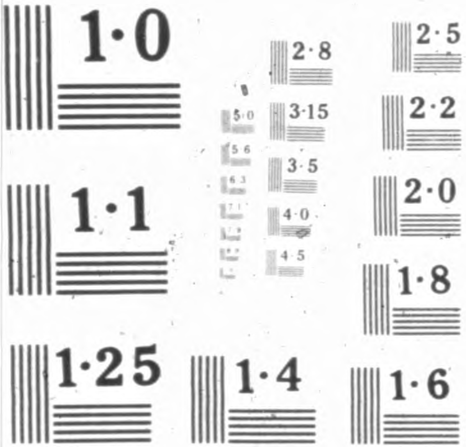
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GREAT BRITAIN
LAW OFFICERS' OPINIONS

Clive Parry
Editor

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Microfilm Editor

Dobbs Ferry, New York
Trans - Media Publishing Company
1976

GREAT BRITAIN
LAW OFFICERS'
OPINIONS

REEL

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LAW OFFICERS' REPORTS

ON

QUESTIONS ARISING OUT OF THE CRIMEAN WAR.

1853-56.

853-56

P W Currie Esq

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LAW OFFICERS OF THE CROWN

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CONFIDENTIAL.

LAW OFFICERS' REPORTS, ON QUESTIONS ARISING OUT OF THE CRIMEAN WAR.

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No. 1.

The Queen's Advocate to the Earl of Clarendon.—(Received October 3.)

My Lord, *Doctors' Commons, October 3, 1853.*

Russian property on board British vessel bound for St. Petersburgh. Declaration will not prevent capture.

I AM favoured with Mr. Addington's letter of the 23rd September, transmitting a letter from Mr. Duncan, who requests to be informed whether property shipped as Russian on board a British steam-vessel bound for St. Petersburgh would be exempt from the consequences of capture in case of war; Mr. Addington requests that I would inform your Lordship at my earliest convenience what answer should be returned to the applicant.

I have accordingly taken Mr. Duncan's letter into consideration, and have the honour to report—

That the measure he proposes to adopt, viz., the insertion in the bills of lading of the words "Russian property," or "all the property of Russian subjects," will not exempt goods on board a British steam-vessel from the consequences of capture in the event of war, and that an answer (in the negative) should be accordingly returned to the applicant in this case.

I have, &c.
(Signed) J. D. HARDING.

No. 2.

The Queen's Advocate to the Earl of Clarendon.—(Received November 22.)

My Lord, *Doctors' Commons, November 22, 1853.*

Russian troops billeted on British and Ionian subjects at Galatz.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 15th instant, stating that he was directed to transmit to me a despatch from Sir Hamilton Seymour, inclosing a note from Count Nesselrode in reply to a representation which Sir Hamilton Seymour has been instructed to make on the part of Her Majesty's Government on the subject of the proceedings of the Russian authorities at Galatz in quartering troops on British and Ionian subjects at that place.

Lord Wodehouse is pleased to request that I would take this subject into consideration, and report to your Lordship at my earliest convenience as to rights of this kind, and the practice usually adopted by belligerents.

In obedience to your Lordship's commands I have taken this subject into consideration, and have the honour to report—

That I am not aware that any special or particular international practice has ever existed upon this subject, and that I am of opinion, that on general principles, and in the absence of express stipulations, foreigners domiciled in a country which is subjected to military occupation cannot, as a matter of right, insist upon any general exemption, from having troops quartered upon them in the same manner and proportion, and subject to the same regulations as natives. Any concession in favour of

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foreigners must be rather a matter of such comity or favour as may not unreasonably be expected at the hands of a friendly Power, than of strict right.

I have, &c,
(Signed) J. D. HARDING.

No. 3.

The Queen's Advocate to the Earl of Clarendon.—(*Received November* 22.)

My Lord, *Doctors' Commons, November* 22, 1853.

Treatment of neutral property on enemies' vessels.

I AM honoured by your Lordship's commands signified in Lord Wodehouse's letter of the 18th instant, stating that he was directed to transmit to me the accompanying despatch from Sir Hamilton Seymour, inclosing a notice of the Russian Minister of Finance, published in the "St. Petersburgh Journal," relative to the treatment of Turkish vessels and their cargoes in the ports of Russia or met with at sea by Russian cruizers, after the term granted for their free departure from Russian ports; and in reference to the particular passage marked in the printed notice, which states that Turkish merchant-vessels and their cargoes shall, if captured, be considered as lawful prizes, even should such cargoes be the property of friendly Powers; and Lord Wodehouse was pleased to request that I would take this paper into consideration and report to your Lordship at my earliest convenience as to the practice usually followed in such cases.

In obedience to your Lordship's commands I have taken this paper into consideration and have the honour to report—

That I am unable to explain fully the practice usually followed in cases of neutral property captured by a belligerent on board an enemy's vessel without far exceeding the ordinary limits of a report. I will endeavour to state as succinctly as the nature of the question will admit, the progress and present state of international law on the subject.

I am of opinion that the practice of the most enlightened and powerful maritime nations, founded upon clear and intelligible principles and supported by the highest authorities, is decidedly in favour of restoring neutral property captured in an enemy's unarmed merchant-ship upon clear and strict proof being given by the claimant of its neutral character.

This principle of international law must, in my opinion, be now considered as established, although the practice of all nations has not been uniform or consistent on the point. Of its vital importance to all commercial countries, and of the serious consequences to them of allowing it to be departed from by any belligerent maritime Power, I need not speak. This principle is distinctly enunciated in the "Consolato de Mare," the earliest Maritime International Code existing; see the passage in Pardessus "Coll. des Lois Maritimes," vol. 2, p. 303, who observes thereon (note)—"Il suffit de reconnaître que, d'après les législations et les usages dont le Consulat a été formé ou avait admis pour principe que la marchandise de l'ennemi, chargé sur un navire ami, était de bonne prise, et que la marchandise d'ami, quoique chargé sur un navire ennemi, devait être respectée." After quoting several ancient Treaties in which it was to be found, he adds (with great truth)—"Ce principe a souvent été modifié par des Traités, et plus souvent par l'usage et la force." See also on the same passage in the "Consolato del Mare," Grotius de J. B. and P., Lib. 3, cap 1, sec. 5, (in notis) and see on the same point, Grotius de J. B. and P., Lib. 3, cap. 6, secs. 5 and 6, who correctly states that all property in enemy's ships is presumed *primâ facie* to be enemy's property, but that the contrary may be established by proof. Bynkershoek, Quest. Jus. Pub., Lib. 1, cap. 113, ably and concisely discusses the point whilst quoting several Treaties, in which the contrary principle had been enunciated clearly, and, in my humble opinion, incontrovertibly establishes that, in the absence of stipulations, the general principle must be in favour of the neutral, who may justly say to his captor, "Cape, si potes, quodcumque est hostis tui, sed mihi redde quod meum est quia amicus tuus sum et impositione rerum mearum nihil sum molitus in necem tuam."

Heineccius, who wrote expressly on the very question in his "Exercitatio VIII de navibus ob vecturam velilarum mercium commissis," cap. 2, secs. 8 and 9, states the correct principle and practice to be precisely as now settled in opposition to what he describes as "inhumanios illarum gentium consuetudo quâ navi hostili captâ res hostium et amicorum juxta in prœdam cedere capientibus judicantur."

Hubner, when on a special mission from Denmark to England and France on this question, ably maintained the same doctrine in his treatise, "De la saisie des bâtiments neutres."

Vattel, book 3, cap. 7, sec. 116, distinctly says that the effects of neutrals found in an enemy's ship are to be restored to the owner, against whom there is no right of confiscation.

England has resolutely maintained and acted upon this principle and under circumstances when it would have been greatly to her interest to have deviated from it. Thus the Report of the Commissioners, 18th January, 1753 (on the Prussian captures) expressly states "That the law of nations has established that the lawful goods of a friend on board the ship of an enemy ought to be restored." Thus Lord Stowell in the case of the "Fanny," 1 Dodson's Admiralty Reports, p. 448, says "a neutral subject is at liberty to put his goods on board a merchant-vessel though belonging to a belligerent, subject, nevertheless, to the rights of the enemy who may capture the vessel, but who has no right according to the modern practice of civilized States to condemn the neutral property." And see the memorable judgment of the Court of King's Bench, pronounced by Lord Ellenborough in Barker *v.* Blakes, 9 East's Reports, p. 291. This right has been permitted by English Courts to be extended to natural born British subjects domiciled in a foreign (neutral) country and thence trading with enemies of England; (a species of commerce highly obnoxious to our national interests and sentiments, and the legality of which could only be supported by the strictest adherence to the principle in question) see Bell *v.* Reid, 1 Maule and Selwyn's Reports, 726. The United States of America have strictly adhered to and enforced the principle. In the judgment of the Supreme Court of the United States in the case of the "Nereide," delivered by Chief Justice Marshall, as reported in 9 Cranche's Report, p. 412, is to be found (particularly at p. 419) the most able and concise statement and reasoning on the point with which I am acquainted; he states (at p. 433)—"Every writer on international law acknowledges the right of the neutral to transport his goods in a hostile bottom. Every civilized nation, with the exception of Spain, has acknowledged the existence of this right, unless it be relinquished by express stipulation."

General doctrine.

Mr. Justice Story (a writer of the very highest authority on International Law) in the same case says (page 437): "The general doctrine, though subject to many learned doubts, is now incontrovertibly established that neutral goods may be lawfully put on board of an enemy ship without being prize of war."

To this great concurrence of authority it must be admitted that there are several instances in which particular nations have, either by Treaty *inter se;* or by express enactment, adopted and acted on a contrary rule. France, for instance, has done so from very early times by various Ordinances, especially by that of Louis XIV in 1681, but it would seem that she has not been strictly consistent, and, that from 1650 to 1681, she admitted the principle now contended for. (See "Wheaton's Elements of International Law," Part 4, c. 3, s. 18.)

Doctrine as to "free ships" making "free goods."

Many countries have at various times renounced their neutral rights and agreed *inter se* that "free ships" should make "free goods" and "enemy's ships" "enemy's goods." Such Treaties are, in my opinion, to be viewed as exceptions to the common and general rule of International Law which must prevail in their absence.

It was well observed by the British Commissioners in 1753, "that particular Treaties have inverted the rule of the Law of Nations," and by agreement "declared the goods of a friend on board the ship of an enemy to be prize."

It has also been contended that those countries which by express enactment, or stipulation, adopt the principle that free ships make free goods acquire thereby an inherent right (without express stipulation) to adopt the converse rule, "enemy's ships make enemy's goods."

In my opinion this doctrine cannot be maintained, and is unanswerably refuted by Chief Justice Marshall in his judgment in the case of the "Neride" above referred to (9 Cranch), and see the "Cygnet," 2 Dodson's Admiralty Reports, p. 299, decided by Lord Stowell to the same purport.

With respect to the Northern Powers, I do not find that on either of the occasions of their armed neutralities (in 1780 and 1801) this question was directly discussed. They contended, and Great Britain denied, that "free ships make free goods," but I

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do not find that they denied the freedom of neutral goods in enemy's ships, and it would not have been to their interest so to do.

The principle of the armed neutrality (that free ships make free goods) seems to have been expressly relinquished by Russia by the Convention with Great Britain, signed at St. Petersburgh in 1801, and acceded to subsequently by Denmark and Sweden.

In 1807 Russia annulled this Convention, and declared that she returned to the principles of the armed neutrality. Since this date I cannot find that any communication has passed between Great Britain and Russia on the subject of neutral property.

I have already endeavoured to point out that the principles of the armed neutrality do not conflict with that in question.

I may mention that I have had the advantage of perusing a very learned and useful manuscript memorandum on this subject recently compiled by my friend and brother Advocate, Dr. Deane, which would doubtless be at your Lordship's service if required.

Burden of proof thrown on the neutral.

I would beg to point out that the Law of Nations clearly authorizes the capture of all hostile vessels; that their cargoes are *primâ facie* hostile; and that the burden of proof is thrown upon the neutral; and that in the absence of such proof, neutral property may not only be captured, but also lawfully condemned by the Prize Courts of the captor's country.

I would also suggest the expediency of giving immediate public notice of this "avis au commerce" of the Russian Minister of Finance, in order to warn all Her Majesty's subjects of the risk they will incur by embarking their property in Turkish vessels; such notice might be accompanied by a statement that "Her Majesty in concert with her allies would not fail to direct urgent representations to be made to the Russian Government on the subject," or by any similar statement (by way of protest) at your Lordship's discretion. I shall, I trust, be pardoned for further adverting:—

1. To the expediency of obtaining (if possible) a declaration from Turkey exempting neutral property on board Russian ships from condemnation "in strict accordance with the principles of International Law," or to that effect.

2. To the necessity of obtaining some knowledge of the nature and constitution of the Russian Prize Courts, by which alone the Maritime Law of Nations can be legally administered, especially as regards neutrals, and without which capture will always be followed by confiscation.

3. To the expediency of joint action and combination on the part of all the maritime and commercial Powers, some of these as Greece and Belgium, are not embarrassed by any adverse or inconsistent precedents or usage, and all are vitally interested in maintaining the principle that neutral property cannot be lawfully confiscated simply by reason of its being found by one belligerent in the unarmed merchant vessel of another.

I have, &c.
(Signed) J. D. HARDING.

No. 4.

Nil.

No. 5.

The Queen's Advocate to the Earl of Clarendon.—(*Received November* 26.)

Doctors' Commons, November 25, 1853.

My Lord,

Warlike stores for Russia concealed in British vessels at Constantinople. Export from England not illegal.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 21st instant, stating that he was directed to transmit to me a despatch from Lord Stratford de Redcliffe, respecting a report that warlike stores destined for Russia have arrived at Constantinople, concealed under cargoes of coal in British ships freighted for Russian ports in the Black Sea.

Lord Wodehouse is pleased to request that I would take this matter into consideration, and report to your Lordship, at my earliest convenience, my opinion whether the exportation of such stores, under the circumstances stated by Lord Stratford de Redcliffe, would be illegal, England not being at war with Russia.

In obedience to your Lordship's commands I have taken this matter into consideration, and have the honour to report—

That I am of opinion that the exportation of the articles in question (steam machinery and guns) to Russia is not at present illegal. If, however, your Lordship should desire to be informed whether any, and what, measures can legally be adopted to prevent or regulate such exportation, I must request the assistance of the Attorney and Solicitor-General.

I have, &c.
(Signed) J. D. HARDING.

No. 6.

The Queen's Advocate to the Earl of Clarendon.—(*Received December* 3.)

Doctors' Commons, December 3, 1853.

My Lord,

Russian vessels chartered by British subjects.

Protection.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 2nd instant, stating that he was directed to transmit to me the draft of a letter which your Lordship proposes to address to Messrs. Maples, Maples, and Pearse, in answer to an application from them made under the circumstances set forth in the inclosed papers, with the view of obtaining protection from the hostile interference of the Porte for certain Russian vessels chartered by British subjects, and to request that I would take this draft into consideration, and report, at my earliest convenience, my opinion as to whether a letter in such terms may properly be addressed to the parties.

In obedience to your Lordship's commands I have taken this draft into consideration, and have the honour to report—

That I have ventured to suggest some alterations in pencil, for the purpose of making the letter in question more strictly correct.

That, with reference to my report of the 22nd ultimo, I would venture to suggest the expediency of acquiring some information as to the course likely to be pursued by Turkey, as well as by Russia, with respect to neutral ships, and neutral property in enemy's ships, and especially as to the existence and regulations of any tribunal in Turkey, analogous to the Prize Courts of other nations.

I have, &c.
(Signed) J. D. HARDING.

Inclosure in No. 6.

*Draft of Letter to Messrs. Maples, Maples, and Pearse.**

Foreign Office, December 3, 1853.

Gentlemen,

I AM directed by the Earl of Clarendon to acknowledge the receipt of your letter of the 1st instant; and I am to state to you, in reply, that his Lordship regrets that he is unable to furnish you with the names of the vessels on behalf of which, on the representation of Mr. James Clay, instructions have been sent to Her Majesty's Ambassador at Constantinople, as stated to you in my letter of the 30th ultimo; the certificate relating to those vessels, which was signed and sealed by the Ottoman Consul at Hull, having been forwarded to Constantinople.

Lord Clarendon will send to Lord Stratford de Redcliffe a copy of your letter and of the list annexed to it, with instructions to use his best efforts for the protection of British interests; but his Lordship cannot hold out any certain assurance to the British charterers either of the vessels which form the subject of your letter, or of those to which Viscount Stratford de Redcliffe's attention has already been called, as to the manner in which the Porte my exercise its belligerent rights.

I am, &c.

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* See also MS. Drafts in Correspondence.

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No. 7.

The Queen's Advocate to the Earl of Clarendon.—(*Received December* 13.)

Doctors' Commons, December 13, 1853.

British subject captured on board merchant-ship treated as prisoner of war.

My Lord,

WITH reference to Lord Wodehouse's letter of the 10th instant, in which his Lordship incloses a despatch from Mr. Yeames, Her Majesty's Consul-General at Odessa, and requests me to report to your Lordship whether a British subject serving on board a captured merchant vessel can lawfully be treated as a prisoner of war, I have the honour to request the assistance of the Attorney and Solicitor-General, and, further, to be informed what has been the practice of England in this respect in times of war as to subjects of neutral States taken on board hostile merchant ships, which information can, I apprehend, be obtained from the Admiralty.

I have, &c.
(Signed) J. D. HARDING.

No. 8.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received December* 16.)

Doctors' Commons, December 16, 1853.

British subjects captured on board Turkish merchant-ship and ship of war. Former should be released, &c.

My Lord,

WE are honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 10th instant, stating that he was directed to transmit to us the inclosed despatch from Mr. Yeames, Her Majesty's Consul-General at Odessa, reporting that two English engineers who were serving, the one on board an Egyptian war steamer, the other on board a Turkish merchant steamer, when those two vessels were captured by a Russian ship, will be treated as prisoners of war; and to request that we would report to your Lordship our opinion whether a British subject serving on board a captured merchant vessel can lawfully be treated as a prisoner of war.

In obedience to your Lordship's commands we have taken this subject into consideration, and have the honour to report—

That we are of opinion that on general principles of international law the subjects of a neutral Power serving on board an unarmed merchant vessel of a belligerent are entitled to claim to be released by the captors on satisfactorily establishing their nationality and peaceable character; at all events, if they engaged to serve on board such vessel before the war had commenced. We would suggest, however, that it will be desirable to ascertain what has been the practice of Great Britain in this respect, particularly as regards Russian seamen captured under similar circumstances during the last general war, before making any direct official demand upon the Government of Russia.

We have, &c.
(Signed) J. D. HARDING.
A. E. COCKBURN.
RICHARD BETHELL.

No. 9.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received January* 5.)

Doctors' Commons, January 3, 1854.

British subjects captured on board Turkish merchant ships.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Addington's letter of the 29th ultimo, stating that, with reference to our report of the 16th on the subject of the question whether British subjects who may be captured by Russian ships of war while serving on board unarmed Turkish merchant vessels are liable to be treated as prisoners of war, he was directed to transmit to us a further despatch which had been received from Mr. Yeames, Her Majesty's Consul-General at Odessa, reporting that, among other prisoners, two English engineers and some Maltese and Ionian subjects, who were taken on board a Turkish merchant steam vessel, have arrived at Odessa, and that they are about to be sent into the interior of the country as prisoners of war.

British subjects captured on board man-of-war.

Mr. Addington is pleased to request that we would take this despatch into consideration, and report to your Lordship, at our earliest convenience, whether, on principles of international law or usage, Her Majesty's Government would be justified in demanding from the Russian Government the release of these British and Ionian subjects, more particularly since it appears that they were captured by a Russian ship of war on the 30th October last, whilst the notice from the Russian Finance Department (an extract from which is contained in Mr. Yeames' despatch) stated that no Turkish merchant ships would be captured by Russian vessels before November 22.

In obedience to your Lordship's commands we have taken the despatch into consideration, and have the honour to report—

That we are of opinion that, on principles of international law, Her Majesty's Government would be justified in demanding from the Russian Government the release of these British and Ionian subjects, with the exception of Mr. Bell, who, having been captured whilst serving on board a Turkish vessel of war, cannot, in the absence of any special circumstances, claim the intervention of Her Majesty's Government.

We have, &c.
(Signed) J. D. HARDING.
A. E. COCKBURN.
RICHARD BETHELL.

No. 10.

The Queen's Advocate to the Earl of Clarendon.—(*Received January* 11.)

Doctors' Commons, January 10, 1854.

Treaties with Russia.

My Lord,

WITH reference to the case of Mr. Huddlestone, and other similar cases, I must request to be informed, as promptly as convenient, what Treaties and Conventions are now actually in existence between this country and Russia, and to be referred to or furnished with copies of them *in extenso*.

I find the Treaty of Commerce and Navigation signed at St. Petersburgh, January 11, 1843, in vol. 6, Hertslet, p. 762, and the Treaty of Arebro, in Hertslet's State Papers, vol. 1, part 1, page 13, and I presume that these two are the only existing Treaties, except specific Conventions as to Slave Trade, &c.

I have, &c.
(Signed) J. D. HARDING.

No. 11.

The Queen's Advocate to the Earl of Clarendon.—(*Received January* 12.)

Doctors' Commons, January 11, 1854.

Neutrality of Sweden and Denmark in case of war.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Addington's letter of the 4th instant, stating that he was directed to transmit to me two identic notes which have been delivered to him by the Representatives of Sweden and Denmark, announcing the policy which the two countries have agreed to adopt in the event of war; and to request that I would take these notes into consideration, and report to your Lordship, at my earliest convenience, whether in my opinion anything is wanting in these notes to constitute complete neutrality, and that I would at the same time report to your Lordship any general remarks I may have to offer on the subject.

In obedience to your Lordship's commands I have the honour to report—

That I do not observe anything is wanting in these notes to constitute complete neutrality according to international law.

That, agreeably to your Lordship's request, I would venture to remark generally thereupon—

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Belligerent vessels in neutral ports.

1. That the proposed admission of the ships of war of both belligerents into the harbours of these neutral countries is open to this observation, viz., that the practical effect of this will be that such harbours when fortified, *e.g.*, Copenhagen, will (in effect) prove an asylum and protection for the fleets or vessels of that belligerent Power which may first enter, and which cannot be attacked therein with impunity; but that such neutral harbours, when undefended by fortifications, will not in practice protect the vessels of one belligerent from the attacks of those of the other, although legally the limit of three miles from the shore ought to protect them.

Three-mile limit.

Interdicted ports.

2. That there may possibly be some harbours, the entry into which being either interdicted or permitted to both parties, may operate greatly to the advantage of one belligerent and to the detriment of the other, for topographical or military reasons, and that in this view it is possible that some alterations in the list of interdicted harbours may be usefully suggested. I would venture, with the utmost diffidence, to suggest whether (for instance) a Russian fleet by getting first into Copenhagen (which is not an interdicted harbour) might not thereby obtain a decisive or most important advantage, as by making it impossible for Her Majesty's ships to enter or quit the Baltic without great danger, and if so, whether the Danish Government might not be induced to interdict Copenhagen to both parties. These, however, are political and military rather than legal questions, and beyond my province, and it is quite possible that the practical result may be in favour of Great Britain.

Contraband of war.

3. It may be expedient to come to some more distinct understanding as to what articles are meant to be included in the term contraband of war. For want of this, cargoes of an ambiguous nature, as timber and coal (for instance), may under certain circumstances cause much difficulty. I observe that such articles were enumerated in an explanatory Article or Declaration signed at Copenhagen, 4th July, 1780, and renewed in Article VII of the Treaty of Kiel, 1814 (1 Hertslet, p. 203).

4. The interdiction as regards privateers, though somewhat novel, is not, I presume, deemed objectionable as being prejudicial to British, or favourable to Russian, interests.

As to flag covering cargo.

5. It is possible that under the words of the Vth Article—"toute sureté et toute facilité pour les navires Danois, Suedois, et Norvégiens, avec leurs cargaisons"—some attempt may be made to contend that "the flag covers the cargo," or even to reopen the point (formerly so much disputed) as to the right of searching neutrals when under convoy. If there be any such idea, some declaration on the part of Her Majesty's Government would be advisable.

I need not, perhaps, at present further advert to such eventualities, nor do more than refer to my report dated November 22nd, 1853 (on the notice from the Russian Finance Minister), especially to the conclusion of that report, and to the very different practice which it is probable will be adopted by Russia and Great Britain as to neutral goods when captured on board unarmed merchant-vessels of a belligerent, with a view to entering into some such common course of action with other neutral Powers as I have therein ventured to suggest, and for which these identic notes may possibly afford a favourable opportunity.

I have, &c.
(Signed) J. D. HARDING.

No. 12.

The Queen's Advocate to the Earl of Clarendon.—(*Received January* 12.)

Doctors' Commons, January 11, 1854.

My Lord,

J. Robertson, born in Poland of British parents, serving in Russian army.

I AM honoured with your Lordship's commands signified in Mr. Addington's letter of the 9th instant, stating that he was directed to transmit to me the inclosed despatch from Colonel Du Plat, Her Majesty's Consul-General at Warsaw, respecting the enlistment in the Russian army of one James Robertson, born in the Kingdom of Poland of British parents, in wedlock, and who has on different occasions claimed and enjoyed the rights and privileges of a British born subject of the British crown; and to request that I would take the same into consideration, and report to your Lordship at my earliest convenience my opinion upon this case; and especially with respect to the last paragraph of Colonel Du Plat's despatch, wherein he states that he has been given to understand that James Robertson had waived his rights as a British

subject, and had voluntarily enlisted in the Russian service, your Lordship would be glad to know what instructions it may be proper to give to Colonel du Plat in answer to his inquiry as to the steps which he should take to vindicate the allegiance due to Her Majesty under the circumstances described.

In obedience to your Lordship's commands I have taken the despatch into consideration, and have the honour to report—

That if James Robertson has been unwillingly compelled to serve as a Russian soldier, the course which Her Majesty's Consul-General proposes to pursue in order to claim and insist upon his liberation and exemption appears to me to be proper, and possibly some reparation may be due to him for the manner in which he may have been treated. If, however, he has voluntarily enlisted, the British Consul has no legal power or authority to adopt any means to vindicate the allegiance due to Her Majesty, or to prevent him from entering the Russian army. By so doing he will forfeit his right to the protection and privileges of a British subject, and in the event of war between this country and Russia, he may be guilty of high treason by serving in such war, and if captured may legally be dealt with accordingly instead of being treated as a prisoner of war. It may, perhaps, be proper to instruct the Consul to inform and warn Robertson accordingly.

I have, &c.
(Signed) J. D. HARDING.

No. 13.

The Queen's Advocate to the Earl of Clarendon.—(*Received January* 13.)

Doctors' Commons, January 11, 1854.

My Lord,

British vessel destroyed by Russians at Sinope. Compensation claimed.

I AM honoured with your Lordship's commands signified in Mr. Addington's letter of the 2nd instant, stating that he was directed to transmit to me therewith a letter from Colonel Freestun, inclosing a Memorial from Ann Smith and James Bowen respecting the destruction of their vessel "The Howard" in the late conflict between the Russian and Turkish squadrons at Sinope; and to request that I would take the same into consideration and report to your Lordship whether, under the circumstances stated by the memorialists, Her Majesty's Government can claim compensation for them from that of Russia.

In obedience to your Lordship's commands I have taken this subject into consideration, and have the honour to report—

That inasmuch as the Memorial omits to state many most material facts and circumstances upon which the right of the memorialists to compensation from the Russian Government may in a great measure depend, I can only say that in the absence of such statements the circumstances actually set forth by the memorialists do not appear to me to be sufficient to authorize Her Majesty's Government to claim compensation for them from the Russian Government.

I would venture to suggest that some of the material facts and circumstances to which I have alluded, and as to which nothing is stated in the Memorial, will be:

1. The position and distance in which the "Howard" was actually lying with reference to the Turkish and Russian ships of war and the batteries on shore, when she was destroyed.

2. The precautions (if any) which she took to save herself; such as displaying her colours, making any signal, or otherwise attempting to communicate with or explain her national character to the Russian fleet, or to remove out of the range of fire.

3. Whether her destruction was wholly caused by the Russian attack, or partially by the Turkish defence, and how caused, as by shots directed especially at her, or by stray shots aimed at the hostile forces, or how otherwise.

4. Whether any application (and with what result) was made by her master or consignee on the spot to the Russian Admiral after the termination of the conflict.

5. Whether there were any and what other neutral vessels in the harbour of Sinope during the action, and in what part of it, and what was their fate, or how they escaped or avoided injury.

6. Any circumstances tending to show that the "Howard" was deliberately and purposely destroyed, and that her national character was known to those who destroyed

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her, or to negative the probability of her having been casually destroyed in the confusion, and in ignorance of her true character, or of her having been mistaken for a Turkish vessel.

I would, however, respectfully suggest to your Lordship whether it may not be expedient simply to require further and full particulars (generally), together with the master's "protest," or original statement from the memorialists, and to abstain for the present from pointing out to them the particular deficiencies in their statement to which I have alluded.

I have, &c.
(Signed) J. D. HARDING.

P.S.—A letter signed James Bowen, dated Weymouth, January 2, copied from the "Morning Herald" newspaper into the "Sun" of January 5, appears deserving of notice in this matter.

J. D. H.

No. 14.

The Queen's Advocate to the Earl of Clarendon.—(*Received January* 13.)

Doctors' Commons, January 12, 1854.

My Lord,

British vessel destroyed by Russians at Sinope.

I AM honoured with your Lordship's commands signified in Mr. Addington's letter of the 11th instant, stating that with reference to his letter of the 2nd instant, he was directed to transmit to me a letter from Messrs. Nash respecting the destruction of the British merchant vessel the "Howard" at Sinope by the Russian fleet, and to request that I would take this paper into consideration, together with those inclosed in his letter above mentioned, and report to your Lordship immediately upon this matter.

In obedience to your Lordship's commands I have taken the matter into consideration, and I have the honour to report—

That neither the letter from Messrs. Nash, nor the newspaper extract inclosed therewith and alluded to in my former report, enable me to add anything material to my previous report upon this case, and that I still consider it essential to be furnished with the "protest" or other original statement of the master of the "Howard" *in extenso* and with the best information which can be supplied upon the various circumstances therein adverted to.

I have, &c.
(Signed) J. D. HARDING.

No. 15.

The Queen's Advocate to the Earl of Clarendon.—(*Received January* 13.)

Doctors' Commons, January 13, 1854.

My Lord,

Timber contract. How affected by war.

I AM honoured with your Lordship's commands signified in Mr. Addington's letter of the 2nd instant, stating that he was directed to transmit to me therewith a letter from Mr. Huddlestone, stating that he has entered into a contract for the purchase of a quantity of Russian wood to be delivered in the ensuing season, and requesting, with reference to the Treaties between this country and Russia, to be informed whether in the event of a war breaking out between the two countries, he will be allowed to ship the goods, or whether the contract will be void by the law of nations; and to request that I would take this application into consideration, and report to your Lordship my opinion as to the answer which should be returned to it.

In obedience to your Lordship's commands I have taken Mr. Huddlestone's application into consideration, and have the honour to report—

War abrogates Treaties.
Trade with an enemy illegal.

That Mr. Huddlestone may be informed that by the law of nations war abrogates all Treaties between the belligerents, and renders all commercial dealing and traffic with the enemy's dominions illegal on the part of individuals of a belligerent State, unless by the special licence of their own Government, such Government concedes permission to them in particular cases. No contract can render such dealing lawful. It will be for Her Majesty's Government to consider the propriety of granting any such licence to Mr. Huddlestone; if he attempts to carry out his contract without it, the timber in question will, if met with at sea, in the event of war, be exposed to capture and condemnation by Her Majesty's ships, and no licence from Her Majesty's Government could affect the right of the Russian Government in such event, either to interrupt or annul the contract, or to confiscate the timber as enemy's property.

I have, &c.
(Signed) J. D. HARDING.

No. 16.

The Queen's Advocate to the Earl of Clarendon.—(*Received February* 9.)

Doctors' Commons, February 7, 1854.

My Lord,

Russian produce being British property on board neutral vessel.

I AM honoured with your Lordship's commands signified in Mr. Addington's letter of the 3rd instant, stating that he was directed to transmit to me the accompanying despatch from Mr. Lousada, Her Majesty's Consul at Riga, inclosing copy of a letter from Messrs. Mitchell and Co., of that city, requesting to be informed what respect would be paid by British cruizers in the event of war to *bonâ fide* British property, the produce of Russia, if shipped on neutral vessels; and Mr. Addington is pleased to request that I would take this subject into consideration and report to your Lordship at my earliest convenience, my opinion as to the answer which it will be proper to return to the inquiry of Messrs. Mitchell and Co.

In obedience to your Lordship's commands I have taken the subject into consideration, and have the honour to report—

Lawful prize.
Licence necessary.

That I am of opinion that property of the description in question, the produce of Russia, and exported therefrom, by, and on account of, a British merchant, domiciled and trading there, although purchased before the war, and exported to England, would not be respected by Her Majesty's cruizers unless in pursuance of a licence, or of some special instructions from Her Majesty to the officers of Her navy. I would beg leave to refer to my report on Mr. Huddlestone's case (of January 13, 1854), and to add that by the law and practice of nations, a belligerent has a right to consider as enemies all persons residing in a hostile country, or who maintain commercial establishments therein, whether such persons be by birth neutrals, allies, enemies, or fellow subjects; the property of such persons, exported from such country, is, therefore, *res hostium*, and as such, lawful prize of war. Such property will be condemned as prize although its owner may be a native-born subject of the captor's country, and although it may be *in transitu* to that country, and its being laden on board a neutral ship will not protect the property. It can only be protected from *capture* by licence; it may be released and restored by the Crown at any time before final *condemnation*, but not afterwards. "The sloop Cornelis," 1 C. Robinson, p. 196, Potts *v.* Bell, 8 "Term Reports," p. 548, the "Francis," 8 Cranch, contain the clearest exposition and application of the law of nations on this subject.

Unless, therefore, Her Majesty's Government should consider that this is a proper case for the granting of a license, or should consider that this property, if actually captured ought to be restored, Messrs. Mitchell must be informed that the property in question will not be protected by the Consular certificate, or by any other document, but will be liable to capture and condemnation as prize.

I observe that although Messrs. Mitchell state that it is not their intention to enter into fresh export business, they indicate no intention of giving up their commercial establishment or trade, or of returning with their property to England in the event of war.

I have, &c.
(Signed) J. D. HARDING.

British licence does not protect from capture by allies.

P.S.—I ought, perhaps to add that a license from Her Majesty will not protect the property from capture by the allies of Her Majesty.

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No. 17.

The Queen's Advocate to the Earl of Clarendon.—(Received February 10.)

Doctors' Commons, February 9, 1854.

My Lord,

Maritime policy of Denmark.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 4th instant, stating that, with reference to the note of the Danish Minister, inclosed in Mr. Addington's letter to me of the 4th, and to my report thereupon of the 11th ultimo, relative to the maritime policy which the Court of Denmark, in concert with that of Sweden, has announced its intention to adopt in the event of war, his Lordship was directed to inclose me a despatch which he addressed to Mr. Buchanan, Her Majesty's Minister at Copenhagen, together with his reply upon the same subject; and, with reference to the observations contained in Mr. Buchanan's despatch, Lord Wodehouse is pleased to request that I would report to your Lordship my opinion, whether there are any, and if any what, points contained in the Danish Minister's note which are contrary to public law.

In obedience to your Lordship's commands I have taken these papers into consideration and have the honour to report—

That I do not perceive that there is any point contained in the Danish Minister's note which is contrary to public law, but that, if there be any particular point which is supposed to be so, I would venture to request that its real bearing, or practical result, should be indicated, and that my attention should be especially directed thereto.

I have, &c.

(Signed) J. D. HARDING.

No. 18.

The Queen's Advocate to the Earl of Clarendon.—(Received February 25.)

Doctors' Commons, February 25, 1854.

My Lord,

Protection for Russian vessels now on their voyage to England.

I AM honoured with your Lordship's commands signified in Mr. Addington's letter of the 22nd instant, transmitting a letter from Mr. James Clay, requesting that certain Russian vessels now on their voyage to England, and freighted on British account, may be protected from capture by English or French cruizers in the event of a Declaration of War, and to request that I would take this subject into consideration and report to your Lordship, at my earliest convenience, my opinion as to what can be done in furtherance of Mr. Clay's wishes.

In obedience to your Lordship's commands I have taken this subject into consideration, and have the honour to report—

That instructions may, if your Lordship thinks proper, be issued to Her Majesty's ships that, in the event of war breaking out between Great Britain and Russia, they are not to detain the particular ships in question if met with on the particular homeward voyage described, and that in order to enable such instructions to be properly framed, the names correct, and full descriptions of the vessels and of their cargoes, should be furnished, and such further reasonable security required, or precautions taken, against fraud or abuse as may appear proper to your Lordship.

I do not, however, see any reason for protecting the vessels from capture on their arrival here, when their cargoes may be released, nor do I understand Mr. Clay to request protection for them.

British licence will not protect from capture by the French.

It will be, of course, competent for your Lordship to make a representation on the subject to the French Government, but the instructions, or even the formal licence, of one belligerent cannot, by the law of nations, protect trade with the common enemy from interruption or the ships or goods engaged therein from capture and condemnation by another belligerent, although such belligerent be an ally in the same war, and it may be proper to explain this to Mr. Clay.

I have, &c.

(Signed) J. D. HARDING.

No. 19.

The Queen's Advocate to the Earl of Clarendon.—(Received February 27.)

My Lord, *Doctors' Commons, February* 27, 1854.

Position of British subjects in Russia in event of war.

I AM honoured with your Lordship's commands signified in Mr. Addington's letter of the 26th instant, stating that he was directed to state to me that, as Her Majesty's Minister has already left St. Petersburgh, and as Her Majesty's Consuls, in the event of war breaking out between this country and Russia (which may shortly take place) will necessarily leave that country, your Lordship is desirous of having my opinion as to the position of British subjects when war is declared; and Mr. Addington is pleased to request that I would consider this point and report thereupon to you Lordship, if possible, by the early part of Monday, as an opportunity might offer for sending on that day a communication to Her Majesty's Consul at St. Petersburgh on the subject.

In obedience to your Lordship's commands I have taken this point into consideration, and have the honour to report—

Dependent on will of Russia, subject to retaliation.

That the position of British subjects in Russia, after war is declared, will, in the absence of all Treaty stipulations, be in great measure dependent on the will and pleasure of the Government of Russia, subject of course to the principle of reciprocity and the right of retaliation. It has indeed in modern times been very usual to insert express stipulations in Treaties containing various special provisions in favour of the subjects of one Power who might be in the dominions of the other in the event of war breaking out, but, in the entire absence of all such stipulations, or of any legal provisions in their favour, I fear that it must be admitted that, by the law of nations, all the goods of the enemy found in the country, whether afloat or on shore, are liable to seizure and confiscation on the breaking out of the war, and the exercise or waiver of such right is a matter for the discretion of the Sovereign Power. The exercise of this right has been constantly modified in practice and has more commonly been limited to goods afloat.

Goods liable to confiscation.

It has been well remarked by high authority "that commercial nations have always considered property in the possession of their neighbours,* and when war breaks out, the question, what shall be done with the enemy's property found in the country is rather of policy than law."—See "Manning's Commentaries," p. 127.—"Kent's Commentaries on American Law," vol. 1, p. 60.—"Brown *v.* The United States," 8 Cranch, p. 110.

Subject to these remarks, I may add that, practically, reciprocity is the true principle, and in this country it is to be found clearly laid down in Magna Carta, and see "The Santa Cruz," 1, C. Robinson, p. 64.

Detention of non-combatants.

With respect to the persons of non-combatants, it has not been usual to place them under restraint, and the seizure and detention of the English residents in France by Napoleon I in 1803 has met with general disapprobation. It appears to have been, even by the Imperial Government, only justified as being a measure of retaliation for a hostile attack without a formal declaration of war.

Exceptions.

I have however some reason to believe that, on the breaking out of the war with the United States in 1812, the merchant seamen of the United States in the British dominions were detained, and treated as prisoners of war; and I do not conceive that all non-combatants can claim, as a matter of strict right, to be exempt from detention.

Protection for limited period.

It has nevertheless been usual for civilized nations to afford distinct protection for a limited period to "alien enemies" who might be within their dominions on the breaking out of war, in order to give them a reasonable opportunity of settling their affairs and leaving the country, and in so doing they have generally been guided by the prinicple of reciprocity.

I may perhaps be excused for reminding your Lordship—

Declaration of war not necessary to legalize hostilities.

1. That no formal declaration of war is strictly necessary to legalize hostile measures, and the withdrawal of an Ambassador has sometimes been considered to amount to such a declaration.

Effect of a state of war.

2. That inasmuch as war in theory places, not only the two Governments, but every individual of each country in a state of mutual hostility, all commercial intercourse, dealing and correspondence, between the belligerent countries becomes illegal from the breaking out of war unless by the express license of the Crown.

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* *Sic in orig.*

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3. That after war has broken out, the property of British subjects residing and trading in Russia will be considered as "enemies' property," and they will be guilty of high treason if they give any aid or assistance to the enemy or give him information or intelligence.

The practical consequences of these principles may of course seriously affect the interests of British subjects in Russia, many of whom, from the long peace which has happily prevailed, may be ignorant of them.

It will be for your Lordship to consider whether any and what notice should be issued to Her Majesty's subjects in Russia, and whether and upon what conditions licences should be given to those who may be desirous of entirely ceasing to reside or trade in Russia, and of returning with their property to England, without such licences such property will be liable to capture at sea by Her Majesty's ships, and to condemnation as lawful prize of war.

The necessity for urgent haste in thus preparing this report will, I trust, excuse its very hasty and imperfect character.

I have, &c.
(Signed) J. D. HARDING.

No. 20.

The Queen's Advocate to the Earl of Clarendon.—(*Received February* 27.)

Doctors' Commons, February 27, 1854.

My Lord,

British vessels trading to "Baltic ports."

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 23rd instant, stating that he was directed to transmit to me a letter from Messrs. Millers and Arthur, requesting to be informed whether, in the event of a war between this country and Russia, the vessels with cargoes dispatched from this country to Baltic ports would be exposed to being stopped at the Sound; and to request that I would take this letter into consideration and report to your Lordship at my earliest convenience, my opinion as to the answer to be returned thereto.

In obedience to your Lordship's commands I have taken the letter into consideration, and have the honour to report—

That Messrs. Millers and Arthur may be informed "that Her Majesty's Government is not aware of the existence of any intention of 'stopping at the Sound' in the event of a war between Great Britain and Russia, British goods of the description alluded to, shipped hence in time of peace to Stettin in Prussia." That no further or fuller answer should be given to this application inasmuch as the phrases "Baltic ports" and "stopped at the Sound" are so indefinite as to be suspicious.

The applicants can hardly require to be informed that, whilst trade between British and neutral ports (as Stettin in Prussia) will in case of a war between Great Britain and Russia, be lawful, all trade with Russian "Baltic ports," will be unlawful and may be "stopped," not merely at the Sound, but everywhere on the high seas, and that British goods, if embarked in such a trade with the enemy would of course be condemned, and the applicants are of course aware of the liability of their goods to Russian capture "at the Sound" or elsewhere; at all events, they are not entitled to receive from your Lordship a gratuitous dissertation on the possible effects and consequences of war, so far as it may affect their goods.

Such inquiries, if fully answered, may often compromise Her Majesty's Government, and also may enable the applicants and others to carry out safely enterprizes which may be very adverse to the public interest; and British merchants residing in this country can easily ascertain by legal advice before shipping their goods to any particular port, what risks they incur in the event of war.

I have, &c.
(Signed) J. D. HARDING.

No. 21.

The Queen's Advocate to the Earl of Clarendon.—(*Received March* 8.)

Doctors' Commons, March 8, 1854.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Addington's letter of the 6th instant, stating that he was directed to transmit to me therewith, a letter from the Treasury inclosing a letter from Messrs. Arbuthnot and Co., praying that a Russian vessel named the "Vesta," freighted on British account, may be exempted from capture in the event of a declaration of war, and to request that I would take the application of the parties into consideration, and report to your Lordship at my earliest convenience my opinion thereupon.

Russian vessel "Vesta." No objection to exempt from capture.

In obedience to your Lordship's commands I have taken the papers into consideration, and have the honour to report—

That, assuming that your Lordship is satisfied of the truth and *bona fides* of the statement of Messrs. Arbuthnot and Co., I see no objection to the necessary orders being issued not to capture the "Vesta" on her homeward voyage as requested by them.

Ship may be condemned and cargo released.

The ship herself may in the event of war, be detained and condemned after her arrival, her cargo being released.

I have, &c.
(Signed) J. D. HARDING.

No. 22.

The Queen's Advocate to the Earl of Clarendon.—(*Received March* 8.)

Doctors' Commons, March 8, 1854.

My Lord,

Hudsons' Bay Company.

WITH reference to Mr. Addington's letter of the 3rd instant, respecting a proposal made by the Russian American Company to the Hudson's Bay Company, that in case of war between England and Russia, a state of reciprocal neutrality should exist with reference to the two Companies, I beg to request, if it meets your Lordship's approval, to have the assistance of the Attorney and Solicitor-General.

I have, &c.
(Signed) J. D. HARDING.

No. 23.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received March* 10.)

Doctors' Commons, March 9, 1854.

My Lord,

Fictitious transfer of Russian vessel to Ionian flag.

WE are honoured with your Lordship's commands, signified in Lord Wodehouse's letter of the 2nd instant, stating that he was directed to transmit to us the accompanying despatch from Mr. Annesley, Her Majesty's Consul at Amsterdam, reporting the circumstances under which he has been called upon to furnish a vessel which has hitherto been sailed under the Russian flag with papers authorizing her to navigate under the Ionian flag, on the ground that she has been sold to an Ionian subject.

That Mr. Annesley has hesitated to furnish the documents required of him in consequence of suspicions which he entertains that the transaction is not a *bonâ fide* one, but merely a fictitious sale, and he requests to be informed what course he is to pursue under the circumstances set forth in his despatch; and Lord Wodehouse is pleased to request that we would take this case into consideration, and report to your Lordship at our earliest convenience, our opinion as to the course which it would be proper to instruct Mr. Annesley to pursue in this matter.

In obedience to your Lordship's commands, we have taken this case into consideration, and have the honour to report—

That Mr. Annesley may be instructed that, although the circumstances are certainly suspicious, they do not furnish such decided proof of fraud as to afford legal grounds for refusing any documents which in the course of his office it would be his duty to deliver, but that, if the nature of the papers to be furnished will admit of his

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making the facts appear that the ship was Russian, and has been by a bill of sale presented to him on a certain day, transferred to the present alleged owner, it is desirable that he should do so.

We have, &c.
(Signed) J. D. HARDING.
A. E. COCKBURN.
RICHARD BETHELL.

No. 24.

The Queen's Advocate to the Earl of Clarendon.—(*Received March* 11.)

Doctors' Commons, March 10, 1854.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Addington's letter of the 2nd instant, stating that he was directed to transmit to me the inclosed copies of communications from parties in this country interested in the Russian trade, and who wish to be informed as to the course to be adopted in case of war with respect to Russian produce; and to request that I would take this subject into consideration, and report to your Lordship my opinion as to the answers which should be returned to the parties.

In obedience to your Lordship's commands I have taken the matter into consideration, and have the honour to report—

Russian produce, the property of British subjects, &c.

That the phrases "Russian produce," the "property of British subjects," "Russian goods," and "if the Baltic be blockaded," are so indefinite that it is difficult to answer these questions clearly and concisely without incurring some risk of misleading the parties interested. Subject to this remark, they may be informed—

Evasion of blockade subjects ships to capture.

1st. That if any of the Baltic ports or coasts should be blockaded, all attempts to violate or evade such blockade will subject all ships and cargoes so offending (to whomsoever they may belong, or of whatsoever produce the cargoes may be composed) to capture and condemnation as prize of war.

2nd. That the importation into the British dominions by British merchants of goods purchased in neutral countries, *bonâ fide*, and not for the purpose of carrying on an indirect and circuitous trade with the enemy's dominions, will be legal and unmolested as a general rule.

Russian property will be captured;

3rd. That the circumstance of the goods being "Russian," if it is thereby meant that they are Russian property, or really in course of being imported from Russia into England, will expose them to capture and condemnation, even although the ship may have touched at, or the goods have been colourably transhipped or transferred at a neutral port in the course of the voyage, all trade with the enemy being illegal.

but not neutral goods, originally Russian.

If by "Russian goods" it be meant merely that such goods (as hemp and tallow, for instance) were originally produced in Russia and have since been purchased from neutrals at a neutral port, and in the ordinary course of trade with such port by British merchants, the fact that they were originally produced in Russia will be immaterial. The material questions in such cases when brought before Prize Courts relate to the *bonâ fide* property or interest in the goods, and the course of trade in which they were actually engaged when captured, and not to the place of their original production or manufacture.

All *bonâ fide* trade between neutral countries and the British dominions will be lawful and unmolested as a general principle, and if captors detain or capture any ships or goods without probable cause of suspicion, they will be restored with costs and damages.

It will be for your Lordship to consider what portion of this report should be communicated to the applicants.

I have, &c.
(Signed) J. D. HARDING.

No. 25.

The Queen's Advocate to the Earl of Clarendon.—(*Received March* 15.)

Doctors' Commons, March 15, 1854.

My Lord,

British cargoes waiting to load in Russian ports on outbreak of war.

I AM honoured with your Lordship's commands signified in Mr. Addington's letter of the 14th instant, stating that he was directed to transmit to me a letter from Mr. William Price, requesting to know what amount of protection from seizure by English or French cruizers Her Majesty's Government would afford in the event of war to certain specified cargoes now waiting to load in Russian ports in which British merchants are interested; and to request that I would take this paper into consideration, and report to your Lordship my opinion as to the answer which should be returned to Mr. Price's application, and, further, that I would send in my report on this matter on Thursday morning next.

In obedience to your Lordship's commands I have taken this paper into consideration, and have the honour to report—

License or order necessary.

That unless licences should be granted to the applicant, or a special Order in Council issued, or Act of Parliament passed, or at least orders given to Her Majesty's ships, and also to the ships of war of the Allies of Her Majesty, in respect of the goods in question, they will be liable to capture and condemnation.

All trading with enemy illegal.

No principle of international law is more clear than that war renders all trading with the enemy, and all commercial intercourse with the enemy's dominions, on the part of merchants settled in a belligerent country, illegal, and subjects the property engaged therein to condemnation, in whatever ships or under whatever circumstances it may be carried on, "ex naturâ belli commercia inter hostes cessare non est dubitandum."

There is no difference in such cases between goods going to or coming from the enemy's ports, and, although grievous hardships may be caused in particular cases by the application of this rule to the goods of Her Majesty's subjects, yet the power of the Crown to dispense with it has been considered a sufficient answer to all such objections. (See particularly the "Hoop," Cornelis, 1, C. Robinson, p. 196, and the cases there cited.)

Mr. Price's cargoes not yet British property.

In this particular case, however, I conceived it to be my duty to point out to your Lordship that, as to the "10 cargoes bought at Onega for shipment in 1854 (bills accepted and due in May next for two-thirds of their value)," the date of the purchase is not given, and this particular transaction does not seem entitled to the same favourable consideration as the others, inasmuch as I understand all the other goods to have been already paid for, and to have become British property in 1853, whilst these particular goods appear to be still the subject of contract or dealing, apparently intended to be carried out and completed, notwithstanding the war, which is contrary to law and public policy.

General principle as to trade before war is imminent.

Neither does it appear with respect to these goods that the contract was not made when war was imminent, nor that the contract, if made before war was impending, could not have been rescinded in sufficient time.

In conclusion, I would venture to submit to your Lordship whether some general principle might not be adopted by Her Majesty's Government as governing the numerous cases likely to arise of British property *bonâ fide* acquired in goods in Russia before war was imminent, and which the owners may be permitted by the Russian Government to transmit to England.

Subject to these remarks, it will be entirely a matter for your Lordship in your discretion to determine whether a license should be granted, and if granted, on what terms and conditions, exempting from capture all or any, and which, of the goods in question. Even such a license will not protect them from capture by Her Majesty's Allies, with whom it may be desirable that a distinct arrangement should be made to meet such cases.

I have, &c.
(Signed) J. D. HARDING.

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No. 26.

The Queen's Advocate to the Earl of Clarendon.—(*Received March* 15.)

Doctors' Commons, March 15, 1854.

My Lord,

Contemplated modification of Prize Laws.

WITH reference to the numerous cases recently referred to me from the Foreign Office for reports as to cargoes and goods in which either British merchants or alien friends resident here are interested, and which may be exposed to capture in the event of war, I have the honour to state that I have been informed by the First Lord of the Admiralty that Her Majesty's Government have under consideration the expediency of introducing and announcing very shortly some important modifications in the application of the Law of Prize as hitherto enforced in previous wars, especially with respect to enemy's goods laden on board neutral ships, and possibly on other points of great interest and importance to all engaged in commerce.

Warning not to tell merchants that "flag will not cover cargo" if that rule is to be relaxed.

I therefore conceive it to be my duty most respectfully to point out to your Lordship the serious consequences which may result to the commercial interests of individuals if applicants should rely and act upon the information and answers received from your Lordship in accordance with my reports in these cases (which reports are framed upon the old and existing practice in prize cases) and if immediately afterwards a course of action and policy should be determined upon and announced by Her Majesty's Government entirely at variance with such information. If, for instance, a merchant, on being informed "that the flag will not cover the cargo," should countermand his order, or forego or forfeit an advantageous contract, and should immediately afterwards find that it *will* do so, he will naturally complain. I merely mention this as one instance out of many in illustration of my meaning.

It will be, of course, entirely for your Lordship to consider whether, by delaying the answers in these cases, or appending to them any caution, or by any other means, the consequences to which I have alluded may be obviated.

I have, &c.
(Signed) J. D. HARDING.

No. 27.

The Queen's Advocate to the Earl of Clarendon.—(*Received March* 15.)

Doctors' Commons, March 15, 1854.

My Lord,

Blockades are general. Enforced against all neutral flags alike.

I AM honoured with your Lordship's commands signified in Mr. Addington's letter of the 10th instant, stating that he was directed to transmit to me therewith a letter from Mr. Duncan, requesting to be informed whether, in the event of a blockade of Russian ports, such blockade would be general, and against all neutral flags; and to request that I would report to your Lordship my opinion as to the answer which should be returned to Mr. Duncan's application.

In obedience to your Lordship's commands I have taken Mr. Duncan's letter into consideration and have the honour to report—

That in the event of any Russian ports being blockaded, such blockade will be general, and will be enforced against all neutral flags without exception.

I have, &c.
(Signed) J. D. HARDING.

No. 28.

The Queen's Advocate to the Earl of Clarendon.—(*Received March* 17.)

Doctors' Commons, March 16, 1854.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Addington's letter of the 10th instant, stating that he was directed to transmit to me a letter from Mr. T. G. Baring conveying a request from Messrs. Fox of Falmouth, to be furnished with certain information with reference to a commercial transaction in Russian hemp, in which that firm proposes to engage; and to request that I would take this subject into consideration and report to your Lordship my opinion as to the answer which should be returned to the parties.

In obedience to your Lordship's commands I have taken this subject into consideration and have the honour to report—

Russian hemp purchased at a neutral port.

Russian origin does not expose it to capture.

That the hemp in question, if purchased *bonâ fide* and not in the course of a trade with the enemy, but in the ordinary course of trade, from a neutral resident in a neutral port, and thence shipped to England on British account, in a British or neutral ship, will not be exposed to condemnation as prize of war, merely because it was originally grown or manufactured in the Russian dominions. It will, of course, be necessary that the proper documents should be on board, and that there should be no suspicious circumstances about the ship or any portion of her cargo. The existence of such circumstances, or the absence of such documents, might justify her detention or capture, even although not justifying the ultimate condemnation of the hemp as prize.

I have, &c.
(Signed) J. D. HARDING.

No. 29.

The Queen's Advocate to the Earl of Clarendon.—(*Received March* 17.)

Doctors' Commons, March 16, 1854.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Addington's letter of the 11th instant, stating that he was directed to transmit to me therewith a letter from Mr. Stedingk, requesting information as to the manner in which certain descriptions of goods specified by him would be dealt with in case of war, and to request that I would take the same into my consideration, and report to your Lordship my opinion as to the answer which should be returned to the party.

In obedience to your Lordship's commands I have taken this matter into consideration, and have the honour to report—

That an answer may be returned to Mr. Stedingk to the effect:—

Russian vessels with Russian or British cargoes for England liable to capture.

1. That Russian vessels carrying either Russian or British property from Russia to England will be liable, in case of war, to be captured on their voyage or after their arrival, although they may have passed Constantinople before any declaration of war. The cargoes alluded to will, in the event of war, be liable to be condemned as prize in the absence of any license from the Crown, or any Order in Council, or other sufficient authority.

The neutral vessels would probably be restored.

"Danubian produce."

2. That the phrase "Danubian produce," especially with reference to the recent and present political condition of the countries bordering on the Danube, is so indefinite as to render it impossible to give a definite or satisfactory answer to this question.

As to vague inquiries by foreigners.

I trust I may be excused for pointing out that in this case the applicant, who appears to be a foreigner and engaged in the Russian trade, omits (as I conceive designedly) to state either the place, the date, the amount, or any other particulars of the purchase or shipment of any of his goods, excepting that he "has several cargoes of grain," and the phrase "Danubian produce" may (as he must well know) apply indiscriminately either to Austrian or Turkish produce, or to the produce of one or more provinces of Turkey, shipped either before or since they were occupied by Russia.

I would respectfully suggest to your Lordship the possible expediency of not answering, or at least of not encouraging, such applications made by foreigners, and unaccompanied by any reference.

I have, &c.
(Signed) J. D. HARDING.

No. 30.

The Queen's Advocate to the Earl of Clarenden.—(*Received March* 17.)

Doctors' Commons, March 17, 1854.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Addington's letter of the 14th instant, stating that he was directed to transmit a letter from

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Overland trade with Russia.

Mr. H. W. Elder, containing certain queries with reference to the overland trade with Russia, in which he is interested; and to request that I would take the same into consideration, and report to your Lordship my opinion as to the answer to be returned to Mr. Elder.

In obedience to your Lordship's commands I have taken the letter into consideration and have the honour to report—

That the question of overland trade between neutral and hostile countries in the event of war is so important, especially having regard to the increased facilities of communication now afforded by railways, and to the announcement of the city article of the "Times" newspaper of the 17th instant, that a line of steamers has been advertized to run from Hull to Pillau, taking goods for Memel, "*with the view of carrying on trade between England and Russia*," that I must request the assistance of the Attorney and Solicitor-General, and also such further information or instructions on the point as it may be considered expedient to communicate on this subject.

Law Officers.

I have, &c.
(Signed) J. D. HARDING.

No. 31.

The Queen's Advocate to the Earl of Clarendon.—(Received March 17.)

Doctors' Commons, March 17, 1854.

My Lord,

Goods shipped from Russia to England liable to capture.

I AM honoured with your Lordship's commands signified in Mr. Addington's letter of the 14th instant, stating that he was directed to transmit to me a letter from Mr. William Thompson, requesting information as to the restrictions which would be placed, in the event of war, on the movements of British vessels loading in Russian ports for the United Kingdom or the Continent, and to request that I would take this paper into consideration, and report to your Lordship my opinion as to the answer which should be returned to Mr. Thompson.

In obedience to your Lordship's commands I have taken the letter into consideration, and have the honour to report—

That Mr. Thompson may be informed generally that the goods in question, shipped from Russia by Russian firms to English houses on consignment, will be liable to capture and condemnation in the event of war. I remark that the applicant does not ask for a license or any indulgence, but simply whether he incurs any risk by trading with the enemy after a declaration of war, which he evidently proposes to do. He gives no particulars or dates of the purchases or shipments, which were therefore, I presume, made with full knowledge of the impending war, and which there probably was ample time to countermand.

This may possibly be the result of honest ignorance, as he appears to be an imperfectly-educated man, but it has a singular and suspicious appearance.

I have, &c.
(Signed) J. D. HARDING.

No. 32.

The Queen's Advocate to the Earl of Clarendon.—(Received March 20.)

Doctors' Commons, March 20, 1854.

My Lord,

Position of Russians in England in event of war.

I AM honoured with your Lordship's commands signified in Mr. Addington's letter of the 17th instant, stating that he was directed to transmit to me therewith a letter from Mr. Waguelin, respecting the position of Russian subjects in this country in the event of war; and to request that I would take the letter into consideration and report to your Lordship such observations as may occur to me thereupon, by Monday next, on which day your Lordship is to receive the Deputation referred to in the inclosed letter.

In obedience to your Lordship's commands I have taken the letter into consideration, and have the honour to report—

Persons and property may be seized.

That although I should, if time permitted, be most desirous of the assistance of the Attorney and Solicitor-General on this matter, I proceed to remark, that I humbly conceive that Her Majesty has, by virtue of her Royal Prerogative and in accordance with the law of nations, the absolute and unqualified right of seizing or detaining the

persons as well as the property of all enemies who may, under whatever circumstances, be within her dominions on the breaking out of war.

Relaxations of rule.

The numerous instances of relaxations in the application of the principle, whether by special Convention, by the issue of letters of safe-conduct, by the practice of expressly taking such persons under Royal protection on the breaking out of war, and other similar instances, are exceptions which prove "the rule" of the existence of which I conceive that there can be no reasonable doubt.

Authorities.

It is distinctly stated in a book of high authority on these subjects (Chitty's "Prerogative of the Crown," p. 48), "As conductor of the war, the King is also entitled to adopt measures to prevent the *egress* or ingress of his enemies out of or into His Majesty's dominions; thus His Majesty may promulgate blockades; may, during war or threatened hostilities, and on occasions of emergency, lay an embargo on all shipping, and thereby prevent any one from leaving the Kingdom," and the author refers to several decided cases in support of his position. So in the United States, in the case of Brown *v.* the United States (8 Cranch, p. 110), before the Supreme Court of the United States, the broad principle was assumed "that war gave to the Sovereign the full right to take *the persons* and confiscate the property of the enemy wherever found; and that the mitigation of this rigid rule, which the wise and humane policy of modern times had introduced into practice, might more or less affect the exercise of the right, but not impair the right itself" (Kent's "Commentaries," vol. i, p. 59).

This is also the principle laid down by the best authorities upon the law of nations "At de his qui bello exorto deprehensi erant dici idem non poterat; nam in illis nullum injuriæ consilium fingi poterat. Tamen ad minuendas hostium vires retineri eos manente bello non iniquum videbatur" (Grotius, book iii, cap. 9, sec. 4); and in a subsequent passage in the same book, cap. 21, sec. 29, he says of such a person, "quem captivum manere ad pacem usque supra notavimus."

So Bynkershoek, "Quæst. Jur. Pub.," cap. 3: "Captura autem quamvis apud Romanos etiam exercita sit adversus eos qui tempore belli exoriuntis in alterius imperio inveniebantur, hodie, quamvis exerceri possit, raro tamen exercetur."

"Le genre le plus usité de représailles c'est la saisie de personnes ou de biens rencontrés soit dans notre territoire, soit en pleine mer" (Martens, Précis, l. iii, c. 2, s. 259).

"The persons and property of enemies found in a belligerent state when war breaks out may be rightfully seized by the Government; the individuals as prisoners of war" (Manning's Commentaries, p. 125).

With respect to the ancient Statute of Staples, 27 Edw. III, cap. 17, alluded to by Mr. Weguelin, I may remark that it is (like Magna Charta) confined to merchants, and provides for their absolute expulsion.

General practice.

The general practice has been far more mild than that indicated by these old statutes, for although some exceptions have occurred, such as the seizure and detention of the English by Napoleon I in 1803, and the detention of the United States' merchant seamen as prisoners of war by England in 1812, yet it has certainly been usual in modern wars to waive or suspend the exercise of this right, "alien enemies," remaining in England and conducting themselves peaceably, have even been expressly taken under the protection of the Crown in many instances, and thereby placed in the same legal position as alien friends. See instances in Foster's "Crown Law," p. 185.

Abuse of privileges.

High treason.

Provision was made in the United States of North America, by Act of Congress of July 6, 1798, cap. 73, for the same purpose, and the common modern practice of nations has, I believe, been to permit alien enemies to remain unmolested in war. It seems that such persons, by withdrawing from this country and serving their own in war, or by conveying information to the enemy, or similar acts, will be guilty of high treason (Foster's "Crown Law," p. 185), of which, perhaps, it would be fair to give them notice.

Reciprocity.

I cannot, therefore, upon the whole, see any objection to your Lordship's informing Mr. Weguelin that Russians who remain here and abstain from any overt acts whatsoever in favour of the enemy will be treated, at least, as well as the English resident in Russia; at the same time he may be informed that the right to make them prisoners of war, or otherwise to treat them as Her Majesty's subjects may be treated in Russia, cannot be doubted or disputed.

It will be for Her Majesty's Government ultimately to determine whether, by proclamation or otherwise, any specific declaration of Her Majesty's intentions towards such persons should be publicly made, and if so, in what terms, whether unreservedly or subject to any and what reservation.

If this is to be done, no time should be lost in sending me instructions through

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the Queen's Proctor on the point, as by the directions of the First Lord of the Admiralty I am engaged in preparing the legal documents connected with the impending declaration of war.

I beg to refer your Lordship to my Report of the 27th ultimo, on the position of British subjects in Russia.

I have, &c.
(Signed) J. D. HARDING.

No. 33.

The Queen's Advocate to the Earl of Clarendon.—(*Received March* 20.)

Doctors' Commons, March 20, 1854.

My Lord,

Fate of goods, the produce of Russia.

I AM honoured with your Lordship's commands signified in Mr. Addington's letter of the 11th instant, stating that he was directed to transmit to me therewith a letter from Messrs. Draper, Petroni, and Co., containing various questions respecting the fate of goods, the produce of Russia, in the event of war, and to request that I would take this paper into consideration, and report to your Lordship my opinion as to the answer which should be returned to the parties.

In obedience to your Lordship's commands I have taken this paper into consideration, and have the honour to report—

That this is another of those cases in which I conceive the real and ultimate object of the applicants is to ascertain how far they can safely trade with the enemy, and I observe that these cases are all hypothetical, that they do not state any facts, and that it is very difficult to answer such questions framed in language which is purposely vague and indefinite, with legal accuracy.

The publication of the answers given below would, in my humble opinion, be a matter of very doubtful expediency at the present conjuncture. It is, however, a matter exclusively for your Lordship's decision.

Practice of English Prize Courts.

I proceed to answer the various questions as well as I can understand them, according to the law and practice hitherto observed by English Prize Tribunals in war.

(1). It is necessary to explain that "capture" is by no means identical with "condemnation." Suspicion will justify capture, but innocence, when proved, will avoid condemnation and obtain restoration.

Trade with enemy.

(2). That trade between belligerent States is illegal.

Neutral trade.

(3.) That neutrals may trade with either of the belligerents, or with each other.

1. Goods the produce of Russia shipped by any flag, Russian excepted, for account of British subjects resident in Russia.

2. Goods the produce of Russia shipped by Russian flag, for account of British subjects non-resident in Russia.

3. Goods the produce of Russia shipped by any flag (not Russian) for account of foreigners being allies or neutrals, and residing out of Russia.

4. Goods the produce of Russia shipped by a Russian flag for account of foreigners being allies or neutrals, and residing out of Russia.

5. Goods the produce of Russia shipped from a port, not Russian, by British, neutral, or ally's flag, and being the property of a British subject.

6. Goods the produce of Russia shipped from a port, not Russian, by British allies, or neutral flag, and being the property of allies or neutrals.

7. Does the British flag cover the cargo, provided the same is not the property of a Russian subject?

8. Under what circumstances will the "license or special instruction" referred to in your Lordship's afore-mentioned despatch be granted?

Goods for neutrals in Russian ships.

1 and 2. That goods the produce of Russia shipped from Russian ports by any flag for account of, and going to, British subjects domiciled in neutral countries, will not be liable to condemnation, all persons having a neutral domicile being treated as neutrals in the English Prize Courts, but if such British subjects should be resident or carrying on their trade in the dominions of Her Majesty, or of her allies in the war, such goods will be liable to condemnation.

The Russian flag will in all cases expose both ship and goods to capture. If such British subjects are domiciled or trading in the dominions of Her Majesty or any of her allies, their goods taken trading with the enemy will be condemned; if domiciled

in a neutral country they will be considered as neutrals, and may lawfully trade with the enemy, although they may be British subjects.

All ships under the Russian flag will be exposed to condemnation as prize.

Domicile of owner fixes nationality of goods.

3 and 4. Such goods, if the property of neutrals or persons domiciled in neutral countries, will be released; but if the property of our allies will be condemned for trading with the enemy, neither the place of birth nor the nationality of the owner are decisive in such cases; the question is usually the domicile of the owner and the course or nature of his trade.

The fact of the ship being under the Russian flag will not necessarily condemn the goods of neutrals laden on board, but will justify their detention and capture. They will only be released on legal proof of neutrality.

Flag does not cover cargo.

5 and 6. If such goods are not engaged directly in a trade with the enemy, but have been purchased *bonâ fide* in a British, neutral, or ally's port, and are going *bonâ fide* to another port of the same description, and there are no circumstances of fraud or suspicion connected therewith, they will not incur any risk.

7. The British flag will not cover the cargo in any case. The question will not turn upon the flag, but upon the nature and ownership of, or interest in the property, and the real purpose of the voyage.

8. This is a matter entirely for the consideration and decision of Her Majesty's Government.

I have, &c.
(Signed) J. D. HARDING.

No. 34.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received March* 20.)

Doctors' Commons, March 20, 1854.

My Lord,

Hudson's Bay Company. Proposed neutrality with Russian American Company.

WE are honoured with your Lordship's commands signified in Mr. Addington's letter of the 10th instant, stating that he was directed to transmit to us a letter from the Hudson's Bay Company respecting a proposal made by the Russian American Company, that in case of war between the Governments of England and Russia, a state of reciprocal neutrality should exist with reference to the two Companies; and to request that we would take this subject into our consideration, and report to your Lordship our opinion as to the answer which should be returned to the Hudson's Bay Company.

In obedience to your Lordship's commands we have taken into consideration the letter from the Hudson's Bay Company, and have the honour to report—

No objection.

That we are of opinion that under the peculiar circumstances of the case, your Lordship will be justified in consenting to the proposed arrangement being entered into between the two Companies, and, in causing the necessary instructions to be conveyed to Her Majesty's naval officers, and others, not to commit hostilities on land within the Russian dominions on the coast of America.

Conditions.

We beg to suggest, however, that the Hudson's Bay Company should be informed that the proposed neutrality will, as far as Her Majesty's Government is concerned, be territorial only, and confined to the land, and that its operation will not extend to the high seas, but that all Russian vessels and goods thereon, whether the property of the Company, the Government, or of individuals, and, whether going to, or from the possessions of the Russian American Company, will be liable to capture by Her Majesty's ships, and that the coasts and ports of those possessions will be liable to naval blockade.

We have, &c.
(Signed) J. D. HARDING.
A. E. COCKBURN.
RICHARD BETHELL.

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No. 35.

The Queen's Advocate to the Earl of Clarendon.—(*Received March* 21.)

Doctors' Commons, March 20, 1854.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Addington's letter of the 14th instant, stating that he was directed to transmit to me a letter from the Treasury, inclosing a letter from Messrs. Catlinge and Co., requesting exemption of certain cargoes of Russian produce from capture in the event of war; and to request that I would take these papers into my consideration, and report to your Lordship my opinion as to the answer to be returned to Messrs. Catlinge's application.

In obedience to your Lordship's commands I have taken the papers into consideration, and have the honour to report—

Goods shipped from Russia before declaration of war.

That the answer to be returned to Messrs. Catlinge must, in common with those to be returned in many similar cases, depend upon the determination to which Her Majesty's Government may come with respect to what is to be done with Russian produce purchased and shipped to England by British merchants before the war. In strict practice, and in the absence of those relaxations of the laws of war which have been usually made in former wars in favour of British subjects by Order in Council, license, or otherwise, such produce will (as I have frequently explained) be liable to capture and condemnation as prize.

Subject to this remark, the cases of the "Nyord" and the "Habbett" appear to me to be very deserving of indulgence, if your Lordship is satisfied of the truth of the statements that the "Nyord" sailed from Odessa about the 18th November, and that her cargo was paid for in cash on 16th December, and that the "Habbett" sailed from Odessa about the 7th December, and that her cargo was paid in cash on the 3rd January.

The cargo of the "Free Trade" is not so favourably circumstanced as the other goods, inasmuch as the ship only sailed from Odessa on the 2nd February, and her cargo was paid for in cash on the 17th February, at a period when war was apprehended as being imminent, and the order might probably have been countermanded if due diligence had been used.

I have, &c.
(Signed) J. D. HARDING.

No. 36.

The Queen's Advocate to the Earl of Clarendon.—(*Received March* 21.)

Doctors' Commons, March 20, 1854.

My Lord,

Neutral flag on high seas, and neutral property in Russia.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 17th instant, stating that he was directed to transmit to me a letter from Mr. Colquhoun, Agent and Consul-General of the Hanse Towns, requesting to know the intentions of the British and French Governments with respect to the flag of neutral States on the high seas, and the property within the territories of Russia belonging to the subjects of neutral States; and to request that I would take this letter into consideration, and report to your Lordship my opinion as to the answer to be returned thereto.

In obedience to your Lordship's commands I have taken the letter into consideration, and have the honour to report—

That this is a question of general political expediency, very proper for the decision of the Government of Her Majesty, in conjunction with her Allies in the impending war. The argument of Mr. Colquhoun *ab inconvenienti* applies to every blockade without exception. There is in every blockaded port—at all events, at the commencement of hostilities—some property originally the produce of the soil, or the manufacture of the country, which has been purchased and paid for by neutrals, and which they must be always anxious to export. There does not appear to me to be anything very peculiar in the case of Hanseatic purchases in Russia; probably many merchants of various nations will be precisely in the same situation in the event of the Russian ports being blockaded. It would be very difficult, if not impossible to make exceptions in favour of any one or more nations; all would naturally insist upon being treated alike, and it would, I fear, be found practically impossible to prevent any particular privileges from being abused, and if once Russian property is exported it will certainly

be paid for or the value returned in some shape, and thus the very object of blockade will be frustrated.

Blockades admit of no exceptions.

It is obvious, however, that this question is one, not of international law, but of policy and expediency, and as I am wholly ignorant of the intentions or ideas entertained on this subject either by the Government of Her Majesty or that of France, I feel incompetent to offer any useful advice to your Lordship.

Blockade rights must be insisted on.

I may, however, perhaps be permitted to suggest that if (as I have reason to believe) Her Majesty's Government have it in contemplation to relax in some degree the exercise of belligerent rights as respects neutrals in ordinary cases, this would appear to render it more than ever necessary to insist upon the vigorous exercise of such rights in the event of blockade, otherwise the enemy's trade will be transferred to and covered by neutral flags—the flags of England, France, and Russia being alone excluded, and Russian commerce will be entirely uninjured by the naval forces of Her Majesty and her ally, so that a "war for arms" will co-exist with a "peace for commerce," contrary to what has hitherto been supposed to be a fundamental principle of public and national policy.

I have, &c.
(Signed) J. D. HARDING.

No. 37.

The Queen's Advocate to the Earl of Clarendon.—(*Received March* 21.)

Doctors' Commons, March , 1854.

My Lord,

Dates of departure of Ambassadors, &c.

AS it is now frequently necessary for me in Reports to your Lordship on the various and difficult questions which are connected with the impending war to take into consideration the exact date from which war is to be considered as impending or imminent, between this country and Russia, I request to be furnished with such information on this point as it may be in your Lordship's power to afford me, and particularly as to the date of the Russian Ambassador's notification of his withdrawal, and of his actual departure from this country, also the date and particulars of any public or official statement by Her Majesty's Government, in Parliament or otherwise, of the intended withdrawal of Her Majesty's Minister from Russia, the date when orders to withdraw were sent to him, and the date of his actual departure. It might also be desirable that I should be informed of the date when all direct and ordinary diplomatic intercourse is to be considered as having ceased between the two nations, and when and in what shape your Lordship conceives that the earliest public and official announcement was made, or notice given of war being imminent, which can be fairly considered as binding or operative upon merchants and the public in general in Great Britain.

I have, &c.
(Signed) J. D. HARDING.

No. 38.

The Queen's Advocate to the Earl of Clarendon.—(*Received March* 23.)

Doctors' Commons, March 21, 1854.

My Lord,

Russian sailors under neutral flag sent to reinforce Russian squadrons.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 17th instant, stating that he was directed to transmit to me an extract of a despatch from Her Majesty's Minister at Lisbon, in reply to the inclosed instruction addressed to him by your Lordship respecting the alleged intention of the Russian Government to send under a neutral flag from Portugal some Russian sailors to reinforce the Russian squadron in the Japanese seas; and to request that I would take these papers into consideration, and report to your Lordship at my earliest convenience my opinion thereon.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That, the opinion stated by M. de Lisle in Sir R. Pakenham's letter, March 10, 1854, to have been come to on this subject by the Commanders of the "Petrel" and the "Newton," appears to me to be correct; and I am of opinion that the ships of Her Majesty, or of her allies, would be justified in capturing on the high seas all

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May be captured and vessels condemned.

vessels under whatever flag carrying Russian sailors intended to reinforce Russian cruizers. The ostensible port of destination of such vessels is not stated; their real destination can, I presume, be proved to be the Russian squadron in the Japanese seas, and if so, it will render such vessels, even if neutral property, liable to condemnation.

It will be for your Lordship to consider whether it may not be proper to invite the attention of the Dutch and Portuguese Governments, and to call upon them to prevent the carrying out of this enterprize, and whether some arrangement may not be come to between the Governments of Her Majesty and of her ally, as to the actual capture and immediate disposal of the ships in question; as, for instance, whether they shall be actually captured by a French or English vessel, and whether they shall be sent for adjudication to a British or to a French port.

It may also be desirable to invite the attention of Her Majesty's Diplomatic and Consular servants in Holland to this matter, with a view to obtain the best information as to the actual purchase and ostensible destination of the vessels in question.

I have, &c.
(Signed) J. D. HARDING.

No. 39.

The Queen's Advocate to the Earl of Clarendon.—(*Received March* 23.)

Doctors' Commons, March 21, 1854.

My Lord,

Dutch ships sent to Riga to fetch away British property.

I AM honoured with your Lordship's commands signified in Mr. Addington's letter of the 17th instant, stating that he was directed to transmit to me therewith a letter from Mr. Robert Mackay Smith requesting to be informed whether Dutch ships, to be sent out for the purpose, would be permitted to bring away some property belonging to him at present at Riga.

Mr. Addington is pleased to request that I would take this paper into my consideration, and report to your Lordship my opinion as to the answer which should be returned to Mr. Smith.

In obedience to your Lordship's commands I have taken the letter into consideration, and have the honour to report—

Must get licence.

That, inasmuch as the goods in question appear to be exclusively British property, and to have been purchased and paid for long before war was imminent, I humbly conceive that your Lordship may inform Mr. Smith that, on being satisfied of the truth and *bona fides* of his statement, Her Majesty's Government will offer no impediment to the importation of these particular "two cargoes of goods," for which, however, proper licenses must be obtained.

I observe, however, that Mr. Smith puts a very abstract question; he does not state that the goods are his own property, nor does he describe them in any manner, and that it does not appear in what capacity, or on whose behalf, he applies to your Lordship in this matter. Under these circumstances, your Lordship may, perhaps, think proper to require some further information upon these points before answering Mr. Smith.

I have, &c.
(Signed) J. D. HARDING.

No. 40.

The Queen's Advocate to the Earl of Clarendon.—(*Received March* 23.)

Doctors' Commons, March 21, 1854.

My Lord,

Neutral property from Odessa.

I AM honoured with your Lordship's commands signified in Mr. Addington's letter of the 15th instant, stating that he was directed to transmit to me letter from Messrs. Ralli and Sons, requesting information as to whether neutral vessels, with neutral property on board, now loading at Odessa, or on their way from Odessa to England, would, in case of war, be liable to capture by British cruizers; and to request that I would take this letter into consideration and report to your Lordship my opinion as to the answer which should be returned to this application.

In obedience to your Lordship's commands I have taken the letter into consideration, and have the honour to report—

That, subject to any determination at which Her Majesty's Government may arrive on these or similar points, Messrs. Ralli may be informed—

Definition of enemies and enemies' property.

1. That in the event of war, all persons whatsoever their origin who are domiciled in, or trading from, the dominions of the enemy are considered as enemies. Russian produce on its way from Odessa to England can, therefore, hardly be, as they describe it, "neutral property:" it is in all probability either "enemy's property," or "British property trading with the enemy," and if so, its being laden on board neutral vessels will not protect it from capture and condemnation.

Definition of neutral property.

2. That neutral property proceeding from an enemy's port to a neutral port will not be condemned; but property the produce of Russia belonging to merchants domiciled or keeping up commercial establishments in Russia, will be considered as enemy's property, and not as neutral property.

I observe that Messrs. Ralli put their questions in an abstract form, and do not state that they are interested in any particular shipping or goods, and it will be for your Lordship to decide upon the expediency of answering these abstract questions, the framers of which seem to me to contemplate a course of trading with the enemy.

Messrs. Ralli, from their position and extensive dealings, cannot be ignorant of the law on this subject, and could easily ascertain what will be the real position of their property in war, without asking your Lordship such very general questions.

I have, &c.
(Signed) J. D. HARDING.

No. 41.

The Queen's Advocate to the Earl of Clarendon.—(*Received March* 23.)

My Lord, *Doctors' Commons, March* 21, 1854.

Russian vessel "Vesta." Exemption from capture.

I AM honoured with your Lordship's commands, signified in Mr. Addington's letter of the 18th instant, stating that with reference to my report of the 8th,* respecting the application of Messrs. Arbuthnot and Co. for protection to the Russian vessel "Vesta," freighted on British account, he was directed by your Lordship to transmit to me a further letter from the Treasury inclosing copies of further communications from Messrs. Arbuthnot on this matter, and requesting to be informed as to the nature of the security which Messrs. Arbuthnot should be required to furnish to the Board of Admiralty before any steps can be taken to obtain for them the indulgence they seek; and to request that I would take these papers into consideration and to report to your Lordship my opinion on the point above referred to, together with any further observations I may have to offer.

The former papers are herewith returned.

In obedience to your Lordship's commands I have taken the papers into consideration, and have the honour to report—

Orders may be given.

Ship may be proceeded against on arrival in port, and cargo released.

That not having suggested that Messrs. Arbuthnot and Co. should be required to give any security to the Lords of the Admiralty or otherwise in the matter of the "Vesta," I am unable to advise upon the nature of that security. If the statement of Messrs. Arbuthnot and Co. is correct, the ship may possibly even arrive, discharge her cargo, and depart before war is declared, in which case the interference of Her Majesty's Government will not be necessary. The only contingency which occurs to me is that her master and crew may hear of the impending war and may change her destination for a neutral port; but I do not see how this can be prevented (war not being declared), unless, indeed, your Lordship should think proper to call on Messrs. Arbuthnot to give bond to the full amount of the value of the ship and cargo that this shall not be done; otherwise, if your Lordship is satisfied of the truth of Messrs. Arbuthnot's case, which is corroborated by their statement of the particulars, and their offer to give security, it will only be necessary that they should be informed that orders will be given not to capture the "Vesta" in the event of war, provided that when met with she is clearly bound and going direct to a British port, and that such orders should be given accordingly. When in port the cargo may be released and the ship alone proceeded against; the master and crew, if Russians, will be, in my opinion, entitled to very favourable consideration.

I have, &c.
(Signed) J. D. HARDING.

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* No. 21.

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No. 42.

The Queen's Advocate to the Earl of Derby.—(Received March 23.)

Doctors' Commons, March 21, 1854.

My Lord,

Tallow from Odessa in a Hanoverian vessel.

I AM honoured with your Lordship's commands, signified in Mr. Addington's letter of the 17th instant, stating that he was directed to transmit to me a letter from Mr. Mollel respecting a cargo of tallow consigned to him from Odessa, and shipped on board a Hanoverian vessel.

Mr. Addington is pleased to request that I would take this paper into my consideration and report to your Lordship my opinion as to the answer which should be addressed to Mr. Mollel.

In obedience to your Lordship's commands I have taken this paper into consideration, and have the honour to report—

Cannot exempt from capture.

That I am of opinion that the circumstances stated by Mr. Mollel are insufficient to enable your Lordship to comply with his request. He does not state when, or under what circumstances, the order was given for, or the purchase made of, this tallow, nor why it was not countermanded on war becoming imminent. He does not state whether the Hanoverian ship "Charon" has sailed from Odessa, or even when she was expected to sail, although he must be informed of these matters. Mr. Menger, the shipper, is, I presume, to be considered as commercially domiciled at Odessa, and if so, his being the subject or Consul of a neutral Power will not affect the question; but it is very singular (if true) that he should "have no idea that the cargo can in any eventuality be exposed to the risk of capture," inasmuch as, being a Consul and a merchant, he must, I should suppose, have some idea that trading with the enemy is illegal on the part of all merchants settled in the country of either belligerent, and that on a declaration of war he, and all others in the same situation continuing to reside and trade in Russia, will be legally enemies to England. I would, for these reasons, respectfully submit to your Lordship that Mr. Mollel should be informed that no such directions as he requests can be issued in favour of the "Charon" and her cargo.

Shipper ought to know better.

Residents in Russia are enemies.

I have, &c.
(Signed) J. D. HARDING.

No. 43.

The Queen's Advocate to the Earl of Clarendon.—(Received March 23.)

Doctors' Commons, March 22, 1854.

My Lord,

Bond required by Customs for due delivery of warlike stores at destination.

I AM honoured with your Lordship's commands, signified in Mr. Addington's letter of the 15th instant, stating that he was directed to transmit to me a letter from the Treasury, stating that the Commissioners of Her Majesty's Customs have been ordered to require shippers of warlike stores to give bond for their due delivery at the port of destination, and requesting that notice may be given to Her Majesty's Consuls that proof of discharge of such stores under their hand and seal will be required by the Customs; and Mr. Addington is pleased to request that I would report to your Lardship my opinion whether the course pursued in this matter fully meets the requirements of Her Majesty's Proclamation.

In obedience to your Lordship's commands I have the honour to report—

That, not having any information as to the precise objects which the Proclamation was intended practically to accompiish, or the nature of the designs against which it was in reality directed, I am scarcely in a position to say whether the course pursued in this matter fully meets its requirements; but, according to my view of these requirements, the course pursued is far from meeting them. I do not, I confess, precisely understand what the Lords Commissioners of Her Majesty's Treasury mean by "the improper export of those articles," which "they are desirous of preventing by every means in their power." Perhaps it is not meant to permit their exportation in all cases, even where the bonds in the prescribed form are given; but nothing is stated to this effect, and if all persons giving bond are to be allowed to export the prohibited articles to all neutral or friendly ports, there can be little doubt of such articles soon reaching either the enemy or the rebellious subjects of allies, as the case may be. Gunpowder, for instance, exported under bond, say to Memel, to Smyrna, or Valona, would probably easily reach the very persons whom it would be most desirable to prevent its reaching, and this without any breach of the conditions of the bond.

Insufficient.

Proper conditions for export of arms.

The bond may be a very proper precaution, but it does not appear to me to be sufficient. I would humbly submit that, in order to meet the requirements of the Proclamation, every effort must be used entirely to prevent the export of such articles on any terms to places where they may easily reach those whom it is meant to prevent their reaching; for instance, that they should not be shipped on any terms to any port in Europe (say), north of Dunkirk or east of Genoa, or to any port in Asia, unless on the application of the Turkish Government; or if this should be thought too rigorous a measure, I do not think it would be unreasonable to require an application from the Government of which the consignee may be a subject in such case, and an assurance from that Government that it would take care that the articles did not leave the country.

Precautions against improper export.

Effect of allowing flag to cover cargo.

I may, perhaps, be permitted to point out to your Lordship that if Her Majesty's Government have it in contemplation to allow the flag to cover the cargo, the question of enforcing this Proclamation will be one of great practical importance, and that if these articles are furnished on any terms by England to neutral countries between which and Russia, or the revolted subjects of the Porte, direct commercial intercourse and communications exist, there can be no doubt but that they will, either directly or indirectly, reach those who may be ready to pay for them, and that British merchants will, as on former occasions, readily supply arms, ammunition, and stores, to be used even against their own country.

British merchants will supply arms against their country.

This subject, is, however, more proper for the consideration of the executive authorities, especially in the naval and military departments of Her Majesty's Government, than for my advice; but I have deemed it my duty respectfully to submit to your Lordship the view which I have taken of it, which is shortly to the effect that these bonds alone will not prove, by any means, a sufficient practical check or security against improper exportations of warlike stores.

I have, &c.
(Signed) J. D. HARDING.

No. 44.

The Queen's Advocate to the Earl of Clarendon.—(Received March 23.)

My Lord, *Doctors' Commons, March* 23, 1854.

I AM honoured with your Lordship's commands, signified in Mr. Addington's letter of the 21st instant, stating that he was directed to request that I would acquaint your Lordship whether Russian produce brought over the frontier to Prussian ports and shipped from thence by British or neutral vessels, will be subject to seizure by Her Majesty's cruizers and subsequent confiscation in the Court of Admiralty.

In obedience to your Lordship's commands I have the honour to report—

Goods brought by land from Russia to Prussia, and shipped thence by British or neutral vessels,

That, assuming that the question meant to be proposed is whether, in the event of war between this country and Russia, Russian produce brought over the frontier by land to Prussian ports, and shipped from thence by British or neutral vessels, will be subject to seizure by Her Majesty's cruizers, and to subsequent confiscation in the High Court of Admiralty.

Depends on ownership and destination whether liable to capture.

I have the honour to report that the question will turn upon the true ownership of, or the interest or risk in, and the destination of the property which may be seized or captured, and that neither the place of its origin nor the manner of its conveyance to the port from whence it was shipped will be decisive or even, in most cases, of any real importance.

If shipped at neutral risk, or after it has become *bonâ fide* neutral property, it will not be liable to condemnation, whatever may be its destination; if it should still remain enemy's property, notwithstanding it is shipped from a neutral port and in a neutral ship, it will be condemned, whatever may be its destination; if it be British property, or shipped at British risk, or on British account, it will be condemned if it is proved to be really engaged in a trade with the enemy, but not otherwise. The place of its origin will be immaterial, and if there has been a *bonâ fide* and complete transfer of the ownership to a neutral (as by purchase in the neutral market), the goods will not be liable to condemnation, notwithstanding they may have come to that neutral market from the enemy's country, either overland or by sea.

I may, however, observe that circumstances of reasonable suspicion will justify

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capture, although release (and not condemnation) may follow, and ships with cargoes of Russian produce may not improbably be considered, under certain circumstances, as liable to capture, even though not liable to condemnation; but captors seize at their own risk, and are liable to costs and damages, if they seize without probable cause.

I have, &c.
(Signed) J. D. HARDING.

No. 45.

The Queen's Advocate to the Earl of Clarendon.—(*Received March* 23.)

Doctors' Commons, March 23, 1854.

My Lord,

Russian vessel with British cargo from Havana.

I AM honoured with your Lordship's commands, signified in Mr. Addington's letter of the 16th instant, stating that he was directed to transmit to me a letter from Messrs. Kirkland, requesting that means may be taken for the protection of property belonging to them, coming to this country from the Havannah on board the Russian ship "Argo," and to request that I would report to your Lordship my opinion as to the answer which should be returned to Messrs. Kirkland and as to the course which should be adopted in the event of their application being complied with.

In obedience to your Lordship's commands I have taken into consideration Messrs. Kirklands' letter, and have the honour to report—

Orders not to capture.

Release cargo.

Proceed against vessel.

That, provided your Lordship is satisfied of the entire truth and accuracy of Messrs. Kirklands' statement, the case of the cargo of the Russian ship "Argo" appears to be entitled to the favourable consideration of the Government. It may, therefore, be proper to cause the necessary instructions to be issued not to capture her if she be met with at sea, when clearly bound and going to a British port. Should she arrive after war has been declared, the cargo may be released and the ship proceeded against as prize.

I have, &c.
(Signed) J D. HARDING.

No. 46.

The Queen's Advocate to the Earl of Clarendon.—(*Received March* 24.)

Doctors' Commons, March 24, 1854.

My Lord,

Russian produce shipped on British account from Russian ports in British or neutral vessels.

I AM honoured with your Lordship's commands, signified in Mr. Addington's letter of the 20th instant, stating that he was directed to transmit to me a letter from Mr. Eastley as to the liability of Russian produce shipped on British account in Russian ports on board British or neutral vessels to be confiscated on war being declared with Russia; and to request that I would take this letter into consideration, and report to your Lordship my opinion as to the reply.

In obedience to your Lordship's commands I have taken the letter into consideration, and have the honour to report—

1. That the purchase which Messrs. Edwards and Eastly have "just made" must have been made after the war was known to be imminent, and when the property was not expected to arrive until after a declaration of war.

2. That they do not state whose property the linseed would have been on its arrival had they not purchased it. They do not state whose it was when shipped, or on what terms or on whose order or account it was actually shipped, or whether it had changed hands, and under what circumstances, before they purchased it.

3. That the only date of its shipment is stated to be "February," so that it may have been shipped when war was known at Odessa to be impending, and when there was time to countermand it.

Capture, unless days of grace are allowed.

Under these circumstances, the case does not appear to me to be of a very favourable character; and, unless some general measures should be taken which would protect all property of this character, or all destined for England which had left Russia before a certain date (as has been frequently done in former wars), I see no such peculiar circumstances in favour of the applicants as should induce Her Majesty's Government to interfere, and their case may fairly and properly be disposed of in the Admiralty Court should the linseed be captured or seized.

It will be for your Lordship to consider whether it will be proper to confine the answer to be returned to the applicants to the preceding paragraph.

I have, &c.
(Signed) J. D. HARDING.

No. 47.

The Queen's Advocate to the Earl of Clarendon.—(*Received April* 1.)

Doctors' Commons, March 25, 1854.

My Lord,

Instructions to Admiralty.

WITH reference to your Lordship's draft instructions to the Admiralty, dated the 4th instant (inclosed), relating to vessels supposed to be engaged in conveying arms from Belgium to the revolted subjects of the Sultan, upon which I had yesterday the honour of a conference with your Lordship, I have now the honour to report—

Seizure of arms destined for insurgents in Turkey.

That if the instruction is to be understood as directing the commanders of Her Majesty's ships of war to seize and detain ships with arms on board which may appear to be destined for any ports from whence it is probable that such arms would be conveyed to the revolted subjects of the Sultan, I am of opinion that such conduct on the part of Her Majesty's naval officers would be at variance with the law of nations.

1. It must be borne in mind, with the exception of the hostilities between Turkey and Russia, complete and universal peace still exists throughout Europe.

How far lawful.

2. That the insurgents were not by the last advices in possession of any seaport, nor was any port or any portion of the Turkish coast blockaded, nor had any notice whatsoever been given forbidding the importation of arms into any Turkish port. The Turkish Government, therefore, does not appear hitherto to have taken the ordinary measures for preventing the insurgents from being either directly or indirectly supplied with arms by sea, and cannot be considered, therefore, as apprehending any serious danger from the importation of arms into its ports. Belgium has not forbidden the exportation of arms, and Her Majesty's Government is, I apprehend, to be considered as acting in this matter, not in pursuance of any Treaty either with Turkey or Belgium or any other Power, but solely by her own authority.

Under these circumstances, I cannot consider that the capture or detention on the high seas of vessels bound on a lawful voyage, and laden with lawful merchandize, would be justifiable on the part of Her Majesty's ships; if loss of life or even property resulted, the consequences might be very serious; and, above all, even if no such consequences ensued, it appears to me that Great Britain would be furnishing a bad precedent which might hereafter be followed by other nations, and even used against British interests to their serious detriment.

Lord Stowell.

No nation has a stronger interest than Great Britain in maintaining the rights of unrestricted commerce in peace and of neutrality in war, and in preventing (instead of sanctioning) any arbitrary interference with the rights or deviations from the law of nations on these subjects. "Two principles of public law (said Lord Stowell, Le Louis, 2 Dodson, 243) are generally recognized as fundamental. One is the perfect equality and entire independence of all distinct States. Relative magnitude creates no distinction of right; relative imbecility, whether permanent or casual, gives no additional right to the more powerful neighbour; and any advantages seized upon that ground is mere usurpation. This is the great foundation of public law, which it mainly concerns the peace of mankind, both in their politic and private capacities, to preserve inviolate. The second is, that all nations being equal, all have an equal right to the uninterrupted use of the unappropriated parts of the ocean for their navigation. In places where no local authority exists, where the subjects of all States meet upon a footing of entire equality and independence, no one State, or any of its subjects, has a right to assume or exercise authority over the subjects of another. I can find no authority that gives the right of interruption to the navigation of States in amity upon the high seas, excepting that which the rights of war give to both belligerents against neutrals. . . . .

Right of search.

"At present, under the law as now generally understood and practised, no nation can exercise a right of visitation and search upon the common and unappropriated parts of the sea, save only on the belligerent claim. If it be asked why the right of search does not exist in time of peace as well as in war; the answer is prompt; that it has not the same foundation on which alone it is tolerated in war—the necessities of self-

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defence. They introduce it in war; and practice has established it. No such necessities have introduced it in time of peace, and no such practice has established it."

Lawful commerce cannot be interrupted.

"No nation (says Chancellor Kent in his Commentaries, vol. I, p. 33) has a right in time of peace to interfere with or interrupt any commerce which is lawful by the law of nations and carried on between other independent States, or between different members of the same State."

In Madrazo *v.* Willes (3 Barnewall and Alderson, 353), the Court of Queen's Bench unanimously decided that it was illegal for a British officer to seize a foreign slaver unless in accordance with a Treaty with the nation to which she belonged. I need not multiply quotations on the point.

Alternative course.

I would, however, venture to submit that the object in view may possibly be attained without incurring any risk of an infraction of the law of nations by forwarding to the Governments of the seaports to which these particular vessels may be destined, full information, and requesting them to prevent the arms from being sent from such ports to the revolted districts; by inducing the Turkish Government to take stringent measures for the same purpose (such as blockade prohibition of the importation of arms), and by instructing Her Majesty's naval officers closely to watch, and, if necessary, to follow the ships in question, and to communicate thereupon with the local authorities.

Seizures within three-mile limit, &c.

Her Majesty's naval officers will, however, probably be justified in assisting the Turkish or any other local authorities in seizing arms actually found either on shore or waterborne within the ordinary territorial limits (three miles), provided such importation be forbidden and the seizure be justified by the local law, and be made under the orders and in the presence of some of the local authorities.

Assistance of British Naval officers.

They must, however, in so doing act with caution, and only interfere when the local authorities are unable to act without them, and actually request their assistance. They will, of course, be justified in giving every information and indirect assistance to the local authorities (*e.g.*, by taking on board and conveying a local officer to take possession of the vessel laden with arms, if she be within the local jurisdiction), but they must altogether abstain from capturing or detaining such vessels on the high seas; and even when within a foreign jurisdiction, they must not directly, or by their own authority, interfere with such vessels, but only aid and assist the local authorities when actually required by them so to do.

The urgent haste which is required, and the absence of all specific information must plead my apology for any errors or deficiences in this report.

I have, &c.
(Signed) J. D. HARDING.

No. 48.

The Queen's Advocate to the Earl of Clarendon.—(*Received March* 28.)

My Lord, *Doctors' Commons, March* 27, 1854.

Cargoes of flag shipping at Libau for British subjects

I AM honoured with your Lordship's commands signified in Mr. Addington's letter of the 21st instant, stating that he was directed to transmit to me a letter from Messrs. Thom, requesting to be furnished with information bearing on the case of two cargoes of flag shipping on their account at Libau, and to request that I would take this paper into consideration, and report to your Lordship my opinion as to the answer which should be returned to Messrs. Thom.

In obedience to your Lordship's commands, I have taken the letter into consideration, and have the honour to report—

exposed to capture unless exempted.

That I am inclined to consider this case as entitled to favourable consideration, although the date of the purchase, "in winter," is somewhat vague with reference to a knowledge of impending war, and nothing is said as to the payment, or impossibility of countermand. Such cargoes, even though conveyed in neutral ships sailing after war is declared, will be exposed to the risk of capture and condemnation, unless measures are taken to exempt them.

I have, &c.
(Signed) J. D. HARDING.

No. 49.

The Queen's Advocate to the Earl of Clarendon.—(*Received March* 28.)

My Lord, *Doctors' Commons, March* 27, 1854.

British vessel laden with Russian produce detained at Cronstadt by ice.

I AM honoured with your Lordship's commands signified in Mr. Addington's letter of the 20th instant, stating that he was directed to transmit to me a letter from Messrs. Cates and Son, requesting to be informed whether the ship "Ann McLister," laden with Russian produce, the property of British merchants, and waiting to leave the Port of Cronstadt for this country on the breaking-up of the winter, would be interrupted by the British squadron before any declaration of war took place; and, if so liable, what the steps the consignees should take, in order to avoid such detention or confiscation; and to request that I would take this letter into consideration, and report to your Lordship my opinion as to the answer which should be returned to Messrs. Cates' application.

In obedience to your Lordship's commands, I have taken the letter into consideration, and have the honour to report—

Favourable consideration.

That the case of the "Ann McLister" appears to me a favourable one for the consideration of Her Majesty's Government.

She sailed long before war was imminent, and put back, and was detained by accident. I am, of course, unable to say whether any instructions have been, or will be, given to the Baltic fleet which would provide for this or similar cases, or whether any general measure will be taken by Order in Council or otherwise.

I am also ignorant of the intention of Her Majesty's Government as to blockade, and whether, if established, it would be relaxed under any or what circumstances. I am, therefore, unable to advise what answer should be returned to Messrs. Cates, but it appears to me that such answer may be (generally) favourable.

I have, &c.
(Signed) J. D. HARDING.

No. 50.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received March* 29.)

My Lord, *Doctors' Commons, March* 28, 1854.

WE are honoured with Lord Wodehouse's letter of the 10th instant, stating that, with reference to our Report of the 9th instant,* reporting our opinion on the case of the "Themis," he was directed by your Lordship to transmit to us a copy of a despatch from Her Majesty's Minister at the Hague on the subject; and to request that we would take this despatch into consideration, and report to your Lordship, at our earliest convenience, whether there is anything in this despatch to alter the Report already made by us on this case.

Fictitious sale of Russian vessel to an Ionian.

In obedience to your Lordship's commands, we have taken into consideration the despatch above referred to, and have the honour to report—

That the circumstance referred to by the Consul in the above despatch certainly forms an additional ground of suspicion, but we do not think that it affords ground for impugning the validity of the sale from the Russian owner to the Ionian subject. We collect that the British Consul declines to recognize the transaction, on the ground that some regulation of Russian law or usage has not been complied with by the captain; but such non-compliance would not affect a *bonâ fide* sale in a foreign port; and, upon the whole, we cannot advise the British Consul, on the materials he possesses, to incur the responsibility of refusing the papers to the alleged Ionian purchaser.

We have, &c.
(Signed) J. D. HARDING.
A. E. COCKBURN.
RICHARD BETHELL.

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* No. 23.

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No. 51.

The Law Officers of the Crown to the Earl of Clarendon.—(Received March 29.)

Doctors' Commons, March 28, 1854.

My Lord,

Corn purchased in Russia by Dutch firms, and conveyed in Dutch vessels to Dutch ports.

WE are honoured with your Lordship's commands, signified in Lord Wodehouse's letter of the 23rd instant, stating that he was directed to transmit to us the inclosed despatch from Sir James Turing, Her Majesty's Consul at Rotterdam, requesting instructions with reference to an application which has been made to him by some of the first mercantile firms in that city. Those firms, it is stated, some time since made large purchases of corn in the Russian Baltic ports, and having already chartered, or having occasion still to charter, Dutch vessels to bring the purchased corn to the Netherlands, they are desirous of knowing whether, in the event of war being declared, licenses will be granted to them by Her Majesty's Government to enable them, in their capacity as neutrals, freely to transport their corn from Russian ports in neutral vessels to the Netherlands, without molestation from British cruizers.

Lord Wodehouse is pleased to request that we would take this question into our immediate consideration, and report to your Lordship, at our earliest convenience, what answer should, in our opinion, be returned to this application.

In obedience to your Lordship's commands we have taken the despatch into consideration, and have the honour to report—

All right, if *bonâ fide.*

May be searched, &c.

That the applicants may be informed that except in case of a blockade, of which notice will be given, their goods shipped in neutral vessels from a Russian to a neutral port, *bonâ fide* in the ordinary course of trade, will not be exposed to molestation. The vessels will, of course, be liable to search by Her Majesty's ships, and to capture if any reasonable cause of suspicion should exist as to the true ownership or destination of the goods, or if contraband of war, or enemy's despatches should be found on board.

We have, &c.
(Signed) J. D. HARDING.
A. E. COCKBURN.
RICHARD BETHELL.

No. 52.

The Queen's Advocate to the Earl of Clarendon.—(Received March 29.)

Doctors' Commons, March 29, 1854.

My Lord,

Declaration respecting neutrals.

Inquiries respecting.

HAVING yesterday received from your Lordship (marked Private and Immediate) a printed copy of Her Majesty's Declaration respecting neutrals, letters of marque, &c., also marked Confidential, I observe that the same document is published in the morning papers; but that version of it which is printed in the "Times" omits the following words, "or *in transitu* from one of the enemy's ports to the other," and stops at "contraband of war."

It also contains the addition of "Westminster, March 28," which is not in the copy sent to me.

Under these circumstances, I request either to be furnished with a correct copy or to be informed that the copy sent is correct, and that the version printed in the "Times" is erroneous.

I need scarcely point out to your Lordship the importance of my being furnished officially, as early as possible, with correct and authenticated copies of such documents, such as that called "Declaration of War," in the newspapers to-day, Proclamations, Orders in Council, &c., which I seldom receive at all, and never with any regularity.

I have, &c.
(Signed) J. D. HARDING.

P.S.—I have just perused the version of the Declaration printed in the Supplement to the "London Gazette" of the 28th, and I find that this version agrees with that printed in the "Times," and differs from that sent to me by your Lordship and marked "Confidential."

J. D. H.

No. 53.

The Queen's Advocate to the Earl of Clarendon.—(Received March 29.)

Doctors' Commons, March 29, 1854.

My Lord,

Neutrals and their property.

I AM honoured with your Lordship's commands, signified in Mr. Addington's letter of the 24th instant, stating that he was directed to transmit therewith a despatch which your Lordship has received from Her Majesty's Minister at Copenhagen on certain questions connected with neutrals and neutral property; and to request that I would take this despatch into consideration and report to your Lordship, at my earliest convenience, my opinion as to the reply which should be returned to the questions put to Mr. Buchanan by the Danish Minister for Foreign Affairs.

In obedience to your Lordship's commands I have taken the despatch into consideration, and have the honour to report—

See British Declaration in "London Gazette."

That Mr. Buchanan may be instructed to refer the Danish Minister for Foreign Affairs to Her Majesty's Gracious Declaration, published in the Supplement to the "London Gazette," March 28th, which must remove all doubt upon the subject in question.

I have, &c.
(Signed) J. D. HARDING.

No. 54.

The Queen's Advocate to the Earl of Clarendon.—(Received March 31.)

Doctors' Commons, March 31, 1854.

My Lord,

Onega Wood Company. Concessions in favour of

I AM honoured with your Lordship's commands, signified in Mr. Addington's letter of the 24th instant, stating that he was directed to transmit to me therewith a letter from Mr. D. J. Morgan, Agent in this country to the Onega Wood Company, setting forth certain points bearing on the interests of the said Company with respect to which he is anxious to receive information; and to request that I would take this paper into consideration, and report to your Lordship my opinion as to the answer which should be returned to Mr. Morgan.

In obedience to your Lordship's commands I have taken the letter into consideration, and have the honour to report—

a matter of policy.

That the first question, viz., whether special instructions are to be issued to avoid all injury to the property of the Company (and thus, I presume, in effect to allow it to trade with the enemy without any restriction) is one exclusively for the decision of Her Majesty's Government.

I see no reason stated in favour of such a course being adopted which would not apply to nearly the whole trade carried on by British merchants established in Russia.

Exemption of Onega from blockade.

That the second question, viz., "Whether Port (so-called) of Onega, being such as described, should not be exempted from any blockade or consequences thereof," is also entirely for the decision of Her Majesty's Government.

Licences, and period allowed for entering and leaving after declaration of war.

That with respect to the third question, viz., "Whether, in case of war, licenses should not be granted to Her Majesty's subjects, under the circumstances herein named, to bring home their goods from Onega in neutral ships, or in such other way as the Admiralty laws recognize, without the same being subject to capture by Her Majesty's cruizers," it appears to me that it would be right and proper to grant licenses for the importation of all goods proved to have been actually bought and paid for by the merchants settled in England before they had any notice of war being imminent, and which they could not have countermanded afterwards before war, and to refuse such licenses in all other cases, but this is a question of policy rather than law, and one as to which each particular application would require distinctive consideration.

If, however, Her Majesty should be graciously pleased to grant to Russian vessels bound to England for a certain period the privilege of sailing from, and returning back to, Russian ports, this might possibly so apply to or affect the case of the Onega Company as to render any further concession to that Company unadvisable.

I have, &c.
(Signed) J. D. HARDING.

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No. 55.

The Queen's Advocate to the Earl of Clarendon.—(*Received April* 3.)

Doctors' Commons, April 3, 1854.

My Lord,

British trade with Russia through neutral territory.

I AM honoured with your Lordship's commands signified in Mr. Addington's letter of the 24th ultimo, stating that he was directed to transmit to me a letter from Messrs. Satow and Co., requesting to be informed whether in the event of war with Russia they would be permitted to carry on trade with that country through neutral territory; and to request that I would take this letter into consideration and report to your Lordship my opinion as to the answer which should be returned to it.

In obedience to your Lordship's commands I have taken the letter into consideration, and have the honour to report—

All trade with enemy illegal.

That Messrs. Satow and Co. may be informed that all trade and intercourse, correspondence and communication with the enemy, is absolutely illegal, by whatsoever channels or methods, or in whatsoever merchandize, or under whatsoever devices or pretences it may be carried on, and that all those who may embark or continue in the same will incur the most serious risk.

I have, &c.
(Signed) J. D. HARDING.

No. 56.

The Queen's Advocate to the Earl of Clarendon.—(*Received April* 3.)

Doctors' Commons, April 3, 1854.

My Lord,

British vessel destroyed by Russians at Sinope.

I AM honoured with your Lordship's commands signified in Mr. Addington's letter of the 14th ultimo, stating that with reference to my reports of the 11th and 12th of January last,[*] he was directed to transmit to me therewith a letter from Mrs. Smith and Mr. Bowen, containing a statement and protest of the owners of the "Howard," destroyed by the Russian forces at Sinope, and to request that I would take these papers into consideration, and report to your Lordship my opinion as to the course which should be taken about the protest, loss of cargo, &c., with reference to the present state of our relations with Russia.

The previous papers are herewith returned.

In obedience to your Lordship's commands I have taken the papers into consideration, and have the honour to report—

No redress, war having broken out.

That the existing war with Russia will render it impossible to obtain compensation for the owners of the "Howard," and that they may be so informed, and the papers may be returned to them. I may perhaps observe that, with reference to my former reports, it appears that the "Howard" was lying just in the centre, but inshore, of the Turkish fleet, which was moored in a crescent, and that the immediate cause of her destruction was a Turkish frigate, which drifted foul of her.

Under these circumstances, the result of any application to the Russian Government would hardly have been, in my opinion, successful, even if peace had continued.

I have, &c.
(Signed) J. D. HARDING.

No. 57.

The Queen's Advocate to the Earl of Clarendon.—(*Received April* 3.)

Doctors' Commons, April 3, 1854.

My Lord,

American vessel with neutral cargo bound for a blockaded port.

I AM honoured with your Lordship's commands signified in Mr. Addington's letter of the 24th ultimo, stating that he was directed to transmit to me a letter from Messrs. Lefevre and Co., requesting to know whether in the event of war an American vessel with a neutral cargo, sailing from America for St. Petersburgh before a declaration of war, would be permitted by the blockading squadron to proceed to Cronstadt, and to request that I would take this letter into consideration, and report to your Lordship my opinion as to the answer to be returned to it.

In obedience to your Lordship's commands I have taken the letter into consideration, and have the honour to report—

Any breach of blockade renders liable to capture.

That I observe that Messrs. Lefevre and Co. put this question in an abstract form, and do not state that they have any interest in any particular ship or goods whatsoever. If they are London merchants they can scarcely be so ignorant as they pretend or assume to be on the point in question. Under these circumstances I submit to your Lordship's judgment whether they are fairly entitled to any specific answer. If, however, your Lordship considers it proper to answer their application fully, they may be informed that when once a vessel has been informed that any particular port to which she may be destined is blockaded, she will be liable to condemnation if she attempts to commit any breach of such blockade. The time when, or the place whence, she originally sailed, will not affect the question. She ought, in order to be safe, to abandon her destination immediately on receiving notice that it is a blockaded port, and the mere act of sailing with a destination to a blockaded port, after having received a formal notification that it is blockaded, will expose a vessel to condemnation.

I have, &c.
(Signed) J. D. HARDING.

No. 58.

The Queen's Advocate to the Earl of Clarendon.—(*Received April* 3.)

Doctors' Commons, April 3, 1854.

My Lord,

Russian goods loading at Odessa for an Antwerp firm.

I AM honoured with your Lordship's commands signified in Mr. Addington's letter of the 23rd ultimo, stating that he was directed to transmit to me therewith a letter from Messrs. Sieveking and Son, conveying an inquiry on the part of a commercial firm at Antwerp for information on certain points concerning some goods of Russian origin stated to be loading at Odessa, and to be consigned to that firm; and Mr. Addington is pleased to request that I would take this subject into consideration, and report to your Lordship my opinion as to the answer which should be returned to Messrs. Sieveking.

In obedience to your Lordship's commands I have taken this subject into consideration, and have the honour to report—

If *bonâ fide* neutral will not be captured.

Unless in British vessels after declaration of war, &c.

That the cargoes in question will not be confiscated merely by reason of their being composed of goods originally the growth or manufacture of Russia, provided that they are *bonâ fide*, and exclusively owned by neutrals. If, however, these goods should be entirely the produce of Russia, and are shipped on board British vessels (described as "now loading"), and not sailing until after the declaration of war, and especially if not sailing until after this should be known at Odessa, I cannot venture to say that such vessels might not be exposed to capture or detention, unless either a license or specific instructions be issued. The entire want of specification as to the dates and particulars of the transaction is worthy of remark, and under these circumstances this case may perhaps be properly referred to the consideration of the Committee of the Privy Council on Licenses.

I have, &c.
(Signed) J. D. HARDING.

No. 59.

The Queen's Advocate to the Earl of Clarendon.—(*Received April* 4.)

Doctors' Commons, April , 1854.

My Lord,

Bond for export of warlike stores.

I AM honoured with your Lordship's commands signified in Mr. Addington's letter of the 30th ultimo, stating that with reference to my Report of the 22nd,[*] relative to the bonds which the Commissioners of Her Majesty's Customs have been ordered to require shippers of warlike stores to give for their due delivery at the port of destination, he was directed to transmit to me a letter from the Treasury, in reply to one which your Lordship on the receipt of my Report caused to be addressed to that Department upon the subject of the bonds in question; and with reference to the explanations contained in that letter, Mr. Addington is pleased to request that I would take the matter again into consideration, and report to your Lordship my opinion thereupon.

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[*] Nos. 13 and 14.

[*] No. 43.

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The letter from the Treasury, together with the two bonds, are herewith returned.

In obedience to your Lordship's commands I have again taken the matter into consideration, and have the honour to report—

Cannot afford security against abuse.

That, provided it is strictly borne in mind that the bonds in question will not in themselves afford any security whatever that the articles in question will not reach either the enemy or the revolted subjects of the Sultan (to insure which other sufficient measures must be taken), there does not appear to me to be any objection to such bonds being required. I may, however, observe, that I cannot but think that "arms for Antwerp, to be used as patterns for an order for the African market" (which, it seems, are allowed by the Treasury to be exported under bond) would probably make equally good patterns for the Russian or Greek market, especially as it is suspected that considerable orders for such markets have been or are being executed in Belgium. This, however, is not a legal question, but one of fact and probability, and I do not presume to put my opinion forward on such a point against that of the Lords Commissioners of the Treasury, who (no doubt properly) conceive that their explanation will be "in every way satisfactory" to your Lordship.

I have, &c.
(Signed) J. D. HARDING.

No. 60.

The Queen's Advocate to the Earl of Clarendon.—(*Received April* 5.)

My Lord,
Doctors' Commons, April 4, 1854.

Exemptions from capture. British Government cannot answer for French Government.

WITH reference to the numerous cases of applications from merchants to be relieved from the risk of capture which may be incurred by their ships and goods during the war, I respectfully submit to your Lordship's consideration the propriety of warning them in every case that Her Majesty's Government cannot undertake to answer for the course which the French Government or its ships of war may think proper to adopt.

Mutual understanding.

I would further venture to suggest the expediency of forthwith coming to some understanding with the French Government both as to the general principles upon which, and as to the particular instances in which, licenses or specific instructions are or may be issued, in order to insure a uniform line of action on the part of both Governments in such cases, without which serious confusion, inconvenience, and mischief may result, inasmuch as a license from one belligerent will not protect the ship from capture by an ally in the war.

The same observations apply to the Turkish Government.

I would request to be furnished officially with correct copies of any Decree, Declaration, or other official documents which the French Government has already issued, or may hereafter issue, on these points.

I have, &c.
(Signed) J. D. HARDING.

No. 61.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received April* 10.)

My Lord,
Doctors' Commons, April 5, 1854.

Overland trade with Russia.

WE are honoured with your Lordship's commands signified in Mr. Addington's letter of the 18th ultimo, stating that he was directed to transmit to us a letter from Mr. W. H. Elder, containing certain queries with reference to the overland trade with Russia, in which he is interested, and to request that we would take this paper into consideration, and report to your Lordship our opinion as to the answer to be returned to Mr. Elder.

Mr. Addington is pleased to add, with reference to a remark from the Queen's Advocate, that the Foreign Office has no further information or instructions to give on the subject of this reference than are contained in Mr. Elder's letter.

In obedience to your Lordship's commands, we have taken the letter into consideration, and have the honour to report—

Property, not neutral, may be seized.

That the first question is so expressed as to be scarcely intelligible, but assuming that it is intended to inquire whether Russian produce brought overland into Prussia and shipped at a Prussian port for this country, would be liable to seizure, we are of opinion that it would be so liable, unless it should be *boná fide* neutral property.

***Boná fide* trade with neutral in Russian goods legal.**

2. We are of opinion that, though a British subject cannot trade with an enemy through a neutral, or make a neutral his agent for the purpose of such trade, it will be lawful for an English merchant to purchase Russian produce from a neutral subject resident, or trading in, a neutral state, and that the goods so purchased would be safe in their transit from such neutral state to this country, provided the goods were *boná fide* the property of the neutral at the time of the purchase.

All trade with enemy illegal.

3. That it will be equally illegal for a British subject to trade with the enemy, whether he sends or receives the goods by sea or overland, and whether a blockade of the enemy's ports does or does not exist.

We have, &c.
(Signed) J. D. HARDING.
A. E. COCKBURN.
RICHAHD BETHELL.

No. 62.

The Queen's Advocate to the Earl of Clarendon —(*Received April* 7.)

My Lord,
Doctors' Commons, April 6, 1854.

I AM honoured with your Lordship's commands signified in Mr. Addington's letter of the 27th ultimo, stating that he was directed to transmit to me therewith a despatch from Her Majesty's Consul at St. Petersburgh, stating certain points in regard to blockade and neutral vessels, on which the British residents in that capital require information, and to request that I would take the same into consideration, and report to your Lordship my opinion as to the answer which should be returned to Her Majesty's Consul with reference to the measures now in contemplation, in regard to neutrals, as stated in the inclosed Declaration, which Her Majesty proposes to issue.

In obedience to your Lordship's commands I have taken the despatch into consideration, and have the honour to report—

Queries respecting trade with the enemy.

That in this, as in many similar cases, I have to remark that the questions are put in a vague and abstract form, and that M. Cazalette, or whoever may be the writer of the accompanying letter dated St. Petersburgh 27th February / 11th March, 1854, and addressed to Mr. Consul Michele, does not state that he has any particular interest in any ships or goods whatsoever. It appears, moreover, that this "English gentleman," resident in the enemy's country and extensively engaged in commerce there, contemplates adhering to the enemy and trading between the enemy's country and Great Britain during the war, and that it is for this very purpose that he has the assurance to request information and assistance from your Lordship, through Her Majesty's Consul, at a time when he must have known that war was imminent; and it is to be remarked that Her Majesty's Consul does not appear to consider that there is any impropriety in encouraging and assisting British subjects in such a course.

Impolicy of answering.

Such a state of things does not appear to me to require any further comment, but I shall, I trust, be pardoned for stating explicitly my humble opinion of the impolicy of showing any indulgence to such persons, or even of answering such applications, and also the necessity for impressing upon Mr. Consul Michele some correct principles for his guidance, if he is to remain in Her Majesty's service.

This, however, is entirely a matter for your Lordship's decision, and I proceed to answer the questions as well as their very vague and general character will admit.

Licences only will protect. Residents in enemy's country are enemies, &c. Trade illegal.

First, the applicant, if he is to be answered at all, may be warned that nothing but a license from the Crown can exempt him or others continuing in the enemy's country from the consequences of adhering to, or trading or holding any intercourse with, the enemy, and that those who do not immediately withdraw from the enemy's country will be treated in all respects as enemies, although British subjects by birth, and that all trade and intercourse between belligerents is illegal, howsoever carried on, and all goods taken therein will be confiscated as a general principle.

Questions.—1 and 2. "Will neutral or English vessels which may have wintered in a Russian port or should arrive there previous to a declaration of blockade be

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allowed free egress by Her Majesty's cruizers in the event of a blockade being established before they are ready to sail? If so, what time will be allowed them to clear out?" and

(2). "Will such vessels be allowed to complete their cargoes and sail with them to any port to which they may be destined, or will a distinction be made between the vessels and their cargoes to the prejudice of the latter?"

Principles of blockade.

Egress in certain cases.

(1). When a blockade is established and notified, egress is just as much a breach of blockade as ingress, and *primâ facie* all vessels and their cargoes coming out of a blockaded port will be liable to capture, and it will be for the claimants to establish their innocence in each particular case. British and neutral vessels would probably be permitted to come out if without any lading; goods proved to have been *bonâ fide* purchased, and laden on board by friends or neutrals before the blockade began, will be released; all others will be condemned.

Breaches of blockade.

(2). The ship will, in every case of breach of blockade, be condemned, to whomsoever she may belong. The property on board (to whomsoever it may belong) will be *primâ facie* liable to condemnation; it will be for those who may claim it to establish their innocence of any design to break the blockade, which, in cases of egress, it will be difficult for them to do.

Distinction between British, neutral, or Russian property.

3rd question. "Will any distinction be made whether the property on board belong to a subject of Great Britain, Russia, or a neutral state?"

(3). No distinction will be made between British or neutral property, excepting whether it was purchased and laden before and after blockade. Russian property will be condemned for breach of blockade without reference to the time when it was laden.

The "Ann McLeister" (which I have already reported on, March 27th) and other special cases, will be provided for by license or by release in case of actual capture.

Fate of goods depends on ownership, not on origin.

Apart from any question of breach of blockade, the fate of merchandize will not depend upon its origin, or the manner in which it was conveyed to the port from whence it may be shipped, but upon the answer to the question "who is the true owner or person interested therein, and what is its true destination," and its fate will be decided accordingly, if there be no breach of blockade.

Russian property on neutral vessels safe, &c.

Russian property, not contraband of war, will (except in cases of blockade) be perfectly safe under Her Majesty's Declaration, if laden on board neutral vessels, but British property taken trading with the enemy will be confiscated under whatever it may be sailing, and whether it has performed, or is intended to perform, part of its transit to or from the enemy's country overland, will be immaterial. What may be the fate of ships or goods captured by the French I am unable to say.

I have, &c.
(Signed) J. D. HARDING.

No. 63.

The Queen's Advocate to the Earl of Clarendon.—(Received April 8.)

My Lord,
Doctors' Commons, April 7, 1854.

"Ocean Bride" detained in "White Sea. Might have license even to come through blockade.

I AM honoured with your Lordship's commands, signified in Mr. Addington's letter of the 25th ultimo, stating that he was directed to transmit to me therewith a letter from Messrs. Wishart and Son, of Leith, respecting the case of the brig "Ocean Bride," of Dundee, expected to be dispatched from the White Sea with a cargo of Russian produce consigned to Messrs. Wishart.

Mr. Addington is pleased to request that I would take this letter into consideration, and report to your Lordship my opinion as to the answer which should be returned to the parties.

In obedience to your Lordship's commands I have taken the letter into consideration, and have the honour to report—

That inasmuch as the "Ocean Bride" is stated to have sailed from Archangel in October last, and to have been stranded, and ever since unavoidably detained, this appears to me to be a very proper case for the granting of a license, even in the event of the ports in the White Sea being blockaded. Probably your Lordship may consider it a proper case for reference to the Committee on Licenses.

I have, &c.
(Signed) J. D. HARDING.

No. 64.

The Queen's Advocate to the Earl of Clarendon.—(Received April 8.)

My Lord,
Doctors' Commons, April 7, 1854.

Timber waiting to be shipped at Riga.

I AM honoured with your Lordship's commands signified in Mr. Addington's letter of the 30th ultimo, stating that with reference to my letter of the 21st, he was directed to transmit to me a letter from Mr. R. M. Smith respecting some cargoes of timber now waiting to be shipped on British account at Riga, together with the previous correspondence with that gentleman, and to request that I would take the same into consideration and report my opinion as to the answer which should be returned to Mr. Smith's inquiry whether these goods should be shipped as British, Dutch, or Russian property, it being proposed to ship them in Dutch vessels.

Mr. Addington is pleased to request my opinion whether it would not in future be well to refer all applicants to the Committee of Privy Council, which will be formed for the consideration of cases entitled Licenses.

In obedience to your Lordship's commands I have taken the papers into consideration, and have the honour to report—

Refer to Committee of Privy Council on Licences.

That this case appears to me one which may properly be referred to the Committee on Licences. It will be for your Lordship to consider whether all similar applications should be likewise so referred, or whether it should previously be ascertained that they are proper cases for such reference.

The timber in question appears to be British property, purchased long before the war was probable, but nothing is distinctly stated as to the opportunity for countermanding.

Licence must state if blockade may be broken.

It should be distinctly settled in all these cases whether or not the license is to include the privilege of breaking blockade.

I have, &c.
(Signed) J. D. HARDING.

No. 65.

The Queen's Advocate to the Earl of Clarendon.—(Received April 8.)

My Lord,
Doctors' Commons, April 7, 1854.

Flax, British property, waiting to load at Riga.

I AM honoured with your Lordship's commands signified in Mr. Addington's letter of the 25th ultimo, stating that he was directed to transmit to me therewith a letter from Messrs. Bell, of Dundee, requesting certain information with respect to some flax belonging to that firm, at present waiting for shipment at Riga, and to request that I would take this letter into consideration, and report to your Lordship my opinion as to the answer to be returned thereto.

In obedience to your Lordship's commands I have taken the letter into my consideration, and have the honour to report—

Committee on Licences.

That this case appears to me to be fit for reference to the Committee on Licenses.

Russian property in neutral vessels may pass blockade in certain cases.

It is to be remarked that the flax in question would, if enemy's property, be allowed to pass in neutral vessels by virtue of Her Majesty's Declaration, and even in case of blockade, if laden before the blockade. Her Majesty's Declaration, however, has not permitted any trading with the enemy by British merchants. Whether this property will be condemned if captured without a license will, in a great measure, depend upon dates and particulars. Messrs. Bell give no particulars as to the date of the purchase, or of the lading, or as to what opportunity they had of countermanding, and they should, I conceive, be required to furnish full and detailed information on these points before the propriety of granting a license is considered.

The answer to be returned should, in my opinion, be confined to requiring full information on these points.

I have, &c.
(Signed) J. D. HARDING.

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No. 66.

The Queen's Advocate to the Earl of Clarendon.—(*Received April* 8.)

My Lord, *Doctors' Commons, April* 8, 1854.

Prussian trading vessels running between Stettin and Cronstadt.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 4th instant, stating that he was directed to transmit to me a memorandum which was communicated to your Lordship by the Prussian Minister at this Court, putting certain questions as to whether, so long as Cronstadt is not blockaded, the steam vessels belonging to the Berlin Sea Trading Company, which run between Stettin and Cronstadt, would be allowed to carry the ordinary passengers, goods, and postal correspondence, and to request that I would take this Memorandum into consideration, and report to your Lordship, at my earliest convenience, my opinion as to the reply which should be returned thereto.

In obedience to your Lordship's commands I have taken the Memorandum into consideration, and have the honour to report—

That the Prussian Minister may be informed that—

If neutral property, and not carrying British or French goods, not liable to capture.

"1. As long as Cronstadt is not blockaded, can those packets continue to carry ordinary passengers and goods, contraband of war of course (officers and soldiers included) excepted." Provided that the packets are the entire and exclusive property of neutrals, and that they have not on board any British or French property trading with the enemy, they will not, under the circumstances stated, be liable to capture.

"2. Can they carry the ordinary postal correspondence, that is to say, letters not Russian Government despatches, or can they carry no letters whatsoever?"

Risk attending carriage of letters.

They will not be forbidden to carry any letters whatsoever, but they carry all letters at their own risk, whether by way of postal correspondence or otherwise; a single letter on the enemy's public service will expose the vessels to great risk of capture, and it will depend on the circumstances of each particular case whether she will be condemned or not.

It may probably be advisable to send instructions to Sir Charles Napier on the subject of these packets, and to direct the attention of the French Government, and Her Majesty's Consul at Stettin to the subject.

I have, &c.
(Signed) J. D. HARDING.

No. 67.

The Queen's Advocate to the Earl of Clarendon.—(*Received April* 8.)

My Lord, *Doctors' Commons, April* 8, 1854.

"Vesta." Proposed bond.

I AM honoured with your Lordship's commands signified in Mr. Addington's letter of the 3rd instant, stating that, with reference to my report of the 21st ultimo,* he was directed to transmit to me a further letter from the Board of Treasury respecting the communications which have passed between the Solicitor to the Treasury and Messrs Arbuthnot, Latham, and Co., as to the security to be given in the case of the "Vesta;" and to request that I would take this case into consideration and report to your Lordship my opinion as to the course that Messrs. Arbuthnot and Latham propose to pursue.

The previous correspondence is herewith returned.

In obedience to your Lordship's commands I have taken the subject into consideration and have the honour to report—

That I see no objection to the course proposed to be pursued by Messrs. Arbuthnot and Co., and no necessity for any further interference at present.

It will be for those gentlemen to make a further application, if necessary, whenever the "Vesta" may be captured or seized.

I have, &c.
(Signed) J. D. HARDING.

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* No. 41.

No. 68.

The Queen's Advocate to the Earl of Clarendon.—(*Received April* 12.)

My Lord, *Doctors' Commons, April* 11, 1854.

Goods bought in Russia before war.

I AM honoured with your Lordship's commands signified in Mr. Addington's letter of the 3rd instant, stating that he was directed to transmit to me a letter from Messrs. Ralli and Son, respecting some property which they state to have purchased in Russia by their firm previous to the war between this country and Russia, and which they are now anxious to be enabled to import into Great Britain.

Mr. Addington is pleased to request that I would take this paper into consideration and report to your Lordship my opinion as to the answer which should be returned to Messrs. Ralli and Son.

In obedience to your Lordship's commands I have taken the paper into consideration, and have the honour to report—

That I would suggest that it may be proper to inquire of Messrs. Ralli and Son in this case—

Why not countermanded, &c.

1. Whether they took any and what steps to countermand their orders, or otherwise to break off their commercial dealing with the enemy, either when war was imminent, or upon its being declared, and if not, why not?

2. What are the dates and terms of the charter parties, of the ships which are on their way on their account to Russian ports, when each of them sailed, to what port, and under what flag?

That on their answers being received the case may be referred to the Committee on Licenses.

I have, &c.
(Signed) J. D. HARDING.

No. 69.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received April* 13.)

My Lord, *Doctors' Commons, April* 12, 1854.

Fictitious transfers of Russian ships to neutrals, and indirect trade with Great Britain.

WE are honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 4th instant, stating that he was directed to transmit to us a despatch from Her Majesty's Minister at Berlin, and to request that we would take this despatch into consideration and report to your Lordship our opinion as to the instructions to be given to Her Majesty's Agents abroad with respect to false sales of Russian vessels to subjects of neutral countries, and as to the proceedings of Russian merchants in forwarding Russian produce to Memel for shipment to this country through the medium of Russian merchants at that port.

In obedience to your Lordship's commands we have taken the despatch into consideration, and have the honour to report—

That a neutral cannot be allowed to act as agent to a belligerent in the colourable transfer of either ships or goods.

Both illegal.

If the sale of either ships or goods is made by an enemy to a neutral with any reservation of property or interest therein to the enemy, either avowed or upon a secret trust or contract for repurchase, such ships or goods will, notwithstanding such colourable sale, be liable to be captured and condemned as prize.

We have, &c.
(Signed) J. D. HARDING.
A. E. COCKBURN.
RICHARD BETHELL.

No. 70.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received April* 13.)

My Lord, *Doctors' Commons, April* 13, 1854.

WE are honoured with your Lordship's commands signified in Mr. Addington's letter of the 4th instant, stating that he was directed to transmit to us therewith a

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Produce of Moldavia and Wallachia.

letter from the Board of Trade inclosing a communication from Mr. Theologo, of Manchester, respecting the liability to seizure of goods the produce of the Principalities of Moldavia and Wallachia, in the event of war between this country and Russia; and to request that we would take this subject into consideration and report to your Lordship our opinion as to the answer which should be returned to Mr. Theologo.

In obedience to your Lordship's commands we have taken the subject into consideration, and have the honour to report—

Safe, if *bonâ fide*, &c.

That this question appears to us one of some nicety, and we cannot undertake to say how a Prize Court would decide it; but we incline to think that if the produce of the Principalities of Wallachia and Moldavia to which the question relates be the *bonâ fide* property of persons who were resident in those Principalities before the Russian occupation, and not shipped in Russian vessels, such property would not be subject to seizure by Her Majesty's cruizers.

We have, &c.
(Signed) J. D. HARDING.
A. E. COCKBURN.
RICHARD BETHELL.

No. 71.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received April* 15.)

My Lord, *Doctors' Commons, April* 15, 1854.

WE were honoured with your Lordship's commands contained in Mr. Addington's letter of the 8th instant, in which he stated that he was directed by your Lordship to transmit to us a letter from the Russian Consul-General in this country, setting forth two points arising out of the late Order in Council on which he requested explanation, and he was to request that we would take M. de Krehmer's letter into consideration and favour your Lordship with our opinion as to the answer which should be returned to him.

Russian ships quitting French or neutral port, not protected by Her Majesty's Declaration.

In obedience to your Lordship's command we have taken the letter into our consideration, and have the honour to report that we are of opinion that the answer to be given to the first question put by M. de Krehmer, should be that Russian merchant-ships quitting a neutral or French port will not be within the protection afforded by Her Majesty's recent declaration to Russian ships quitting a British port.

It therefore becomes unnecessary to answer the second question put by M. de Krehmer.

We have, &c.
(Signed) J. D. HARDING.
A. E. COCKBURN.
RICHARD BETHELL.

No. 72.

The Queen's Advocate to the Earl of Clarendon.—(*Received April* 19.)

My Lord, *Doctors' Commons, April* 17, 1854.

Requesting certain information.

WITH reference to certain papers which have been submitted to me by Her Majesty's Proctor, by desire of the First Lord of the Admiralty, with reference to questions (arising out of the existing hostilities) in relation to Denmark, and to the Netherlands, especially as to instructions issued by the Danish Government to its ships of war, I have to request that I may be forthwith furnished with copies of the "identic notes" from the Governments of Sweden and Denmark communicated to Her Majesty's Government, and on which I reported to your Lordship on the 11th of January last, and that I may be further informed whether Her Majesty's Government has, in effect, recognized the principles contained in those notes, with or without limitation or remark, or how otherwise.

I would further request that I may be informed whether there are any and what Treaty stipulations in existence with Sweden, Denmark, or the Netherlands, on the subject of contraband of war.

I have, &c.
(Signed) J. D. HARDING.

No. 73.

The Queen's Advocate to the Earl of Clarendon.—(*Received April* 17.)

My Lord, *Doctors' Commons, April* 17, 1854.

I AM honoured with your Lordship's commands signified in Mr. Addington's letter of the 8th instant, stating that he was directed to transmit to me a letter from the Admiralty, inclosing a letter from Mr. Hutt, inquiring whether the term allowed for Russian vessels to quit the English ports will be allowed for them to quit neutral ports, and to request that I would take this subject into consideration and report to your Lordship my opinion as to the answer which should be returned to Mr. Hutt.

In obedience to your Lordship's commands I have taken this subject into consideration, and have the honour to report—

Days of grace for leaving British ports. Does not extend to neutral ports.

That Mr. Hutt may be informed that the term of six weeks allowed by the Order in Council of March 29 to Russian vessels in British ports is not thereby granted to Russian vessels in neutral ports which will be liable to capture whensoever they may have left, or may hereafter leave, such ports, excepting only in case of their having left such ports before the 29th of March bound to a British port, according to the terms of the Order in Council.

Mr. Hutt's attention may be directed to any Orders in Council which may be issued in this matter, but which will probably only extend the permission alluded to in point of time under certain specified circumstances.

I have, &c.
(Signed) J. D. HARDING.

No. 74.

The Queen's Advocate to the Earl of Clarendon.—(*Received April* 17.)

My Lord, *Doctors' Commons, April* 17, 1854.

I AM honoured with your Lordship's commands signified in Mr. Addington's letter of the 8th instant, stating that he was directed to transmit to me a letter from Mr. Booth, requesting to be informed whether he can legally continue to forward to Russia certain newspapers which he has been in the habit of supplying to the Emperor of Russia, and to request that I would take this subject into consideration, and report to your Lordship my opinion as to the answer which should be returned to Mr. Booth.

In obedience to your Lordship's commands I have taken this subject into consideration, and have the honour to report—

Newspapers may not be sent to Emperor of Russia.

That Mr. Booth may be informed that it will not be legal for him to continue to send the newspapers referred to, either through the Post-office or in any other manner, to the Emperor of Russia.

It will be for your Lordship to consider the propriety of calling the Postmaster General's attention to the expediency of taking effectual steps to prevent the transmission of newspapers and the communication of intelligence from this country to Russia.

I have, &c.
(Signed) J. D. HARDING.

No. 75.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received April* 21.)

My Lord, *Doctors' Commons, April* 18, 1854.

Sale of Russian vessel and cargo at Waterford.

WE are honoured with your Lordship's commands signified in Mr. Addington's letter of the 8th instant, stating that he was directed to transmit to us a letter from the Board of Trade, together with its inclosures, respecting the arrival and sale of a Russian vessel and cargo at the port of Waterford, and to request that we report to your Lordship at our earliest convenience our opinion as to the answer which should be returned to the Lords of Trade.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

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If *bonâ fide*, it is valid.

That if the proper authorities at the port of Waterford are satisfied, upon full inquiry, that the sale of the Russian ship the "Norden" to Messrs. White is a *bonâ fide* absolute sale, we are of opinion that the transaction is a valid one, and that the application of Messrs. White to have the vessel registered under the Registry Act may be properly complied with.

We have, &c.
(Signed) J. D. HARDING.
A. E. COCKBURN.
RICHARD BETHELL.

No. 76.

The Queen's Advocate to the Earl of Clarendon.—(Received April 20.)

Doctors' Commons, April 20, 1854.

My Lord,

Russian goods in neutral vessels.

I AM honoured with your Lordship's commands signified in Mr. Addington's letter of the 8th instant, stating that he was directed to transmit to me therewith a letter from Mr. Christiansen respecting the liability to seizure of certain goods purchased by him in Russia, and to request that I would take this paper into consideration, and report to your Lordship my opinion as to the answer which should be returned to Mr. Christiansen.

In obedience to your Lordship's commands I have taken the paper into consideration, and have the honour to report—

Vessels laden previous to a blockade may come out after its establishment, &c.

That Mr. Christiansen may be referred to the Order in Council of the 15th instant, and informed that it permits the importation of the goods in question in neutral vessels. That in case of a blockade of Libau, or any port, being established, egress will be permitted only to such cargoes as may have been laden before the blockade. His case does not appear to me either to require a license or to entitle him to any favourable consideration.

I huve, &c.
(Signed) J. D. HARDING.

No. 77.

The Queen's Advocate to the Earl of Clarendon.—(Received April 20.)

Doctors' Commons, April 20, 1854.

My Lord,

Blockade of the Baltic.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 18th instant, stating that he was directed to transmit to me the accompanying letter, with its inclosure from the Admiralty, and a despatch, together with its inclosure, from Mr. Buchanan, Her Majesty's Minister at Copenhagen, respecting the departure of the fleet under Vice-Admiral Sir C. Napier, on the 11th instant, from Kioge Bay for the Gulf of Finland, to place in a state of blockade all the Russian ports in the Baltic and in the Gulf of Finland and Bothnia; and to request that I would take these papers into consideration, and report to your Lordship, at my earliest convenience, my opinion whether their contents would warrant Her Majesty's Government in announcing an effective blockade of the ports in question.

Mr. Hammond is further pleased to request that I would draw up a proper notice for insertion in the "Gazette," if I am of opinion that the blockade should now be officially notified.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

Must not notify as effective until it has actually taken place.

That I am of opinion that neither the letter of Sir C. Napier to Mr. Buchanan of the 11th April, nor that of Mr. Buchanan to M. de Blukme of the 12th of April, will of themselves justify Her Majesty's Government in announcing that an effective blockade of the whole of the Russian ports in the Baltic and in the Gulfs of Finland and Bothnia has been established. Her Majesty's Government have, in my humble opinion, the strongest motives for not furnishing any precedent as to blockade which might hereafter be used against the interests of Great Britain, and for adhering strictly to the established principles of international law on this subject. One of the clearest of these principles is that a declaration of blockade, unaccompanied or unsupported by the fact of the actual presence of a competent force, does not establish a blockade, and all Decrees and Orders declaring extensive coasts and countries in a state of blockade, without the presence of an adequate naval force to support it, are manifestly illegal, and have no sanction in international law, See especially the cases of the "Mercurius" and of "The Betsey," 1 C. Robinson.

It is to be observed, 1st, that Sir C. Napier only expresses a design or intention to establish a blockade thereafter, without fixing any date from which he expected that such a blockade would be effectively established.

2nd. That he was obviously not in a position to establish such a blockade effectively at the moment of his sailing from Kioge Bay, nor would he be in such a position for some time after sailing therefrom.

3rd. That it is hardly possibly that so extensive a blockade as that contemplated should become completely and equally effective as to all the ports and coasts in question precisely at the same time.

Whensoever the blockading force shall have arrived off any one or more of the ports in question, it will proceed (even in the absence of any public notification) to warn off all vessels which may be bound thereto, or may attempt to enter them, and any vessel persisting, after such warning, in an attempt to enter, or continuing her voyage for such ports, will be liable to capture. I do not see, therefore, that any very serious mischief can result from a postponement of the proposed notification. If, however, it should be deemed necessary by Her Majesty's Government immediately to publish a notification of the proposed blockade, I can only suggest that a day should be named for its commencement, upon which it is almost certain, after making fair allowance for accidental delay, that the blockading force would be on the spot, and that there should be a distinct notification of the fact and the date of the blockade, without any reference to Sir C. Napier's letter. I do not, however, wish to be understood as advising any such steps which may not improbably give rise to international difficulties with neutrals.

I have, &c.
(Signed) J. D. HARDING.

No. 78.

The Law Officers of the Crown to the Lords Commissioners of the Admiralty.

Doctors' Commons, April 21, 1854.

My Lords,

THE Queen's Proctor has laid before us Captain Hamilton's letter of the 17th of April, in which he states that he is commanded by your Lordships to transmit to us therewith the questions which have been put to the British Government by the Dutch Minister, together with the answers which have been given by the French Government to the same questions, and to request that we will advise what answers be given to these questions; that they cannot be the same as those of France, for the doctrine of Great Britain with reference to the "right of search," and the mode of exercising it, are different. Moreover, with regard to "contraband of war," it may probably be expedient to enumerate the articles specified by the French Government, adding to the enumeration any articles omitted by them, but contained in the Article on this head in the Treaties of neutrality with Sweden and Denmark; but that, together with this specification, it will be prudent to insist upon a general reservation regarding articles of a doubtful character, such as coal, hemp, marine steam engines, and their component parts, which may be applied to purposes either of commerce or war. That your Lordships conceive that the doctrine for which the British Government ought to contend is that laid down by Sir W. Scott with respect to these uncertain articles, viz., that each case must be decided with a due regard to the attendant circumstances, such as the port of destination, the parties to whom the captured articles are consigned, the probable cause for believing the special use to which they are about to be applied, that the warlike or commercial character of these articles can be safely tested in no other manner.

Right of search.

Definition of contraband of war.

We have accordingly taken the papers into consideration, and we have the honour to state that we entirely concur with the opinions thus expressed by your Lordships with respect to contraband of war.

With reference to the questions as put in writing by his Excellency the Netherlands' Minister, we have to remark—

1. That we cannot advise that any limitation whatever to the right of visit and

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No limitation to right of search.

search of all vessels on the high seas by Her Majesty's ships of war should be admitted. It is thus defined and justified by Sir W. Scott, in the case of "Maria, Paulsen," 1 C. Robinson, page 163:—"The right of visiting and searching merchant ships upon the high seas, whatever be the ships, whatever be the cargo, whatever be the destinations, is an incontestible right of the lawfully commissioned cruizers of a belligerent nation; and this, be the ships, the cargo, and the destinations what they may, because, until they are visited and searched, it does not appear what the ships, or the cargoes, or the destinations, are." Nevertheless, we deem it right to invite your Lordships' particular attention to the Order in Council of the 15th of April, 1854, which, although it cannot be considered as waiving or abandoning the right of visitation or search, must, in practice, very materially affect its exercise, and will greatly reduce the number of instances in which it can be safely or properly insisted upon.

Extent of search.

2. This right will be exercised in the manner hitherto practised by Her Majesty's ships in all former wars. It will not be abused or vexatiously used, but it cannot be confined merely to ascertaining the national character of the ship. It will be extended to all other material circumstances connected with the ship, those on board her, her cargo, and destination; as, for instance, whether there are on board articles contraband of war destined for the enemy's use, or any persons in the military or naval service of the enemy, or whether any breach of blockade has been committed, or is intended; a mere inspection of the ship's papers will not in all cases suffice.

Convoy cannot protect from search.

3. The presence or convoy of a man-of-war of her nation will not exempt any vessels from being visited or searched by Her Majesty's ships, and if resistance to this undoubted belligerent right should be resorted to, capture and condemnation will, under the general law of nations, ensue thereupon.

Definition of contraband of war.

4. Contraband of war will be held to include (1) all articles which are solely or chiefly employed for purposes of war, such as arms, ammunition, military and naval stores, articles of equipment, accoutrements, and so forth; (2) all other articles of a doubtful character ("Aucipitis usus"), *i. e.*, all articles which, though capable of use for peaceable purposes, are also capable of use for warlike purposes. The nature, considered, and if these be such as to render it probable that they are, in any particular case, intended for the naval and military use of the enemy, they will be treated as con- destination, origin, and other circumstances attending upon such articles, will be duly traband of war; ships' timber and naval stores, and naval steam machinery, will be of this character, with respect to which we entirely concur in the doctrine of Lord Stowell alluded to by Captain Hamilton; (3) all the articles mentioned in any particular Treaty so far as regards the state with which such Treaty exists; (4) coal will, in our opinion, be in all cases of this doubtful character, and may be, under the circumstances above alluded to, clearly treated as contraband of war.

Coal.

We have, &c.
(Signed) J. D. HARDING.
JOSEPH PHILLIMORE.
A. F. BAYFORD.
THOS. NIXON.

No. 79.

The Queen's Advocate to the Earl of Clarendon.—(Received April 22.)

My Lord,
Doctors' Commons, April 21, 1854.

British Consular seal and signature to Swedish ships' papers.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 13th instant, stating that he was directed to inclose to me a despatch from Mr. Pringle, Her Majesty's Consul at Stockholm, dated the 31st ultimo, reporting that he had been requested by several owners of Swedish merchant-vessels which were loading at that port, and many of them ready to go to sea, to attach his name and seal of office as Her Majesty's Consul to the papers of the several ships in addition to the certificate of the Swedish authorities; and to request that I would take this subject into consideration, and report to your Lordship my opinion whether Mr. Pringle should comply with the request of the Swedish merchants or not.

In obedience to your Lordship's commands I have taken the subject into consideration, and have the honour to report—

Should not be sanctioned.

That, inasmuch as Mr. Pringle does not state either the object or purpose for which he is requested to attach his name and seal of office to Swedish ships' papers, or that any British interests are to be affected thereby, or what effect such signature and

seal may have if attached, or any reason why he should so attach them, I am of opinion that he should be instructed not to attach his name and seal of office to Swedish or any other foreign ships' papers, at all events until some further information can be obtained on these points, but to confine himself strictly to the discharge of his Consular duties to British ships and British subjects.

I have, &c.
(Signed) J. D. HARDING.

No. 80.

The Queen's Advocate to the Earl of Clarendon.—(Received April 22.)

My Lord,
Doctors' Commons, April 21, 1854.

Exportation of wood from Russia by French subject of Nantes.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 19th instant, stating that he was directed to transmit to me a note from Count Walewski, the French Ambassador at this Court (dated April 4, 1854), respecting an application of M. Harmauge, of Nantes, to be allowed to export wood from Russia; and to request that I would report to your Lordship my opinion as to what effect the new Order in Council will have as regards such an application, with reference to the answer which will have to be returned to Count Walewski's note.

In obedience to your Lordship's commands I have taken the note into consideration, and have the honour to report—

May pass under Order in Council.

That Count Walewski may be informed that if the cargoes of these vessels were transshipped into neutral vessels such cargoes might pass without molestation to any port in France, under Her Majesty's recent Order in Council; even in case of blockade they could be permitted to leave Russian ports, having been laden before the blockade and in time of peace.

That, even without transshipment, Her Majesty's Government would probably feel disposed to issue instructions to allow to these vessels bound to a French port the same indulgence which would be extended to them by the Order in Council of 15th April, if they were bound to a British port, provided always that they sail before the 15th of May, that is to say, to allow them to land their cargoes and return to any non-blockaded port.

That these extensive concessions appear to be sufficient for all commercial purposes, and that, Her Majesty's Government having hitherto abstained from issuing any special licenses, I do not see any sufficient reason for deviating from this practice in the present instance.

I have, &c.
(Signed) J. D. HARDING.

No. 81.

The Queen's Advocate to the Earl of Clarendon.—(Received April 22.)

My Lord,
Doctors' Commons, April 22, 1854.

Onega Wood Company.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 19th instant stating that, with reference to my Report of the 31st ultimo,* on the application of the Onega Wood Company for license to trade with Russia during the war, he was directed to transmit to me, together with the former papers, a note from the French Ambassador at this Court (dated April 5, 1854) upon the same subject; and to request that I would report to your Lordship my opinion as to what effect the new Order in Council will have as regards the application of that Company to be allowed to bring away their wood from Russia.

In obedience to your Lordship's commands I have taken the papers into consideration, and have the honour to report—

Conditional and temporary trade with Russia is allowed by Order in Council.

That the effect of the new Orders in Council will be to permit either the Onega Wood Company, or any other persons in Russia, to import their goods into British, French, or neutral ports in neutral ships, unless and until the port at which such goods may be embarked shall be blockaded, in which case neutral ships would probably be allowed free egress, provided they had no goods on board but such as were laden before the blockade.

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The recent Orders in Council will further permit the importation of such goods into any British port, even in Russian ships, and the safe return of such ships, provided they sail from ports of Russia in the Baltic or White Sea before the 15th of May.

Under these circumstances it does not appear to me that any special licenses or instructions are required in this matter.

I have, &c.
(Signed) J. D. HARDING.

No. 82.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received April* 25.)

Doctors' Commons, April 24, 1854.

My Lord,

Effect of Orders in Council.

WE are honoured with your Lordship's commands signified in Mr. Addington's letter of the 8th instant, stating that he was directed to transmit to us a letter from Mr. Horsfall, inclosing a letter from Messrs. Telo and Pranges, requesting information on certain points arising out of the late Order in Council respecting trade; and to request that we would take Messrs. Telo and Prange's letter into consideration, and report to your Lordship our opinion as to the answer to be returned to it.

In obedience to your Lordship's commands we have taken the letter into consideration, and have the honour to report—

No articles *imported* are considered contraband of war.

No breach of blockade allowable.

That Messrs. Telo and Pranges may be referred to Her Majesty's Order in Council of the 13th of April, and may be further informed that no articles imported into Her Majesty's dominions will be considered by her as contraband of war. That in the event of Russian ports being blockaded, no vessels will be permitted to enter them, and if, after notice or warning, any such vessel should attempt so to do, they will be captured.

We have, &c.
(Signed) J. D. HARDING.
A. E. COCKBURN.
RICHARD BETHELL.

No. 83.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received April* 25.)

Doctors' Commons, April 25, 1854.

My Lord,

Her Majesty's Declaration respecting neutrals.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 18th instant, stating that he was directed to transmit to us the accompanying letter from Messrs. Staig and Stuart, of Kircaldy, requesting to be informed whether Her Majesty's Declaration of the 28th of March regarding neutrals is to be applied in favour of vessels under a neutral flag which may now leave an unblockaded Russian port.

Mr. Hammond likewise incloses the correspondence with Mr. Elder, which is referred to in the letter from Messrs. Staig and Stuart, and to request that we would take these papers into consideration, and to report to your Lordship our opinion as to the answer which should be returned to Messrs. Staig and Stuart.

In obedience to your Lordship's commands we have taken the papers into consideration, and have the honour to report—

Neutral flag may leave unblockaded Russian port.

Russian produce coming through Prussia not liable to capture.

That Messrs. Staig and Stuart may be informed that Her Majesty's Declaration of the 28th of March regarding neutrals is to be applied in favour of vessels under a neutral flag which may now leave an unblockaded Russian port; and with reference to the further question contained in their letter (which refers to your Lordship's reply to Mr. H. W. Elder, dated the 12th instant), they may be informed that under and by virtue of the Order in Council of the 15th April (issued subsequent to the date of your Lordship's letter to Mr. Elder), Russian produce brought overland into Prussia, and shipped at a Prussian port for this country, will not be liable to seizure.

We have, &c.
(Signed) J. D. HARDING.
A. E. COCKBURN.
RICHARD BETHELL.

No. 84.

The Queen's Advocate to the Earl of Clarendon.—(*Received April* 25.)

Doctors' Commons, April 25, 1854.

My Lord,

American ship bound for St. Petersburgh.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 17th instant, stating that he was directed to transmit to me a letter from Mr. Schlottner, requesting to be informed whether the American ship "Mary Annah," laden with property belonging to his house at New Orleans, and destined for St. Petersburgh, will be allowed to proceed to its destination unmolested; and to request that I would take this paper into consideration, and report to your Lordship my opinion as to the answer to be returned to Mr. Schlottner.

In obedience to your Lordship's commands I have taken the letter into consideration, and have the honour to report—

May enter until blockaded.

That Mr. Schlottner may be informed that the American barque "Mary Annah" will, by virtue or Her Majesty's recent Order in Council (April 15), be permitted to proceed to her destination (St. Petersburgh) unmolested, unless and until that port shall be blockaded, and the "Mary Annah" shall either have been warned off by the blockading force, or shall have had due notice of such blockade; but that if she should persist after such warning or notice in endeavouring to enter that or other blockaded port she will be liable to capture and condemnation, according to the law of nations, as administered without exception in all such cases in the Prize Courts of the United States as well as those of Great Britain.

I have, &c.
(Signed) J. D. HARDING.

No. 85.

The Queen's Advocate to the Earl of Clarendon.—(*Received April* 25.)

Doctors' Commons, April 25, 1854.

My Lord,

Russian vessels in neutral ports.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 19th instant, stating that he was directed to transmit to me a letter from Messrs. Unorius and Paton, in which, with reference to the case of three Finnish vessely at present at Antwerp, they request to be informed whether the Proclamation of March 29 extends to Russian vessels in neutral ports.

Mr. Hammond is pleased to request that I would take this paper into consideration, and report to your Lordship my opinion as to the answer which should be returned to Messrs. Unorius and Paton.

In obedience to your Lordship's commands I have taken the paper into consideration, and have the honour to report—

Liable to capture on high seas.

That I observe that Messrs. Unorius and Paton do not state that they are interested in the Russian vessels in question; subject to this observation they may be informed that neither the Order in Council of the 29th March, nor that of the 15th April, extend to Russian vessels in neutral ports, and that the vessels in question will be liable to capture on the high seas.

I have, &c.
(Signed) J. D. HARDING.

No. 86.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received April* 26.)

Doctors' Commons, April 25, 1854.

My Lord,

WE are honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 13th instant, stating that he was directed to transmit to us the accompanying note from the Belgian Minister at this Court, requesting to be furnished with certain information with respect to the licences to be granted by Her Majesty's Government to vessels carrying Belgian produce, and request that we would take M. Van de Weyer's note into consideration, and to report to your Lordship our opinion as to the answer to be returned thereto.

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In obedience to your Lordship's commands we have taken the note into consideration, and have the honour to report—

Belgian vessels from Russian Black Sea ports, and ditto bound for Berdiansk for cargo, protected by Order in Council.

That the Belgian Minister may be informed, in answer to his note, that in the cases which are first mentioned by him of Belgian vessels freighted from ports in the Black Sea with cargoes of Russian produce for Belgium, no licences will be necessary, as the ships will be protected by the last Order in Council of the 15th instant.

Vessel to Africa and back must have licence.

That in the secondly mentioned case of a Belgian ship freighted with a cargo for Constantinople, and intending to proceed thence to Berdiansk for a cargo, such vessel will also be protected by the same Order, provided she does not attempt to break any effective blockade. But that in the case of the Russian vessel chartered by the Belgian house for a voyage from Antwerp to the coast of Africa and back, such vessel (unless licensed) will be liable to capture, but her cargo, if *bonâ fide* Belgian property, will be released.

We have, &c.
(Signed) J. D. HARDING.
A. E. COCKBURN.
RICHARD BETHELL.

No. 87.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received April* 26.)

My Lord, *Doctors' Commons, April* , 1877.

Rights of Russian subjects remaining in England during war by Her Majesty's permission.

WE were honoured with your Lordship's commands contained in Mr. Hammond's letter of the 13th instant, in which he stated that he was directed by your Lordship to state to us that Mr. Krehmer, the Russian Consul-General, called at the Foreign Office on the 12th instant with the view of ascertaining how far the permission granted by Her Majesty, as stated in the inclosed despatch to Mr. Michell, Her Majesty's Consul at St. Petersburgh, to Russian subjects to continue to reside in this country in perfect security, and unmolested in their persons and property, provided they conformed to the law, and did not perform any acts forbidden to British subjects, would admit of their enjoying the British law in their ordinary transactions, and specifically in prosecuting their suits in the British Courts, from which under ordinary circumstances alien enemies would be debarred.

Mr. Hammond also stated that we would see by the inclosed despatch from Mr. Michell that he had made the communication to the Russian Government prescribed to him by your Lordship.

He concluded by stating he was to request that we would take the point adverted to by Mr. Krehmer into consideration, and to report to your Lordship our opinion thereupon at our earliest convenience.

In obedience to your Lordship's command we have taken the several documents transmitted to us into our consideration, and have the honour to report—

May prosecute their suits in the British Courts of Justice.

That aliens resident in this country by permission of the Crown are by our law regarded as owing allegiance to the Crown in return for the protection they enjoy, although their Sovereign is at war with this country, and are entitled to the protection and benefit of British law; and their actions or suits in our Courts of Justice could not be met by the plea of alien enemy.

The Russian Consul, therefore, may be informed that, notwithstanding the war, Russian subjects permitted to reside in this country will, whilst they conform to British law, enjoy the full protection of that law in their ordinary transactions, and will have the full right of prosecuting their suits in the British Courts of Justice, to obtain the benefit of all lawful contracts, in the same manner as they would have been entitled to do if war had not broken out between the two countries.

We have, &c.
(Signed) J. D. HARDING.
A. E. COCKBURN.
RICHARD BETHELL.

No. 88.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received April* 28.)

My Lord, *Doctors' Commons, April* 27, 1854.

WE are honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 17th instant, stating that with reference to his letter of the 8th, inclosing for our opinion a letter from the Agent and Consul-General of the Hans Towns, requesting to be informed in what manner a Russian vessel *en route* with a cargo for Bremen will be dealt with, he was directed to transmit to us a further letter on the same subject which has been received from Mr. Colquhoun; and to request that we would take the letters into consideration, and report to your Lordship our opinion as to the reply to be returned thereto.

In obedience to your Lordship's commands we have taken the letters into consideration, and have the honour to report—

Russian vessels from British or French port may go to an unblockaded Russian port.

If to a neutral port to take in cargo, may be captured.

Russian vessels from neutral ports may be captured.

That in answer to Mr. Colquhoun's inquiries, which are not very distinctly expressed, it may be sufficient to state that Russian vessels which have cleared out from a British or French port since the declaration of war will be allowed to proceed direct on their voyage home, that is, to any Russian port not under blockade, without being liable to capture, but that if any such Russian vessel, having so left a British or French port, shall go to a neutral port, and take on board a neutral cargo, she will be liable to capture. Further, Mr. Colquhoun may be informed that, according to the declarations and orders which have been issued up to the present time by the English and French Governments, Russian vessels which have cleared out of neutral ports since the declaration of war with neutral cargoes, bound either to Russian or neutral ports, will not be protected from capture, although the cargoes of neutral property will be released.

We have, &c.
(Signed) J. D. HARDING.
A. E. COCKBURN.
RICHARD BETHELL.

No. 89.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received April* 28.)

My Lord, *Doctors' Commons, April* , 1854.

Russian vessel from Sandwich Islands to British port to take in cargo for Bremen.

WE are honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 8th instant, stating that he was directed to transmit to us the accompanying letter from Mr. Colquhoun, Agent and Consul-General of the Hans Towns, requesting permission for a Russian vessel, on its way from the Sandwich Islands to Cowes or Falmouth, to take orders from those ports, and to proceed with its cargo to Bremen, to which port the owner of the cargo belongs; and to request that we would take Mr. Colquhoun's letter, with its inclosures, into consideration, and report to your Lordship our opinion as to the reply to be returned thereto.

In obedience to your Lordship's commands we have taken the papers into consideration, and have the honour to report—

Cannot grant licence.

That we are of opinion that the answer to be returned to Mr. Colquhoun should be that his request cannot be complied with.

The extent of the indulgence to be afforded to Russian merchant vessels bound to British ports is settled and determined by the Order in Council.

Neutral cargo would be restored by Admiralty Court.

The property of neutrals is now protected to a degree unparalleled in the history of European warfare. It is admitted by Mr. Colquhoun that the neutral cargo on board the "Suomi" would, in case of capture, be restored on application to the Admiralty Court. It is too much to ask that, to secure the neutral against the possible expense of an application to the Court, protection should be afforded to an enemy's ship to which it would otherwise not be entitled.

We have, &c.
(Signed) J. D. HARDING.
A. E. COCKBURN.
RICHARD BETHELL.

1853-56

No. 90.

The Law Officers of the Crown to the Earl of Clarendon.—(Received April 28.)

Doctors' Commons, April 27, 1874.

My Lord,

Russian vessels quitting French or neutral ports not protected by British Declaration.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 18th instant, stating that in our Report of the 15th instant,* on certain questions proposed by Mr. Krehmer, the Russian Consul-General; we state that the answer to be returned should be that Russian merchant ships quitting a neutral or French port will not be within the protection afforded by Her Majesty's recent Declaration to Russian ships quitting a British port.

That your Lordship, however, directs Mr. Hammond to observe to us that as the English and French Governments have agreed together that Russian vessels should be allowed freely to depart from English and French ports until the 9th or 10th of May, it would seem that the respective Governments are bound to carry out that agreement as regards their respective ports, though that is not the case as regards neutral ports.

Your Lordship requests, therefore, that we would reconsider the case with reference to what Mr. Hammond has now stated, and report to your Lordship our opinion thereupon at out earliest convenience.

In obedience to your Lordship's commands we have the honour to report—

British and French agreement at variance with British Declaration, which should be amended.

That as the license allowed to Russian vessels in or bound to the ports of France or England to discharge their cargoes, and depart before the 10th of May unmolested, is the result of mutual agreement between England and France, it is according to the spirit of that agreement that a Russian ship which has quitted a French port by virtue of such license, and is returning direct to her own country, should be protected from English cruizers and *vice versâ*, but such is not the language of the English Order in Council, or of the French Ordonnance; and if it be resolved, therefore, to carry out the agreement between France and England to the extent of protecting the Russian vessel which within the allowed time has cleared out of the port of the one country from the cruizers of the other, it will be necessary either to publish an additional Declaration, or to give instructions to that effect to the Commanders of the vessels of war of France and England.

Russian vessels clearing out from neutral ports are not within the order or the agreement between the two countries in which that order originated.

We have, &c.
(Signed) J. D. HARDING.
A. E. COCKBURN.
RICHARD BETHELL.

No. 91.

The Queen's Advocate to the Earl of Clarendon.—(Received April 28.)

Doctors' Commons, April , 1854.

My Lord,

Russian vessel and armament at Shields, purchased by a British subject.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 26th instant, stating that he was directed to transmit to me the accompanying letter from the Board of Customs, requesting to be informed as to the course which should be pursued with regard to the armament of a Russian vessel taken by the Custom-house officers at the port of Shields on the 1st instant, and to request that I would take the same into consideration and favour your Lordship at my earliest convenience with a report upon this case.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

If *bonâ fide*, the sale is valid, and the armament of ship belongs to the purchaser.

That the sale and purchase of this Russian ship (the "Odero") by a British subject (of the particulars of which I have no information), if made "*bonâ fide* and duly completed in the ordinary legal form to the satisfaction of the officers of the Customs, will be legal, as decided by the Law Officers in the case of the "Norden" at Waterford,† and it will be their duty under the circumstances to deliver to the purchaser or to his order the armaments in question as belonging to the ship, taking his receipt for the same.

I give this opinion in ignorance of the particular authority, or orders, under which the officers of the Customs acted in this case in taking and keeping possession of the armaments alone, and as distinguished from the ship; but I conceive it to be their duty, in the absence of any special circumstances, to act in this case as they would do in any similar case of the regular and legal purchase by a British subject of any foreign merchant vessel lying in a British harbour; and I presume that in such a case they would deliver up any arms or articles belonging to such ships to the purchaser.

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* No. 71.

† No. 75.

I have, &c.
(Signed) J. D. HARDING.

No. 92.

The Queen's Advocate to the Earl of Clarendon.—(Received April 29.)

Doctors' Commons, April 28, 1854.

My Lord,

Russian bristles purchased at Hamburgh may be imported into Great Britain.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 19th instant, stating that he was directed to transmit to me the accompanying letter from Messrs. L. Myers and Co. requesting to be informed whether they may purchase forty-four casks of Russian bristles at Hamburgh, and import them into this country; and to request that I would take Messrs. Myers' letter into consideration with reference to Her Majesty's Orders in Council of the 18th instant, and report to your Lordship my opinion as to the answer which should be returned thereto. In obedience to your Lordship's commands, I have taken Messrs. Myers' letter into consideration, and have the honour to report—

That Messrs. Myers and Co. may be informed that they may purchase these goods (forty-four casks of Russian bristles) at Hamburgh, and import them into this country, without exposing themselves to any risk of having them seized.

I have, &c.
(Signed) J. D. HARDING.

No. 93.

The Law Officers of the Crown to the Lords Commissioners of the Admiralty.

Doctors' Commons, April 29, 1854.

My Lords,

Appropriation of prizes and disposal of prisoners.

WE have had before us Captain Hamilton's letter to Her Majesty's Proctor, dated the 24th instant, and the drafts of Conventions transmitted therewith, respecting the appropriation of prizes and the disposal of prisoners made by the combined forces of England and France agreed upon by Lord Cowley and by Rear-Admiral Dundas, and also the Instructions to the Naval Commanders of both nations in pursuance of the Conventions, and signifying your Lordship's directions that our opinion should be taken on these drafts, and especially whether the execution of any of the stipulations thereof would be attended with difficulty with reference to the present arrangements of the British Admiralty Courts and the principles by which they are guided.

We have the honour to report that we have taken the papers into our consideration.

Opinion on Draft Convention and Instructions.

We are of opinion that the execution of some of the stipulations of the Prizes Convention and of some of the Articles of the Instructions will be attended with difficulty with reference to the present arrangements of British Admiralty and other Courts, and the principles by which they are guided.

For instance, Instruction No. 5, directing the delivering up of prizes in certain cases to Consuls in neutral ports, will, in the case of British Consuls at least, give rise to serious legal difficulties.

These difficulties may, in our opinion, be obviated either by the insertion of clauses in the Prize Act or by some other legislative enactment.

It will not have escaped the attention of Her Majesty's Government that the case, either of Turkey or of any other allies, is not provided for, although Her Majesty's Proclamation of the 29th March for the distribution of captures, alluded to in Section 5 of the proposed Prize Act, appears to contemplate a distribution amongst allies generally.

We have, &c.
(Signed) J. D. HARDING.
JOSEPH PHILLIMORE
A. F. BAYFORD.
THOS. PHINN.

1853-56

No. 94.

The Queen's Advocate to the Earl of Clarendon.—(*Received April* 29.)

Doctors' Commons, April 29, 1854.

My Lord,

Armaments and ammunition carried by merchantmen for self-defence.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 21st instant, stating that he was directed to transmit to me the accompanying despatch, which your Lordship has received from Sir James Turing, Her Majesty's Consul at Rotterdam, in which he states that several mercantile firms and shipowners of eminence at that port have applied to him for advice as to the course which it would be advisable for them to pursue under existing circumstances with regard to the shipment of arms and ammunition on board their vessels for purposes of self-defence, more especially with regard to those ships engaged in trade to remote quarters of the globe which have been accustomed to carry a considerable armament. Sir James Turing adds that it is apprehended by the Netherland shipowners that, if their vessels were visited at sea by British or French cruisers, their armament might be considered as much larger than necessary as to expose their ships and property to serious inconvenience and loss, and his despatch contains suggestions for averting this danger, as well as for insuring the *bonâ fide* nature of the cargo loaded; and Lord Wodehouse was pleased to request that I would take this despatch into consideration, and report to your Lordship my opinion as to the answer which it would be proper to instruct Sir James Turing to return to the applications for advice which have been addressed to him in this matter.

In obedience to your Lordship's commands I have taken this despatch into consideration, and have the honour to report—

That there does not appear to me to exist any cause to apprehend that any interruption will be offered to the Netherlands vessels in question by Her Majesty's ships, and that Sir James Turing may be so instructed.

Contraband of war must be proved to be destined for enemy.

"Contraband of war" must be proved to be destined for the enemy's use, in order to be liable to confiscation, and neutral vessels going to Africa or other ports remote from the seat of war may freely carry and trade in arms and ammunition.

Your Lordship will judge of the expediency of so informing the Dutch merchants, or of merely stating generally that they will not be molested under the circumstances stated, and that no additional papers or Consular certificates will be required.

I have, &c.
(Signed) J. D. HARDING.

No. 95.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received May* 2.)

Doctors' Commons, April 29, 1854.

My Lord,

Privileges to neutral vessels

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 27th instant, stating that, with reference to our letter of the 26th instant,* reporting our opinion as to certain questions asked by the Belgian Minister at this Court with respect to licenses, he was directed to transmit to us again M. Van de Weyer's note, and to point out to us that Mr. Van de Weyer's first question relates to "des licenses pour des navires Belges, Anglais, Autrichiens, Hollandais, et Danois," but that our Report refers only to the case of Belgian vessels; and to request that we would take the note of M. Van de Weyer into our further and immediate consideration, and report to your Lordship at our earliest convenience our opinion as to the other cases above mentioned.

In obedience to your Lordship's commands we have taken this case into our further consideration, and have the honour to report—

That Dutch, Austrian, Danish, and any other friendly or neutral ships, will be treated in the same manner and entitled to the same privileges as to trading with any non-blockaded port of the enemy as Belgian ships.

British ships may not communicate with enemy's ports, open or blockaded.

That British ships are expressly forbidden by Her Majesty's Order in Council of the 15th April to enter or communicate with any enemy's port or any port in the occupation of the enemy, whether open or blockaded, and that their so doing will expose them to capture and condemnation.

We have, &c.
(Signed) J. D. HARDING.
A. E. COCKBURN.
RICHARD BETHELL.

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* Query 25th. See No. 86.

No. 96.

The Queen's Advocate to the Earl of Clarendon.—(*Received May* 2.)

Doctors' Commons, May , 1854.

My Lord,

Neutral flag on high seas. Neutral property in Russian territory.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 24th ultimo, stating that, with reference to my letter of the 20th March last,* containing a report upon the letter addressed to your Lordship by the Agent and Consul-General of the Hanse Towns, requesting to know the intentions of the British and French Governments with respect to the flag of neutrals on the high seas, and the property of neutrals within the territories of Russia, he was directed to transmit to me, together with the former papers, a further correspondence on the same subject which has been received from Mr. Colquhoun and from Colonel Hodges, Her Majesty's Chargé d'Affaires at Hamburgh; and to request that, in taking the same into consideration, I would report to your Lordship whether, under existing circumstances, my Report of the 20th March would now be a proper reply to the applications made to Her Majesty's Government on this subject.

In obedience to your Lordship's commands I have taken the further correspondence into consideration, and have the honour to report—

That I am of opinion that my Report of the 20th March would now be as proper a reply to the applications made to Her Majesty's Government on this subject as it was at that date.

Law of blockade is unaltered.

Her Majesty, both in her Declaration of the 28th March and in the subsequent Orders in Council, has hitherto maintained her belligerent rights as to blockade in all their integrity, and has not made any concessions whatever as to blockaded ports. The law of nations, in all that relates to blockade, will therefore (it is to be presumed) be administered in British Prize Courts precisely as it has hitherto been administered.

Blockades. Lord Stowell on.

By this law blockade is broken by egress as much as by ingress, and all cargoes coming out of a blockaded port are *primâ facie* liable to capture. They will only be restored on its being proved that they were *bonâ fide* purchased and laden on board before the blockade was established, or that they were neutral property brought into the port before the blockade and withdrawn *bonâ fide* by the neutral owner (as being found unsaleable or otherwise); in which latter case their reshipment during the blockade would probably not prevent their restoration. "A blockade," says Lord Stowell, in the "Voum Judith," 1 C. Robinson, 152, "is intended to suspend the entire commerce of the place, and a neutral is no more at liberty to assist the traffic of exportation than of importation. The utmost that can be allowed to a neutral vessel is, that, having already taken on board a cargo before the blockade begins, she may be at liberty to retire with it, but it must be considered as a rule which this Court means to apply that a neutral ship departing can only take away a cargo *bonâ fide* purchased and delivered before the commencement of the blockade. If she afterwards takes on board a cargo it is a fraudulent act and a violation of the blockade."

Such was the law of nations in the late war, and such, in my opinion, it still remains.

I may, perhaps, be permitted to suggest that the observations which I ventured to offer in my former Report against the concessions sought, appear to me to have derived great additional strength from circumstances occurring since the date thereof.

1st. From the very extensive concessions which Her Majesty and her ally have recently made in favour of neutral and commercial interests in general, and which are calculated infinitely to diminish the serious evils which neutrals might reasonably have apprehended on the 20th March from the impending war.

2nd. From the fact that, up to this day, I am not aware of any single Russian port having been actually blockaded.

Any concession should be extended to all neutrals.

It is obvious, therefore, that, in a large number of cases, Hanseatic citizens and other neutrals may (if acting with due diligence) have laden their cargoes on board before any blockade had been established. I therefore adhere generally to my former Report, and I can only repeat that, so far as this is a question of policy, I cannot express an opinion, not being in possession of the views of Her Majesty's Government on the question. If the concession sought for is to be made, it should, in my humble opinion, be general; should be extended to all neutrals, and limited in point of time by a fixed date, so as to avoid the frauds and abuses which are always to be apprehended from the issuing of licenses in individual cases.

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* No. 36.

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I may add that, in all cases which may appear entitled to favourable consideration, the belligerent Government may at once release the prize after capture, which appears to me a mode of dealing with neutral claims much to be preferred to that of granting a license to individuals, or undertaking beforehand not to capture individual vessels.

I have, &c.
(Signed) J. D. HARDING.

No. 97.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received May* 4.)

Doctors' Commons, May 3, 1854.

My Lord,

Transfer of Russian vessels, &c., to neutrals.

WE are honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 26th ultimo, stating that, with reference to our letter of the 12th,* reporting our opinion as to the instructions to be given to Her Majesty's Agents abroad with respect to the transfer of Russian vessels and goods to the subjects of neutral countries, he was directed by your Lordship, in returning to us the former papers, to request that we would inform your Lordship, with reference to the recent Orders in Council, whether we are still of opinion that instructions should be given to Her Majesty's Agents abroad in accordance with our report of the 12th ultimo; or, if not, what instructions.

In obedience to your Lordship's commands we have the honour to report—

That the later Orders in Council have altered the law as stated by us in our former report so far as such goods are concerned, but has made no alteration *quoad* the ships.

We have, &c.
(Signed) J. D. HARDING.
A. E. COCKBURN.
RICHARD BETHELL.

No. 98.

The Queen's Advocate to the Earl of Clarendon.—(*Received May* 3.)

Doctors' Commons, May 3, 1854.

My Lord,

Memorandum on American doctrines on neutral rights.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 26th instant, stating that he was directed to transmit to me a despatch from Her Majesty's Minister at Washington, inclosing a Memorandum upon the American doctrines relative to neutral rights, and to request that I would report to your Lordship any observations which I might have to make thereupon.

In obedience to your Lordship's commands I have the honour to report—

That the Memorandum appears to me to be a correct statement of the doctrines of the Prize Courts of the United States upon neutral rights, which, on all essential points, is identical with that of the English Prize Courts.

Her Majesty may resume such belligerent rights as she has at present waived.

That I apprehend that, although Her Majesty has, by her Declaration and Orders of Council, waived and modified for the present in favour of neutrals the exercise of her undoubted belligerent rights, yet that she has by no means abandoned or renounced the exercise of such rights permanently or irrevocably; that it will be competent to her, as well as to her ally, at any time after due notice, to resume and to insist upon the full and vigorous exercise of all or any of the rights commonly admitted to belong to belligerents in relation to neutrals as well as to enemies. It will be for your Lordship to decide upon the expediency of making any communication on the subject to the Government of the United States, or to any other Government.

I have, &c.
(Signed) J. D. HARDING.

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* No. 69.

No. 99.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received May* 3.)

Doctors' Commons, May 3, 1854.

My Lord,

Enlistment of British subjects in foreign service.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 27th ultimo, stating that he was directed to transmit to us a despatch from Viscount Stratford de Redcliffe, together with the draft of a despatch which your Lordship proposes to address to his Excellency in reply, respecting the conditions on which British subjects can enlist in foreign service, and to request that we would take these papers into consideration, and report to your Lordship our opinion whether we concur in the proposed instruction to Lord Stratford.

In obedience to your Lordship's commands we have taken the papers into consideration, and have the honour to report—

That we concur in the proposed instructions to Lord Stratford de Redcliffe.

We have, &c.
(Signed) J. D. HARDING.
A. E. COCKBURN.
RICHARD BETHELL.

Inclosure in No. 99.

The Earl of Clarendon to Lord Stratford de Redcliffe.

(No. 224.) *Foreign Office, May* 5, 1854.

My Lord,

I HAVE to state to your Excellency, in reply to your despatch of the 6th ultimo, that the Circular despatch of the 10th March, to which you allude, was specially directed against a practice which was accidentally brought under my notice, of formal Certificates of Permission to enlist in foreign service being granted by one at least of Her Majesty's Ministers abroad to British subjects applying for the same. But such formal permission can only be given by the Crown, and therefore persons seeking to obtain formal permissions can only do so by applying to the Crown through the usual channel.

In some foreign services, I have reason to know, the applicant for employment must show that he has obtained the formal permission of his Government; but where that condition does not apply I apprehend that Her Majesty's Ministers abroad cannot interfere to prevent a British subject from accepting a Commission at his own risk from a foreign Sovereign. Her Majesty's Ministers indeed cannot formally permit a British subject to accept a Commission, but I am not aware that they have any authority to proceed against a British subject in a foreign country for doing so; nor is it any part of their duty to interfere in the matter.

I am, &c.
(Signed) CLARENDON.

No. 100.

The Queen's Advocate to the Earl of Clarendon.—(*Received May* 3.)

Doctors' Commons, May 3, 1854.

My Lord,

Sale of Finland vessel "Vesta."

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 1st instant, stating that he was directed to transmit to me therewith a letter from Messrs. Alcenius and Co., in which they request to be informed whether a Finland barque, the "Vesta," which has discharged a cargo in the port of London, can be sold to a British subject, and take out a British register. That Messrs. Alcenius also request that, in case such transfer cannot be effected, the captain of the "Vesta" may be furnished with a letter or other document ensuring the ship against capture and seizure on a voyage from hence to an unblockaded or neutral port.

And Mr. Hammond was pleased to request that I would take this paper into consideration, and report to your Lordship at my earliest convenience my opinion as to the answer which should be returned to Messrs. Alcenius.

In obedience to your Lordship's commands I have taken this paper into consideration, and have the honour to report—

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If *bonâ fide*, is legal.

That, in accordance with the report of the Law Officers on the case of the Russian vessel "Norden" (dated April 18), the sale of this vessel, the "Vesta," if made *bonâ fide*, will be legal and valid.

I must, however, venture to suggest to your Lordship that it may be sufficient to inform Messrs. Alcenius that it is not your Lordship's intention to interfere at all in this case, and that questions relating to the registration of ships ought to be addressed to the Customs Department.

I have, &c.
(Signed) J. D. HARDING.

No. 101.

The Queen's Advocate to the Earl of Clarendon.—(*Received May* 5.)

Doctors' Commons, May 5, 1854.

My Lord,

Ionian vessels fetching cargoes from Black Sea.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 24th ultimo, stating that he was directed to transmit to me a letter from Messrs. Melas, Brothers, containing certain queries with respect to the case of two vessels under the Ionian flag, chartered by their house to bring away some cargoes from the Black Sea; and to request that I would take this paper into consideration, and report to your Lordship my opinion as to the answer which should be returned thereto.

In obedience to your Lordship's commands I have taken the letter into consideration, and have the honour to report—

They may take cargoes from any unblockaded ports.

That I assume that the vessels in question, said to be "under the Ionian flag," are not either British or Russian vessels, but *bonâ fide* Ionian vessels, and that Messrs. Melas, Brothers, may be informed that, if this be so, unless the port in the Sea of Azoff (not named), at which the Ionian vessels in question were to take their cargoes, should be blockaded by the naval forces of Her Majesty or of her allies, neither the vessels nor their cargoes will be molested on their homeward voyage therefrom to this country. Such a course of trade will be legal under the Order in Council of April 15, and they will be entitled to the same protection as they would receive under ordinary circumstances.

I have, &c.
(Signed) J. D. HARDING.

No. 102.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received May* 5.)

Doctors' Commons, May 5, 1854.

My Lord,

Vessels of a Lubeck Company having Russian members.

WE are honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 26th ultimo, stating that he was directed to transmit to us a letter from the Agent and Consul-General of the Hans Towns, conveying the request of the Government of Lubeck to be informed whether the vessels belonging to a company to which Russian subjects are admissible, and which have hitherto traded between the port of Lubeck to certain Russian ports, and which have been navigated under the Lubeck flag, would be treated as neutrals, or whether licenses would be granted to them to protect them against any risk of seizure; and to request that we would take Mr. Colquhoun's letter into consideration, and report to your Lordship our opinion as to the reply to be returned thereto.

In obedience to your Lordship's commands we have taken Mr. Colquhoun's letter into consideration, and have the honour to report—

Treated as neutrals.

That the vessels alluded to will, under the circumstances stated, be treated as neutrals; that no licenses will be required for them; that they will incur no risk of capture, unless they attempt to break blockade, to carry contraband of war, the enemy's despatches, or are guilty of some similar misconduct.

We have, &c.
(Signed) J. D. HARDING.
A. E. COCKBURN.
RICHARD BETHELL.

No. 103.

The Queen's Advocate to the Earl of Clarendon.—(*Received May* 9.)

Doctors' Commons, May 9, 1854.

My Lord,

Vessel under Hanoverian colours seized by Customs suspected of being Russian.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 5th instant, stating that he was directed to transmit to me the accompanying letter from the Treasury, inclosing a Report from the Commissioners of Customs respecting the detention by their officers of the vessel "Johanna Amelia," as being a Russian vessel under Hanoverian colours; and to request that I would take this case into consideration, and report to your Lordship at my earliest convenience my opinion thereupon.

In obedience to your Lordship's commands I have taken this case into consideration, and have to report—

She must prove she has ceased to be Russian.

That this ship appears to have sailed from Lisbon on the 5th April. Her master's account and other evidence show that she was, for some time at least, whilst at Lisbon, a Russian ship, and she now either has not or will not produce any papers, and will not give any evidence to prove when or under what circumstances she ceased to be a Russian and became a Hanoverian vessel. If she be Russian property, she is not protected by the Order in Council of March 29, having sailed from Lisbon subsequently to the date of that Order.

In the absence, therefore, of any proof to rebut the presumption of her still being a Russian ship, that presumption, on the contrary, being confirmed by the silence of her master and other circumstances, I am of opinion that the ship may legally be detained and proceeded against as prize. It is of course possible that she may be released on proving that she is not Russian.

I have, &c.
(Signed) J. D. HARDING.

No. 104.

The Queen's Advocate to the Earl of Clarendon.—(*Received May* 9.)

Doctors' Commons, May 9, 1854.

My Lord,

Russian vessel from Havana to Cork with British cargo.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 5th instant, stating that, with reference to my letter of the 23rd ultimo,* he was directed to transmit to me therewith a further letter from Messrs. Kirkland and Co. respecting the case of the ship "Argo;" and to request that I would take this letter into consideration, and report to your Lordship at my earliest convenience my further opinion upon this case.

In obedience to your Lordship's commands I have taken this letter into consideration, and have the honour to report—

That Messrs. Kirkiand and Co. may be informed that, although in their letter to your Lordship, dated the 13th March, they state that the "Argo" must *now* be at sea on her homeward voyage," yet it appears by Messrs. Fesser and Co.'s letter to them of the 6th April that she actually did not sail until the 2nd April.

Under these circumstances I conceive that they are not strictly entitled to avail themselves of your Lordship's letter to them of the 25th March, inasmuch as if their statement of her being then at sea had been correct, she would have been protected by the Order in Council of the 29th March without any further or special instructions being requisite, and if any special instructions were issued, this was done under a misapprehension of the real facts. She may have been, or may be captured at sea, inasmuch as she is not protected by the Order in Council (29th March), and your Lordship's special instructions (which I have not seen) may not have gone beyond the terms of that Order. For this, however, Messrs. Kirkland and Co. are entirely responsible; should she arrive at Cork she will be a lawful prize, and it only remains to decide what might be done with her as such.

The most convenient course would appear to me to be that the Officers of Customs at Cork should take possession of her as a prize, securing her papers, crew and stores; she may then be sent on to Glasgow, and the ordinary proceedings against her may be taken in the Prize Court.

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* Query 23rd March. See No. 45.

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Ship lawful prize. Release cargo according to promise.

I do not, however, feel able to advise with any great confidence how or by what Department these details can be best carried out, and I can only say generally that I am of opinion the ship will be a lawful prize whenever she arrives in any British port, and her crew will be prisoners of war, but that her cargo ought to be released agreeably to the promise already made in that respect to Messrs. Kirkland and Co., and that under the circumstances it should be discharged at Glasgow.

I am not aware that your Lordship has any legal authority whatsoever in this matter, but the case may be referred either to the Committee of the Privy Council on Licenses or to the Customs, with an intimation of your Lordship's desire that your engagement to Messrs. Kirkland should be carried out.

I may observe, in conclusion, that the further papers which Messrs. Kirkland have transmitted being satisfactory as to *bonâ fides* of the transaction, and your Lordship will not probably desire to expose Messrs. Kirkland to any unnecessary inconvenience.

I have, &c.
(Signed) J. D. HARDING.

No. 105.

The Queen's Advocate to the Earl of Clarendon.—(*Received May* 12.)

Doctors' Commons, May 10, 1854.

My Lord,

Temporary residence in England of a Russian in service of a British subject.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 1st instant, stating that he was directed to transmit to me a letter from Mr. Mosley, requesting to be informed whether a Russian subject, in the service of a British subject, will be allowed to reside in England during the temporary presence of his employer in this country; and to request that I would take this subject into consideration, with reference to the prohibition to British subjects to cross the Russian frontier, and report to your Lordship my opinion as to the answer which should be returned to Mr. Mosley.

In obedience to your Lordship's commands I have taken this subject into consideration, and have the honour to report—

That it does not appear to me that Mr. Thomas Mosley is entitled to receive from your Lordship an answer to the question which he proposes.

He neither gives the name or country of his correspondent in Portugal, nor does he state the purpose for which he is coming to England, nor the capacity in which the Russian subject in question is employed by such correspondent. Subject to these remarks, I am not aware of any reason why a Russian subject (whose name and profession is quite uncertain) should be prevented from coming to England, or even how he could be prevented from so doing under such circumstances. With reference to "the prohibition to British subjects to cross the Russian frontier," to which your Lordship alludes, I beg to state that I have never seen any document of that purport, and I am not precisely aware of what is meant or alluded to thereby.

I have, &c.
(Signed) J. D. HARDING.

No. 106.

The Queen's Advocate to the Earl of Clarendon.—(*Received May* 12.)

Doctors' Commons, May 11, 1854.

My Lord,

Trade with Russia through neutrals.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 5th instant, stating that he was directed to transmit to me the accompanying letter from Mr. Francis Russell respecting certain points connected with trade with Russia through neutrals, on which he desires information, and to request that I would take this letter into consideration, and report to your Lordship my opinion as to the answer which should be returned to Mr. F. Russell.

In obedience to your Lordship's commands I have taken this letter into consideration, and have the honour to report—

That I am not aware what right Mr. Russell has to ask your Lordship the question which he states the Board of Trade and the Attorney-General decline to answer, and I have frequently adverted to the serious public inconvenience of answering general and abstract legal questions, when no facts or details are stated to show what is the real position or interest of the applicant in connection therewith. If, however, your Lordship should be of opinion that the abstract questions proposed by Mr. Russell should be answered as he puts it, I beg to request the assistance of the Attorney and Solicitor-General. I would, however, most respectfully venture to suggest that those British subjects who deliberately propose for their private gain to "adhere to the Queen's enemies," and to devote their capital and their exertions to the augmentation of the enemy's resources, and the furnishing him with supplies during the war, are not entitled to receive the advice and assistance of the Law Officers of the Crown to assist them in so doing, and that they may fairly be left to act at their peril, or at least to obtain other advice.

As to British subjects augmenting enemy's resources.

If the Law Officers should be of opinion that such a line of conduct as suggested is not illegal, and if their opinion or your Lordship's to that effect should be communicated to Mr. Russell and published, I cannot but fear that the result would be anything but favourable to the public interest.

Advising that no answer be returned.

I am, perhaps, overstepping the strict line of my duty in making these remarks, but I feel so strongly that what Mr. Russell wants to know is, in effect, how far he or his friends can go in advancing their private interest by adhering to the Queen's enemies, that I trust your Lordship will excuse my suggesting that he has no right to ask your Lordship or the Law Officers of the Crown to answer such a question, and that he may with propriety be so informed.

I have, &c.
(Signed) J. D. HARDING.

No. 107.

The Queen's Advocate to the Earl of Clarendon.—(*Received May* 12.)

Doctors' Commons, May 11, 1854.

My Lord,

Supposed Russian vessel under Hanoverian colours.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 9th instant, stating that, with reference to his letter of the 5th instant respecting the case of the "Johanne Emilie," he was directed to transmit to me a further letter from the Treasury of the 8th instant upon the same subject.

In obedience to your Lordship's commands I have taken this further letter from the Treasury into consideration, and have the honour to report—

That bearing in mind the very suspicious circumstances connected with this ship, which are adverted to in the former papers (returned by me), and in my report of the 9th instant,* I do not consider that the communication from the Hanoverian Consul is sufficient of itself to authorize her release and the abandoning of all further proceedings. When these papers alluded to by the Consul have been inspected, and any further explanations which he may have to offer with respect to her has been given, it may be proper to reconsider the question; at present I can only say that I see no sufficient reason for releasing the "Johanne Emilie."

I have, &c.
(Signed) J. D. HARDING.

No. 108.

The Queen's Advocate to the Earl of Clarendon.—(*Received May* 17.)

Doctors' Commons, May 16, 1854.

My Lord,

British Consular Certificate respecting neutrality of foreign cargoes consisting of Russian produce.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 9th instant, stating that he was directed to transmit to me the accompanying despatch, which your Lordship has received from Mr. Annesley, Her Majesty's Consul at Amsterdam, reporting that applications have of late been made to him by Amsterdam merchants to certify that Russian produce purchased by them at Riga previous to the declaration of war has thereby become neutral property.

That Mr. Annesley entertains doubts as to the course which he should pursue with regard to granting the certificates required of him, and he requests instructions for the guidance of his conduct in this matter; and Lord Wodehouse is pleased to request

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that I would take Mr. Annesley's despatch into consideration, and report to your Lordship my opinion upon the course which it would be proper to instruct Mr. Annesley to pursue under the circumstances reported in his despatch.

In obedience to your Lordship's commands I have taken the despatch into consideration, and have the honour to report—

Irregular.

That in my opinion Mr. Annesley should be instructed not to sign or issue any such certificates or declarations as those alluded to; no British interest appears to be in question, and it would be highly irregular for a British Consul in Holland to certify as to what may (or may not) have happened between foreigners in Russia, of which he can have no personal knowledge whatsoever.

I beg leave to refer to my report of the 21st April,* upon a similar question put by Mr. Pringle, Her Majesty's Consul at Stockholm, and to suggest the propriety of instructing British Consuls not to lend their assistance to any transactions of this kind, in which no British property or British subjects are interested. Foreigners in such cases are evidently only anxious to obtain the assistance of British Consular officers, when, if the transaction be regular, it will not be required (inasmuch as their ships and goods will incur no risk against which it will avail them), or when, if it is irregular, and may consequently expose their vessels or goods to capture, such assistance ought to be studiously withheld, as being calculated to embarrass both the captors and Her Majesty's Government and to cover and protect illegal and irregular transactions.

The existence of a naval war, in which Her Majesty has naval allies, appears to me to render it more necessary than ever for British Consuls to confine themselves strictly to the discharge of their duty to British subjects and property *exclusively*. It is impossible to foresee the serious consequences which may result from their issuing any official documents at all to foreigners.

I have, &c.
(Signed) J. D. HARDING.

No. 109.

The Law Officers of the Crown to the Earl of Clarendon.—(Received May 20.)

Relation of Ionian Islands towards Great Britain with reference to war with Russia.

Doctors' Commons, May 19, 1854.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 11th instant, stating that he was directed to transmit to us therewith a collection of papers upon a question which has been raised at Constantinople, and also by parties in this country, and moreover reported upon by the Lord High Commissioner of the Ionian Islands, touching the relation in which the Ionian States, their citizens, and commerce, stand towards Great Britain, the protecting Power, which is now engaged in hostility with Russia, and the position in which those States are placed with reference to that state of things.

That it being very desirable that instructions on the points raised in these papers should be forwarded with as little delay as possible to Constantinople, your Lordship requests that we would take the subject into consideration without delay, and report our opinion thereupon at our earliest convenience.

In obedience to your Lordship's commands we have taken this subject into consideration, and have the honour to report—

They cannot assume position of neutrals.

That the relations established and now subsisting by the Treaty of Paris and the Ionian Constitution between the Queen of this country and the Ionian States, render it impossible that the Ionian Republic can stand in the position of a neutral as between the belligerent Powers; much less can it be permitted to continue the ordinary relations of amity and commerce with Russia; and we are therefore of opinion that the clearances which have been applied for were properly refused.

We have, &c.
(Signed) J. D. HARDING.
A. E. COCKBURN.
RICHARD BETHELL.

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* No. 79.

No. 110.

The Queen's Advocate to the Earl of Clarendon.—(Received May 23.)

Doctors' Commons, May 23, 1854.

My Lord,

Purchase of Russian goods in neutral port, brought to England in neutral vessel.

I AM favoured with Mr. Hammond's letter of the 17th instant, transmitting to me a letter from Messrs. Row and Son, requesting information with respect to the purchase of Russian goods in a neutral port to be brought to England in a neutral vessel. Mr. Hammond requests that I will take this letter into consideration, and favour your Lordship with my opinion as to the answer which should be returned to Messrs. Row. I have accordingly taken their letter into my consideration, and have the honour to report—

That Messrs. Row put their question in an abstract form, and do not state that they are in any way interested in the goods to which they allude; such questions ought not, in my humble opinion, as a general rule, to receive any answer.

Transaction legal.

Subject to this remark, I am of opinion that the purchase of Russian goods in a neutral port, and their shipment to a British port in a neutral vessel chartered for that purpose by a British merchant, will, under Her Majesty's Order in Council of April 15th, be treated by the Court of Admiralty as a legal transaction, and will not expose the ship or goods to condemnation.

I have, &c.
(Signed) J. D. HARDING.

No. 111.

The Law Officers of the Crown to the Earl of Clarendon.—(Received May 25.)

Doctors' Commons, May 24, 1854.

My Lord,

Trade with Russia through neutrals.

WE were honoured with your Lordship's commands contained in Mr. Hammond's letter of the 17th instant, in which he stated that, with reference to the Report from Her Majesty's Advocate-General of the 11th instant,* he was directed by your Lordship to transmit to us a further letter which your Lordship had received from Mr. Russell, in reply to a letter from the Foreign Office, also inclosed herewith, respecting his request for information on various points connected with trade with Russia through neutrals, and he was to request that we would take Mr. Russell's letter into our consideration, in connection with the previous papers, and favour your Lordship, at our earliest convenience, with our opinion as to the answer which should be returned to Mr. Russell.

In humble obedience to your Lordship's command we have taken the papers transmitted to us into our consideration, and have the honour to report—

Not illegal.

That we are of opinion that, under and by virtue of the Order in Council of 15th April, British subjects residing in Russia may send produce purchased in Russia overland, or may ship it in a Russian port not blockaded in a neutral vessel to a neutral port, and afterwards ship it thence to England in English or neutral bottoms, without such produce being liable to capture or condemnation as prize.

We have, &c.
(Signed) J. D. HARDING.
A. E. COCKBURN.
RICHARD BETHELL.

No. 112.

The Law Officers of the Crown to the Earl of Clarendon.—(Received May 25.)

Doctors' Commons, May 24, 1854.

My Lord,

Vessels chartered by Belgians. Permission to leave Riga with cargoes.

WE were honoured with your Lordship's commands contained in Lord Wodehouse's letter of the 12th instant, in which he stated that he was directed by your Lordship to transmit to us a note from the Belgian Minister at this Court, requesting that the necessary orders might be given for permission for two vessels chartered by Belgian merchants to leave the port of Riga with cargoes of hemp, rye, and wheat,

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* No. 106.

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after the 15th of this month, and to continue their voyage unmolested, and he was to request that we would take M. Van de Weyer's note into our immediate consideration, and report to your Lordship, at our earliest convenience, our opinion as to the reply to be returned thereto.

In humble obedience to your Lordship's commands we have considered the note so transmitted, and have the honour to report—

Conditions for coming through blockade.

That the application of the Belgian Minister is founded on the supposition that a general blockade of the Russian ports will be established on the 15th of May. We are not aware of any such blockade having been established. In the absence of any blockade, no permission will be necessary for these vessels (which will be safe under the Orders in Council). If there should be a blockade, they will only be permitted to bring away such cargoes as may have been actually laden on board before it was established.

Whether Her Majesty's Government will think it right under the circumstances to issue licenses to these vessels and their cargoes is a matter of general policy, upon which it is not within our province to advise.

We have, &c.
(Signed) J. D. HARDING
A. E. COCKBURN.
RICHARD BETHELL.

No. 113.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received May* 25.)

Doctors' Commons, May 24, 1854.

My Lord,

IN obedience to your Lordship's commands signified in Lord Wodehouse's letter of the 3rd instant, in which he stated he was directed by your Lordship to transmit to us two despatches from Her Majesty's Minister at Copenhagen, communicating certain information which he has received from the French Minister, with respect to the fictitious sales of Russian merchant vessels to Lubeck citizens, and requesting that in taking these despatches into consideration, we will report to your Lordship our opinion thereupon.

In humble obedience to your Lordship's commands we have the honour to report that we have examined the papers that accompanied Lord Wodehouse's letter of the 3rd of May.

Transfer of Russian vessels to Lubeck flag at Lubeck.

With respect to Russian vessels transferred to Lubeck citizens whilst lying in the Port of Lubeck, and which have since sailed under the Lubeck flag, if they appear to be duly documented and the certificates of ownership are in conformity with the law of Lubeck, three-fourths of the crew being citizens of one of the Hanseatic towns or of some state included in the Germanic Confederation, we think that they cannot be safely detained if fallen-in with by our cruizers, unless there is some more definite proof of the transfer to the Lubeck citizen being fictitious than is afforded by the papers before us.

Ditto while in ports of other countries.

With respect to Russian vessels which have been attempted to be transferred to Lubeck citizens whilst they were lying in the ports of other countries, and which have left those ports under the Lubeck flag, Lubeck papers having been transmitted to them from Lubeck, we are of opinion that such ships will not be duly documented, and cannot claim a Lubeck nationality.

In the case of Russian ships transferred whilst in a foreign port to a Lubeck citizen, and leaving such port under the Lubeck flag with Lubeck papers obtained from the Lubeck Consul at such foreign port, we think that so much suspicion justly attaches to the transaction that such ships may be detained until satisfactory proof be given of the *bonâ fides* of the alleged transfer.

We have, &c.
(Signed) J. D. HARDING.
A. E. COCKBURN.
RICHARD BETHELL.

No. 114.

The Queen's Advocate to the Earl of Clarendon.—(*Received May* 25.)

Doctors' Commons, May 24, 1854.

My Lord,

WITH reference to your Lordship's letter of the 10th instant, respecting the claim of the Danish Agents at Elsinore for clearing vessels at that port, &c., I have the honour to report—

Sound dues. Want more information.

That I have conferred with the Attorney and Solicitor-General on this case, but before answering the questions submitted to us, we must request to be referred to or furnished with a copy of the Treaty by which the sound dues are payable by British ships, and also to be supplied with information as to the particular description of ships and cargoes which are, by usage or otherwise, exempt from payment thereof, such, for instance, as ships of war, transports, military stores, when embarked in ordinary merchant-vessels, and with any similar information.

I have, &c.
(Signed) J. D. HARDING.

No. 115.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received May* 25.)

Doctors' Commons, May 24, 1854.

Danish vessels entering Riga before blockade. What days of grace before leaving?

My Lord,

WE were honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 17th instant, in which he stated he was directed by your Lordship to transmit to us a note from the Danish Minister at this Court, and to call our attention to the request of General Oxholm to be informed whether Danish vessels which may have entered Riga before the establishment of a blockade will be permitted to leave that port with their cargoes within a certain number of days after the commencement of an effective blockade of Russian ports, "lequel délai a été dans les cas antérieurs accordé aux navires neutres;" and Lord Wodehouse further requested that we would inform your Lordship at our earliest convenience our opinion thereon.

In humble obedience to your Lordship's commands we have perused the note transmitted to us, and have the honour to report—

Egress allowed only when cargo was loaded before blockade.

That the English practice has been to forbid all ingress and to permit egress to all neutral vessels in ballast, but only to permit egress to laden vessels where their cargoes were put on board before the blockade was established. The allowance of a fixed number of days for egress, although it may have been the practice of the French Government, has not hitherto been adopted by England.

We have, &c.
(Signed) J. D. HARDING.
A. E. COCKBURN.
RICHARD BETHELL.

No. 116.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received May* 26.)

Doctors' Commons, May 25, 1854.

"Armes de luxe" exported from Belgium and seized at Malta.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 19th instant, stating that he was directed to transmit to us a note from the Belgian Minister at this Court requesting that certain "armes de luxe," belonging to a manufacturer of arms at Liege, embarked on board the Greek vessel "San Spiridion," which vessel has been seized by the British authorities at Malta, may not be confounded with the warlike arms destined for the use of the Greek Government, but may be restored to the agents of the Belgian house which exported them; and to request that we would take M. Van de Weyer's note into consideration, and report to your Lordship our opinion as to the reply to be returned thereto.

In obedience to your Lordship's commands we have taken the note into consideration, and have the honour to report—

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May be released.

That we are of opinion that the request of the Belgian manufacturers, as conveyed through M. Van de Weyer, is reasonable, and should be complied with.

We have, &c.
(Signed) J. D. HARDING.
A. E. COCKBURN.
RICHARD BETHELL.

No. 117.

The Queen's Advocate to the Earl of Clarendon.—(Received May 25.)

Doctors' Commons, May 25, 1854.

My Lord,

Relative effect of a notified or *de facto* blockade.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 21st instant, requesting that, at my earliest convenience, I would report to your Lordship as to the relative effect of a notified or *de facto* blockade, and whether it is necessary that a formal notification of blockade should be given to foreign Governments or published in the "London Gazette," in order to give effect to a blockade of an enemy's port established *de facto* by a force adequate to realize it.

In obedience to your Lordship's commands I have the honour to report—

That the effect of a notified blockade differs from that of a mere *de facto* blockade (not notified) chiefly in the species of notice required in order to condemn neutral ships and cargoes who may be captured in the attempt to break the blockade.

Notified blockades require no individual notice to shipmasters.

Notification to a neutral Government binds and affects all those within its dominions, and ignorance or misinformation would not avail them as a defence after such notification. In such cases it is not necessary for the captor to prove that the master was personally cognizant of the fact that the particular port was blockaded; the mere act of sailing after notification with the design to enter a blockaded port will be sufficient to ensure the condemnation of the offending vessel.

In un-notified blockades, warning must be given to each individual master.

On the other hand, in case of a mere *de facto* blockade (not notified), the individual neutral master must be proved in each case to have personally had actual notice of its existence, as (for instance) by warning from a blockading ship, and to have persisted in the attempt to enter after such notice, before his ship can be condemned. The important results of these principles upon the practical efficacy of a blockade and its operations, so far as relates to stopping all communication and intercourse with the enemy, especially in the case of many ports having a commercial connection with remote regions, or where a great extent of coast is blockaded, will be at once apparent to your Lordship, and it will be obvious that the public notification of a blockade greatly and immediately tends to increase its efficacy, by, as it were, instantly paralyzing all communication between every country which receives such notification and the blockaded ports.

Advantages of notifications and of their publication.

And, inasmuch as this has been the great object of all blockades, every Power establishing a blockade has considered that the giving the utmost publicity to their existence was no less in accordance with its own immediate and direct interest than with its duty to the subjects of neutral Powers.

Such notifications have accordingly been constantly resorted to in all cases, even in civil wars (as in South America), and when the ports blockaded have been in the territories of uncivilized Chiefs or barbarians (as in Africa).

The publication in the "Gazette" of notifications of blockade, whether imposed by Her Majesty or by foreign Powers, has been, I believe, the invariable usage in modern times. I am not aware whether any other or different notification has been also usual.

De facto blockades are valid without notification.

I am, however, of opinion that a blockade *de facto*, supported by an adequate force, would be legally valid, even although no formal notification of it were given to foreign Governments by the blockading Power.

Neutral Governments would probably inquire officially of that Power whether the blockade was really established by its forces, and the official answer to any such inquiry would operate as a notification.

I have, &c.
(Signed) J. D. HARDING.

References.

P.S.—I would beg leave to refer your Lordship to the cases of the "Rolla," 6 Cr. Robinson's Reports, p. 364, and "Neptunus," 2 Cr. Robinson, p. 100, for the clearest exposition of these principles.

J. D. H.

No. 118.

The Law Officers of the Crown to the Earl of Clarendon.—(Received May 26.)

Doctors' Commons, May 26, 1854.

My Lord,

Russian vessel captured by British cruizer, and re-captured by master and taken into Ystadt.

WE are honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 5th instant, stating that he was directed to transmit to us a despatch from Her Majesty's Minister at Copenhagen, reporting the substance of a conversation which he has had with the Danish Minister for Foreign Affairs, relative to the course to be pursued by the Danish Government towards a Russian vessel which is reported to have been taken by a British cruizer, and to have been subsequently recovered by the master from the prize crew, and carried into Ystadt; and to request that we would take this despatch into our consideration, and report to your Lordship our opinion as to the reply which should be returned thereto.

In obedience to your Lordship's commands we have taken the despatch into consideration, and have the honour to report—

Her Majesty's Government may require that she be made to leave Ystadt.

That we are of opinion that the rescue by the Russian crew amounts to a recapture of the vessel (then being a British vessel) by a Russian force, and that such vessel, when brought into a Swedish port, is to be legally regarded as a British vessel captured by Russians, and consequently that Her Majesty's Government will be warranted by the Swedish Declaration of Neutrality in requiring the Swedish authorities to insist upon her immediately leaving the harbour of Ystadt.

We have, &c.
(Signed) J. D. HARDING.
A. E. COCKBURN.
RICHARD BETHELL.

No. 119.

The Queen's Advocate to the Earl of Clarendon.—(Received May 26.)

Doctors' Commons, May 26, 1854.

My Lord,

Tea shipped at Shanghai for Russian-American Company at St. Petersburgh.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 18th instant, stating that he was directed to transmit to me therewith a letter from Messrs. Pelly and Co., agents for the Russian-American Company at St. Petersburgh, respecting certain teas shipped at Shanghai in March last for St. Petersburgh, in which they state that they have a pecuniary interest; and to request that I would take this paper into consideration, and report to your Lordship my opinion as to the answer which should be returned to Messrs. Pelly.

In obedience to your Lordship's commands I have taken the letter into consideration, and have the honour to report—

Their British agents have an interest in cargo.

They may bring claim before Prize Court.

That your Lordship has no power to give any such order as requested, nor is it at all required. If the "Cesarewitch" should be captured by any of Her Majesty's vessels and brought into a British Prize Court for adjudication, Messrs. Pelly and Co. will have an opportunity of making any legal claim which they may be advised to make with respect to any portion of the cargo, or of applying to the Crown for a release before condemnation of any portion thereof; but I observe—

1. That Messrs. Pelly acted in this matter, not on their own account, but as the agents of a Russian Company.

2. That although war was imminent on the 6th of February, they paid a draft for 6,506*l*. on account of this transaction on the 15th of May, and that they only made their first application to Her Majesty's Government on the subject two days later, viz., on the 17th. I certainly do not think that, under these circumstances, their case deserves any particular favour.

I have, &c.
(Signed) J. D. HARDING.

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No. 120.

The Queen's Advocate to the Earl of Clarendon.—(*Received May* 26.)

Doctors' Commons, May 26, 1854.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 25th instant, stating that he was directed to transmit to me therewith a despatch from Lord Bloomfield, inclosing an extract of a letter from the British Vice- Consul at Memel, dated 13th May, announcing that Captain A. Cooper Key (of Her Majesty's steam frigate "Amphion") has given him written information that after the 15th of this month the blockade of the Russian ports will be effectually carried out by the vessels of war under his command; and also a letter from the Admiralty stating that Vice-Admiral Sir Charles Napier has not yet forwarded specifications of the various ports in the Baltic which he is about to blockade, but that in the case of Riga there is a notice, and by the last accounts that port was effectually blockaded; and to request that I would take these papers into consideration and report to your Lordship my opinion whether the statements contained in them will warrant Her Majesty's Government in giving public notice of the blockade, and if so, if I would furnish your Lordship with a draft of notice to be inserted in the "Gazette" of to-morrow. In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

Blockades to be notified.

That, before I can deal with this question in a satisfactory manner, or prepare any draft notice for insertion in the "Gazette," I must request to be furnished with "the notice with respect to Riga," alluded to as being in existence in the letter from the Admiralty to Lord Wodehouse of the 25th, signed by Mr. Dyer, "pro Secretary."

Further information necessary.

I must also request to be furnished with a copy of any official communication from Captain Key, or any other naval officer (to whomsoever addressed), relating to the blockade either of Riga or any other port.

"The Russian ports" is obviously so vague and indefinite a phrase as to be unintelligible.

I must further request to be informed whether any and what arrangement with the French Government exists either as to this or any other blockade being notified and treated as a joint blockade established by the combined naval forces of both countries; and whether any and what definite period is to be allowed for the egress of ships from the ports blockaded, inasmuch as I am aware that the expediency of making such an arrangement has been recently under the consideration of Her Majesty's Government; and in conjunction with the Admiralty Advocate, on the 29th April, I gave a written opinion on these subjects upon a case laid before us by the Solicitor to the Admiralty.

Arrangement with French Government.

Days of grace.

And in reference to this point I would respectfully invite attention to a notification with respect to a joint blockade of ports in South America, prepared by Sir John Dodson, and contained in his report of October 31, 1845.

I would also beg leave to refer to my report of the 26th instant,* on the subject of blockades notified, and blockades *de facto*, and to the communication from Mr. Buchanan, dated 19th May, just received by me, and to state my strong impres- sion of the inexpediency of withholding or delaying formal notification of any blockade actually established, and of the serious inconvenience which may result from the further continuance of the existing uncertainty as to what (if any) Russian ports are actually blockaded.

Formal notifications should not be delayed.

I have, &c.
(Signed) J. D. HARDING.

No. 121.

The Queen's Advocate to the Earl of Clarendon.—(*Received May* 30.)

Doctors' Commons, May 29, 1854.

My Lord,

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 24th instant, stating that he was directed to transmit to me the accom- panying despatch from Sir James Turing, Her Majesty's Consul at Rotterdam, report- ing that he has been requested to bring to the notice of Her Majesty's Government

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* Query 25th. See No. 117.

the case of two Dutch vessels which were chartered to proceed to Riga in ballast for the purpose of bringing away corn from that port, which vessels, it is asserted, were boarded on the 1st of this month by a British cruizer, and the master warned against proceeding to their port of destination, although it is alleged that no official intimation of blockade had been published at that period, and that other Dutch vessels in company at the same time were not prevented from continuing their voyage, and did arrive several days later at Riga. Sir James Turing states that the parties who chartered the Dutch vessels above alluded to are merchants of great respectability, and that they have represented to him that they will suffer great loss unless Her Majesty's Government will be pleased to make an exception in their favour by granting them permission to dispatch two vessels to load and bring away from Riga, notwithstanding the blockade, the corn which they have been deprived of under the circumstances above mentioned; and Lord Wodehouse is pleased to request that I would take this case into consi- deration, and report to your Lordship my opinion as to the answer which Sir James Turing should be directed to return to the parties who have addressed to him in this matter.

Dutch vessels going in ballast to Riga for corn, and warned by Brtiish cruizer not to proceed.

In obedience to your Lordship's commands I have taken this case into considera- tion, and have the honour to report—

That Sir James Turing should be informed that the request of the merchants to whom he alludes cannot be complied with.

Cannot be allowed to enter.

There appears good reason to suppose that Riga has been effectively blockaded, —at all events, since the 15th ultimo, and possibly from an earlier date. Had these ships, therefore, gone into that port they would, at all events, have run great risk of having either to come out again in ballast, or of being captured if laden; and the warning (whatever it was) has probably turned out advantageous to their owners and charterers.

Neither the place nor the circumstances under which the alleged warning was given to the vessels in question is mentioned, nor (although the ships' papers are said to have been endorsed) is the purport of such endorsement given, nor is it even stated that any warning was given that Riga was actually blockaded on the 1st of May.

Information indefinite.

I do not clearly understand from Sir James Turing's letter whether the parties interested applied to him officially on this subject. If they did not, I do not see why he addressed your Lordship on their behalf; if they did so apply, it would, in my opinion, be proper to instruct him, and all other British Consular Officers, not to interfere in such matters, but to inform all those who may apply to them that they should address themselves either to their own Government, in order to obtain its sanction to their application (which would thereupon be made through the Legation at this Court), or to your Lordship directly, with all necessary particulars. The parties interested in this case are described only as "merchants of great respectability," who had chartered at a date (not stated) Dutch vessels to proceed in ballast to Riga, and no names or other particulars are given. I do not feel any confidence that Russian interests may not be at the bottom of the whole affair. At all events, I would venture to suggest that Her Majesty's Consuls should be instructed not to apply to your Lord- ship in such cases without stating the necessary dates and facts, inasmuch as they must be well aware that such very vague and indefinite statements as the present cannot be dealt with in a satisfactory manner, and can only cause useless trouble and delay.

Consuls should not take up such cases.

I have, &c.
(Signed) J. D. HARDING.

No. 122.

The Queen's Advocate to the Earl of Clarendon.—(*Received May* 30.)

Doctors' Commons, May 29, 1854.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 26th instant, stating that he was directed to transmit to me a note from Mr. Buchanan, the United States' Minister at this Court, applying for permission for American vessels to go to Russian ports in order to convey from those ports merchan- dize purchased before the war; and to request that I would take Mr. Buchanan's note into consideration and report to your Lordship my opinion thereupon with the least possible delay.

Application for American ships to enter blockaded ports.

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In obedience to your Lordship's commands I have taken Mr. Buchanan's note into consideration, and have the honour to report—

Arrangement as to days of grace.

That it is possible some arrangement may have been entered into with France on the subject of blockade, especially as to the allowance of a fixed time for the egress of neutral ships with cargoes. On this subject I would beg leave to refer to an opinion given by me, in conjunction with the Admiralty Advocate, on the 28th April last,* on a case submitted to us by the Solicitor to the Admiralty.

It is obvious that a joint action on the part of the Allies on all points relating to blockade will be highly expedient. In the absence of any such arrangement, I observe, with reference to Mr. Buchanan's communication to your Lordship—†

Great Britain maintains her belligerent rights.

1. That Her Majesty's Declaration of the 28th March last expressly declared her Royal intention to "maintain her belligerent rights to prevent neutrals from breaking any effective blockade established with an adequate force against the enemy's forts, harbours, or coasts;" it is, therefore, not very easy to perceive upon what grounds Mr. Buchanan could be thereby "encouraged to believe" that any such blockade would be conducted in a manner altogether different from that in which all blockades have hitherto been conducted.

British and United States law of blockade is identical.

2. That the law of blockade as affecting neutrals is in all its leading principles substantially identical in the United States and Great Britain. "The judicial decisions in England and in this country," says Chancellor Kent (Commentaries, p. 149), "have given great precision to the law of blockade by the application of it to particular cases. They are distinguished for general coincidence and harmony in their principles." It is important to bear this in mind in considering Mr. Buchanan's application.

Application at variance with law and usage.

3. That the concessions for which Mr. Buchanan asks are wholly at variance with the existing law and use of nations as to blockade and to the legal decisions of the highest authorities in the United States and in Great Britain; and Mr. Buchanan in effect admits this throughout, for he does not cite any precedent or authority whatever in favour of his requests in any one instance, nor does he even offer similar concessions in the case of any blockade which may be hereafter established by the United States.

Concessions made by Her Majesty.

4. The course of trade with Russia to which Mr. Buchanan adverts is by no means peculiar to the United States; it is common to many other nations, especially Great Britain and the Hanse Towns, whose subjects have made large advances upon and payments for, Russian produce, by which they may be great losers in consequence of the war. I would beg to refer to my report of the 20th March‡ on the subject of the application made by the Agent of the Hanse Towns on this point, and also to my report of the 6th of April§ on an application from Her Majesty's Consul at St. Petersburgh; and I am not aware that Her Majesty's Government has yet issued any licenses even to its own subjects, who may be placed in their position. Considerations of the description of those suggested by Mr. Buchanan, and a regard for general commercial interests, weighed materially with Her Majesty's Government in inducing it to make the great concessions which it has done in the Declarations of 28th March and the subsequent Orders in Council; and Her Majesty's Government may well be surprized and disappointed in finding that such ample concessions only lead to further and unreasonable demands.

Blockades admit of no exceptions.

5. It is impossible to make exceptions in blockade in favour of one neutral Power exclusively, and all relaxation is very inconvenient and hazardous, and tends to expose the validity of the entire blockade to question in the Prize Court. "For what is a blockade but a universal exclusion of all vessels not privileged by law? If some are to be permitted to pass, others will have a right to infer that the blockade is raised." Lord Stowell, "Rolla," 6 C. Robinson, 372.

Cargo *loaded* before blockade may be released.

6. In the case of American or other neutral vessels who may be captured coming out of a blockaded port, such portion of their cargoes as may have been actually laden on board when the blockade was established will, on due proof, be restored.

Not cargo *purchased* before it.

Authorities as to blockade-breaking, &c.

7. With respect to the case of cargoes which, though purchased before blockade, may not have been laden on board until afterwards, Mr. Buchanan does not pretend to cite any authority or precedent for their being released. I dissent entirely from his assertion that "the same reason will apply to both these cases." "With respect to violating a blockade by coming out with a cargo, the time of shipment is very material, for although it might be hard to refuse a neutral liberty to retire with a

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* Query 29th. See No. 93.

† I request to be furnished as early as convenient with a copy of this communication for further reference.—
J. D. H.

‡ No. 36.

§ No. 62.

cargo already laden, and by that act already become neutral property; yet, after the commencement of a blockade a neutral cannot be allowed to interpose in any way to assist the exportation of the property of the enemy." "A neutral ship departing can only take away a cargo *bonâ fide* purchased and delivered before the commencement of the blockade; if she afterwards takes on board a cargo, it is a violation of the blockade."*

"After the commencement of a blockade a neutral is no longer at liberty to make any purchase in that port."†

Objects of blockade.

"The object of a blockade is not merely to prevent the importation of supplies, but to prevent export as well as import, and to cut off all communication of commerce with the blockaded port. The act of egress is as culpable as the act of ingress, if it be done fraudulently; and a ship coming out of a blockaded port is, in the first instance, liable to seizure, and, to obtain a release, the party must give satisfactory proof of the innocence of his intention. But according to modern usage, a blockade does not rightfully extend to a neutral vessel found in port when the blockade was instituted, nor prevent her coming out with the cargo *bonâ fide* purchased and laden on board before the commencement of the blockade."‡

Knowledge of blockade.

Relaxation to vessels from a distance.

Notice to vessels from a distance.

8. With respect to permitting American vessels to break blockade by entering (after warning) merely because they did not know of the blockade when they sailed, the same observations apply. I consider this demand preposterous; on what possible grounds Mr. Buchanan "conceives this to be a principal of international law" I cannot imagine; all that they will be entitled to in such cases will be actual notice or warning; but even that is not to be sought for off the port blockaded. "Some relaxation was very reasonably given to this rule in its application to distant voyages, as from America; and ships sailing for Europe before knowledge of the blockade reached them were entitled to notice, even at the blockaded port. If they sailed after notice, they might sail on a contingent destination for the blockaded port, with the purpose of calling for information at some European port and be allowed the benefit of such a contingent destination, to be rendered definite by the information. But in no case is the information as to the existence of the blockade to be sought at the mouth of the port."§ "Where the vessel sails from a country lying sufficiently near to the blockaded port to have constant information of the state of the blockade, whether it is continued or relaxed, no special notice is necessary; for the public declaration in this case implies notice to the party after sufficient time has elapsed to receive the declaration at the port whence the vessel sails. But where the country lies at such a distance that the inabitants cannot have this constant information, they may lawfully send their vessels conjecturally, upon the expectation of finding the blockade up, after it has existed for a considerable time. In this case, the party has a right to make a fair inquiry whether the blockade be determined or not, and, consequently, cannot be involved in the penalties affixed to a violation of it unless, upon such inquiry, he receives notice of the existence of the blockade."‖ When once they are proved to have had notice, the fact of their having originally sailed without notice is wholly immaterial.

9. The proposal that the Minister and Consuls of the United States in Russia should exclusively verify the facts regarding the pecuniary interests of their fellow citizens, by investigations made in the enemy's dominions (where Her Majesty's Government could have no representative, and no knowledge of what was going on), "in a manner which (Mr. Buchanan says) could not fail to prove satisfactory to the British Government," scarcely requires a serious answer. It seems wholly to ignore the existence of Prize Courts, legal evidence, ship's papers, the possibility of fraud, and the rights of captors.

Notification of blockades.

10. Mr. Buchanan's request for information with respect to the existence and commencement of any blockade of Russian ports appears to me quite reasonable and proper; nothing being more likely to bring on international difficulties with neutrals, and especially neutrals at a great distance, than any uncertainty about the existence, date, or extent of blockades established *de facto*, but not promptly and duly notified.

11. His request to be informed of the instructions which have been given to Her Majesty's naval officers with reference to their conduct to neutrals, does not appear to me to be one with which your Lordship can properly comply. I am, of course, not

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* Wheaton's "Elements of International Law," vol. ii, page 244.

† Ibid., page 245.

‡ "Kent's Commentaries," vol. i, page 748 (7th edition)

§ Ibid, page 150.

‖ Wheaton's "Elements of International Law," vol. ii, page 233.

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Naval officers responsible for illegal captures.

Ships coming from blockaded ports to be seized, but released on proof of innocence.

aware whether any or what special instructions have been issued on the subject, the official documents issued by various departments of Her Majesty's Government not being supplied to me except irregularly, notwithstanding my reiterated requests for them. In the absence of any special instructions, I presume that the established usage of nations will be followed by Her Majesty's ships of war in all cases of blockade; at all events they capture at their own risk, and will be responsible to neutrals if they act illegally. All laden vessels coming out of any blockaded port will be captured and sent before the Prize Court for adjudication; such vessels or their cargoes will only be released on proof of their innocence. "A ship coming out of a blockaded port is in the first instance liable to seizure, and, to obtain a release, the party must give satisfactory proof of the innocence of his intention."—"Kent's Commentaries," vol. I, p. 148. All neutral vessels will be allowed egress in ballast. No vessel will be allowed to enter on any pretence. Those who may persist in attempting so to do after actual knowledge of the blockade (howsoever acquired) will be captured and condemned.

Exceptional favours demanded by United States.

In conclusion, I would respectfully venture to observe that Mr. Buchanan evidently requires and pretends to expect the application of totally different and exceptional principles in favour of the United States to those which any nation has hitherto contended for, and to those which the United States themselves have hitherto conceded to others, and to those which Her Majesty has applied to her own subjects; he asks throughout for the concessions of special favours in the tone in which a right is usually demanded; he artfully mixes up requisitions which he must know that he need not have made, because the decisions of the English Prize Courts have established them as legal rights, *e. g.* egress with cargo laden before blockade, with others which he cannot expect to be granted by any belligerent. I humbly conceive that there must be some ulterior purpose or design in this, and the more so since all these points are most accurately defined in the standard works of American authors on international law, with which Mr. Buchanan must be quite familiar.

I have, &c.
(Signed) J. D. HARDING.

P.S.—I have confined myself, for obvious reasons, to quotations from American authors of the highest authority, but all the best European authorities upon these subjects have been in effect adopted and incorporated into the American law and authorities.

J. D. H.

No. 123.

The Law Officers of the Crown to the Earl of Clarendon.—(Received June 2.)

Doctors' Commons, May 31, 1854.

My Lord,

Ship building at Stettin for British subjects.

WE are honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 23rd instant, stating that he was directed to transmit to us a letter from MM. Weinholt, Wehner, and Co., requesting to be informed whether they may, as British merchants, contract for the building of a ship at Stettin, or some other German port, and to request that we would take this letter into consideration and report to your Lordship our opinion as to the reply to be returned thereto.

In obedience to your Lordship's commands we have taken the letter into consideration, and have the honour to report—

No objection while at peace with Germany.

That we are at a loss to understand what can have given rise to the doubt entertained by MM. Weinholt, Wehner, and Co. We cannot conceive in what way it can be supposed that the liberty of a British merchant to have a ship built in the port of a friendly State can be affected by the circumstance of this country being at war with some other Power. If, indeed, the question of MM. Weinholt and Co. has reference to the possibility of war taking place between this country and the neutral Power in whose port the ship may be built, that, of course, is a contingency the happening of which would entirely alter the case, and of which the parties ordering the ship to be built in a foreign country must take the chance. All that can be said is that, under

existing circumstances, they will run no risk so far as the acts of this country are concerned.

We have, &c.
(Signed) J. D. HARDING.
A. E. COCKBURN.
RICHARD BETHELL.

No. 124.

The Queen's Advocate to the Earl of Clarendon.—(Received June 2.)

Doctors' Commons, June 1, 1854.

My Lord,

British vessel sunk by Russian batteries in the Danube.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 19th ultimo, stating that he was directed to transmit to me therewith a letter from Mr. Ellice, inclosing various papers communicated to him by Messrs. Andersen, owners of the British vessel "Bedlington," which vessel is said to have been sunk by the Russian batteries in the Danube; and to request that I would take these papers into consideration and report to your Lordship any observations which I may have to make upon the case.

I am also honoured with Mr. Hammond's note of 24th ultimo transmitting some further papers upon the above case.

In obedience to your Lordship's commands I have taken the papers into consideration, and have the honour to report—

War renders present steps impossible.

That the existing war with Russia renders it impracticable for Her Majesty's Government to take any step whatever in this case at the present time.

With the view, however, of the possibility of obtaining some compensation for the claimants hereafter, it may be desirable to have some information of the most important facts bearing on the claim, which information is not supplied by the papers sent herewith.

The newspaper extract apparently refers to some hostile acts of the Russians committed upon other British vessels (the "Ann" and the "Crescent" steamers) near the same place, on the 18th of March, for which the Russian General apologized, and which he stated to have been committed by mistake. He is stated to have been thereupon informed that the "Bedlington" was coming down the river, and to have thereupon pledged his word that she should not be molested; she was nevertheless fired upon and sunk. Under these circumstances it certainly would appear that she was sunk in a very unjustifiable manner, and with no pretence of right, but under mistake as to her character, or as to the orders given to the gunners.

May be pressed hereafter.

If this should turn out to have been the case, this claim might perhaps be successfully brought forward hereafter; but until full particulars are given, such, for instance, as whether she was at anchor or under sail, whether she had her colours flying, whether it was by night or day, whether she had received any and what prohibition or warning previously, and for what reason, or on what pretext, she was fired at, it is impossible to express any opinion on the case.

The "full account given to the British Consul at Constantinople" (mentioned in Mr. Wright's letter of the 6th of April) is not with the papers.

When this is forthcoming the case may be reconsidered.

Neutral good offices for liberation of crew taken before war.

The fate of the captain and crew is peculiarly hard; I can only suggest that possibly the good offices of some neutral Power may be exerted to procure their liberation as non-combatants taken before the war.

I have, &c.
(Signed) J. D. HARDING.

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No. 125.

The Queen's Advocate to the Earl of Clarendon.—(*Received June* 3.)

Doctors' Commons, June 2, 1854.

My Lord,

Fraudulent assumption of neutral flag by Russian vessels at Leghorn and Genoa.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 23rd ultimo, stating that he was directed to transmit to me a note from the French Ambassador at this Court (dated May 22, 1854), inclosing a Report from the French Consul at Leghorn, relative to the fraudulent assumption of neutral flags by Russian vessels at Leghorn and Genoa; and to request that I would report to your Lordship my opinion how far Her Majesty's Government are bound to respect the Tuscan flag on board of vessels hoisting it under the circumstances mentioned by the French Consul.

In obedience to your Lordship's commands I have taken the papers into consideration, and have the honour to report—

Liable to capture.

That assuming the French Consul's impression to be correct, the transfers of the ships in question are obviously so colourable and pretended that the ships would not be protected thereby, and would be liable to capture and condemnation; but I observe that the French Consul gives no dates or details, and does not mention whether there was even an apparent compliance with the requirements of the local law relative to the purchase or navigation of foreign ships, or whether any money at all was even pretended to be paid by the purchasers. I cannot, therefore, entirely rely on the strict accuracy of his impression of these transactions. I may, perhaps, state generally—

Prize Courts recognize validity of real sales.

1. That although British Prize Courts recognize the validity of *boná fide* and complete sales of enemy's ships to neutrals in neutral ports, though made during war, that such sales are always regarded as open to suspicion, and are required to be proved to be not merely in due form but *boná fide*, and without any reservation or secret agreement or understanding whatsoever.

2. That in every case, especially where neutral ships' papers are exhibited, and the ship is apparently navigated in accordance with the requirements of the law of the neutral State, the captor seizes at his own risk; but he will be justified in so doing, and his costs will be allowed by the Prize Court, if there existed reasonable cause of suspicion against the ship, even although she should be restored by the decision of such Court.

Relaxations do not extend to enemy's ships.

3. That none of the relaxations in favour of enemy's goods and neutral ships contained in the late Declaration and Orders in Council extend to enemy's ships.

4. That all neutral States favouring or assisting such transfers, or even permitting them to take place with great facility, may fairly expect that all ships hoisting their flag and using their papers will be exposed to frequent and rigorous search, and even to detention and capture upon the slightest suspicion, and that they have, therefore, a strong interest in preventing, or at least in checking, such transactions.

I have, &c.
(Signed) J. D. HARDING.

No. 126.

The Queen's Advocate to the Earl of Clarendon.—(*Received June* 8.)

Doctors' Commons, June 8, 1854.

My Lord,

Messrs. Pelly, agents for a Russian Company.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 3rd instant, stating that, with reference to my Report of the 26th ultimo,* he was directed to transmit to me a further letter from Messrs. Pelly and Co., respecting the cargo of tea on board the "Cesarewitch," in which Messrs. Pelly and Co. state that they have a pecuniary interest; and to request that I would take this letter into consideration, and report to your Lordship my opinion as to the answer which should be returned to Messrs. Pelly.

In obedience to your Lordship's commands I have perused the further letter of Messrs. Pelly, and have the honour to report—

Their tea may be captured.

That I cannot suggest any further or better answer than that which has already been given to Messrs. Pelly, and that the facts stated in their letter of the 30th of May do not alter my opinion of the case.

Transaction being on Russian account.

The transaction was throughout on Russian account; the claimants state that they advanced their money as agents for their Russian principals, without taking any legal security or obtaining any transfer of the property; such property being therefore Russian is, as such, liable to capture and confiscation, and I do not see that the claimants have a just or equitable claim to be reimbursed out of it to the amount of such advance made on Russian account; they are, in my opinion, not interested in the cargo of the "Cesarewitch" as British merchants, but as Russian agents, and as such I do not consider them entitled to any favour.

If, however, your Lordship should consider this case entitled to further consideration, I must request the assistance of the Law Officers of the Crown.

I have, &c.
(Signed) J. D. HARDING.

* No. 119.

No. 127.

The Queen's Advocate to the Earl of Clarendon.—(*Received June* 13.)

Doctors' Commons, June 13, 2854.

My Lord,

Blockade of Danube announced by allied Admirals.

I AM favoured with Mr. Hammond's letter dated the 12th, transmitting to me a telegraphic despatch from Her Majesty's Consul-General at Belgrade, reporting that he had been instructed by Vice-Admiral Dundas to inform Her Majesty's Government that the Admirals commanding the combined squadrons in the Black Sea had declared the Danube to be in a state of blockade.

Mr. Hammond requests that I will take this paper into my consideration with reference to the letter from the Admiralty, which is also inclosed, and that I will report to your Lordship, at my earliest convenience, my opinion whether the facts stated by Mr. Fonblanque will warrant Her Majesty's Government in giving public notice of the blockade, and, if so, that I will furnish your Lordship with a draft of notice to be inserted in the "Gazette" of this day.

I have accordingly taken into consideration the telegraphic despatch from Mr. Fonblanque, with reference to the letter of the Admiralty, and have the honour to report—

Notice for "Gazette.

That the Lords of the Admiralty entertain no doubt of an effective blockade of the Danube having been *de facto* established by a competent force on the 1st of June, inasmuch as "their Lordships conclude that the necessary orders will be given by your Lordship for the due insertion of the proper notice in to-day's "Gazette."

I have accordingly prepared (and herewith transmit) a draft Notification for insertion in the "Gazette."

Admiral should report in more definite terms.

I trust that I shall be excused for pointing out to your Lordship that the telegraphic message from Vice-Admiral Dundas to your Lordship is not, in my opinion, by any means so clear or definite as is desirable in such cases. It does not state that the Danube was actually blockaded by a competent force on any particular date, but only that on the 1st of June the Vice-Admirals (the combined fleets being then at Varna) had declared the Danube to be in a state of blockade.

Bearing in mind, however, the ample force under their command, trusting to their experience, and having regard to the serious consequences likely to arise from any delay or appearance of doubt or hesitation in notifying such a blockade, I have thought it best to prepare the notification. The expediency of calling the attention of the Admirals to the importance of strict accuracy in such cases, and above all to the necessity of a distinct statement of the date at and from which a blockade *de facto* is or has been established by a competent force, will I trust receive your Lordship's consideration.

I have, &c.
(Signed) J. D. HARDING.

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Inclosure in No. 127.

Draft Notification.

IT is hereby notified that the Right Honourable the Earl of Clarendon, Her Majesty's Principal Secretary of State for Foreign Affairs, has received a despatch from the Vice-Admiral Dundas, commanding Her Majesty's naval forces in the Black Sea, addressed to the Lords Commissioners of the Admiralty, and dated the 1st of June, announcing that the Danube was blockaded by the combined naval forces of Her Majesty and of the Emperor of the French.

(Signed) J. D. H.

No. 128.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received June* 14.)

Doctors' Commons, June 13, 1854.

My Lord,

Sound Dues. Payment by prizes.

WE are honoured with your Lordship's command signified in Lord Wodehouse's letter of the 29th ultimo, stating that with reference to our letter of the 24th,* requesting to be furnished with further information with respect to the Sound Dues, he was directed to refer us to Hertslet's Commercial Treaties, vol. 6, p. 280, containing the stipulations entered into between this country and Denmark for the regulation of the duties to be levied on vessels and goods passing the Sound, and to an extract from the regulations which have recently been issued by the Danish Government with respect to the duties to be levied during the war in the Sound and the belts on the vessels of the belligerents, a copy of which Lord Wodehouse is pleased to transmit.

In obedience to your Lordship's commands we have the honour to report—

Liable only in respect of cargo.

That we are inclined to think that a Russian merchant vessel captured by an English ship of war, and passing the Sound, would fall within Article 15, section C, of the Agreement between Great Britain and Denmark of August 13, 1841, and be liable only in respect of the cargo aboard, but as we think it desirable to ascertain the rule and practice that prevailed during the late war, when the case must have repeatedly arisen, we respectfully suggest that this should be ascertained in order that there may be consistency in the rule to be observed.

We have, &c.

(Signed) J. D. HARDING.
A. E. COCKBURN.
RICHARD BETHELL.

No. 129.

The Queen's Advocate to the Earl of Clarendon.—(*Received June* 16.)

Doctors' Commons, June 16, 1854.

My Lord,

Blockade of Baltic.

I AM favoured with Mr. Hammond's letter of the 15th instant, transmitting to me a letter from the Admiralty inclosing copies of despatches which have been received from Sir Charles Napier announcing that the Russian ports therein mentioned have been blockaded; Mr. Hammond requests that I will take these papers into my consideration, and that I will draw up and transmit to your Lordship a notification for insertion in this day's "Gazette" of the blockade of the ports in question, provided I am of opinion that the publication of such a notice will be right and proper.

I have accordingly taken these papers into my consideration, and have prepared and transmit herewith a Notification for insertion in the "Gazette."

I have, &c.

(Signed) J. D. HARDING.

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* No. 114.

P.S.—The names of many of the ports appear to be so incorrectly spelt, that I have endeavoured to correct them (sometimes from conjecture); I would suggest the proofs being corrected by some person acquainted with the country.

J. D. H.

Inclosure in No. 129.

Notification.

Notification for "Gazette."

IT is hereby notified that a communication has been received by the Lords Commissioners of the Admiralty from Vice-Admiral Sir Charles Napier, commanding Her Majesty's naval forces in the Baltic, dated Hango Bay, May 28, 1854, informing their Lordships that the ports of Libau and Windau, on the coast of Courland, and other ports, roads, havens, or creeks from latitude 55° 53′ north to as far north as Cape Dager Oit, including the ports of Riga, Pernan, and all other ports, roads, havens, or creeks in the Gulf of Riga, were then in a state of blockade by a competent force.

That all ports, roads, havens, or creeks eastward from Cape Dager Oit, including Hapsal, Worms Island, Port Baltic, Revel, and other intermediate ports on the coast of Esthonia as far as Ekholm Light (situated in latitude 59° 43′ north, longitude 25° 48′ east), and from thence in a north-west direction as far as Helsingfors and Sweaborg on the coast of Finland; continuing westward, Baro Sound, Hango Head, Oro, and Abo, including the Aland Archipelago and intermediate ports; from thence north, including Nystad, Bjorneborg, Christinestadt, Vasa, Walgrund Islands, Little Carleby, Jacobstad, Great Carleby, Lahts, Kalaioki, Brakestad, Uleaborg, Karle Island, Ijo, Gestila, Tornea, Red Tornea (situated in latitude about 65° 50′ north, longitude 24° 15′ east), and all intermediate Russian ports, roads, havens, and creeks in the Gulf of Bothnia; and all the before-mentioned ports and places are and were then in a state of strict blockade by a competent force.

And it is hereby further notified that all the measures authorized by the laws of nations and the respective Treaties between Her Majesty and the different neutral Powers will be adopted and executed with respect to all vessels which may attempt to violate the said blockade.

(Signed) J. D. HARDING.

No. 130.

The Queen's Advocate to the Earl of Clarendon.—(*Received June* 17.)

Doctors' Commons, June 16, 1854.

My Lord,

Baltic blockade. Gulf of Finland not included.

WITH reference to my report of this day's date (accompanying a Draft Notification of blockade of Russian ports in the Baltic), I beg to observe that Sir C. Napier does not expressly state that all the ports of the Gulf of Finland (especially Cronstadt and St. Petersburgh) are blockaded; the accompanying chart does not indicate them as being blockaded; Sir C. Napier also states "another division *will* extend up to Cronstadt; this *will* hermetically seal the whole of the Gulf." I conclude, therefore, that the existing blockade will be extended to these ports and to the whole of the Gulf of Finland. When such a blockade shall be actually established by a competent force, a further notification thereof will be proper, and I would venture to request your Lordship to cause the requisite instructions to be addressed to Sir C. Napier, in order to insure the transmission of prompt and exact intelligence by him relative thereto, so as to enable Her Majesty's Government to publish a formal notification both of any such blockade, and of any other blockade or any changes thereof, as they may occur.

Further notification necessary.

I have, &c.

(Signed) J. D. HARDING.

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No. 131.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received June* 16.)

Doctors' Commons, June 16, 1854.

My Lord,

Sale of Russian ships to neutrals.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 8th instant, stating that he was directed to transmit to us a despatch from Her Majesty's Minister at the Hague, inclosing a copy of a Circular which has been addressed by the French Government to their Consular Agents abroad, reminding them that the 7th Article of the Regulation of July 25, 1778, relative to the sale of enemy's ships subsequently to the declaration of war, is still in force in France, and instructing French Consular Agents to give information to the English and French cruizers of any sales being effected in contravention of that Article; and Mr. Hammond was pleased to request that we would take Sir Ralph Abercromby's despatch and its inclosures into consideration, and at our earliest convenience report to your Lordship our opinion as to how far the English law and the recent instructions issued by Her Majesty's Government coincide with the French law in this respect.

In obedience to your Lordship's commands we have taken the despatch and its inclosures into consideration, and have the honour to report—

French law forbids. English law permits if *bonâ fide*.

That the English law does not coincide with the French law in this respect, inasmuch as by the English law the purchase of enemy's ships by neutrals is valid and legal, although made during war, provided such purchase be made *bonâ fide* and without any secret trust or reservation of hostile interest.

We would beg leave to refer to our Report of the 24th ultimo,[*] on the fictitious sales of Russian ships to Lubeck citizens, and to that of April 11[†] on the same subject.

We are not aware of any recent instructions having been issued by Her Majesty on the subject of Russian vessels purchased by neutrals since the declaration of war.

We have, &c.
(Signed) J. D. HARDING.
A. E. COCKBURN.
RICHARD BETHELL.

No. 132.

The Queen's Advocate to the Earl of Clarendon.—(*Received June* 19.)

Doctors' Commons, June 17, 1854.

My Lord,

Clearance of the "St. George" for a Russian port.

(Alleged sale of a British vessel to a Dane.)

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 9th instant, stating that he was directed to transmit to me therewith a letter from the Treasury respecting an application made by Messrs. Christiansen and Co., of Leith, for the clearance out of the vessel "St. George" from[‡] a Russian port; and to request that I would take the papers into consideration, and report to your Lordship my opinion as to the answer which should be returned to Messrs. Christiansen and Co.

In obedience to your Lordship's commands I have taken the papers into consideration, and have the honour to report—

If not proved to be Danish, must be considered British, and clearance refused.

That this question appears to me to be properly for the decision of the Customs, and not of your Lordship. I can see no particular reasons for deviating from the ordinary rule or practice of the Customs in the case of the "St. George." In every case of the purchase by foreigners of British ships in British ports the Customs must be satisfied that the property in such ships has been legally transferred, and must require the production of the regular documents, and there must, I presume, be certain rules laid down, or a certain practice and usage existing, for their guidance in such cases. Until, therefore, such documents are produced, and such proof is given as would be considered sufficient in any similar case to show that the "St. George" was actually and legally a Danish vessel, she must be considered as a British vessel, and cannot be permitted to clear out for a Russian port. I should conceive that the production, at least, of a bill of sale, and probably also of other documents, would be necessary by the rules or the practice of the Customs to prove her to be Danish property; but I can only say that, whatever documents are required by the Customs in the case of any other British vessel sold to any other foreigner ought to be required in this case, and I would further invite attention to the Danish Royal Ordinance of Christian VII, 4th May, 1803, on this subject (recently printed, and sent to me from the Foreign Office), by which it will be seen what ship's papers are required in Denmark.

If Danish, may only go to unblockaded ports.

The letter of Messrs. Christiansen and the passport of the Danish Consul appears to me to be wholly insufficient to prove that the "St. George" is a Danish vessel; and unless she is proved to be so, she ought not, in my opinion, to be allowed to clear out for a Russian port. If she should be proved to be Danish, she can, of course, only be allowed to clear for a blockaded[*] port.

I have, &c.
(Signed) J. D. HARDING.

No. 133.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received June* 19.)

Doctors' Commons, June 17, 1854.

My Lord,

Mr. Mackenzie, Surgeon to Imperial Dockyard at Archangel.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 31st ultimo, stating that he was directed to transmit to us the accompanying despatch from Mr. Whitehead, Her Majesty's Consul at Archangel, reporting that he has been requested by Mr. Mackenzie, a British subject, who for the last twenty-five years has been attached as Surgeon to the Imperial Dockyard and other hospitals at Archangel, without, however, becoming a Russian subject, to inquire whether it would be contrary to the allegiance which he owes to his Sovereign for him to continue his service as Surgeon to the Imperial Dockyard, or to any other civil department, now that war is declared between this country and Russia; and Mr. Hammond was pleased to request that we would take this case into consideration, and report to your Lordship our opinion as to the answer which Mr. Whitehead should be directed to return to Mr. Mackenzie's inquiry.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

Contrary to allegiance to continue service: but might be sanctioned under circumstances.

That we are of opinion that it would be contrary to the allegiance which, as a British subject, Mr. Mackenzie owes to his Sovereign to continue his services as Surgeon to the Russian Imperial Dockyard. At the same time, considering that the service rendered by Mr. Mackenzie is not in the full sense of the term a military service, as it would be were he serving with the Imperial army or navy; that he has been so many years in the Imperial service; and that to quit it now would probably be seriously detrimental to his interests; it may be for the consideration of Her Majesty's Government whether his continuance in his present service might not be sanctioned.

We have, &c.
(Signed) J. D. HARDING.
A. E. COCKBURN.
RICHARD BETHELL.

No. 134.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received June* 20.)

Doctors' Commons, June 19, 1854.

My Lord,

Position of Ionian Islands and Ionian vessels.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 25th ultimo, stating that, with reference to our Report of the 19th[†] and to the report of Her Majesty's Advocate-General of the 5th,[‡] he was directed to transmit to us a letter from Messrs. Mellas Brothers, charterers of two Ionian vessels, and to request that we would take this letter into consideration, and report to your Lordship our opinion how far the Report which we have given respecting the position of the Ionian Islands in regard to the present war may affect the opinion on this case previously given by the Queen's Advocate.

In obedience to your Lordship's commands we have the honour to report—

That we think the opinion we gave (dated 19th of May) respecting the position of the Ionian Islands in regard to the present war does not affect the opinion previously

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[*] No. 113.

[†] Query 12th. See No. 69.

[‡] Query "for."

[*] Query "*un*blockaded."

[†] No. 109.

[‡] No. 101.

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given by the Queen's Advocate on the application of Messrs. Mellas (dated 6th May) which had reference exclusively to the condition of certain Ionian vessels chartered before the war, and then in the Black Sea, under the particular circumstances stated by Messrs. Mellas, and which opinion we consider to have been correct with reference to those circumstances.

We have, &c.
(Signed) J. D. HARDING.
A. E. COCKBURN.
RICHARD BETHELL.

No. 135.

The Queen's Advocate to the Earl of Clarendon.—(*Received June 20.*)

Doctors' Commons, June 20, 1854.

"Johanna Amelia." Supposed Russian under Hanoverian colours.

My Lord,

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 16th instant, stating that, with reference to my report of the 9th of May,* respecting the detention of the "Johanna Amelia," supposed to be a Russian vessel under Hanoverian colours, he was directed to transmit to me a note from the Portuguese Minister at this Court, inclosing an extract of a letter from the consignees of some Portuguese property on board that vessel, and requesting that that property might be given up to the consignees; and a letter from the Council Office, to which Department Count Lavradio's application was referred, together with the answer returned to Count Lavradio's note.

Lord Wodehouse also incloses a further note from Count Lavradio stating the grounds on which he thinks that the Portugese property in question should be restored without delay, conditions, or expense, to the consignees of the parties to whom that property belongs; and he is pleased to request that I would take all the enclosed papers into consideration, and report to your Lordship at my earliest convenience my opinion as to the answer which should be returned to Count Lavradio's note of the 13th instant.

In obedience to your Lordship's commands I have taken the papers into consideration and have the honour to report—

That I am informed by the Admiralty Proctor that all the cargo laden on board this vessel has been already released and restored to the claimants or their agents.

Portuguese property on board should be released.

If, however, this should not actually have been done, I would suggest that the necessary directions should be forthwith issued to that gentleman to cause the particular goods alluded to by Count Lavradio, and described in the original bills of lading and shipping documents forwarded by his Excellency, to be released and restored to the Portuguese owners or their agents, and that Count Lavradio should be informed to this effect in answer to his Excellency's note of the 13th instant.

I have, &c.
(Signed) J. D. HARDING.

No. 136.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received June 23.*)

Doctors' Commons, June 23, 1854.

Transfer of vessels at Oporto from Russian to Hanoverian flag.

My Lord,

WE are honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 26th ultimo, stating that he was directed to transmit to us a note which your Lordship addressed to the Hanoverian Minister at this Court requesting to be furnished with certain information with respect to the transfer of vessels at Oporto from the Russian to the Hanoverian flag. Lord Wodehouse likewise incloses Count Kielmansegg's reply explaining the circumstances under which this transfer was effected; and he is pleased to request that we would take these papers into consideration and report to your Lordship our opinion as to the manner in which such vessel should be treated.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

Transfer to Russian flag, and re-transfer to Hanoverian.

That we are of opinion that the circumstances attending the alleged transfer of these vessels to Russian subjects in the first instance, and their present retransfer to Hanoverians, are of a very equivocal character, and such as would fully warrant their being captured, and sent before a Prize Court for adjudication, leaving the alleged Hanoverian owners to make out their title to them if they can. If, indeed, Her Majesty's Government should be perfectly satisfied that in fact no property in these ships ever did pass to the Russians, the assumption of the Russian flag being merely colourable, and a deceit practised on the Danes, and that the vessel in effect remained Hanoverian, it might be for the consideration of Government whether the right to treat these vessels as Russian (arising from the assumption ostensibly of Russian nationality) should, under the circumstances, be enforced. At the same time, we cannot but observe that it is of great importance that the utmost good faith should be observed and enforced in all that regards the national character of ships, and that owners should be held bound by a nationality they have assumed, unless a subsequent *bonâ fide* transfer takes place.

Depends on *bonâ fides.*

We have, &c.
(Signed) J. D. HARDING.
A. E. COCKBURN.
RICHARD BETHELL.

No. 137.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received June 27.*)

Doctors' Commons, June 27, 1854.

Russian Dutch loan.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 24th instant, stating that he was directed to call our attention to the accompanying notice of a motion to be made in the House of Commons on Tuesday next, with the view of obtaining the concurrence of that House to a proposition to the following effect: that Great Britain having undertaken, by a Convention concluded with Russia on the 16th May, 1831, to secure the payment to Russia of a portion of her old Dutch debt, in consideration of the general arrangements of the Congress of Vienna to which Russia had given her adhesion; and that Russia having withdrawn her adhesion from those arrangements by neglecting for a series of years to keep the channel of the Danube clear for the purposes of navigation, which she was bound to do under the general stipulations of the Congress of Vienna relating to rivers, Great Britain is freed from the obligations in respect to the Russian Dutch Loan which she contracted by the Convention of 1831.

As to future payments by England.

Mr. Hammond is pleased to request that we would take this proposition into our immediate consideration, and report to your Lordship our opinion thereupon, at the latest by Tuesday morning.

In obedience to your Lordship's commands we have taken the proposition into consideration, and have the honour to report—

That we think it necessary to refer to some documents of an earlier date than those to which our attention has been directed.

Treaties.

Conditions of original obligation to pay.

By the Ist Article of the Convention between Great Britain and the Netherlands, signed on the 14th May, 1814, Great Britain engaged to restore to the Sovereign of the Netherlands the Colonies possessed by Holland at the commencement of the war, with the exception of the Cape of Good Hope, Demerara, Essequibo, and Berbice, which were to be disposed of by a Supplementary Convention; and by the 3rd section of the Ist Article of *that* Supplementary Convention, it was provided that Great Britain should bear equally with Holland such further charges (not exceeding 3,000,000*l.*) as might be agreed on towards the final and satisfactory settlement of the Low Countries, in union with Holland, and under the dominion of the House of Orange.

Value received by Great Britain.

Great Britain, therefore, received the valuable consideration of four Colonies as the price of her engagement to be liable to contribute 3,000,000*l.* for the purposes of Holland, and Holland had the right to direct the manner in which this engagement should be fulfilled; provided only that it should be directed to the establishment of the final union of Holland and the Netherlands.

By the Treaty of Chaumont, concluded on the 1st March, 1814, Holland and the Low Countries became liable to repay to the allied Powers, parties to that Treaty, a portion of the expenses attending their reconquest from France; and those claims were waived by the allied Powers in favour of Russia, and Russia having become a

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* No. 103.

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party to the final union of Holland and the Netherlands, the King of Holland had a right to call upon Great Britain to fulfil in favour of Russia the engagement contained in the Supplementary Convention which is above referred to.

It is therefore clear that Great Britain became a party to the Convention of May 1815, by virtue of a contract for a valuable consideration between herself and Holland; and that so long as Holland is liable to Russia, that is, so long as the Russo-Dutch Loan remains unpaid, Holland is entitled to the benefit of that contract.

It is a mistake to treat Russia's right to the guarantee given by Great Britain as dependent on the condition of her abiding by the provisions of the Treaty of Vienna. Russia fully performed her engagement by being a party to the final union of Holland and the Netherlands,—a union which she offered to maintain by force of arms in 1830, though she desisted from doing so principally at the request of Great Britain.

It is in this sense only that the language in the recital of the Convention of November 1831 ought to be understood when it speaks of the "general arrangements of the Treaty of Vienna;" for no other part of these arrangements entered into this contract than that which provided for the final union of Holland and the Netherlands.

Convention of 1815 not to be affected by war.

It is important to observe that the obligation of the Convention of 19th May, 1815, was not to be affected by war,—a provision which is affirmed by the Act of 55 George III, c. 115, and that this Convention was prior to the Act of the Congress of Vienna as to the navigation of rivers, which Act was not signed until the 9th June, 1815.

The right of Russia to the payment stipulated to be made by Great Britain in the Convention of 1815 was expressly acknowledged and confirmed by this country in the Convention of November 1831; for which confirmation Russia, by the IInd Article, gave a new and distinct engagement by way of consideration, and this Convention became an additional and independent contract.

We are therefore of opinion that there is no foundation in law or in fact for the Resolutions of Lord D. Stuart, and that there is no just ground on which Great Britain can hold herself released from the engagements in the Conventions of 1815 and 1831.

We have, &c.
(Signed) J. D. HARDING.
A. E. COCKBURN.
RICHARD BETHELL.

No. 138.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received June* 27.)

Doctors' Commons, June , 1854.

My Lord,

Foreign Loan raised by Russia.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 22nd instant, stating that he was directed to state to us that the Government of Russia has just entered into a contract in a foreign city for a loan of a considerable sum of money, and that your Lordship would wish to be informed by us whether any subject of Her Majesty can legally contribute to that loan by purchasing either in this or any other country shares in the same, or holding either for himself or in behalf of other persons any such shares; and, if he cannot do so legally, what is the nature of the crime, or the degree of penalty which any subject of Her Majesty would render himself liable to by any dealings with this loan.

In obedience to your Lordship's commands we have the honour to report—

High treason for British subject to subscribe.

That we are of opinion that a British subject contributing to a loan raised by or on behalf of a Sovereign at war with Great Britain will be guilty of high treason, as adhering to the Queen's enemies.

We have, &c.
(Signed) J. D. HARDING.
A. E. COCKBURN.
RICHARD BETHELL.

No. 139.

The Queen's Advocate to the Earl of Clarendon.—(*Received June* 28.)

Doctors' Commons, June 28, 1854.

My Lord,

Maritime law. British and French points of disagreement.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 23rd instant, stating that he was directed to transmit to me therewith the accompanying papers respecting questions of maritime law on which the views of the Governments of England and France have not yet been brought to coincide. Mr. Hammond states that the Memorandum on the Netherland and Danish Instruction, which forms the first of the series, is founded on reports made by myself, in common with other Legal Advisers of the Board of Admiralty. That this Memorandum was placed in the hands of the Government of France, who, a short time ago, delivered to Lord Cowley, in reply to a further communication which he was directed to make to the French Minister, a memorandum of observations which were afterwards more formally stated in the despatch from M. Drouyn de L'huys to the French Ambassador at this Court, also inclosed.

Contraband of war. Blockade. Right of search.

That these papers having been sent to the Board of Admiralty, that Department has declared in the accompanying letter its adherence to the opinions formerly expressed by it in regard to the three specific points of contraband of war, blockade, and right of search, still under discussion between the Governments of England and France.

That your Lordship requests that I would take the papers now transmitted into consideration, and report to your Lordship such observations as may occur to me upon the statements and arguments therein set forth.

In obedience to your Lordship's commands I have taken the papers into consideration, and have the honour to report—

That I entirely concur in the view which is taken in the letter from the Secretary to the Admiralty to Mr. Hammond, dated June 20, and I also adhere to the opinions which I have already given, in common with the other Counsel on behalf of the Admiralty, and as expressed in the "Memorandum on the Netherlands and Danish Instructions," founded upon my previous reports.

Notification of blockade dispenses with individual warnings.

I may add that, on the points in question, I have more than once reported, or, in conjunction with other Counsel, given written opinions to the Admiralty, to which reports and opinions generally I would beg to refer. I would further beg leave to state that, in many of my recent reports addressed to your Lordship, I have given my opinion upon some of the points in question, especially as to the effect of notification of blockade in dispensing with the necessity of notice or warning to each particular vessel (May 25).* See also my report dated May 1†, on Mr. Coulquhoun's application on behalf of the Hans Towns, and that dated May 3,‡ on certain American doctrines, and more particularly to that dated May 29,§ upon an application from Mr. Buchanan (United States' Minister). Subject to the opinions which I have so frequently expressed on these points, and to which I still adhere, I would venture to observe generally, with reference to M. Drouyn's despatch to Count Walewski:—

Separate warnings unadvisable.

A (1). (As to Notice of Blockade.) I consider that the requiring actual warning and endorsement of the ship's papers in each case would tend most seriously to diminish, and in some cases to neutralize, the effect of blockade, more especially in the event of the accidents of weather, or of war, preventing a particular blockade being so closely and invariably maintained as to render any attempts to enter altogether hopeless; and I cannot recommend any relaxation or any deviation whatever from the law and practice of British and United States' Prize Courts on this point.

Egress of neutrals through blockade.

B. The permission of egress to neutrals for a certain fixed period after the institution of a blockade is rather a question of policy than of law. The allowance of egress for such a period will be *legal*, and has been occasionally resorted to in blockades by allied French and English forces. (See report of Sir John Dodson, and notification of blockade of the port of Buceo, October 31, 1845.)

On this head, any arrangement to which your Lordship may consider it expedient to accede may, in my opinion, be safely made with the French Government, and instructions in accordance therewith issued to Her Majesty's naval officers.

A (2) and B (2). (As to search). Do not require any remark.

Right of search, notwithstanding convoy.

C. (Right of search notwithstanding convoy.) I cannot advise any concession whatsoever on this point, which has always been resolutely maintained by Her Majesty's Government (see the "Maria," 1, C. Robinson, p. 340; the "Elsabe," 4, C. Robinson,

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* No. 117. † No. 96. ‡ No. 98. § No. 122.

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Should not be relinquished.

173), and which is, in my opinion, of the greatest practical importance, especially having regard to the establishing of a *rule*, or a precedent for future wars.

I presume that Her Majesty's naval officers will be instructed not to search neutrals under convoy, excepting where there exists some reasonable ground of suspicion.

Contraband of war.

3. Contraband of war.

This, again, is a question of policy rather than of law.

Articles vary.

As to coals and sulphur.

The list of particular articles to be so considered, when not enumerated in any existing Treaty, must vary from time to time with circumstances. The inconvenience of any permanent and unalterable list will be at once apparent. The recent cases of coals (in the Baltic), and sulphur (Naples), will afford illustrations of this.

I may perhaps, in conclusion, be permitted to state—

Remarks.

1. That France appears disposed to induce Great Britain to alter her existing law and practice in these respects, without offering to make any corresponding change by way of concession on her own part. At least, I do not perceive *what* particular change or concession France proposes or offers.

Question of egress from Baltic and Danube.

2. The Baltic ports of Russia were actually and formally blockaded by the British forces alone before the French fleet joined. On the institution of such blockade, nothing was said about egress for a particular period, and thus the question is practically settled and at an end as to those ports, except for the future.

I am not aware whether any such egress was permitted from the Danube, which was a joint blockade; but, if it was not, this would furnish an additional argument against any such concession.

Warning and search. Necessity for agreement.

3. That, especiallly as to actual warning and endorsement of each ship's papers, and as to searching neutrals under convoy, it would seem essential to come to some decided arrangement with France as to what is to be done where the forces of both countries are actually and jointly engaged in the same service or operation.

For instance: are all the ships to obey the directions on these points of the Senior Officer? or is each ship to act according to the standing instructions of her own Government? Thus, is an English Commanding Officer of a blockading force to be authorized to order French vessels to capture all vessels sailing from a neutral port after a certain date without regard to their not having been "warned off" the blockaded port?

Again, is a French Commanding Officer to be authorized to order Her Majesty's ships not to search any vessels under convoy, merely because the convoying officer has given the requisite assurance, even although reasonable grounds of suspicion should exist that such vessels have contraband of war, destined for the enemy's use, on board?

The speedy and decisive settlement of these points is, I conceive, essential to the proper employment and harmonious action of the allied naval forces, and their remaining open to doubt may be found (when too late) productive of many serious results.

I have, &c.
(Signed) J. D. HARDING.

No. 140.

The Queen's Advocate to the Earl of Clarendon.—(*Received June* 29.)

Doctors' Commons, June 28, 1854.

My Lord,

Manner of effecting blockade of Black Sea.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of this day's date, stating that he was directed to transmit to me therewith a despatch from Viscount Stratford de Redcliffe respecting the manner in which the blockade of the Russian ports in the Black Sea can most effectually be established, notified, and enforced; and to request that I would take the same into immediate consideration, and report to your Lordship my opinion upon the subject with as little delay as possible, in order that the necessary instructions to Lord Stratford de Redcliffe may be sent by telegraph to Marseilles, where it will overtake a messenger dispatched this evening to Constantinople.

In obedience to your Lordship's commands I have taken the despatch into consideration, and have the honour to report—

That the plan of operations described as the "second measure," in the note of Admirals Dundas and Hamelin, will, in my opinion, be the only means of establishing

a valid, legal, and effectual blockade of the Russian ports. As I understand that measure, it is the stationing a sufficient force so near each port blockaded as to make egress therefrom or ingress thereto impracticable without evident and imminent danger of capture.

Each port must be actually blockaded.

Porte may refuse to clear vessels.

They must not be stopped at Bosphorus unless Russian ports are actually blockaded.

The Turkish Government will of course be justified in refusing to permit vessels to clear out from its custom-houses for an enemy's port, more especially for a blockaded port, and also in warning and indorsing the papers of every neutral passing through the Bosphorus when an effective blockade of Russian ports is established; but it would not be justified nor would the Admirals be justified, in my opinion, in preventing neutral vessels from proceeding through the Bosphorus into the Black Sea, nor even from proceeding through the Bosphorus to Russian ports, unless and until such ports are effectually blockaded in the ordinary manner.

Precise notices of blockades.

I beg to refer to my previous reports, especially that of 25th May,* on the effect of notification of blockade, and that of 29th May† on the note of the American Minister (Mr. Buchanan), and to represent the necessity of the admirals furnishing a distinct enumeration and list of each of the blockaded ports (as lately done by Sir Charles Napier), and also of their stating from what date each port has been or is actually and effectively blockaded, which Sir Charles Napier did not state, in order that a proper notification may be issued.

Proposed instructions.

I would further suggest that it will be desirable, in order to avoid mistakes similar to that committed by Sir Charles Napier on his sailing from Kioge Bay (see my report thereon dated 20th April),‡ to instruct the Admirals not to issue any formal notification until they are informed that the blockade is effectively established, and then to give in such notification the date of the blockade in each case, and the dates and names of the ports.

I have ventured in haste to send herewith a blank form of notification for the guidance of the Admirals which may be adapted to circumstances.

I have, &c.
(Signed) J. D. HARDING.

Inclosure in No. 140.

Form of Notice.

Form of notification by Admirals.

IT is hereby notified that on the day of last, the Russian ports of and , and that on the day of , all Russian ports, roads, havens, and creeks, from Cape , in longitude , latitude , to Cape , including especially the ports of and , were placed in a state of strict blockade by a competent force of the allied fleets.

And it is hereby further notified that all measures authorized by the laws of nations and the respective Treaties between Her Majesty and the different neutral Powers will be adopted and executed with respect to all vessels which may attempt to violate the said blockade.

(Signed) J. D. HARDING.

No. 141.

The Queen's Advocate to the Earl of Clarendon.—(*Received June* 30.)

Doctors' Commons, June 30, 1854.

My Lord,

Ingress of American vessels to blockaded ports.

Answer to American Minister.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 28th instant, stating that, with reference to my report of the 29th ultimo,† stating my opinion with respect to the application which had been received from Mr. Buchanan, the American Minister at this Court, for permission for American vessels to go to Russian ports, in order to convey from those ports merchandize purchased before the war, he was directed to transmit to me the draft of a note which your Lordship proposes to address to Mr. Buchanan upon this subject, and to request that I would take the same into consideration, and report to your Lordship my opinion whether the proposed answer to Mr. Buchanan is right and proper.

Mr. Hammond is at the same time pleased to request that I would state to your Lordship whether the quotations from Mr. Wheaton and Chancellor Kent are correctly given in the inclosed draft.

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* No. 117.

† No. 122.

‡ No. 77.

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In obedience to your Lordship's commands I have taken the papers into consideration, and have the honour to report—

That I consider the draft in question to be right and proper as far as it goes, subject to some trifling alterations which I have suggested in the margin, and that the quotations from Kent and Wheaton are therein correctly given.

No authority for such demands.

I would, however, further venture, with great deference, to point out that the draft appears to me to be susceptible of certain additions which would increase its form and effect, especially having regard to the probability of its being hereafter made public; and I would beg to suggest, in reference thereto, that Mr. Buchanan may properly be asked on what authority he relies for his demands as to the ingress of American vessels to blockaded ports, and as to their egress from such ports with cargoes laden after the establishment of the blockade, and also whether the United States have ever, and when made, or whether they are ready to make in favour of Great Britain, or of any and what other nations, similar concessions to those which he requires. It may, I believe, be truly stated that no other Power has, as yet, made similar demands or concessions. That he may also be reminded that such concessions cannot be limited to one neutral Power, especially in blockades. That Her Majesty having a naval ally in the war would, of course, prevent her from making any special concessions without the full consent and concurrence of such ally; and that she must reserve to herself the entire right of making such alterations, not at variance with the principles of international law, as her interests and those of her allies may require.

Any concessions must be concurred in by allies.

Lastly, it appears to me most important that Mr. Buchanan should be required to distinguish clearly between what he demands as rights under the law of nations and what he asks as special and exceptional favours or concessions to the United States.

It will, of course, occur to your Lordship to inquire whether Mr. Buchanan has addressed any and what similar communication to the French Government, and what answer he has received. If he has not done so, the omission will be properly open to severe remark.

I have, &c.
(Signed) J. D. HARDING.

No. 142.

The Queen's Advocate to the Earl of Clarendon.—(*Received July* 3.)

Doctors' Commons, July 1, 1854.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 30th ultimo, stating that, with reference to my Report of the 28th ultimo,* relative to certain points of maritime law on which the opinions of the British and French Governments do not wholly coincide, he was directed to transmit to me a Memorandum which your Lordship proposes to place in the hands of the French Ambassador, declaring the views of Her Majesty's Government in this matter; and to request that I would report to your Lordship, at my earliest convenience, my opinion thereupon.

In obedience to your Lordship's commands I have the honour to report—

Compromise with France on law of blockades.

As to exemption of naval officers from obeying orders of superior officer of ally: Inexpedient.

That the only part of the Memorandum in question on which I consider it necessary to offer any remark is the concluding passage, which suggests that an understanding should be come to by the Governments of France and England to exempt the naval officers of each nation, under certain circumstances, from the duty of implicit and unhesitating obedience to the orders of their commanding officer when he is not of their own nation. This is so serious a matter that, unless the concurrence of the Admiralty and of the chief naval officers of each nation should have been previously obtained, I must venture to submit to your Lordship that it is not expedient to make such a proposal.

I would respectfully suggest to your Lordship's consideration (as an illustration of my meaning) the probable case of a joint blockade commanded by a British officer, and attempted to be violated by a neutral, by sailing for the blockaded port after knowledge of an official notification. No British vessel being in a position to capture her, a signal is made by the British commanding officer to a French blockading ship to capture and detain her. The proposition in the Memorandum (as I understand it) would either prevent such a signal being made, and thus render the blockade defective, and allow the neutral to escape, or it would authorize the French officer to refuse to obey the signal, because the neutral had not been warned, nor had her papers been

endorsed, which (as I read the French naval instructions) is absolutely necessary to authorize a capture for breach of blockade.

Implicit obedience in all such cases appears to be as necessary in allies as in subjects, and any difficulty might, in my opinion, be better obviated by sending the prize before the Court of that country, which would condemn her, or even by releasing her after such detention as would operate as a punishment, than by authorizing disobedience of orders, or preventing complete unity of action in naval operations, by a combined force.

I have, &c.
(Signed) J. D. HARDING.

No. 143.

The Queen's Advocate to the Earl of Clarendon.—(*Received July* 3.)

Doctors' Commons, July 1, 1854.

My Lord,

Russian vessels sailing under Tuscan flag.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 23rd instant, stating that I shall perceive by the inclosed correspondence with Her Majesty's Chargé d'Affaires at Florence, and Her Majesty's Consul at Leghorn, that a practice has prevailed in Tuscany to a considerable extent of allowing Russian vessels to assume the Tuscan flag. Mr. Hammond was directed to request that I would consider this correspondence, and report to your Lordship my opinion how far Her Majesty's forces can legally go in stopping vessels which, being originally Russian, are now sought to be protected as neutral by the display of the Tuscan flag, without, as it would seem, in many instances, really undergoing any other change as regards their crews and the conditions under which they are navigated than that of hoisting the flag of a neutral instead of that of a hostile Power.

Mr. Hammond is pleased to call my special attention to that passage in M. Baldasseroni's letter to Mr. Scarlett, of the 11th instant, in which he seeks to set up the identity of a merchant vessel and the merchandize carried on board it, and contends that, as by the declarations of England and France a neutral flag will protect an enemy's goods from capture, a neutral flag ought also to protect an enemy's ship from capture.

In obedience to your Lordship's commands I have taken the correspondence into consideration, and have to report—

That, with respect to the general principles prevailing in British Prize Courts as to the purchase by neutrals of enemy's ships, I beg to refer to the Reports of the Law Officers of March 28,* the "Themis"; April 11,† on the general question; and May 24,‡ transfer of ships at Lubeck. The French law refuses altogether to recognize such transactions if entered into during war, and is, therefore, wholly different from the English law in this respect.

Transfers before commencement of war.

With respect to the transfers or purchases of the particular ships in question, I have to observe that the dates of such transfers are not given, but that several of them appear to have taken place before the war could be considered as known at Leghorn to be imminent.

I do not conceive that Her Majesty's Government can safely issue any instructions for capturing these particular vessels.

Transfers made after the war was known to be imminent, and especially if made after it was known to have commenced, would be more open to suspicion; still, unless upon the face of the ship's papers, or by the evidence of the master and crew, it could be established that there was an absence of *bona fides*, a secret understanding or reservation in favour of enemies, or some other strong legal ground for suspicion of fraud, I am opinion that such captures could not be supported in a British Prize Court.

If the ship's papers be in order, a captor detains a neutral at great risk; such suspicion as is alluded to by Mr. Macbean, as arising from the ostensible owner being a banker, for instance, will not justify capture. There must be some strong legal evidence, arising either from the state of the papers or the statement of the master, that the ship is not neutral property, but really belonging to an enemy.

I cannot say that the particulars stated by Mr. Consul Macbean would be of themselves sufficient to justify capture, excepting as to the vessel No. 8, "Prosperita."

In the event, for instance, of such bills for repairs as he alludes to, or any similar

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* No. 139.

* No. 50.

† Query April 12. See No. 69.

‡ No. 113.

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documents, being found on board of her, showing that she is still a Russian vessel, I consider that she might be captured with a fair prospect of condemnation.

As to neutral flag protecting enemy's ship.

With reference to the argument of M. Baldasseroni, that ships are to be considered as goods under Her Majesty's Declaration of March 28, I have to observe that this argument is erroneous and unfounded, and I beg to refer on this point to the report of the Law Officers of May 3,* especially to the last words therein.

No objection to proper transfers.

I may generally add that, provided the fair value of the ship is actually paid by the neutral purchaser, and that they are duly documented as Tuscan before they leave the Tuscan ports, there seems no reason to complain of the Tuscan Government for affording facilities to such transactions; and inasmuch as Her Majesty has in the present war offered unprecedented facilities to neutrals engaged in commerce with the enemy, there does not appear to me to be any peculiar reason for great strictness as to the purchase of enemy's ships by neutrals, which was always permitted by Great Britain.

I have, &c.
(Signed) J. D. HARDING.

No. 144.

The Queen's Advocate to the Earl of Clarendon.—(*Received July* 3.)

Doctors' Commons, July 1, 1854.

My Lord,

Baltic blockade.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 29th ultimo, stating that, with reference to my reports of June 16,† respecting the blockade of Russian ports in the Baltic, he was directed to transmit to me the accompanying letter from the Admiralty, inclosing a further despatch from Sir Charles Napier, specifying the territorial limits of the ports blockaded; and to request that I would take this despatch into consideration, and report to your Lordship, at my earliest convenience, my opinion upon the contents of the same, with reference to the inclosed copy of the notification of blockade published in the "Gazette" of June 16.

The former correspondence mentioned in the Admiralty letter is herewith returned.

In obedience to your Lordship's commands I have taken the despatch into consideration, and have the honour to report—

Dates of commencement.

That the previous omission of Sir Charles Napier to state the date at and from which the ports in question were actually placed in a state of blockade, rendered the former notification unavoidably imperfect, and may hereafter give rise to difficulties with neutrals. Mr. Buchanan, in his note of May 19, especially requested information on this point, and I have reason to believe that this omission has been noticed by other Foreign Ministers. I know not, however, what communications may have passed on this subject, either with France or with other countries. I must, therefore, leave to your Lordship to consider whether, all things considered, matters had better remain as they are, or whether an additional notification should now be issued, stating the date to be relied on for the legal commencement of each blockade. This latter course appears to me upon the whole to be the most candid, and therefore the most advisable.

As to supplying former omissions.

Adverting to my report on this matter, dated June 16, I have to observe:—

1. That I am still without any information as to whether Cronstadt and St. Petersburgh, or any other ports at the head of the Gulf of Finland, have been blockaded, or, if so, from what date.

Mis-spelling.

2. That I fear that the spelling of the names of ports in the notification of June 16 is still so imperfect as to mislead. "Tio" and "Ned. Tornea," for instance, are, I apprehend, erroneous. "Ijo" and "Neder Tornea" are possibly intended.

I have, &c.
(Signed) J. D. HARDING.

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* No. 97.

† Nos. 129 and 130.

No. 145.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received July* 10.)

Doctors' Commons, July 8, 1854.

My Lord,

Export of a cylinder for steamer of a neutral.

WE were honoured with your Lordship's commands contained in Lord Wodehouse's letter of the 28th ultimo, in which he stated that he was directed by your Lordship to transmit to us a letter from the Agent and Consul-General of the Hanse Towns, renewing an application which had already been made by Messrs. Caird and Co. of Greenock for permission to export from this country a cylinder intended to repair a steamer, the property of a Corporate Steam-Packet Company at Lubeck, on the grounds that the refusal of the Lords of Her Majesty's Most Honourable Privy Council to grant such permission was caused by the incorrect manner in which Messrs. Caird had stated the actual facts of the case; and he was to request that we would take Mr. Colquhoun's letters and its inclosures into our consideration, and report to your Lordship our opinion thereon.

In obedience to your Lordship's commands we have considered the several papers transmitted to us, and have the honour to report—

Legal. Matter of policy.

That we are of opinion that this is altogether a question of policy. As the steamers in question belong to the subjects of a neutral State, there will be nothing illegal in allowing the exportation of the cylinder as requested.

We have, &c.
(Signed) J. D. HARDING.
A. E. COCKBURN.
RICHARD BETHELL.

No. 146.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received July* 10.)

Doctors' Commons, July 8, 1854.

My Lord,

English and French law as to sale of enemy's ships.

WE were honoured with your Lordship's commands contained in Mr. Hammond's letter of the 17th ultimo, in which he stated that he was directed by your Lordship to transmit to us a note from Count Walewski, inquiring whether the English law cannot be assimilated to that of France in regard to the sale of enemies' ships, and to request that we would report to your Lordship our opinion thereupon.

Mr. Hammond also transmitted on the 3rd instant a further note from Count Walewski upon the subject in question.

In obedience to your Lordship's commands we have taken the several documents so transmitted into our consideration, and have the honour to report—

Rights of neutrals cannot be abridged.

That, inasmuch as this is a question depending on international law, and as that law appears to us to sanction the *bonâ fide* purchase by neutrals of enemies' ships during war, we are of opinion that it is not competent to this country to abridge the rights of neutrals under such law without their consent. It appears to us that the Order in Council of 1807 proceeded upon the principle that the French Government, having declared its intention not to observe the law of nations in this respect, the British Government was entitled to retaliate.

We are, therefore, of opinion that Her Majesty's Government cannot consent to assimilate the English rule in regard to the sale of enemies' ship to that of France, with a due regard to what this country has always acknowledged to be the rights of neutrals.

We have, &c.
(Signed) J. D. HARDING.
A. E. COCKBURN.
RICHARD BETHELL.

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No. 147.

The Queen's Advocate to the Earl of Clarendon.—(*Received July* 8.)

Doctors' Commons, July 8, 1854.

My Lord,

British vessel clearing from Reni, captured by Turks.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 26th ultimo, stating that he was directed to transmit to me a letter from Messrs. Papayanni and Co. respecting the cases of two vessels belonging to them, both clearing out of Reni, a Russian port, and which are already seized by the Turkish authorities; and to request that I would take this letter into consideration, and report to your Lordship my opinion as to the answer which should be returned to Messrs. Papayanni.

In obedience to your Lordship's commands I have taken the paper into consideration, and have the honour to report—

Explanation of Turkish procedure necessary.

That I can only suggest that Her Majesty's Consul at Constantinople should be instructed to furnish an explanation of the circumstances relating to the capture of the "Evangelistria" and her cargo, and also, if possible, of the principles on which the Turkish Government proceeds in these and similar cases.

The "Panaja Valacherena" is not even stated to have sailed, and I cannot recommend any interference in her case, as it is possible that she may not be captured. The Consul's attention may be directed to the case of this ship.

Messrs. Papayanni and Mussabini being British subjects, and consequentially not neutrals, and stating that the cargoes of both these vessels are their own property and were shipped after the war in an enemy's port, I conceive that the Turkish Government was *primâ facie* justified in capturing them as being engaged in trade with the common enemy, unless that Government should have made any express exemptions in their favour or there should exist any peculiar circumstances relating to them of which I am not aware.

It may perhaps be sufficient to inform Messrs. Papaynni and Mussabini that the attention of Her Majesty's Consul has been directed to the case of the "Evangelistria," but that Her Majesty's Government cannot at present undertake to interfere in that case; and that in the case of the "Panaja Valacherena," Her Majesty's Government see no sufficient reason for interfering at present. I may add that the dates and circumstances are so shortly and briefly stated that it is difficult to advise with any confidence on the case, especially as I am entirely ignorant of the Turkish prize law and practice.

I have, &c.
(Signed) J. D. HARDING.

No. 148.

The Queen's Advocate to the Earl of Clarendon.—(*Received July* 8.)

Doctors' Commons, July 8, 1854.

My Lord,

Export of grain from Danube.

Probable relaxation.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 29th ultimo, stating that he was directed to transmit to me a letter from Messrs. Booker and Co., requesting information with reference to a report which has reached them that the restriction on the export of grain from the Danube will shortly be removed, and to request that I would take this paper into consideration, and report to your Lordship my opinion as to the answer which should be returned to Messrs. Booker.

In obedience to your Lordship's commands I have taken the matter into consideration, and have the honour to report—

That I would venture to suggest that this case (like many others on which I have previously reported) is one in which Messrs. Booker ought not to receive any answer at all, inasmuch as the publication of an answer which they may receive may tend to mislead others, and to expose Her Majesty's Government to adverse remark, and to prejudice the public interest. The object of the application is, in my opinion, simply to obtain information as to the future intentions and policy of Her Majesty's Government.

Her Majesty's Government cannot answer questions as to future policy.

Subject to this observation, and if your Lordship should be of opinion that Messrs. Booker's application is one which must be answered, I would venture to suggest that they should be informed that, inasmuch as the Danube is blockaded by the

naval forces of Her Majesty and her ally, the Emperor of the French, no vessels will be allowed egress therefrom with cargoes unless such cargoes shall have been laden on board before such blockade was established. That Her Majesty's Government cannot, however, undertake to answer beforehand for the various alterations affecting the export of goods from Galatz, either by way of restriction or of relaxation, which may be hereafter caused by the military and political contingencies of the war.

I have, &c.
(Signed) J. D. HARDING.

No. 149.

The Queen's Advocate to the Earl of Clarendon.—(*Received July* 8.)

Doctors' Commons, July 8, 1854.

My Lord,

Purchases of Russian ships by neutrals.

ADVERTING to the numerous cases (some of which have already arisen, and others which are likely to arise) of purchases or pretended purchases by neutrals of Russian ships, I beg to suggest the great convenience of obtaining from Her Majesty's Consuls abroad some information upon the following questions:—

Law of foreign States should be ascertained.

1. What is the law of , with respect to the purchase by its subjects of foreign ships of a belligerent; more especially when made in the ports of a third neutral country? Refer to the best authorities by chapter and verse.

2. What documents must a foreign ship so purchased by a subject of have on board, and with what formalities must she have complied in order to entitle her to hoist the flag and enjoy the privileges of the State of , especially before she has been in a port of ?

3. What precautions does the law, or do the authorities, or the local regulations of take or require to secure the *bonâ fide* character of such transactions, and to prevent its flag from being fraudently or unduly used, to cover ships which are either the property of a belligerent, or are not the exclusive and genuine property of its own subjects?

4. Procure and furnish if possible three or four copies of the documents in question.

I beg to add that, having applied to the First Lord of the Admiralty on this subject, he referred me to your Lordship, and expressed his general approval of the suggestion.

It may possibly be unnecessary to have such information from every foreign country; those from which it is most urgently required appear to be Hanover, Denmark, Hanse Towns, Tuscany, Sardinia, and the United States.

I have, &c.
(Signed) J. D. HARDING.

No. 150.

The Queen's Advocate to the Earl Clarendon.—(*Received July* 11.)

Doctors' Commons, July 11, 1854.

My Lord,

Blockade of Gulf of Finland.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 11th instant, stating that he was directed to transmit to me therewith a letter from the Admiralty, and inclosing a copy of a despatch from Vice-Admiral Sir Charles Napier respecting the further blockade established by the English and French forces in the Gulf of Finland; and to request that I would take the same into consideration, and, if satisfied with the terms in which Sir Charles Napier reports the establishment of this blockade, I would prepare the proper form of notification thereof for insertion in the "London Gazette."

Notification.

In obedience to your Lordship's commands, I have prepared and herewith transmit the draft of a notification for immediate insertion in the "London Gazette," which I submit as proper to be used on this occasion.

I have again to invite attention to the necessity of having the spelling of the names of the ports attended to or corrected by some person of local knowledge, as in the last "Gazette" notification the names were so inaccurately spelt as not to indicate in all cases the places intended.

I have, &c.
(Signed) J. D. HARDING.

1853-56

Inclosure in No. 150.

Draft Notification.

Notification.

IT is hereby notified that the Lords Commissioners of the Admiralty have been informed by Vice-Admiral Sir Charles Napier, K.C.B., commanding Her Majesty's Naval Forces in the Baltic, that on and from the 26th of June last a strict and effective blockade was actually established by the combined fleets of Her Majesty and of His Imperial Majesty the Emperor of the French of the various ports in the Gulf of Finland as hereafter specified, that is to say, the whole of the ports in the Gulf of Finland to the eastward of Helsingfors and Sweaborg on the Finland shore, including Borgo, Lovisa Pythis, Fredericksham, Werslax Bay, Viborg, Biorko Sound, and all intermediate ports, roads, havens, and creeks to Cape Lubovki in lat. 60·5′ N., long. 29·56′ E.

From Cape Lubovki the line of blockade crosses to Tolboukin Light immediately off Cronstadt, then across southward to off the town of Borki, in the province of St. Petersburgh, in lat. 59·57′ N., long. 29·28′ E.

That a complete blockade of Cronstadt and St. Petersburgh has been effected by the combined fleets who anchored off Cronstadt on the 26th instant.

Proceeding westward, the line of blockade extends from Borki to Karavalda Island; thence to Dalgoiness, and from Dalgoiness to Rolgentpia Point, which includes the Bight of Coporia; from thence to Korngoul Point, which includes Longa Bay; then the River Narva and the whole coast of Esthonia and adjacent islands to Ekholm Light, situated in lat. 59·43′ N., long. 25·48′ E.

And it is hereby further notified that all the measures authorized by the laws of nations and the respective Treaties between Her Majesty and the different neutral Powers will be adopted and executed with respect to all vessels which may attempt to violate the said blockade.

(Signed) J. D. HARDING.

No. 151.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received July* 13.)

Doctors' Commons, July 12, 1854.

My Lord,

Russian loan. Quotation on Stock Exchange.

WE are honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 3rd instant, stating that he was directed to request that we would report to your Lordship at our earliest convenience our opinion as to whether the quotation of the Russian Loan on the Stock Exchange can be legally prohibited.

In obedience to your Lordship's commands we have the honour to report—

That assuming the term "quotation" to import that the Loan has already been completed, and the money actually been paid to the Emperor of Russia, the mere quotation of such a loan on the Stock Exchange cannot be legally prohibited.

Not illegal.

Any contribution by a British subject, wheresover made to a loan by the Emperor of Russia, would (as we have before reported) be treasonable; but if such a loan has been actually made, and the money actually advanced to the Emperor of Russia by persons not owing any allegiance to the British Crown, the quotation of such loan on the British Stock Exchange will not be illegal, the dealing not being with the Emperor of Russia or in any way operating to his benefit.

We have, &c.
(Signed) J. D. HARDING.
A. E. COCKBURN.
RICHARD BETHELL.

No. 152.

The Queen's Advocate to the Earl of Clarendon.—(*Received July* 14.)

Doctors' Commons, July 13, 1854.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 4th instant, stating that, with reference to my report of the 1st ultimo,* respecting the case of the "Bedlington," which was sunk in the Danube by the Russian batteries, he was directed to transmit to me, together with the former papers, a letter from Mr. Edward Ellice, containing some additional information respecting this case, and to request that I would take them into consideration, and further report to your Lordship my opinion thereupon.

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* No. 124.

British vessel sunk by Russian batteries in Danube.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That the further papers now sent appear to me to establish that the destruction of the "Bedlington" was an inexcusable and wanton act on the part of the Russians, and that it was probably the result of negligence or mistake, as seems to have been admitted at the time. In other respects I beg to refer to my former report on this case.

I have, &c.
(Signed) J. D. HARDING.

No. 153.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received July* 14.)

Doctors' Commons, July 13, 1854.

My Lord,

Dutch vessel, British prize, seized at Harlingen.

WE were honoured with your Lordship's commands signified in Mr. Hammond's letter of the 7th instant, wherein he stated he was directed by your Lordship to transmit to us the accompanying despatch, and its inclosure, from Mr. Annesley, Her Majesty's Consul at Amsterdam, reporting the circumstances under which the Dutch ship "Youge Albert," a prize to Her Majesty's ship "Conflict," having put into the port of Harlingen, was taken by the authorities of that port out of the charge of the British prize crew, the persons belonging to the vessel set at liberty, and the cargo discharged; and Mr. Hammond requested us to take the case into our immediate consideration and report to your Lordship our opinion thereupon.

We were also honoured with a further letter from Mr. Hammond dated the 11th instant, stating that he was directed by your Lordship to transmit to us a further despatch, and its inclosure, relating to this matter, received from Mr. Annesley, Her Majesty's Consul at Amsterdam, and requesting our consideration and report thereupon.

In obedience to your Lordship's commands we have perused and considered the several papers transmitted to us, and have the honour to report—

May demand restoration.

That we are of opinion that Her Majesty's Government will be warranted in demanding the restoration of this ship and cargo, with the view of bringing them to adjudication before the Prize Court of Admiralty.

Prize Court must decide legality of capture.

If any circumstances exist which will warrant the owners in maintaining that the vessel was either unlawfully captured, or has ceased to be a lawful prize, it will be competent to them to raise the question before such Court; but we are clearly of opinion that nothing is shown at present to justify the seizure of the ship and cargo out of the hands of a British prize crew, and the withdrawal thereof from the proper jurisdiction.

We have, &c.
(Signed) J. D. HARDING.
A. E. COCKBURN.
RICHARD BETHELL.

No. 154.

The Queen's Advocate to the Earl of Clarendon.—(*Received July* 15.)

Doctors' Commons, July 15, 1854.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 10th instant, stating that, with reference to my report of the 1st instant,* stating my opinion as to how far Her Majesty's naval forces could legally go in stopping vessels which, having been originally Russian, had for the purpose of protection from capture assumed the Tuscan flag, he was directed to transmit two despatches from Mr. Scarlett, Her Majesty's Chargé d'Affaires at Florence, together with their

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* No. 143.

1853-56

Russian vessels assuming Tuscan flag.

inclosures, stating the grounds on which the Tuscan Government seek to justify the transfer of their flag to Russian vessels; and to request that I would take the inclosed despatches into consideration, and report to your Lordship, at my early convenience, my opinion thereupon.

In obedience to your Lordship's commands I have taken the papers into consideration, and have the honour to report—

French law recognizes no transfers.

That, inasmuch as the French Prize Law altogether refuses to acknowledge the validity of the purchase by a neutral of any enemy's ship if made during war, it will be competent for the French Government to give directions for the capture of those of the vessels in question which may have been so purchased, and probably the date of registration required by Tuscan law would be considered by a French Prize Court as the date of the purchase.

English law permits if *bonâ fide*.

With respect to these vessels being captured by Her Majesty's ships, I can only refer, and adhere, to my previous reports on this subject.

Difficulty of proving.

The question of the validity of such captures would chiefly, if not exclusively, turn—(1) upon the state of the ship's papers, which would, I conceive, in all probability be found to be complete and in order; (2) upon the evidence of the Tuscan master, who would be either really ignorant of any fraud (as having been recently appointed), or who would profess an honest ignorance, and say that he believed in the *bona fides* of the purchaser, had no suspicions, and knew of no Russian interest existing, and that he was himself a Tuscan, and appointed by the Tuscan owners, who acted in all respects as such in Tuscany.

Upon such evidence it is my opinion that the ships would be restored, and a legal justification and some cause of complaint thus afforded to the Tuscan Government.

License to use Tuscan flag granted by Austrian Consul.

With reference to the brig "Victor," I observe that it is the Austrian (and not the Tuscan) Consul at Constantinople who granted her a license to assume the Tuscan flag. I do not understand this. She is now, however, in port at Leghorn. The "Christians" appears to have returned without any ship's papers at all; they may have been left at Elsinore. This seems very improbable. I presume that she is now in a Tuscan port.

Mr. Macbean's report, especially as to the "Teti," shows how very little reliance can be placed on any of the Tuscan statements.

Transfers in foreign ports.

In case of any alleged transfers to Tuscan owners of Russian ships made not in Tuscany, but in foreign ports, after the war was known at those ports, the opinion of the Law Officers in their report on the "Lubeck" case, May 24,* may justify their capture, provided it takes place before they have touched at any Tuscan port so as to obtain regular and complete Tuscan papers.

The "Odessa" and "Guisappina" appear to be suspicious cases; but without knowing what is the present state of their "ships' papers," I could not advise their capture.

I have, &c.
(Signed) J. D. HARDING.

No. 155.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received July 26.*)

Doctors' Commons, July 24, 1854.

My Lord,

Fictitious sales of Greek vessels to Ionian subjects.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 15th instant, stating that he was directed to transmit to us a letter from the War Department, inclosing a despatch from the Lord High Commissioner of the Ionian Islands, relative to the fictitious sale of certain Greek vessels to Ionian subjects, with the view of obtaining the protection of the Ionian flag, and to his power of refusing, at his discretion, to grant sanitary papers to such vessels; and to request that we would report to your Lordship, at our earliest convenience, our opinion thereupon.

In obedience to your Lordship's commands we have the honour to report—

Lord High Commissioner may not withhold papers without sufficient proof.

That although by the Ionian law the attestation of nationality appears to entitle vessels to obtain their sanitary papers, yet if such attestation should be fraudulent and merely colourable, the Lord High Commissioner would not be bound to issue the sanitary papers.

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* No. 113.

Fraud, however, in such a case is not to be presumed, and we are of opinion that the Lord High Commissioner ought only to withhold the sanitary papers in cases in which he is prepared, under the advice of the Attorney-General, to order criminal proceedings to be instituted against the parties concerned in such fraud.

We have, &c.
(Signed) J. D. HARDING.
A. E. COCKBURN.
RICHARD BETHELL.

No. 156.

The Queen's Advocate to the Earl of Clarendon.—(*Received July 27.*)

Doctors' Commons, July 26, 1854.

My Lord,

Transfers of Russian vessels to Tuscan flag.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 15th instant, stating that, with reference to his letter of the 1st instant, transmitting despatches from Her Majesty's Chargé d'Affaires at Florence, respecting the supposed fictitious sales of Russian merchant vessels, he was directed to transmit to me therewith a despatch from the French Chargé d'Affaires at this Court, inclosing a Memorandum delivered by M. Drouyn de Lhuys to the Tuscan Minister at Paris on the subject of a remonstrance addressed by the Tuscan to the French Government, on the refusal of the French Consul at Leghorn to affix his signature to the papers of the vessel therein mentioned, and to request that I would take these papers into consideration simultaneously with those already before me, and report to your Lordship whether, in my opinion, there is any objection to Her Majesty's Minister at Florence being instructed, as proposed by M. Drouyn de Lhuys, to hold to the Tuscan Government in regard to the refusal of Consular signature to vessels under similar circumstances to those of the "Nicholas Ist," in conformity with the Memorandum of the French Government now transmitted to me.

In obedience to your Lordship's commands I have taken the papers into consideration, and have the honour to report—

That I see no objection to Her Majesty's Minister at Florence being instructed, as proposed by M. Drouyn de Lhuys, to hold to the Tuscan Government, in regard to the refusal of Consular signature under similar circumstances to those of the "Nicholas Ist," language in conformity with the Memorandum of the French Government now transmitted to me (dated "Juillet 1854").

French and English law.

In holding such language to the Tuscan Government, however, it should always be carefully borne in mind that the British law recognizes *bonâ fide* sales of enemy's ships to neutrals, even in time of war, whilst the French law altogether refuses so to do. I would also beg to call attention to my report of the 16th May,* on an application of Mr. Annesley, Amsterdam, with reference to the caution with which Her Majesty's Consuls ought to act in signing papers, and to state that, under the existing state of matters in Tuscany, relating to enemy's ships said to be covered by the Tuscan flag, Her Majesty's Consuls should sign no documents connected with such ships but those which they are either legally bound or officially instructed to sign.

Consular Certificate.

Caution necessary.

I have, &c.
(Signed) J. D. HARDING.

No. 157.

The Queen's Advocate to the Earl of Clarendon.—(*Received July 28.*)

Doctors' Commons, July 27, 1854.

My Lord,

Russian vessel sold to British subjects since declaration of war.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 21st instant, stating that he was directed to transmit to me a letter from Messrs. Brown, Atkinson, and Co., of Hull, requesting to know whether the Russian ship "Macclesfield," which became British property after the date of the declaration of war against Russia, will be liable to capture on her proposed voyage to Australia, and to request that I would take the same into consideration, and report to your Lordship my opinion thereupon.

In obedience to your Lordship's commands I have taken the letter into consideration, and have the honour to report—

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* No. 108.

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If *bonâ fide*, not liable to capture by Her Majesty's ships, but French ships may capture her.

That assuming the purchase of the ship in question to have been completely *bonâ fide*, and without any reservation of hostile interest, the circumstance of its having been so completed since the war will not render her liable to capture by Her Majesty's ships; but inasmuch as I understand that the French Prize Law altogether interdicts and refuses to recognize purchases of enemy's ships made after war has commenced, I conceive that the "Macclesfield" may be liable to capture on her intended voyage to Australia by a French ship-of-war, unless some understanding should have been come to with the French Government as to purchases of Russian ships by Her Majesty's subjects during the war, as to which I have no information.

I have, &c.
(Signed) J. D. HARDING.

No. 158.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received July* 29.)

Doctors' Commons, July 28, 1854.

My Lord,

Treatment of prizes in neutral ports.

WE are honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 4th instant, stating that he was directed to transmit to us a despatch from Her Majesty's Chargé d'Affaires at Stockholm, requesting instructions upon a question raised by the Swedish and Norwegian Minister for Foreign Affairs with respect to the treatment of prizes in neutral ports.

Lord Wodehouse likewise transmits to us the previous papers referred to in Mr. Grey's despatch, together with a letter from the Board of Admiralty; and requests that, in compliance with the wishes expressed in that letter, we would, in conjunction with the Admiralty Counsel, take Baron Stierweld's objections into consideration, and that in reporting our opinion thereon, we would define the cases of necessity in which the shelter and protection of neutral ports can be legally demanded by officers in charge of prizes.

In obedience to your Lordship's commands we have taken the papers into consideration, in conjunction with the Admiralty Counsel, and have the honour to report—

Protection may be claimed on account of—
(1.) Stress of weather.
(2.) Disabled ship.
(3.) Want of provisions, necessaries, &c.
(4.) Accident.
(5.) Pursuit of enemy (doubtful).

That we are of opinion that the "cases of necessity," in which the shelter and protection of neutral ports can be legally demanded by officers in charge of prizes, may be defined as cases of (1) stress of weather; (2) the disabled state of the ship; (3) want of provisions, water, fuel, necessary stores or medical assistance; (4) the occurence on board of any unforeseen accident, which may render it necessary for the preservation of the ship, the cargo, or the lives of those on board, to enter the nearest port. With respect (5) to the right of a prize (that is of a captured merchant vessel with a prize crew on board) to claim admission into a neutral port in Sweden in order to escape from the pursuit of the enemy (as being, under such circumstances, within the excepted cases of necessity), we have been unable to find any distinct authorities upon the question which is not free from doubt, and upon which we have been unable to arrive at a unanimous conclusion. We think it right, however, to call the attention of Her Majesty's Government to the expediency of pressing this claim upon the Swedish Government as coming within the terms and spirit of their own phrase, "circonstances majeures."

As to reciprocity.

At the same time we desire to point out that the expediency of so doing will depend upon the course which Her Majesty's Government might be prepared to take on this subject under similar circumstances in the event of Great Britain being neutral in a war between other naval Powers, and desiring to exclude prizes from her ports.

Treatment of captured vessel as man-of-war of the captor cannot be claimed.

The claim for "any captured vessel commanded by an officer of the Royal Navy and bearing the national pendant of the captor, to be treated as a ship of war" (directed to be made in the letter No. 17 to Mr. Grey), was not suggested by, nor founded upon, any legal advice given by any of ourselves, but appears to have been adopted from M. Drouyn de L'huys' letter to Count Walewski of the 12th of April last (upon the Danish instructions), which was laid before the Queen's Advocate, the Admiralty Advocate (Dr. Bayford), and Mr. Phinn, for their consideration, and upon which they reported, on the 21st of April, that they could not advise Her Majesty's Government to join in a note "identic" with that of France.

Such a claim cannot, in our opinion, be legally maintained, excepting in cases

where the captured vessel has been previously taken into the naval service of, and is acting as a national vessel of, a belligerent.

We have, &c.
(Signed) J. D. HARDING.
A. E. COCKBURN.
RICHARD BETHELL.
JOSEPH PHILLIMORE.
A. F. BAYFORD.
THOS. PHINN.

No. 159.

The Queen's Advocate to the Earl of Clarendon.—(*Received July* 29.)

Doctors' Commons, July 29, 1854.

My Lord,

Detention of Dutch vessels off Sulina by Her Majesty's ships.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 17th instant, stating that he was directed to transmit to me a despatch from Her Majesty's Ambassador at Constantinople, inclosing correspondence respecting a complaint made by the captains of two Dutch merchant-vessels detained off Sulina by the cruizers of Her Majesty's squadron.

Mr. Hammond is pleased to request that I would take these papers into consideration, and report to your Lordship any observations which I may have to make on this case.

In obedience to your Lordship's commands I have taken the papers into consideration, and have the honour to report—

That I assume (1st) that the Danube was not actually blockaded when these vessels were first brought-to and detained.

2nd. That there existed no reasonable ground for suspecting either their national character, or that they had on board, and concealed, any articles contraband of war.

Illegal, if blockade was not established, &c.

If this be so, all that the officers of Her Majesty's ships were legally entitled to do was to ascertain the nationality of the vessels in question and the nature of their cargoes, and they were not entitled to detain these vessels for the time which they appear to have done, or to tow them to Baltchick. The Dutch masters state that they were towed into Custangé at 12 A.M. of the morning after they were detained, and that their cargoes were then and there examined.

If this be strictly true it would render their subsequent detention, and their being towed to Baltchick, less excusable.

It is to be borne in mind that, as I understand the facts, the Dutch masters were bound on a perfectly lawful voyage, even if their cargoes were intended for the enemy's use, and that they were apparently permitted by the Turkish authorities to sail on such voyage from Constantinople; that they had no knowledge of the existence of a blockade of the Danube before they were detained, and that they were not detained even on suspicion of endeavouring to break such blockade, or on any distinct legal grounds, that I can discover.

I have, &c.
(Signed) J. D. HARDING.

No. 160.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received July* 31.)

Doctors' Commons, July 31, 1854.

My Lord,

Dutch vessel, British prize, detained in Dutch port.

WE are honoured with your Lordship's commands signified in Lord Wodehouse's letter of 25th instant, stating that, with reference to his letter of the 11th instant, he was directed to transmit to us a despatch from Her Majesty's Minister at the Hague, reporting the steps already taken by him in the case of the Dutch vessel "Yonge Albert," a prize to Her Majesty's ship "Conflict," and now lying at the port of Harlingen, and requesting instructions on several points likely to be raised in the course of this affair.

We are also honoured with Lord Wodehouse's letter of the 29th instant, trans-

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mitting to us a further despatch from Her Majesty's Minister at the Hague, inclosing a note from the Netherlands Minister for Foreign Affairs, refusing to deliver up the Dutch vessel "Yonge Albert;" together with the draft of an instruction which Sir Ralph Abercromby proposes to address to Her Majesty's Consul at Amsterdam.

Lord Wodehouse also transmits the former papers on this subject and requests that we would take Sir Ralph Abercromby's despatch and the inclosed draft of Instructions to Mr. Annesley into our immediate consideration, and report to your Lordship, at our earliest convenience, whether in our opinion it would be proper to authorize Sir Ralph Abercromby to give the proposed instructions to Mr. Annersley, or if not, to inform your Lordship what instructions should be given.

We are also honoured with Lord Wodehouse's letter of the 31st instant, transmitting to us a further despatch from Her Majesty's Minister at the Hague on the subject of the "Younge Albert," and to request that we would take this despatch into our immediate consideration, together with the former papers, and report to your Lordship at our earliest convenience our opinion thereupon.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

Dutch authorities must let her proceed on her voyage.

That the ship the "Younge Albert" must be considered as *de facto* and *de jure* in possession of the British Crown; which being so, the British officer and crew in possession are entitled to the protection of the Dutch authorities, and to their assistance to enable the vessel to proceed on her voyage to a British port for the purpose of adjudication.

For, although the Queen of Great Britain has detained the vessel as a belligerent Power, yet that detention arises from the vessel having violated a rule of international law admitted by all nations, and which the Dutch Government is bound, in case of the infraction of it by its own subjects, to assist Her Majesty's Government in enforcing by the only means allowed by the law of nations, namely, that of carrying the vessel before a proper tribunal for deciding the question as to the legality of her seizure and detention according to that law.

Legality of capture must be decided by Prize Court.

The question which the Dutch Government appears disposed to raise as to whether the vessel had been illegally captured, as not having broken blockade, cannot properly come under discussion in the present stage of the proceedings, being a question exclusively for the Prize Court.

We collect that the vessel is not in a condition to proceed to sea without assistance being rendered to her as regards repairs, ballast, and pilotage. We think Her Majesty's Government is as much entitled to claim such assistance for the vessel as it would be for one of Her Majesty's ships-of-war if lying at Harlingen under similar circumstances.

Assistance of Dutch authorities may be demanded.

We therefore recommend that application should be made by Mr. Annesley to the authorities at Harlingen, and by Sir R. Abercromby to the Dutch Government at the Hague, to direct that such assistance should be immediately furnished as shall enable the ship to proceed to sea. If the Dutch Government has no authority to compel the service of a pilot, it can have no difficulty in affording the assistance of some competent person it its service.

From what we have already said, it will sufficiently appear that we do not concur in the instructions proposed to be issued by Sir R, Abercromby to Mr. Annesley, more especially as regards the abandonment of the vessel, a course which it appears to us would be highly inexpedient.

If vessel is seized by creditors, validity of claim must be proved.

An intimation is contained in the papers sent to us that process has been issued from a Dutch Court for the purpose of arresting the vessel at the suit of some creditor of the owners. If the vessel has been attached and is in the actual custody of the Dutch civil authorities, and the Dutch Government should assign this proceeding as a reason for not affording assistance, it will be necessary that the validity of such process or suit shall be judicially determined before the English Government will be in a condition to enforce its claims on the Dutch Government.

It will not, however, be necessary that our Representative at the Dutch Court should advert to this point in his communications with that Government, unless it be assigned by them as a reason for declining to accede to his application for assistance.

We have, &c.
(Signed) J. D. HARDING.
A. E. COCKBURN.
RICHARD BETHELL.

No. 161.

The Queen's Advocate to the Earl of Clarendon.—(*Received August* 1.)

Doctors' Commons, August 1, 1854.

My Lord,

Russian vessel captured when leaving Russian port by permission.

I AM favoured with Lord Wodehouse's letter of the 31st July, transmitting to me a telegraphic despatch from Her Majesty's Minister at Copenhagen, respecting a Russian vessel detained by Her Majesty's ship "Vulture," off Kioge, and requesting to know whether, under the circumstances stated in the despatch, this vessel is covered by the rule laid down as to Russian vessels leaving Russian ports before the 15th of May; and Lord Wodehouse requests that I will take this despatch into my immediate consideration, and that I will report to your Lordship, at my earliest convenience, my opinion as to the answer which should be returned to Mr. Buchanan.

I have accordingly taken into my consideration the telegraphic despatch in question, and beg to report—

May pursue voyage to Lubeck, but if sold there, may be captured by French ships.

That, assuming that the vessel in question is *bonâ fide* proceeding upon the voyage (to Lubeck) upon which she was permitted by the French Government to clear out from Nantes, I am of opinion that she ought not to be now captured. Her papers should be endorsed so as to prevent any deviation from the particular voyage in which she is now engaged, and information should be given to the French Government of what has been done, inasmuch as, even should she be sold at Lubeck, she may not thereby be exempted from French capture on leaving that port, according to my understanding of the French Prize Law.

I have, &c.
(Signed) J. D. HARDING.

No. 162.

The Queen's Advocate to the Earl of Clarendon.—(*Received August* 7.)

Doctors' Commons, August 7, 1854.

My Lord,

Swedish vessels captured for breaking blockade.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 1st instant, stating that he was directed to transmit to me the accompanying note from Admiral Virgin, the Swedish and Norwegian Minister at this Court, respecting the capture of two vessels named the "Johanna Maria" and the "Normen," by Her Majesty's cruizers in the Baltic, on the ground of their having broken blockade.

Mr. Hammond also incloses a letter from the Admiralty containing Sir Charles Napier's explanations of the circumstances under which those vessels were captured; and is pleased to request that I would take these papers into consideration, and report to your Lordship my opinion thereupon at my earliest convenience.

In obedience to your Lordship's commands I have taken the papers into consideration, and have the honour to report—

Legality of capture must be decided by Prize Court.

That I am of opinion that it will be proper to inform Admiral Virgin that Her Majesty's Government see no sufficient reason for releasing either of these vessels, and that the question of their having been legally captured for breaking blockade must be left to the decision of the Prize Court. He may be further informed that Her Majesty's Government can by no means admit that no Russian port in the Baltic was actually or legally blockaded before the 28th of May.

Discussions as to dates of blockades are unadvisable.

Uncertainty of date of Riga blockade.

I strongly recommend your Lordship to abstain from entering into any discussion as to the facts and dates bearing on these and similar cases, either with Admiral Virgin or with the Representatives of any other of the neutral States. The real date at and from which Riga will be considered by the Prize Court to have been effectively and legally blockaded is, I regret to say, uncertain; and from the remarkable and unfortunate omission of Sir Charles Napier to state any such date in his original communication (from which the Notification in the "Gazette" of June 16th was drawn), as well as from the different dates that are (even now) alluded to for the commencement of the blockade of Riga, it must be open to considerable doubt.*

With respect to the cases of these particular vessels, without going into details, I would venture to point out that Admiral Virgin observes an absolute and suspicious

* Sir Charles Napier states the Port of Riga to have been actually blockaded on and from the 17th April; Captain Key gave the first notice thereof on the 12th May. Her Majesty's ship "Archer" is stated by Sir Charles Napier to have been blockading "off the entrance of the Gulf of Riga" as far back as the 15th April, and the 28th April is the earliest date mentioned in the "Gazette" Notification of June 16th.—J. D. H.

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silence, both as to the port from which either vessel sailed, or at which they touched previous to their entering Riga, and also as to the dates at which they respectively sailed from or touched at any such ports.

As to the Notice from Her Majesty's Legation at Stockholm, of the 30th of May, to which Admiral Virgin alludes (which I have never seen, and with a copy of which, as well as of all documents of a like nature, I must request to be furnished), it probably alludes to breaches of blockade which might be thereafter committed or attempted by *ingress*, and not by *egress*.

I may further observe, that I see no particular reason for indulgence as to either of these vessels. I suspect that they did know of the blockade when they sailed from Riga. At all events, their capture does not appear to have been unjustifiable under the circumstances; but if it should ultimately turn out to have been so, the Prize Court will cause them to be restored, with costs and damages.

As to information of real dates of Riga blockade.

With reference to this, and similar cases which may be expected to arise, I would respectfully suggest that Her Majesty's Consuls at Memel and other neighbouring ports should be instructed to ascertain—

1. On what day it was first commonly known or supposed at Riga that the port was actually blockaded.
2. On what day the blockade was officially and certainly known at Riga.
3. Whether any and what legal evidence of this could be procured.

I have, &c.
(Signed) J. D. HARDING.

No. 163.

The Queen's Advocate to the Earl of Clarendon.—(Received August 8.)

Doctors' Commons, August 8, 1854.

My Lord,

Purchase of ships of belligerent Powers.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 28th ultimo, stating that the Lords Commissioners of the Admiralty having suggested to your Lordship that information should be procured from abroad respecting the practice of foreign nations in regard to the purchase of ships from belligerent Powers, he was directed to transmit to me, for my information, a copy of a despatch from Her Majesty's Ambassador at Paris, inclosing the replies given by the French Government upon this subject.

As to negotiations for bringing French and English law into harmony.

Lord Wodehouse is pleased to add that if I should have any suggestion to offer in regard to bringing the practice of the two Governments in this matter into more harmonious action, your Lordship would be glad to receive them.

In obedience to your Lordship's commands I have taken the subject into consideration, and have the honour to report—

That I would respectfully venture to suggest that, with a view to bringing the practice of the two Governments into more harmonious action, it would be desirable that negotiations should be opened with the French Government for the purpose of inducing it, at least, to recognize the *bonâ fide* purchase of Russian ships made by British subjects after the declaration of war.

As the French Prize Law now appears to stand, and especially under the "Règlement du 26 Juillet, 1778," Article 7, a Russian vessel, though *bonâ fide* purchased by a British subject, and even though duly registered as a British vessel, would be liable to French capture and condemnation; but inasmuch as such purchases would be in many cases valid by English Prize Law, the existing conflict of law on this subject between the allied belligerents is obviously calculated to cause embarrassment and injury to British interests.

I have, &c.
(Signed) J. D. HARDING.

No. 164.

The Law Officers of the Crown to the Earl of Clarendon.—(Received August 8.)

Doctors' Commons, August 8, 1854.

My Lord,

WE are honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 28th ultimo, stating that he was directed to transmit to me a note from

White Sea blockade. Egress through.

the Netherlands Minister at this Court, requesting to be informed whether neutral vessels which shall have entered the port of Archangel, and have embarked their cargoes before the commencement of the blockade of the White Sea on the 1st August next, will be permitted egress from that port with their cargoes.

Lord Wodehouse states that he is further directed to transmit to us a despatch from Her Majesty's Consul at Archangel on the subject of the blockade of the White Sea; and to request that, in taking these papers into consideration, we would report to your Lordship, at our earliest convenience, our opinion as to the reply to be returned to Baron Bentinck.

In obedience to your Lordship's commands we have taken the papers into consideration, and have the honour to report—

Neutral vessels, loaded before blockade, will be released on producing proofs.

That we are of opinion that the proper reply to be returned to Baron Bentinck will be to the following effect:—Neutral merchant vessels having on board cargoes which were *bonâ fide* purchased and delivered on board before the day of the commencement of the blockade will be permitted, on proof of such facts, to proceed on their voyage; but inasmuch as every loaded vessel coming out of a blockaded port is *primâ facie* liable to seizure, all such vessels will be detained by the blockading squadron, and conducted to the nearest Admiralty Court for adjudication, and will not be liberated except on proof of the cargo having been completely taken on board before the commencement of the blockade.

We have, &c.
(Signed) J. D. HARDING.
RICHARD BETHELL.

No. 165.

The Law Officers of the Crown to the Earl of Clarendon.—(Received August 8.)

Doctors' Commons, August 8, 1854.

My Lord,

Dutch vessel, British prize, detained at Dutch port.

WE are honoured with your Lordship's commands signified in Lord Wodehouse's letter of August 7, stating that, with reference to our letter of July 31, he was directed to transmit to us a further despatch from Her Majesty's Minister at the Hague, respecting the detention of the "Yonge Albert" at Harlingen, together with a letter from the Admiralty, inclosing a Report from Lieutenant Dickens, who had been sent to Harlingen to inquire into the circumstances of this case; and to request that, in taking these papers into consideration, we would report to your Lordship at our earliest convenience, with any remarks we may think proper to make thereon.

We have accordingly taken these papers into our consideration, and have the honour to report—

That it appears to us that no proceeding can be taken for the removal of this ship from the port of Harlingen which will not involve the risk of a serious collision between British subjects employed for that purpose and a Dutch mob, unless there is a direct official interposition on the part of the Dutch Government.

May demand her release and assistance.

We are clearly of opinion (inasmuch as we collect from the papers that the creditors' suit in Holland has been suspended or abandoned) that Her Majesty is entitled by the law of nations to demand from the Dutch Government the direct exercise of its authority for the purpose of enabling her officer to obtain in Harlingen such ballast, stores, and assistance as are requisite to make the vessel ready for sea, and the aid of a pilot or other competent person to take her out of the harbour.

We recommend that a firm requisition to this effect be presented to the Netherlands Government at the Hague, and that the naval officer who has been sent to Harlingen to take possession of the vessel be instructed to carry into effect what may be necessary to be done, and to take her to sea when the Netherlands official protection and authority has been obtained.

We have, &c.
(Signed) J. D. HARDING.
A. E. COCKBURN.
RICHARD BETHELL.

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No. 166.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received August* 9.)

Lincoln's Inn, August 9, 1854.

My Lord,

Dutch vessel, British prize, detained in Dutch port.

WE are honoured by a letter from Lord Wodehouse of the 8th instant, in which, with reference to former letters on the subject of the "Yonge Albert," his Lordship transmits to us a telegraphic despatch from Her Majesty's Minister at the Hague, together with a letter and its inclosures from the Admiralty upon this case, and his Lordship states that he is directed to request us to take the aforesaid papers into our consideration, and to favour your Lordship as soon as possible with our opinion thereon.

Part of the telegraphic despatch referred to in Lord Wodehouse's letter appears to be in the following words: "The Dutch Government will facilitate the departure of ship if proved to be in our possession;" and Sir Ralph Abercromby inquires whether he may "prove that by hoisting British flag at all risk, making Dutch Government responsible for safety of crew."

In obedience to your Lordship's direction we have taken the matter into our consideration, and beg to report as follows:—

It appears to us that the proof which the Dutch Government desires cannot be the proof afforded by an act of force, such as that of "hoisting the British flag at all risk," and we cannot recommend any such step to be taken as at all likely to extricate the matter from its present embarrassment.

As to proof of possession to be given by British officer before being allowed to depart.

It is uncertain to what the Dutch Government intends to refer. By the accompanying letter of Lieutenant Dickens it appears that legal proceedings by the alleged creditors of the Dutch owner have been revived, and that the vessel is now under legal arrest, and therefore in the possession of the Dutch Judicial authorities. That being so, it is probable that the Dutch Government means that the British right to the possession of the ship must be asserted and proved before the Dutch Tribunal. Her Majesty's title to the ship can be adjudicated on by her Court of Admiralty alone, which is the sole tribunal having exclusive right to condemn or release the vessel; but, having regard to the fact that the ship was taken into, and is now in, a Dutch port, in a manner quite at variance with the duty of a belligerent detaining a neutral ship (such duty being to take her direct to the Court of Admiralty for adjudication), we recommend (if this be the meaning of the Dutch Government) that Her Majesty's Consul, Mr. Annesley, be directed to intervene in the Dutch suit, so far only as to prove the fact that the vessel was taken and detained by one of Her Majesty's ships of war, and was dispatched, in possession of a prize crew being in the service of Her Majesty, to the English High Court of Admiralty, and that such crew have always since been, and are still, on board, and have the legal possession of the vessel on behalf of Her Britannic Majesty. Care must be taken not in the least degree to recognize the Dutch Tribunal as having any competency to try the English title; but that title must be simply stated as superior to all municipal and civil rights, and as putting an end to the competency of the Dutch Tribunal.

Legal proceedings of creditors.

This course, however, must not be adopted unless the Dutch Government shall specifically and expressly declare, in answer to the requisition which we have already recommended should be made, that it cannot render official assistance to the English Consul for removing the vessel, by reason of the pendency of the Dutch legal proceedings.

But possibly the Dutch Government does not, by its expression "proved to be in our possession," mean to refer to the legal proceedings, but only to require some official proof to account for a Dutch merchantman, stated to have been captured by a British ship of war, having been brought into the port of Harlingen. If this be the meaning, we think, again having regard to the unusual circumstances of the case, that it will not be improper to direct the British Consul to take, by a notary, affidavits from the British seamen on board of the facts of the capture of the vessel by Her Majesty's ship, of the crew being put on board with orders to carry the vessel to England, and of their continued possession of the vessel from that time until the present. It is possible that this "proof of possession" may be required by the Dutch Government as a ground for its official interference.

If it be so understood, and that the necessary official interposition will then be made, the proof we have described may be afforded.

Our uncertainty as to the meaning of the message renders it impossible for us to give your Lordship a more clear and distinct opinion.

We have, &c.
(Signed)
RICHARD BETHELL.

No. 167.

The Queen's Advocate to the Earl of Clarendon.—(*Received August* 11.)

Doctors' Commons, August 10, 1854.

My Lord,

Blockade of Baltic ports.

I AM honoured with Mr. Hammond's letter of the 9th August, stating that, with reference to my report of 1st July last upon the question of an additional notification of the blockades of the Russian ports in the Baltic, he was directed to transmit to me (together with the former papers) the accompanying letter from the Admiralty suggesting the expediency of a further notification of the above blockades being published containing the dates on which each port was *de facto* subjected to blockade, as reported in Vice-Admiral Sir Charles Napier's letter of the 20th of June. Mr. Hammond requests that I will take the inclosed papers into my consideration, and that I will prepare and transmit to your Lordship at my earliest convenience such a notification to this effect for publication in the "Gazette" as I may think fitting and proper.

Fresh notification with dates of commencement.

I have accordingly prepared, and herewith transmit, such a notification for publication in the "Gazette" as appears to me fitting and proper under the peculiar circumstances of the case.

I cannot of course pretend to say what may be the result or legal effect of the original omission of Sir C. Napier to give the dates of the commencement of the blockade of each of the ports in question, or of the delay which has taken place in carrying into effect the suggestion contained in my Report of 1st July relative to an additional notification.

I conceive that the official letters from Captain Key and Mr. Consul Hertslet, transmitted from the Admiralty to the Queen's Proctor, and by him communicated to me, should, under the circumstances of the case, be printed in *extenso*.

I have, &c.
(Signed) J. D. HARDING.

Inclosure in No. 167.

Notification.

Foreign Office, August 11, 1854.

Notification of blockade.

WITH reference to the notifications of blockades of certain Russian ports in the Baltic Sea, published in the "Gazette" of the 16th June and 16th July last, it is hereby notified that the Lords Commissioners of the Admiralty have (since those dates) received further information from Vice-Admiral Sir Charles Napier, K.C.B., commanding Her Majesty's Naval Forces in the Baltic, from Captain Key, R.N., of Her Majesty's ship "Amphion," Senior Officer off the coast of Courland, and from William James Hertslet, Esq., British Vice-Consul at Memel, relating to such blockades, which information is as follows, viz., Sir Charles Napier states that—

"On and from the 17th April last all Russian ports, roads, harbours, and creeks from latitude 55° 53′ north, longitude 21° 3′ east, to Cape Dager-ort, in latitude 58° 55′ north, longitude 22° 5′ east, including especially the ports of Libau, Windau, Riga, and Pernan, were placed in a state of strict blockade by a competent force of Her Majesty's ships.

"On and from the 26th of April last the Russian ports of Helsingfors and Sweaborg, and all Russian ports, roads, havens, and creeks to the westward of Helsingfors as far as Hango Head, in latitude 59° 48′ north, longitude 22° 53′ east, were in like manner blockaded.

"On and from the 20th May last the Russian ports of Hassal, Warmso Islands, Port Baltic, Revel, and all Russian ports, roads, havens, and creeks on the coast of Esthonia from Cape Dager-ort to Ekholme Light (situated in latitude 59° 43′ north, and

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longitude 25° 48′ east) were placed to a state of strict blockade by a competent force of Her Majesty's ships.

"On and from the 26th of June last the Russian ports of Abö, the Islands of Oro and the Aland Archipelago, Nystad, Bjorneborg, Christinestad, Wasa, the Walgrund Islands, Little Carleby, Jacolstad, Great Carleby, Lohto, Kalajoki, Brahestad, Uleaborg, Karle Island, Ijo, Gestila, Kenie, and all Russian ports, roads, havens, and creeks from Hango Head, in latitude 59° 48′ north, longitude 22° 53′ east, to Ned Tornea (included) situated at the head of the Gulf of Bothnia, in latitude (about) 65° 50′ north, longitude 24° 15′ east, were placed in a state of strict blockade by a competent force of the allied fleet.

"On being joined by the French squadron in the Gulf of Finland on the 13th June, the duties of blockading in that gulf and elsewhere were henceforth conjointly carried into effect."

(1.)

Copy of an Official Communication from Captain Key, R.N., of Her Majesty's ship "Amphion," to W. J. Hertslet, Esq., Her Majesty's Consul at Memel.

H.M.S. "Amphion," Memel Roads, May 12, 1854.

Sir,

I HAVE the honour to request you will inform Her Britannic Majesty's Consuls at Riga, Libau, and Windau, that those ports are now strictly blockaded, and that any vessel leaving them after the 15th May, with a cargo or part of a cargo on board, will be detained and sent to England or France for condemnation.

This information is to be publicly made known at those ports.

(Signed) A. COOPER KEY,
Captain and Senior Officer.

W. J. Hertslet, Esq.,
Her Majesty's Consul, Memel.

(2.)

Copy of an Official Communication from W. J. Hertslet, Esq., Her Majesty's Consul at Memel, to Captain Key, R.N., Her Majesty's ship "Amphion."

British Vice-Consulate, Memel, June 8, 1854.

Sir,

I HAVE the honour to inform you that immediately on receipt of your letter of 12th May, which I received on the same day, I communicated the contents of that letter to—

Mr. Grisler, Hanoverian Consul at Memel; Mr. Schiller, Swedish and Norwegian Consul at Memel; Mr. Schröder Sund, Danish Consul at Memel; Mr. Hoeftmann, Hollandish Consul at Memel; and likewise to a number of merchants on the exchange of this town and to several Riga and Libau merchants who were there.

I likewise informed his Excellency Lord Bloomfield that I had communicated the subject of your letters to the Consuls of neutral Powers at Memel.

(Signed) W. J. HERTSLET.

Captain Cooper Key,
Memel Roadstead.

(3.)

Copy of an Official Report from Captain Key, R.N., Her Majesty's ship "Amphion," to Vice-Admiral Sir Charles Napier.

"Amphion," off Windau, June 14, 1854.

Sir,

Report on capture of blockade runners in the Baltic.

HER Majesty's ship under my orders having detained several vessels belonging to neutral nations for attempting to violate the blockade established on this coast, and sent them to England for legal adjudication in accordance with Articles 9 and 10 of the Admiralty Instructions on the subject, I have the honour to report, for your information, the circumstances under which the said vessels have been captured, the manner

in which the blockade has been carried out, and other points which may be of importance to the Court of Admiralty commissioned to take cognizance of this question.

Three points must be proved to condemn these vessels as lawful prizes—

1. That an effective blockade has been established.
2. That the vessels detained attempted to violate this blockade.
3. That they were aware of its existence.

Regarding the first point, I have the honour to inform you that since May 9, when I was first entrusted with the blockade of this coast (at which time I found Her Majesty's ships "Conflict" and "Cruizer" on the station, which vessels had been blockading since April 20), two ships have been ordered to cruize off the entrance of the Gulf of Riga, a passage united by the shoals to a breadth of three miles. This entrance has never been left without one vessel. Two other ships have been continually passing between Windau and Memel within sight of the coast.

No doubt in a few instances vessels have succeeded in evading the cruizers under cover of the night and the fogs which have been so prevalent. That the number of vessels boarded is of itself a proof that vigilance has been exercised.

The second point is readily ascertained by a reference to the definition which has been sent in each vessel by the Captain of the ships detaining her, in which the locality, the course the vessel was steering, and the direction of the winds are stated.

With respect to the third point, the knowledge of the blockade, great care has been necessary to prevent injury to innocent vessels. The captured vessels come under two heads—those attempting to enter the blockaded ports and those leaving them. As regards the former, the Captains of Her Majesty's ships received orders that if the slightest reasonable doubt existed as to the Captain or the owner of the vessel being informed of the blockade, she was to be sent away with a notification to that effect on his papers.

Under these orders 154 vessels have been warned off since April 20, although nearly all of them passed through the Sound, communicating at Elsinore, which scarcely allows a doubt to exist of their knowledge of the blockade. Nevertheless, I deemed it my duty to show as much leniency to neutrals as was compatible with the interests of the allied Powers. Four vessels only have been detained for attempting to enter the ports. Two of these contained coal and were without proper papers, the others were from Copenhagen, and confessed their knowledge of the blockade.

To insure that the residents in the blockaded ports should not plead ignorance of their condition, I wrote the accompanying letter to Her Britannic Majesty's Consul at Memel, the contents of which were published in the "Berlin Gazette" and were publicly made known at Riga, Libau, and Windau. Mr. Hertslet's answer I inclose.

Notwithstanding this, several vessels have taken in cargoes and left Riga; they have, therefore, been detained and sent to England for adjudication.

(Signed) A. COOPER KEY,
Captain and Senior Officer on the Coast of Kourland.

Vice-Admiral Sir Charles Napier, K.C.B.,
Commander-in-chief, &c., &c., &c.

No. 168.

The Law Officers of the Crown to the Earl of Clarendon.—(Received August 11.)

Doctors' Commons, August 11, 1854.

Capture of Netherland vessel with artillery or waggon harness.

My Lord,

WE were honoured with your Lordship's commands contained in Lord Wodehouse's letter of the 8th instant, in which he stated that he was directed by your Lordship to transmit to us copies of despatches from Her Majesty's Minister at Berlin, with their Inclosures, and also a *note verbale* communicated by Count Bernstoff relative to the circumstances under which the Netherland vessel "Wilmina" had been captured by Her Majesty's ship "Archer" and taken into Pillau; and that he was to request that we would take these despatches into our consideration and report to your Lordship our opinion as to the proper course to be pursued in this case.

In obedience to your Lordship's commands we have taken the several documents so transmitted into our consideration, and have the honour to report—

That it appears that the "Wilmina" was on her voyage to Königsberg, consigned to

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a well-known Prussian house of business, and that among her cargo, which was of a general nature, the English officer found four casks in which were packed, among many miscellaneous articles of hardware, a quantity of chains, which are represented by the English officer to be such as are used for artillery harness, and to be expressly adapted for that purpose, but which are stated by the Prussian Memorialists to be such as are commonly used in those countries for the harness of ordinary carts and waggons.

Conflicting evidence.

These four casks are stated by the English officer to have been entered in the ship's manifest as consigned to "M. de Witte, a well-known expediting merchant, agent of the Imperial Bankers Flughtz and Co., at St. Petersburgh." On the contrary, in the letter of C. E. Elsasser, the same four casks are stated to have been cleared "to the address of Mr. Molke at Königsberg, old well-known ironmongers."

The ship's manifest is not among the papers, and it is not easy to come to any satisfactory conclusion amid such conflicting statements.

Onus of proof on captor.
Vessel should be released.

It is, however, clear, that the onus of proving that articles such as these, admitting of a variety of purposes, were expressly intended for warlike use, lies upon the captor; and it not only appears to us that there are no means of proving any such fact in the present case, but rather good ground for inferring the contrary, and we therefore recommend that the detention of the vessel be not insisted on.

We have, &c.
(Signed) J. D. HARDING.
A. E. COCKBURN.
RICHARD BETHELL.

No. 169.

The Queen's Advocate to the Earl of Clarendon.—(*Received August* 14.)

Doctors' Commons, August 14, 1854.

My Lord,

Dutch and Danish vessels captured in Baltic.

I AM honoured by Lord Wodehouse's letter of the 8th August, transmitting to me notes which have been addressed to your Lordship by the Danish and Netherlands Ministers at this Court complaining of the capture by Her Majesty's cruizers in the Baltic of several Danish and Netherlands merchant-ships for breach of blockade.

Lord Wodehouse further transmits to me the reports which have been received by Vice-Admiral Sir Charles Napier of the circumstances under which these vessels have been seized, together with the drafts of the replies which your Lordship proposes to return to the notes from General Oxholm and Baron Bentinck, and requests that I will take these papers into my immediate consideration, and that I will report to your Lordship, at my earliest convenience, my opinion of the proposed replies.

I have accordingly taken these papers into my consideration, and have the honour to report—

That, adverting to the reasons stated in my Report of the 7th August,* on a similar application from Admiral Virgin, and to the additional notification prepared for publication and forwarded by me with a Report dated the 11th August,† I do not consider the proposed replies to be expedient. The questions for determination in each of these cases are—

1. Was an effective blockade of Riga in existence at the time when these vessels were captured?

As to violation of blockade.

2. Did they know of it and attempt to violate it?

I can see nothing in any of these cases to make the innocence of the master apparent. This, in my opinion, ought to be clearly established in order to justify the release of any of the vessels.

Prize Court must decide.

I consider that both questions ought in each of these cases to be left to be decided by the Prize Court, by which costs and damages may be awarded if any of the captures were unjustifiable.

In the present unfortunate state of doubt as to the date from which the blockade of Riga and of other Baltic ports is to be held as legal and effective, I consider it very unadvisable to enter upon any discussion of that question with neutral Ministers. When one or two leading cases on the subject have been decided by the Prize Court, we shall be in a better position to deal with these and similar demands.

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* No. 162.

† Query 10th. See No. 167.

It is possible that some of these cases may be submitted to me by the Queen's Proctor for my opinion, and that on seeing all the papers and evidence I may advise restoration without bringing the case before the Court, but this is a very different thing from acceding to the demand of the Minister of a neutral country.

The "Yonge Albert" is (I presume) the vessel now detained at Harlingen, and I would venture to suggest the expediency of informing Baron Bentinck that until that case is arranged in a satisfactory manner, Her Majesty's Government will be disinclined to listen to any application whatsoever in favour of Dutch prizes.

General rule. Vessels may leave blockaded ports if they entered before blockade.

He may be informed (agreeably to his request) that as a general principle, and in the absence of special circumstances, neutral vessels, if entering a blockaded port before the blockade, will be permitted to come out in ballast.

I have, &c.
(Signed) J. D. HARDING.

No. 170.

Nil.

No. 171.

The Queen's Advocate to the Earl of Clarendon.—(*Received August* 17.)

Doctors' Commons, August 16, 1854.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 12th August, stating that he was directed to transmit to me the accompanying despatches from Her Majesty's Ambassador at Constantinople, requesting to be instructed as to the proper mode of dealing with vessels which have been detained in the Black Sea by British cruizers, under the circumstances stated in the inclosed papers; and to request that I would take the same into consideration, and report to your Lordship my opinion upon this subject at my earliest convenience. I am also honoured with Mr. Hammond's letter of the 14th instant, transmitting for my further information a letter from the Admiralty, inclosing Vice-Admiral Dundas' announcement of the joint blockade of the Danube.

In obedience to your Lordship's commands I have taken this subject into consideration, and have the honour to report—

Blockade of Danube. Ingress and egress. Rules regulating.

That, although the terms of the joint notification of Admirals Dundas and Hamelin of the blockade of the Danube dated June 1st are unfortunately not wholly free from ambiguity, I am of opinion that it must be considered and treated as an ordinary notice of an ordinary blockade to all intents and purposes, and as such prohibiting egress from, as well as ingress to, the Danube, at all events until a Prize Court of one of the belligerent Powers shall have put a judicial interpretation upon it.

The notification in the "Gazette" of June 13 was drawn up from a telegraphic despatch from Mr. Fonblanque (see my report thereon of June 13th),* and contains no ambiguous expressions.

I am accordingly of opinion that there is no sufficient ground for the arguments and observations of Baron Tecco, in his despatch to Lord Stratford of the 23rd July, and of M. Zuylen de Nyvelt to Lord Stratford of the 22nd July; a blockade is as much violated by egress as by ingress, the only exception being that vessels entering before the establishment of the blockade are entitled to come out either in ballast or with such cargo as was actually laden on board before the blockade was established;† but all vessels coming out will nevertheless be *primâ facie* liable to capture and condemnation, and they will be entitled to be restored only in the event of their proving before the Prize Court any circumstances entitling them to exemption. This principle appears to me to dispose of the Sardinian case of the "Innocente," as far as I understand it at present. Prizes captured for breaking blockade (whatsoever may be their national character) must be dealt with just as all other prizes, and sent with their papers and the necessary witnesses, *i.e.*, the master and two or three of the crew, before the nearest Prize Court for adjudication.

Treatment of prizes.

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* No. 127.

† See Report of Law Officers on Dutch Questions as to the blockade of Archangel, August 8 (No 164).—J. D. H.

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The printed instructions for the commanders of Her Majesty's ships and vessels of war as to the disposal of captured vessels are very full and precise on the point, especially Articles 1, 9, and 10 (see also "Regulations for Her Majesty's Service at Sea," chapter 8); and I cannot by any means approve of the entire deviation therefrom apparently contemplated at Constantinople (but not acceded to by Lord Stratford de Redcliffe), by selling the ships with the consent of those interested, and remitting the proceeds, which will be, in my opinion, a highly irregular, if not illegal, proceeding, for which I can see no necessity, and which might expose all concerned therein and Her Majesty's Government to serious liabilities.

Contemplated irregular sale.

I presume that the port of Malta will be "the port in Her Majesty's dominions most convenient," according to the instructions, and that the Prize Commission and necessary machinery there is in "working order;" but of this I have no official information; if not, Gibraltar will be the proper place. It is to be borne in mind that it is the Crown (and not the captors) which is alone legally interested in prizes before condemnation, and as regards foreign nations, and that it is always competent to the Crown to realise a prize at any time before condemnation; if, therefore, the Admiral Commanding and Her Majesty's Ambassador should desire to do so in any case, they should report the circumstances with full particulars and dates (abstract of ship's papers and notes of the master's statement), and on this being submitted to me I could advise thereon.

Realization of a prize before condemnation.

Dr. Pratt's edition of "Storey's Prize Practice" (officially recommended by the Admiralty) might be useful to them for this purpose.

I will merely observe in conclusion that I cannot at present see why the blockade of the Danube and the disposal of prizes taken in the Black Sea should not be dealt with as in other similar cases, the application of Ministers of neutral Powers relative thereto being always referred to your Lordship.

I ought, perhaps, to mention that the Admiralty have printed (confidentially) a Memorandum drawn up by me upon blockade for the use of naval officers, which, though very imperfect, may counteract some of the numerous errors prevailing on the subject.

I have, &c.
(Signed) J. D. HARDING.

No. 172.

The Queen's Advocate to the Earl of Clarendon.—(*Received August* 16.)

My Lord, *Doctors' Commons, August* 16, 1854.

Destruction of British property by British forces at Uleaborg.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 7th instant, stating that he was directed to transmit to me a letter from Messrs. Lewin and Company, of Boston, respecting certain losses which they state they have suffered owing to the late operations at Uleaborg; and to request that I would take this paper into consideration, together with the correspondence, and report to your Lordship my opinion as to the answer which should be returned to Messrs. Lewin.

In obedience to your Lordship's commands I have taken the papers into consideration, and have the honour to report—

That Messrs. Lewin should be informed that Her Majesty's Government cannot undertake to compensate them for their timber destroyed at Uleaborg, which was then in the actual possession of the Queen's enemies, and probaly altogether undistinguishable from other enemies' property, which, as such, was lawfully destroyed by Her Majesty's forces at Uleaborg.

If, however, Messrs. Lewin have any special and peculiar grounds for expecting the favourable consideration of Her Majesty's Government, such, for instance, as their timber having been destroyed when placed by itself, and detached from other similar property, being plainly marked as their private property, and having been previously pointed out to Her Majesty's officers as such, and nevertheless purposely and designedly destroyed by order of Her Majesty's officers, they should be instructed to set forth these particulars minutely, and possibly to renew their application through the United States' Minister.*

With reference to this case and to similar applications, it would perhaps be desirable that Admiral Plumridge should be requested to furnish a detailed account,

accompanied by a plan of the exact position and description of the property destroyed at Uleaborg, and the manner of its actual destruction, and what means were taken (if any) to distinguish between the property of the Russian Government, Russian individuals, British subjects, and foreigners, and to call his attention to Messrs. Lewin's and any similar case.

I have, &c.
(Signed) J. D. HARDING.

No. 173.

The Queen's Advocate to the Earl of Clarendon—(*Received August* 23.)

My Lord, *Doctors' Commons, August* 22, 1854.

Notifications of Baltic blockades; complaints of Foreign Ministers of contradictory nature of.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 16th instant, stating that he was directed to transmit to me, for my information, and for any observations I may have to offer thereupon, a copy of a note from the Netherlands Minister at this Court respecting the new Order in Council published in the Supplement to the "Gazette" of the 11th instant, and complaining of the hardship of the application of it to the cases of vessels now under discussion.

In obedience to your Lordship's commands I have taken the matter into consideration, and have the honour to report—

That Baron Bentinck may be informed:—

1. That Her Majesty's Government cannot admit that the notice in the "Gazette," dated Foreign Office, the 11th August, is in "contradiction" to that dated the 16th June, inasmuch as the fact of the actual existence of a blockade on the 28th May is clearly not in contradiction to such blockade having been established *de facto* at an earlier period.

Evidence of blockade, &c., before Prize Courts.

2. That with reference to the danger which Baron Bentinck apprehends to the Dutch vessels, whose cases are now before the Prize Court, he may be further informed that no such danger exists; the learned Judge of that Court having recently, in the case of the "Union," on the 19th August, refused to be bound by the information recently published, and having directed that neutral claimants should be permitted to prove that, notwithstanding the "Gazette" notice of the 11th August, no valid or legal blockade of Riga was *de facto* established or maintained as therein stated, and having suspended his decision on all the cases of breach of blockade until the point in question is ripe for determination by the production of further evidence on both sides of the question.

Law of nations does not require a notification of a blockade.

It may, perhaps, be advisable further to remark to Baron Bentinck that his Excellency must be perfectly aware that by the law of nations no general or public notification of a blockade is required; some nations (as France) never publish any such notifications; and many legal and effective blockades have been established and enforced previous to and without any such notification; the notification and publication of all particulars relating to blockade must always be beneficial rather than injurious to neutral commerce; he may be likewise informed that Her Majesty's Government sees with surprise that the Netherlands Government is likely to complain of the conduct of Her Majesty's Government in this particular; Her Majesty having unprecedented relaxations during this war in favour of neutrals by which Dutch commerce in particular has largely benefitted. But I would further suggest that a stand should be made against foreign interference with the publication of despatches from Her Majesty's officers. Baron Bentinck may, in my humble opinion, be properly told in reference thereto that Her Majesty's Government cannot admit that any Government has a right to complain of the publication by it of any official communications which may have passed between its officers, and which it may think proper to print and circulate from time to time for the benefit of British no less than of neutral interests.

Foreign interference with publication of despatches.

If your Lordship has any reason to apprehend that the neutral Governments will enter into a serious or protracted discussion on this subject, I would venture to suggest that your Lordship's answer may properly be limited to this last point, especially as I presume that there has been no notification to foreign Ministers in this case, but simply a publication of the despatches in the "Gazette."

I have, &c.
(Signed) J. D. HARDING.

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* See also No. 190. It was not *American*, but *British* property.

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No. 174.

The Queen's Advocate to the Earl of Clarendon.—(*Received August* 24.)

Doctors' Commons, August 23, 1854.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 16th instant, stating that he was directed to transmit to me, for my information, and for any observations which I may have to offer thereupon, a copy of a note from the Swedish and Norwegian Minister at this Court respecting the Order in Council published in the Supplement to the "Gazette" of the 11th instant, and complaining of the hardship of the application of it to the cases of vessels now under discussion.

In obedience to your Lordship's commands I have taken the note into consideration, and have the honour to report—

Blockades. (See preceding Report.)

That I would suggest that the same observations apply to this note as I have already made upon that of Baron Bentinck on the same subject in my report thereon, dated the 22nd August.

I have, &c.
(Signed) J. D. HARDING.

No. 175.

The Queen's Advocate to the Earl of Clarendon.—(*Received August* 24.)

Doctors' Commons, August 23, 1854.

My Lord,

Dutch vessel "Yonge Albert." Suggests restoration to Netherlands Government.

OBSERVING by the ship-news in the "Times" of this day that the "Yonge Albert" has arrived in the river, I would venture to submit to your Lordship the possible expediency of restoring that vessel to the Netherlands Government. She is, I understand, of small value, without any cargo, and her ultimate condemnation for breach of blockade is (possibly) very doubtful.

It appears to me that the conduct of the Netherlands Government in the matter entitles it to some consideration, and this would be a fair opportunity of evincing our sense of that conduct without inflicting any serious loss on the captors.

I have, &c.
(Signed) J. D. HARDING.

No. 176.

The Queen's Advocate to the Earl of Clarendon.—(*Received August* 24.)

Doctors' Commons, August 23, 1854.

My Lord,

Sales of belligerents' vessels.

Not recognized by French law.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 9th of August, stating that, with reference to my letter of the 8th of August,* suggesting that negotiations should be entered into with the French Government for assimilating the laws of the two countries in regard to the sale of belligerent ships, or that the French Government should be asked at least to recognize the English law upon this subject, in order that Russian vessels *bonâ fide* purchased by British subjects might not be liable to capture by French cruizers, he was directed by your Lordship to transmit to me a despatch from Her Majesty's Ambassador at Paris, inclosing the answer of the French Government to the representations made by Her Majesty's Government in this matter; and to request that I would report to your Lordship my opinion thereupon.

In obedience to your Lordship's commands I have the honour to report—

That, although Her Majesty's Government may have no sufficient interest in the question to induce it to interfere in cases of purchases of Russian vessels made abroad, before such vessels have obtained British papers, yet that with respect to all vessels having British papers, and especially to those purchased from Russians in the Queen's dominions, the most serious difficulty will arise if the French Government should persist in capturing and condemning them as prize.

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* No. 163.

The real sufferers by such a proceeding will obviously be, not the common enemy, but the British subject who will have previously paid the price.

The Law Officers of the Crown have, in their Report in the case of the "Norden," dated the 18th of April, 1854,* reported that such purchases will, under certain circumstances, be legal; and upon such vessels obtaining British papers, they will be as fully entitled to British protection and privileges as any other British ships, and their capture by the French must lead to very serious international embarrassment.

The French Naval Instructions on the point being peremptory, it is much to be apprehended that such captures may be made.

Course, if France persists in capturing.

Whatever may be the French Law as to purchases from neutrals, allies are entitled to some consideration in such a peculiar case; but should the French Government refuse to listen to this representation, and should Her Majesty's Government not be disposed to support and protect British purchasers whose ships, purchased from Russians since the war, may be captured by the French, I would suggest that some public notice should be given on the subject.

The course suggested by the French Government (viz., the alteration of the English Law) will not meet the difficulty; even if the law on this subject, as laid down by the British Prize Courts administering the law of nations, could be altered by Parliament (which is open to serious doubt and difficulty), such an alteration could not operate retrospectively, and the validity of all previous purchases from Russians during the war would still be denied by France, and they would be exposed to French capture.

I have, &c.
(Signed) J. D. HARDING.

No. 177.

The Queen's Advocate to the Earl of Clarendon.—(*Received August* 24.)

Doctors' Commons, August 23, 1854.

My Lord,

Baltic blockades.

Dates wanted.

THE Judge of the Admiralty (Prize) Court having recently directed that the cases of several neutral ships captured and proceeded against for breaking blockade in the Baltic (especially the blockade of Riga) should stand over for further proof as to the date at which each of such ports was first actually blockaded, and the date at which any such blockade was well known to exist at various neutral ports, especially Elsinore, Copenhagen, Flensburgh, and Hamburgh, and also at the various ports of Sweden and Norway, I have to request that the Queen's Proctor may be supplied with any information on these points of which your Lordship may be in possession, for the purpose of its being put into a legal shape; such information, for instance, as that furnished by Mr. Hertslet in his letter to your Lordship dated August 15, with reference to Memel and Riga.

The practical importance of this matter (especially with reference to recent complaints from various neutral Powers on the subject of the "Gazette" Notice dated the 11th August) will not escape your Lordship's penetration, and has rendered this application necessary on my part.

I have, &c.
(Signed) J. D. HARDING.

No. 178.

The Queen's Advocate to the Earl of Clarendon.—(*Received August* 24.)

Doctors' Commons, August 23, 1854.

My Lord,

Dates of Baltic blockade. Complaints respecting.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 17th instant, stating that he was directed to transmit to me, for my information, and for any observations which I may have to offer thereupon, a copy of a note from the Danish Minister at this Court, complaining of the hardship attending upon the application of the new Order in Council published in the Supplement to the "Gazette" of the 11th instant.

In obedience to your Lordship's commands I have taken the note into consideration, and have the honour to report—

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* No. 75.

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That the observations which I have already made in my Report, dated the 22nd instant,* on the note of Baron Bentinck on this subject, appear to me to apply to that of General Oxholm. I would, however, suggest that it may not be unadvisable to inquire of General Oxholm what is the latest date at which he is instructed to contend that the authorities at Copenhagen, Elsinore, Altona, and Hamburgh respectively were ignorant of any blockade of any Russian ports in the Baltic; and also at what date he will admit that they were aware of the fact of each, and which of such ports, being blockaded, and at what date each or any such blockade was known, or supposed by them to have commenced. I am induced to make this suggestion because I have already seen many cases in which the Danish authorities have lent themselves with great facility to protecting Russian commercial interests during the war, and I suspect that a pretended or wilful ignorance of blockade will be in many cases set up, and perhaps supported by the Danish officials at various Baltic ports.

I have, &c.
(Signed) J. D. HARDING.

No. 179.

The Queen's Advocate to the Earl of Clarendon.—(*Received August* 29.)

My Lord, *Doctors' Commons, August* 29, 1854.

Russian vessels condemned in England as prize and purchased by Belgians.

Belgian flag refused by Belgian Government.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 16th instant, stating that he was directed to transmit to me a despatch from Her Majesty's Minister at Brussels, reporting that the Belgian Government has refused to allow Russian vessels which have been condemned in England as prize of war, and have been purchased by Belgians, to carry the Belgian national flag, and even in one instance has refused to allow such a vessel to enter a Belgian port; and to request that I would take Lord Howard de Walden's despatch into consideration, and report to your Lordship my opinion thereupon.

In obedience to your Lordship's commands I have taken the despatch into consideration, and have the honour to report—

Belligerent rights may not be questioned by neutrals.

Can't interfere between Belgians and their Government.

That although there can be no doubt that by the law and practice of nations the sentence of a Prize Court sitting in the dominions of a belligerent State confers a perfect and unimpeachable title to the purchaser of any ship condemned as a prize, and thereupon sold in pursuance of such sentence; and although this is a point which neutrals must not be permitted to question, yet I do not see how your Lordship can properly interfere between Belgian shipowners and their own Government, especially in the absence of any application on the subject from any of the parties interested. I cannot, therefore, advise any steps being taken at present in this particular case; but should any opportunity offer, Lord Howard de Walden may, if your Lordship thinks proper, be instructed to intimate to the Belgian Government, in a friendly manner, and without interfering on behalf of Belgians, what are the views which Her Majesty's Government entertain, and are prepared to support, if necessary, on the general question of the sale and purchase of prizes.

I have, &c.
(Signed) J. D. HARDING.

No. 180.

The Queen's Advocate to the Earl of Clarendon.—(*Received August* 30.)

My Lord, *Doctors' Commons, August* 29, 1854.

Purchase of foreign vessels by Danish subjects.

Nationality of vessels owned by Companies of which foreigners may be members.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 21st instant, stating that he was directed to transmit to me two despatches from Her Majesty's Minister at Cogenhagen, containing certain information as to the state of the law of Denmark with respect to the purchase by Danish subjects of foreign ships, and calling my attention to the regulations by which vessels belonging to a company of shareholders, of whom some may not be Danish subjects, are permitted to enjoy Danish nationality; and to request that I would report to your Lordship my opinion as to how far this principle should be recognized.

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* No. 173.

In obedience to your Lordship's commands I have taken the despatches into consideration, and have the honour to report—

That the principle relied upon by M. Bluhme as to the Danish nationality of vessels owned by joint stock companies established in Denmark, some members of which may nevertheless be foreigners, appears to me to be correct, and to be consistent with the Report of the Law Officers in the case of Lubeck vessels, owned by a company and navigated to Russian ports, dated April 26.*

I may observe that the same principle will be applied by the British Prize Courts to vessels belonging to Russian Joint Stock Companies which would be condemned as prize, although Danes or other neutrals may hold shares in the company or in the particular vessel. I do not, therefore, see that any observations need be addressed to the Danish Government on this point.

I have, &c.
(Signed) J. D. HARDING.

No. 181.

The Queen's Advocate to the Earl of Clarendon.—(*Received August* 31.)

My Lord, *Doctors' Commons, August* 30, 1854.

Blockade of White Sea.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of August 29, stating that he was directed to transmit to me the accompanying copy of a despatch from Mr. Whitehead, Her Majesty's Consul at Archangel, reporting the establishment of a blockade by the united English and French squadrons of the ports of the White Sea, from Cape Sweetnose to Cape Kanin, to commence from August 1, with regard to vessels bound inwards, and from August 15, with regard to vessels outward bound from those ports; and Mr. Hammond was pleased to request that I would report to your Lordship my opinion whether it will be necessary that a notification of this blockade should be published in the "Gazette," and if so, that I would draw up a notice for insertion accordingly.

In obedience to your Lordship's commands I have the honour to report—

That I cannot consider Mr. Whitehead's communication as entirely satisfactory. He does not give any copy of the notification which he states was addressed by the British and French Commanders of the combined squadrons to the Military Governor of Archangel on August 13, nor does he state how he became aware of its purport or precise terms; he does not state that the blockading force was effective and sufficient for the purpose, or that it was either then actually off and in sight of the port, or in such a position as to enforce a strict and effective blockade of Archangel, or where it was; and, whatever the probabilities may be, in the absence of any authoritative statement to that effect, or of any communication from the officers in command, and without seeing a copy of the notification, I conceive that this letter *alone* is insufficient to found a formal notification.

I observe that Mr. Whitehead states that the Commanders further notified "that the vessels of Russia carrying on the barter trade between the ports of the White Sea and the Province of Finmarken, in Norway," would be allowed to pass unmolested. This would infer that Norwegian and other vessels carrying on such barter trade (whatever this may mean) would be captured; and the exception is so peculiar and unintelligible, without further explanation, that it increases the difficulty of drawing a notification from the letter of Mr. Whitehead alone.

Effects of defective notifications.

I have earnestly and repeatedly endeavoured to forewarn Her Majesty's Government, and to guard against the serious difficulties and embarrassments which these defective notifications of blockade have caused and are likely to cause, and have drawn up a Memorandum on the subject for the use of naval officers, which the Admiralty has caused to be printed; but I regret to say that a complete and reiterated disregard of all rule and regularity on this subject continues to prevail.

I do not understand how Mr. Whitehead could, on August 14, be "Her Majesty's Consul at Archangel," or how he could have on that day obtained so complete a knowledge of the contents of the document in question (received the day before by the Governor), and yet have been unable to transmit a copy, or even to explain why he could not transmit a copy; nor can I understand why he was unable to state the simple fact that the port was blockaded.

If, however, Her Majesty's Government have no further information on the

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* Query May 5. See No. 102.

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subject, and are not likely to receive any speedily, it will be for your Lordship to consider the expediency of publishing Mr. Whitehead's communication in the "Gazette" for public information, without addressing any formal notification to foreign Ministers resident here.

I may add that the Consular communication as to the blockade of the Danube, upon which Her Majesty's Government founded a notification, turned out not strictly accurate, and may give rise to difficulties, as stated in my Reports of June 13 and August 16, which is an additional reason for caution.

Perhaps in future, on it being the intention of Her Majesty's Government to establish any blockade, they would do well to address special instructions to the Naval and Consular Officers, and to arrange beforehand what steps they should take with regard to its notification.

I have, &c.
(Signed) J. D. HARDING.

No. 182.

The Queen's Advocate to the Earl of Clarendon.—(Received August 31.)

My Lord,
Doctors' Commons, August 31, 1854.

Dutch vessel proceeding from Memel to Holland, having broken blockade of Riga.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 28th instant, stating that he was directed to transmit to me a letter from the Netherlands Minister at this Court, requesting to be informed whether, under the circumstances stated by him, the Dutch vessel "Anna Arendina" can proceed with safety from Memel to a port in Holland; and to request that I would take the inclosed case into consideration and report to your Lordship at my earliest convenience my opinion as to the answer which should be returned to Baron Bentinck.

In obedience to your Lordship's commands I have taken the letter into consideration, and have the honour to report—

That I am of course unable to say whether Baron Bentinck's *exparte* statement of the circumstances relating to the "Anna Arendina" is strictly accurate, or whether there may exist any other circumstances connected with her not alluded to by his Excellency, nor am I aware whether either Her Majesty's Consul at Memel, or Captain Key, R.N., or any other naval or Consular officer has made any communication with respect to her.

Not now liable to capture.

In this state of things I can only say that, assuming Baron Bentinck's statement to be strictly accurate, and to contain all the material facts which are or can be known relative to the case, I am of opinion that the "Anna Arendina" is not now liable to capture for breaking the blockade of Riga, and that the necessary instructions may properly be issued to that effect.

If it be true that Her Majesty's Consul at Memel warned the master that the vessel was liable to capture, I consider that he acted irregularly in giving any such warning, and that he should be so instructed.

I have, &c.
(Signed) J. D. HARDING.

No. 183.

The Queen's Advocate to the Earl of Clarendon.—(Received September 7.)

My Lord,
Doctors' Commons, September 6, 1854.

Danish Company for purchase of Russian ships and sailing under Danish flag.

I AM honoured with your Lordship's commands, signified in Mr. Hammond's letter of the 4th September, stating that he was directed to transmit to me a note from M. Baudin, the French Chargé d'Affaires at this Court, calling the attention of Her Majesty's Government to the proceedings of a company which has been formed in Denmark for the purpose of purchasing Russian merchant ships and navigating them under the Danish flag, and suggesting that the allied cruizers should be instructed to capture all such ships; and to request that I would report to your Lordship my opinion thereupon.

In obedience to your Lordship's commands I have the honour to report—

Ships may be captured.

French Prize Courts would condemn.

That all purchases of Russian vessels by Danes made since the war are so justly open to suspicion, that all vessels so purchased, whether by this Danish company or by any other company or person whatsoever, will be *primâ facie* liable to capture by Her Majesty's ships. There will be, however, this important practical difference between the result of captures of such vessels made by Her Majesty's ships and of those made by French ships of war. By the French Prize Courts, I apprehend that every such vessel (if purchased since the war) will be certainly condemned as prize.

British Prize Courts would release if *bonâ fide* sold.

By the British Prize Courts such vessels will be restored on satisfactory proof that the purchase was not merely colourable, but made *bonâ fide* without reservation, that the money was actually paid, and that all Russian interest and risk terminated by such purchase. I may further observe that British captors seize at their own individual risk, and that such risk is considerable where no defect or ground of suspicion appears on the ship's papers.

Danish law facilitates fraud.

The Danish law, as administered by the Danish authorities, appears to me to furnish great and undue facilities for fraudulent assumption of Danish nationality by Russian ships; some cases of this description are now before the Prize Court, and on that Court pronouncing sentence in some of these cases (which may be expected in October), it will probably become my duty to report further to your Lordship thereon.

A gentleman named Sorensen, of Russian family, but calling himself a Dane, is mixed up with many of these cases.

In conclusion, I may say that, without knowing anything of the existence or constitution or working of the company in question beyond what is vaguely stated by M. Baudin, I cannot advise the issuing of instructions to Her Majesty's vessels to capture all vessels belonging to such company without distinction. Specific information as to such company would be desirable. The existing circumstances, however, seem to me to justify the addressing a general warning to the Danish Government on the part of the allies, should such a measure be considered advisable, although the condemnation of some ship under Danish colours may be the best warning.

I have, &c.
(Signed) J. D. HARDING.

No. 184.

The Queen's Advocate to the Earl of Clarendon.—(Received September 8.)

Doctors' Commons, September 7, 1854.
My Lord,

Trade with Russia through Memel.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of August 29, stating that he was directed to transmit to me a letter from Mr. Charles Paris, in which he requests to be informed whether trade with Russia, through Memel, is to be allowed to be carried on without restriction by British subjects, and to request that I would take this subject into consideration, and report to your Lordship my opinion as to the answer which should be returned to Mr. Paris.

In obedience to your Lordship's commands I have taken this subject into consideration, and have the honour to report—

That this is one of that class of letters which I have frequently reported should, in my humble opinion, not be answered at all. I have further to observe that the two questions to which Mr. Paris requests an answer, viz., "Whether it will continue to be permitted by Her Majesty's Government that the trade with Russia shall be carried on by British subjects unrestrictedly through the port of Memel?" also, "whether the port of Odessa is to be blockaded or not?" are not questions of law or fact, but of intention and policy, as to which Mr. Paris is not entitled to expect private information from your Lordship. As a matter of fact I apprehend that at present—

Not illegal.

1. The overland trade with Russia carried on through Memel is not illegal.

No answer desirable.

2. No notification has been issued of the blockade of Odessa, whether it is to be blockaded or not, or whether it actually is or ever has been blockaded, I am as ignorant as Mr. Paris, nor can I form any opinion of the intentions of Her Majesty's Government as to the overland trade with Russia; I regret therefore to state that I am wholly unable to express any opinion as to the answer which should be returned to Mr. Paris, and I trust that he will not receive any answer at all.

I have, &c.
(Signed) J D. HARDING.

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No. 185.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received September* 8.)

My Lord, *Doctors' Commons, September* , 1854.

Fictitious sales of Russian vessels to Tuscans.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 30th July, stating that, with reference to the question of fraudulent and fictitious sales of Russian vessels to subjects of Tuscany, which has been several times submitted to us, he was directed by your Lordship to request that we would, at our earliest convenience, report to your Lordship whether a vessel, two-thirds of the crew of which are not subjects of Tuscany, is to be considered as having no right to the Tuscan flag, and as being, therefore, liable to capture by Her Majesty's cruizers.

In obedience to your Lordship's commands we have the honour to report—

Two-thirds of crew must be Tuscans.

That, if the question intended to be submitted to us be whether a Russian vessel alleged to have been sold and transferred to a subject of Tuscany, but which is found to be navigated by a crew of which two-thirds are not subjects of Tuscany, and consequently not in accordance with the Tuscan law, is to be considered as having a right to the Tuscan flag, we are of opinion that the fact of the ship not being manned and navigated in conformity with the law of Tuscany affords evidence against the validity and *bona fides* of the alleged transfer, and that a vessel under such circumstances is to be considered as having *primâ facie* no right to the Tuscan flag, and therefore liable to capture.

We have, &c.
(Signed) J. D. HARDING.
RICHARD BETHELL.

No. 186.

The Queen's Advocate to the Earl of Clarendon.—(*Received September* 11.)

My Lord, *Doctors' Commons, September* 9, 1854.

Contraband of war, chains, &c.

I AM favoured with Mr. Hammond's letter of the 4th September, transmitting to me a letter dated 1st September, from the Netherlands Minister at this Court, requesting to be informed as to how far Messrs. Dade and Hontkoper, of Amsterdam, can export to Prussian ports in the Baltic and to other places certain articles specified by him without exposing their goods to the risk of being seized as contraband of war; Mr. Hammond requests me to take Baron Bentinck's letter into my consideration, and favour your Lordship, at my earliest convenience, with my opinion as to the answer which should be returned to it.

I have accordingly taken Baron Bentinck's letter into consideration, and have the honour to report—

That Baron Bentinck may be informed that, assuming the chains in question are precisely such as he describes them to be, and that there are no other suspicious articles on board, Messrs. Dade and Hontkoper may export them from Amsterdam to Prussian ports in the Baltic without hindrance or molestation, and that they may also send the other articles mentioned to Spain without fear of molestation by Her Majesty's ships.

I have, &c.
(Signed) J. D. HARDING.

No. 186*.

The Queen's Advocate to the Earl of Clarendon.—(*Received September* 11.)

My Lord, *Doctors' Commons, September* 9, 1854.

Russian vessel, British prize, sold in England to a Belgian.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 24th August, stating that he was directed to transmit to me the accompanying despatch from Her Majesty's Minister at Brussels respecting a proposal to bring into a Belgian port, under the British flag, a Russian prize condemned and sold in England and purchased by a Belgian subject; and to request that I would take the statements in this despatch into consideration and report to your Lordship my observations thereupon, and more particularly with reference to the bearing on this case of the Belgian law respecting shipping, transmitted to me in Mr. Hammond's letter of the 15th August.

In obedience to your Lordship's commands, I have the honour to report—

Refused permission to carry Belgian flag.

That although the ground of the objection of the Belgian Government to allow the use of the Belgian flag to the "Nadeschda" appears to me to be wholly unfounded in law or reason, and arbitrary and unreasonable in practice, and at variance with the usages of nations, yet, inasmuch as this only appears to be the ground of such objection from the applicant's version of a verbal conversation with M. de Brouckère, I cannot advise that any official notice should be taken of it.

(Refusal of entry to British vessels.)

Should the Belgian Government hereafter refuse the right of entering its ports to any duly documented British vessel (whether purchased at a sale of prizes after condemnation by the Prize Court or otherwise lawfully acquired and owned), the matter must be seriously and directly taken up by Her Majesty's Government

Cannot carry British flag.

The applicant's desire to be allowed to sail to Belgium under the British flag cannot be complied with. Your Lordship has not the power to do what he desires. An alien cannot by law be registered owner of a British vessel, and no licence nor order will enable him to be such, and unless a vessel has a British certificate of registry she cannot legally use the British flag.

Belgian law.

When a vessel is sold by virtue of a sentence or order of the Prize Court, the Marshal of the Court executes a regular bill of sale of the vessel in the English form to the purchaser of such vessel, and this will entitle him to a British certificate of registry from the Custom-house, if he be a British subject; if he be a foreigner, it is to be presumed that he knows the law of England and of his own country: that he cannot have a British certificate of registry, and that his Consul here and his Government in his own country will give him the necessary papers to enable him to sail under his own flag on his satisfying them that he has duly become the owner, and producing a formal instrument which is a valid and regular conveyance by the *lex loci actus*; at all events, and more especially with respect to questions between foreign purchasers and their own Governments, the maxim *caveat emptor* applies to these cases. Assuming that the existing Belgian law on the subject of the purchase of foreign vessels by Belgians is to be found in the "Code des Contributions Directes," pp. 775-778, "Arrêté Royal du Février 1846," as modified by the "Arrêté Royal du 18 Septembre, 1847" (rélatif à la nationalisation des navires étrangers), such law appears to me to leave it to the discretion of the Belgian Government whether it will grant or refuse Belgian Nationalisation Lettres de Mer to foreign vessels purchased abroad by Belgians in each particular case, as it may arise; but this is, of course, entirely a matter of Belgian law and administration as to which I may be in error.

Under these circumstances I would suggest that the applicant may be informed that Her Majesty's Government, although desirous to give him every reasonable facility and assistance, has not the legal power to authorize him to assume the British flag. Whether any or what application should be made on his behalf to the Belgian Government it will be for your Lordship to decide.

I cannot recommend such an application being made, inasmuch as it appears probable that this question will shortly be raised in the case of British vessels, and it would seem therefore premature to enter into any discussion of it upon a Belgian case. I beg to refer to my former Report herein of the 29th August last.*

I have, &c.
(Signed) J. D. HARDING.

No. 187.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received September* 11.)

My Lord, *Doctors' Commons, September* 11, 1854.

Detention of a British prize by the Dutch Government.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 14th August last, stating that, with reference to our previous reports upon the case of the "Yonge Albert," he was directed to transmit to us, together with the former papers, three further despatches, with their inclosures, from Her Majesty's Minister at the Hague, from which we shall learn the further progress of this case, and that it is the intention of the Dutch Government to deliver over the "Yonge Albert" to Lieutenant Dickins so soon as the authorities have been able to

"Yonge Albert."

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remove the arrest now placed on that vessel; and to request that we would take these further papers into consideration, and report to your Lordship any observations which we may have to make upon their contents.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That this ship having been given up by the Netherlands Government, the case does not appear to us to call for any further observations.

We have, &c.
(Signed) J. D. HARDING.
RICHARD BETHELL.

No. 188.

The Queen's Advocate to the Earl of Clarendon.—(*Received September* 15.)

My Lord, *Doctors' Commons, September* 14, 1854.

Blockade of the Danube.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 24th August last, stating that, with reference to my letter of the 16th, he was directed to transmit, for my information, a despatch which your Lordship has addressed to Viscount Stratford de Redcliffe, and a letter which you have caused to be addressed to the Board of Admiralty on the subject of the blockade of the Danube; also inclosing a letter from the Admiralty containing copies of further correspondence on the same subject; and to request that I would return these papers to the Foreign Office.

In obedience to your Lordship's commands I have the honour to report—

Egress permitted to Austrian vessels.

Disapproves.

Should be captured and subsequently released.

That, with reference to the determination of the allied Admirals to permit egress from the Danube to Austrian vessels exclusively without making (as I understand it) any distinction as to the time when, or place where their cargoes were laden, or the nature or destination of such cargoes, I should not, if previously consulted, have approved thereof; and I fear that this determination, especially if publicly announced, may lead to serious difficulties with neutral Powers; but, if such determination has been announced, it is now too late to prevent the mischief which may arise therefrom; if, however, it has not been publicly announced, I have to suggest that no such public announcement should be made, but that every vessel indiscriminately should be captured and taken possession of by a prize crew, and that after a detention sufficient to assert the principle, and to leave no doubt of the fact of capture, the Austrian vessel should be released, and their papers endorsed as follows:—"Captured at
on by for breaking the blockade of the Danube,
and restored on the under special circumstances," or to that effect.
This precaution may not be entirely successful, but it may tend to diminish the difficulties which are to be apprehended.

I must also suggest that instructions of so peculiar a nature as those issued by the French Government relative to the partial relaxation of this blockade in favour of all vessels coming out of the Danube should, in my opinion, be communicated to and considered by Her Majesty's Government before they are issued, so as to insure as much unity of action as possible.

Unity of action of allies requisite.

It is obvious that the success of all conjoint blockade operations by the allies must be greatly hazarded unless precautions are taken beforehand to secure complete unity of action. It is, moreover, to be borne in mind that the British Courts are perfectly independent of all considerations of policy, or of the interests, or intentions of the allies, and will look only to what they consider as strictly in accordance with international law, and that the entire legality and validity of a blockade is hazarded by all exemptions, especially if exclusively in favour of one particular nation.

I have ventured upon these remarks because from recent military and political events it is clear that other similar relaxations or exemptions may be attempted in the case of the Danube, which is in many respects very peculiar, and also because in any other existing or future blockades these points require serious consideration, and all exemptions or relaxations should, if possible, be agreed upon beforehand, and not left to the discretion of naval officers.

Better to permit *all* egress and to prohibit *all* ingress.

In this case the French Government appears to have suggested that egress should be free, and ingress forbidden to ships of *all* nations without distinction. The Admirals have (as I understand them) determined to permit *egress* to all *Austrian* vessels, but otherwise to prevent *all* ingress and egress; the course suggested by the French Government was, in my opinion, by far the best under the circumstances, that adopted by the Admirals being of very doubtful legality. It is to be hoped, however, that the rapid and favourable progress of events on the shores of the Danube may obviate any serious consequences. If Austria has become, or should become, formally an ally and a belligerent, the case would present a very different aspect.

I have, &c.
(Signed) J. D. HARDING.

No. 189.

The Queen's Advocate to the Earl of Clarendon.—(*Received September* 16.)

My Lord, *Doctors' Commons, September* 15, 1854.

Search of a Prussian vessel off Memel by a British cruizer.

I AM favoured with Mr. Hammond's letter of the 13th September, transmitting to me a Memorandum communicated to your Lordship by Count Bernstorff, Prussian Minister at this Court, representing the treatment to which the Prussian vessel "Louis" had been subjected by an officer of Her Majesty's ship "Amphion" in boarding and examining that vessel off the port of Memel. Mr. Hammond likewise incloses a letter from the Board of Admiralty, inclosing a report from Vice-Admiral Sir Charles Napier of the circumstances under which this vessel was boarded and searched, together with a Memorandum which your Lordship proposed to communicate to Count Bernstorff in reply to his representation. Mr. Hammond requests that, in taking these papers into my consideration, I will report to your Lordship my opinion as to the propriety of the proposed reply. Mr. Hammond adds that, as your Lordship has appointed Count Bernstorff for an interview on Friday morning, your Lordship will be obliged by a reply to his letter, if possible, by the evening of the 14th September.

I have accordingly taken these papers into my consideration and have the honour to report—

That subject to certain alterations, chiefly verbal, which I have suggested in the margin, your Lordship's proposed reply appears to me to be correct and proper.

I have to express my regret that accidental circumstances should have caused a delay of twenty-four hours on my part in this matter.

I have, &c.
(Signed) J. D. HARDING.

Inclosure in No. 189.

Memorandum for Count Bernstorff.

Foreign Office, September , 1854.

COUNT BERNSTORFF on the 8th ultimo communicated to the Earl of Clarendon a Memorandum, representing the treatment to which the Prussian vessel "Louise" had been subjected by an officer of Her Majesty's ship "Amphion," in boarding and examining that vessel, and the Earl of Clarendon is enabled to offer the following explanation of the circumstances under which this vessel was boarded and searched.

The great facilities enjoyed both by the export and import trade of Russia at Memel, which is for all practical purposes the port of Courland and Livonia, render some measures of precaution necessary in order to put a check upon the advantages thereby afforded to the Power with which Great Britain is at war; but these measures have hitherto been put in force with a leniency which has proved no less favourable to Prussian than detrimental to British interests.

The Port of Memel is moreover peculiarly situated with reference to the facilities which its situation affords for supplying Russia with articles "contraband of war." This has induced the Commanders of Her Majesty's cruizers in the Baltic to employ proper vigilance to prevent the carrying on of such contraband trade.

It appears that by orders of the Commander of Her Majesty's ship "Amphion," an officer and boat's crew from that vessel boarded the "Louise," which was approaching the coast in the vicinity of Memel, in order to ascertain the true national character of the vessel, and the nature and destination of her cargo.

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The officer who executed these instructions distinctly denies that any unnecessary violence was used on the occasion, or that in the course of the examination any official seals or unusual fastenings were broken or even seen, and the inspection of the hold was simply to ascertain whether any articles contraband of war were on board, which would not be entered in the bills of lading, and could not be detected without an examination of the cargo.

Accidental boarding of a vessel within three-mile limit.

With respect to the complaint that the "Louise" was within the limits of the Port of Memel at the moment when she was actually boarded, it appears that although when orders were given to board the "Louise," that vessel was not within those limits, yet that she approached the coast with a fresh breeze, and before the "Amphion's" boat could actually succeed in boarding her, she had got within three miles of the shore. For this accidental irregularity Vice-Admiral Napier desires to express his regret, and Lord Clarendon has to convey that of Her Majesty's Government.

No. 190.

The Queen's Advocate to the Earl of Clarendon.—(*Received September* 29.)

Destruction of British property in attack on Uleaborg by British forces.

My Lord, *Doctors' Commons, September* 28, 1854.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 11th September instant, stating that, with reference to my report of the 16th August,* upon the subject of the claim of Messrs. Lewin and Co., on account of the destruction of their property during the late operations of the British fleet at Uleaborg, he was directed to transmit to me a letter from Messrs. Scott, Tahourdin, and Shaw, requesting a reconsideration of Messrs. Lewin's claim, and stating that previous to the attack on Uleaborg the whole of the British property at that place was pointed out to Admiral Plumridge.

Messrs. Scott also inclose an extract of a remonstrance that was made to the Admiral at the time.

Mr. Hammond is pleased to request that I would take these papers, together with the former papers, into consideration, and report to your Lordship my opinion thereupon.

In obedience to your Lordship's commands I have taken the papers into consideration, and have the honour to report—

That the only additional document now forwarded appears to consist of what is called "an authentic account" of the transactions at Uleaborg; that it is not stated by whom the account was drawn up, nor to whom it was addressed. It appears, however to come from a Russian source. Under these circumstances I do not see that it can have any effect upon your Lordship's decision.

I observe that the real applicants are Messrs. Lewin of Boston, Lincolnshire, not, as I had erroneously supposed, of Boston in Massachussets, and I do not see, therefore, why their London solicitors, Messrs. Scott, Tahourdin, and Co., should conduct the correspondence with your Lordship, or if they do this, why they should bring forward their clients' case (as it were) piecemeal, and offer further information, if required, instead of supplying it at once,

Wait for Admiral's Report.

If the correspondence is to proceed, it might be desirable to require Messrs. Lewin to lay the whole case, properly authenticated, at once before your Lordship, but I do not recommend that anything further should be done, at all events until Admiral Plumridge has fully reported on the case, as suggested in my former report.

The solicitors of British merchants resident here should not, in my humble opinion, be encouraged in corresponding with your Lordship on behalf of their clients. The claimants should in all ordinary cases apply to your Lordship directly.

I have, &c.
(Signed) J. D. HARDING.

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* No. 172.

No. 191.

The Queen's Advocate to the Earl of Clarendon.—(*Received September* 29.)

My Lord, *Doctors' Commons, September* 28, 1854.

Blockade of White Sea.

I AM favoured with Mr. Hammond's letter of the 26th September transmitting to me a letter from the Admiralty, inclosing a copy of a letter from Captain Ommaney, notifying the blockade of all the ports in the White Sea; Mr. Hammond requests that I will take the inclosed papers into my consideration, and that if I should be satisfied that they are sufficient, I will prepare and transmit to your Lordship at my earliest convenience such a notification to this effect for publication in the "Gazette" as I may think fitting and proper.

I have accordingly taken the inclosed papers into my consideration, and have prepared and herewith transmit a proper notification for publication in the "Gazette."

I have, &c.
(Signed) J. D. HARDING.

Inclosure in No. 191.

Notification.

Foreign Office, September 28, 1854.

Notification.

IT is hereby notified that on and from the 12th day of August last, all Russian ports, roads, havens, and creeks from Cape Swiatoi Nos, in longitude 39° 47′ east, latitude 68° 10′ north; to Cape Kanin, in longitude 43° 32′ east, latitude 68° 39′ 12″ north, including especially the ports of Archangel and Onega, were placed in a state of strict blockade by a competent force of the allied British and French fleets.

And it is hereby further notified that all measures authorized by the Law of Nations and the respective Treaties between Her Majesty and the different neutral Powers will be adopted and executed with respect to all vessels which may attempt to violate the said blockade.

No. 192.

The Queen's Advocate to the Earl of Clarendon.—(*Received October* 3.)

My Lord, *Doctors' Commons, September* 29, 1854.

Purchase of Russian ship at Barcelona by M. Vidal (nationality unknown).

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 16th of September instant, stating that he was directed to transmit to me a letter from M. Vidal in which the writer, without stating his nationality, requests that steps may be taken to give validity to the purchase by him of a Russian ship at Barcelona, and to request that I would take this paper into consideration, and report to your Lordship my opinion as to the answer which should be returned to M. Vidal.

In obedience to your commands I have taken the papers into consideration and have the honour to report—

That M. Vidal should be informed that inasmuch as he states himself to be "established" (*i. e.*, domiciled) at Barcelona, where he bought the "Adonis," a Russian vessel, but now sailing under Spanish colours, your Lordship must decline to issue any special directions in favour of that ship.

It may possibly be desirable to communicate with the French Government, and also with the Admiralty and the Customs, as to the "Adonis," inasmuch as the circumstances mentioned by M. Vidal connected with his asserted purchase of her, and the change from Russian to Spanish nationality ensuing thereupon, appear to be open to suspicion.

Unless M. Vidal should be a British subject, which does not appear, he should have applied to Her Majesty's Government through the Legation of his own country.

I have, &c.
(Signed) J. D. HARDING.

1853-56

No. 193.

The Queen's Advocate to the Earl of Clarendon.—(*Received October* 3.)

Blockade of Russian Baltic ports.

My Lord, *Doctors' Commons, September* 30, 1854.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 22nd September, stating that he was directed to transmit to me therewith a despatch which has been received from Her Majesty's Minister at Copenhagen, inclosing the draft of an affidavit proposed to be taken by him before Dr. Deane as to the dates at which the blockade of any of the Russian ports was known at Copenhagen, and to request that I would take the same into consideration and report to your Lordship my opinion thereupon.

In obedience to your Lordship's commands I have taken this matter into consideration, and have the honour to report—

That inasmuch as Dr. Deane has apparently been in communication with Mr. Buchanan, and will again communicate with him, I conceive it best to leave the whole matter in Dr. Deane's hands.

Proposed affidavit as to date when it was known at Copenhagen.

I see nothing objectionable in Mr. Buchanan's affidavit, but I observe that it is silent as to the date at which it was first well known to the commercial public at Copenhagen from any credible source that any Russian ports, and more especially Riga, were in fact blockaded, and from what date they had been so.

This information will be of more practical importance than any information as to the time when, and manner in which, the Danish Government was officially informed of the blockade.

A great number of neutral vessels of all nations having been "warned off," by Her Majesty's ships soon after the blockade was established, it is probable that some of them either returned immediately to Danish ports or passed through the Sound, and there communicated the existence of a blockade in a manner which could not be open to any doubt; and this is the species of information which it would be desirable to obtain in affidavits from Mr. Buchanan or other persons in Denmark; the most important question being, when was it first known in Danish ports as a matter of fact by the public (whether officially or otherwise). Dr. Deane is, however, so fully competent to deal with the whole subject that it may safely be left to him.

I have, &c.
(Signed) J. D. HARDING.

No. 194.

The Queen's Advocate to the Earl of Clarendon.—(*Received October* 6.)

Baltic blockade. Complaint of Dutch Minister of contradictory notifications. (See No. 173).

My Lord, *Doctors' Commons, October* 5, 1854.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 18th September last, stating that, with reference to my Report of the 22nd August, he was directed to transmit to me a note from the Netherland Minister at this Court, containing certain observations in reply to the answer which your Lordship returned to Baron Bentinck's note of the 15th of August, complaining of the Order in Council which was published in the Supplement to the "London Gazette" of the 11th August, and to request that I would take Baron Bentinck's further note into consideration, and report to your Lordship any observations which I may have to make thereupon.

The former papers were transmitted, and are returned.

In obedience to your Lordship's commands I have taken the further note into consideration, and have the honour to report—

That the object of Baron Bentinck is obviously to extract some favourable admission from your Lordship, or to take his chance that in the course of the discussion something may occur by which the cases of the "Union" and other Dutch ships may be favourably affected. Inasmuch, however, as Baron Bentinck admits the entire impartiality of the Prize Court (before which these cases are actually pending and in course of litigation, and from which there is an appeal to the Judicial Committee of the Privy Council) your Lordship should, in my opinion, altogether decline to enter upon the discussion opened by his Excellency of certain abstract principles of prize law and practice, or of their application to the particular cases of the Dutch vessels now before that Court.

With reference to the concluding paragraph of his note, he may be informed that in case any Dutch vessel should be condemned as prize by a British Court, Her Majesty's Government could hold out no prospect that she will be restored.

Vessels once condemned cannot be restored.

I may add that although the Crown can always restore a prize before condemnation (as was done in the "Yonge Albert"), yet the legal effect of the sentence, and of the Queen's Proclamation, and of the "Prize Act, Russia, 1854," is to vest the property absolutely in the captors from and after condemnation.

Before I conclude I ought perhaps to add, for fear of any mistakes—

Right of Government to publish documents in proof of blockades.

1. That which was published in the Supplement to the "London Gazette" of the 11th August was not (as described in Mr. Hammond's letter) an "Order in Council," or anything resembling this, but simply extracts from despatches and official communications which had been received from different Naval and Consular officers. In my former report on this case I adverted to the expediency of insisting upon the absolute right of Her Majesty's Government to publish such document at any time, without any interference whatsoever from, or any reference to, the wishes or interests of foreign Governments.*

Proof necessary for condemnation.

2. That in order to condemn a neutral ship for breach of blockade in a British Prize Court it will be sufficient to prove that her master did some act towards the violation of the blockade after he actually knew, from a credible source, of its existence. Neither any official intimation, nor any actual warning by a cruizer, is necesssary.

If, therefore, your Lordship should enter at all into discussion upon this matter with Baron Bentinck, both these points should, in my opinion, be strongly insisted upon.

I have, &c.
(Signed) J. D. HARDING.

No. 195.

The Queen's Advocate to the Earl of Clarendon.—(*Received October* 6.)

Purchase of Russian vessels.

Divergence in French and English laws respecting.

My Lord, *Doctors' Commons, October* 5, 1854.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 26th September last, stating that he was directed to transmit to me a correspondence which has taken place with the Consul-General of the Hans Towns relative to a certain divergence in the laws of France and England as to the liability of vessels purchased after the commencement of hostilities to seizure, Mr. Colquhoun wishes to be informed "whether the British Government, in deciding questions of this description, will be guided by general custom and precedents of decided cases, or statute law, or how otherwise;" and to request that I would take these papers into consideration and report to your Lordship my opinion as to the answer which should be returned to Mr. Colquhoun.

In obedience to your Lordship's commands I have taken the papers into consideration, and have the honour to report—

Course pursued by British Prize Courts.

That Mr. Colquhoun should be informed that it is not the British Government, but the British Prize Courts, which throughout Her Majesty's dominions exclusively decide these questions.

That Her Majesty's Government considers all purchases of vessels from the enemy (especially those made after the commencement of hostilities was known by the purchaser) to be justly open to suspicion, and is disposed to send all such cases before the Prize Courts for adjudication.

That Mr. Colquhoun can easily ascertain for himself what are the legal principles by which those Courts are guided in their decisions in such cases by reference to their reported decisions, or by obtaining the best legal advice on the subject from those learned gentlemen who practice before such Courts.

That the decisions of such Courts are notoriously impartial and entirely beyond the control of the Government, which has neither the slightest power or inclination to interfere therewith.

I may add that Mr. Colquhoun must personally have known, when he put the question, that this must be the answer, and possibly a hint to this effect may properly be given to him.

I have, &c.
(Signed) J. D. HARDING.

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* See No. 173.

1853-56

No. 196.

The Queen's Advocate to the Earl of Clarendon.—(Received October 6.)

Baltic blockade.

My Lord,

Doctors' Commons, October 5, 1854.

I AM favoured with Mr. Hammond's letter, dated —— September (received 30th September), transmitting, for my information, a copy of a despatch from Mr. Taylor, Her Majesty's Consul at Elsinore, on the subject of the blockade of Russian Baltic ports, and more especially of Riga. With reference thereto I beg to refer to my Report of the 30th September last* on a similar communication from Mr. Buchanan, and to state that Dr. Deane, who has returned from the Baltic, but not viâ Copenhagen, has recently sent particular instructions to Mr. Taylor on this point, to which his special attention is required.

I request that Mr. Taylor may be further directed forthwith to ascertain and transmit, in the shape of an affidavit, if possible, correct and minute information as to the time when, and the manner in which, it was first known at Copenhagen (not officially, but as a matter of news), or when it was first commonly supposed amongst mercantile men there that Russian Baltic ports, and the port of Riga especially, were blockaded.

Affidavit as to when it was known at Copenhagen to exist.

That Her Majesty's Government have the strongest reason for supposing that, from the arrival of vessels warned off, from statements in the various newspapers published in different ports and circulating in the Baltic, from private commercial letters, ship news, and otherwise, that some knowledge of the blockade (of Riga especially), from sufficiently credible sources, reached the commercial public at Copenhagen long before the 3rd June, and that Her Majesty's Government expect he will use his utmost exertions to ascertain and establish in evidence both this fact and the date when this intelligence arrived in Copenhagen.

Reluctance of Consuls to disclose dates.

I beg to add (in confidence) that I have received private information from an excellent source that the greatest reluctance is shown by all commercial men at the Baltic ports to admit or disclose the dates and particulars of their knowledge of the fact of blockade, and that Her Majesty's Consular officers are, from commercial connections and habits, not so diligent or effective in this matter as could be wished. I do not mean to allude to Mr. Taylor personally, although I cannot think that his information on the point is very satisfactory. The official publication of the intelligence is not the question, but where and how was it first known as a matter of news.

I have, &c.
(Signed) J. D. HARDING.

P.S.—Immediate dispatch is necessary.

No. 197.

The Queen's Advocate to the Earl of Clarendon.—(Received October 6.)

Date of blockade of Riga.

My Lord,

Doctors' Commons, October 5, 1854.

I OBSERVE that amongst the papers accompanying Count Reventlow Criminil's note to your Lordship of the 28th September on the subject of the want of notification of the blockade of the Russian ports in the Baltic (inclosed in Mr. Hammond's letter of the 3rd October), there is a formal and official declaration from the Danish Consul at Riga, signed "A. F. Kriegsmann, Consul," and dated from the Danish Consulate at Riga, 9th September, 1854, described as a translation from the original, and verified by the official seal and signature of Count Reventlow Criminil, in which document it is stated that on the 14th May the Danish Consul at Riga received from the Danish Consul at Memel an official communication as to the blockade of Riga which is therein set forth. I beg to state that this document will be of the utmost importance as evidence in the Prize Court on a point upon which several cases are now depending, viz., the date when the blockade of Riga was known to be in existence by masters of neutral vessels lying in that port, and I have accordingly to request that this document may be immediately communicated to the Queen's Proctor, in order to a proper affidavit being prepared by him with reference thereto.

Evidence of.

I have, &c.
(Signed) J. D. HARDING.

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* No. 193.

Inclosure in No. 197.

Declaration.

Declaration of Danish Consul.

SUR la demande de qui de droit je déclare conformément à la vérité que M. Schröder Lund, Consul de Sa Majesté le Roi de Danemark à Memel, m'a fait, en date du 12 Mai, A.C., la communication suivante:—

"Le Consul Britannique de cette place vient d'être invité par le chef ici présent d'un croiseur Anglais, à porter à la connaissance du public qu'à compter du 15 Mai A.C. les ports Russes seront tenus dans l'état de blocus le plus strict, et que tout navire, qui, après ce terme, quittera, chargé en entier ou en partie, un port Russe, sera capturé et envoyé en Angleterre."

Cette communication m'est parvenue le 14 du même mois.

Depuis le 15 Mai, jour où le susdit blocus fut notifié, jusqu'au $\frac{1}{13}$ Juin inclusivement, sont entrés dans ce port vingt-quatre navires, dont un grand nombre ont déclaré qu'ils n'ont pas pu, malgré leurs efforts, decouvrir de croiseurs ennemis qui eussent pu leur donner des renseignements exacts sur la question, s'il leur était encore toujours permis d'entrer dans notre port, et de le quitter sans détriment, ce qui les a persuadé de la non-existence du blocus, et que par conséquent ils n'ont pas eu l'intention de rompre le blocus.

Après qu'on avait appris plus tard que des navires, partis d'ici avec chargement, ont été capturés, les navires encore situés dans le port n'ont pas osé mettre à la voile et sur leur demande de pouvoir le faire, le memorandum ci-joint, dont l'original est déposé chez moi, leur a été communiqué, plus tard une nouvelle publication du Capitaine Heathcote est émanée, selon laquelle le terme pour quitter le port a été fixé jusqu'au 10 Août A.C.

Le 9 *Septembre*, 1854.

(Signé) A. F. KRIEGSMANN, *Consul.*

Le Soussigné, Ministre des Affaires Etrangères de Sa Majesté le Roi de Danemark, certifie par les présentes que la déclaration que ci-dessus est une traduction exacte du rapport du Consul de Danemark à Riga, M. A. F. Kriegesmann.

Copenhague, ce 19 *Septembre*, 1854.

(L.S.) (Signé) BLUHME.

Pour légalisation de la signature ci-dessus de son Excellence M. Bluhme, Ministre des Affaires Etrangères de Sa Majesté le Roi de Danemark.

Légation de Danemark, Londres, le 28 *Septembre*, 1854.

(L.S.) (Signé) A. REVENTLOW CRIMINIL.

No. 198.

The Queen's Advocate to the Earl of Clarendon.—(Received October 7.)

Letters for Russians detained at Hong Kong Post Office.

My Lord,

Doctors' Commons, October 6, 1854.

WITH reference to Mr. Hammond's letter of the 23rd September, relating to a letter from the Treasury on the subject of the proceedings of the Postmaster at Hong Kong in detaining letters addressed to Russian subjects, I beg to state that I have conferred with the Attorney-General thereon, and that we must request to be furnished with a copy of the Commission of the Governor of Hong Kong, and with any additional information in possession of Her Majesty's Government as to the constitution of the Colony, and especially as to the Governor's power and prerogatives there.

I have, &c.
(Signed) J. D. HARDING.

1853-56

No. 199.

The Queen's Advocate to the Earl of Clarendon.—(Received October 11.)

My Lord, *Doctors' Commons, October* 10, 1854.

Contract at Berlin for wire for Russian telegraph.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 29th September last, stating that he was directed to transmit to me the accompanying despatch from Her Majesty's Chargé d'Affaires at Berlin, reporting that a Russian Colonel had entered into a contract with a firm in that town for the delivery within a certain time of a large quantity of wire, intended for the completion of the electric telegraph between Moscow and Odessa, and that it is supposed that a portion of this contract is about to be completed in England.

To be manufactured in England.

Mr. Hammond was likewise pleased to transmit to me a letter which has been addressed to the Foreign Office by direction of the Lords of Her Majesty's Most Honourable Privy Council, informing your Lordship that the list of articles the exportation of which is prohibited does not include wire, and that the exportation thereof cannot be prevented; and to request that I would take these papers into consideration and report to your Lordship whether Her Majesty's Government is able to stop the exportation of the wire in question.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

xport to Prussia legal.

That I am not aware of any means by which the exportation of the wire in question from Great Britain to Prussia can be legally prevented, at all events without more specific information.

A strong representation to the Prussian Government on the subject may perhaps have the effect of preventing, or at least delaying, the intended transmission of the particular wire in question through Prussia.

Wire may be seized as enemy's property.

If correct information can be procured as to the place of its manufacture here and the mode of its intended transmission, means may possibly be found of legally impeding, if not preventing, the transaction by seizing the particular wire, or some portion thereof, as enemy's property; but, in order to justify this, there must be some reasonable amount of proof that this is the fact.

I have, &c.
(Signed) J. D. HARDING.

No. 200.

The Queen's Advocate to the Earl of Clarendon.—(Received October 13.)

My Lord, *Dobtors' Commons, October* 12, 1854.

Detention of Dutch vessels off Sulina.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 29th September last, stating that with reference to my Reports of the 29th July and 16th August,* respecting the case of two Dutch vessels detained off Sulina, he was directed to transmit to me a further despatch from Viscount Stratford de Redcliffe on this matter, and to request that I would take this paper into consideration, together with the previous correspondence, and report to your Lordship any observations which I might have to make thereupon.

In obedience to your Lordship's commands I have taken this paper into consideration, and have the honour to report—

That the additional papers do not contain any new facts or arguments or throw any further light upon the case, and that I have consequently no further observations to offer thereon.

Should be released.

If it should appear that I correctly assumed the facts to be as I stated in my former Report, I would suggest the propriety of restoring the vessels in question on condition of their owners making no further claims in respect of them.

I have, &c.
(Signed) J. D. HARDING.

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* No. 159 and (?) No. 171.

No. 201.

The Queen's Advocate to the Earl of Clarendon.—(Received October 16.)

My Lord, *Doctors' Commons, October* 13, 1854.

Purchase of Russian vessels by British subjects in neutral ports. Use of British flag before registration.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 28th September last, stating that he was directed to transmit to me a note, dated September 25, 1854, from Count Walewski, inquiring what view is taken by Her Majesty's Government of the questions of the purchase of Russian vessels by British subjects in neutral ports, of the navigation of those vessels under the British flag previously to their being admitted by registration to the privileges of British ships, and of the validity of any contract made under the sanction of Consuls of hostile Powers between their subjects and the subjects of the enemy; and Mr. Hammond was pleased to request that I would report to your Lordship, at my early convenience, my opinion upon this matter.

In obedience to your Lordship's commands I have the honour to report—

That although the purchase of enemy's ships by neutrals during war was always tolerated by British Prize Courts, yet that before the Statute 12 & 13 Vict., cap. 29, foreign vessels could not even in peace, if purchased by British subjects, be registered as British ships. All registered British ships were before that Statute necessarily "British built."

Purchase legal.

The point in question, therefore, now arises for the first time, and I incline to the opinion that a British subject may lawfully purchase a Russian ship in a neutral port, and obtain for her a British register. If such a ship were captured, I apprehend that a British Prize Court must restore her to the British claimant; she could not be considered *boná fide* enemy's property, and her purchaser could not, in my opinion, be considered as "trading with the enemy" so as to subject his ship to condemnation, even if, after the Order in Council of the 15th May, trading with the enemy is a legal offence (which is at least doubtful).

Prize Court does not take notice of infractions of English Statute Law.

The purchaser of the particular ship, the "British Lion," may possibly have violated the English municipal law in this particular case as by "exercising the privileges of a British ship before registration," contrary to 8 & 9 Vict., cap. 89, sec. 4. This must depend upon the particular facts of this and of every other similar case, and is a question exclusively of English and not of international law, upon which the Customs Department might be applied to for information. I may add that the Prize Court of Admiralty has recently decided (in the case of the "Ocean's Bride") that it is not bound to take notice of infractions of the English Statute Law as to registration of British ships even if committed by British claimants, to whom it may, nevertheless, restore a British ship, leaving such infractions to be otherwise dealt with.

I regret that, from the novelty of the case, I am not able to give your Lordship a more explicit opinion, and if the matter proceeds further, I should greatly desire the assistance of the Attorney and Solicitor-General, but I did not wish to delay the matter at present by requiring such assistance.

It may be proper to inform Count Walewski that Her Majesty's Government will, on any cases of the British flag being illegally used within British jurisdiction, make every effort in their power to punish the wrong-doers, but that each of such cases must depend upon the construction which the British Courts may put upon the facts of such case and the law applicable to those facts; and it should be distinctly understood that this is a question in which Her Majesty's Government have little or no discretion or power. They can only institute, or refrain from instituting, legal proceedings in each or any case; they cannot alter the law or interfere with its interpretation by the Tribunals.

The sanction of the British Consul would not be considered by British Courts as sufficient to render any such contracts valid. It would be, of course, a circumstance in favour of the contract, but not by any means decisive. The sanction of any foreign Consul would be immaterial.

I have, &c.
(Signed) J. D. HARDING.

1853-56

No. 202.

The Queen's Advocate to the Earl of Clarendon.—(Received October 17.)

"Ostsee" restored by Prize Court.

Claim of owners for costs.

My Lord, *Doctors' Commons, October* 14, 1854.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 4th October instant, stating that he was directed to transmit to me the accompanying letter from M. Kreeft, Mecklenburg Consul-General in this country, remonstrating against that portion of the decision of the Court of Admiralty in the case of the "Ostsee," captured for an alleged breach of blockade, which decides against the claims of the owners to costs; Mr. Hammond was likewise pleased to transmit to me the former papers on the subject of this capture, and to request that I would take the same into consideration and report to your Lordship any information which I might possess as to the grounds on which the Court of Admiralty has decided not to grant costs against the captors.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I have procured from the Queen's Proctor, and herewith transmit, a shorthand writer's report of the precise expressions used by the Judge of the High Court of Admiralty when he refused costs and damages in the case of the "Ostsee." I have further to observe that there were other circumstances in the case which may not improbably have influenced his decision, although not mentioned in his Judgment; but as the case has been appealed by the claimants, and as these circumstances will be again discussed before the Court of Appeal, I refrain from entering upon them at present; indeed, their bearing on the case could hardly be made intelligible without appending all the papers and troubling your Lordship with a legal discussion of the case at considerable length. I may, perhaps, be permitted to remark upon what appears to me the inconsistent course pursued by the claimants and by M. Kreeft. Whilst the claimants are appealing and endeavouring to get judgment reversed and the captors legally condemned in costs and damages, M. Kreeft is at the same time officially requesting compensation from Her Majesty's Government as if the Judgment (appealed against) were final, or as if Her Majesty's Government were responsible for it; any answer he may receive will probably be communicated to the claimants and used by them (if possible) in their appeal.

I may add that as soon as the case of this ship was laid before me by the Queen's Proctor, and before it was brought to a hearing, I advised that an offer should be at once made to the claimants to restore her on payment of the captors' expenses; this offer the claimants rejected, and thereby considerably increased those costs and expenses which they nevertheless sought, and are still seeking to compel the captors to pay. This was mentioned by me to the Court at the hearing, and even then I did not offer any opposition, but consented to her being restored, and this appears to have had some effect on its decision, which, at all events, is the decision of a competent Court, and for which, even if erroneous (which I do not consider it to be), Her Majesty's Government cannot fairly be held responsible to the Government of Mecklenburg.

On the whole I would venture to suggest that it may be sufficient to inform M. Kreeft that the claimants having appealed from the decision of the Judge of the Admiralty, Her Majesty's Government cannot entertain the question, but must leave it to the decision of the Court of Appeal.

I have, &c.
(Signed) J. D. HARDING.

Inclosure in No. 202.

Admiralty Prize Court, August 19, 1854.

THE "OSTSEE."

Judgment delivered by Dr. Lushington.

Judgment.

DURING the seventeen years that Lord Stowell presided in this Court, and administered the Law of Nations with regard to war, I believe that out of the many

thousands of ships and cargoes brought before him he condemned the captors in only about ten or a dozen cases in costs and damages—not one in a thousand; and Lord Stowell also, as I right well remember, laid it down that he would not condemn the captors in costs and damages upon evidence given before him without giving them the opportunity of justifying their conduct, and stating, if they thought fit, the grounds on which they made the capture. In my own recollection there are only three cases of restitution with costs and damages. I am well aware that where a seizure has been made without ostensible cause or reason, justice requires that the persons making the seizure shall make good to the party the loss that may be occasioned by the capture, but I am also of opinion that this is the extremity of the Law of Nations which ought not to be adopted, except in cases which imperatively require the Court so to do. Without venturing any opinion as to what may be the duty of the Court in cases that may come before it, I think, looking at the confusion that has arisen respecting blockade, and looking at the difficulty which captains of Her Majesty's vessels will have in forming their own opinion, and seeing that consent has been given for the restitution of the ship and cargo, I think I should be going too far in condemning the captors in costs and damages, and I decline so to do.

(Signed) J. F. JOHNSON, *Shorthand Writer.*
October 10, 1854.

No. 203.

The Queen's Advocate to the Earl of Clarendon.—(Received October 16.)

Purchase of Russian vessels by British subjects in neutral ports.

My Lord, *Doctors' Commons, October* 14, 1854.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 4th October instant, stating that, with reference to his letter of the 28th September last, relative to questions put by the French Ambassador in regard to the purchase of Russian vessels by British subjects in neutral ports, he was directed to transmit to me a further note from Count Walewski relative to the same case, and to request that I would report to your Lordship my opinion upon the right of Her Majesty's Government to interfere in this matter.

In obedience to your Lordship's commands I have the honour to report—

That with reference to the special circumstances relating to the ship "British Lion," which Count Walewski states as being the result "des informations recueillies" since the 25th September, I beg to suggest that these circumstances should be immediately communicated to the Customs Department, and their prompt and vigilant attention requested to the case; and that such Department should be requested to cause this ship to be detained and legal proceedings to be instituted against her if possible.

I have, &c.
(Signed) J. D. HARDING.

No. 204.

The Queen's Advocate to the Earl of Clarendon.—(Received October 17.)

British property destroyed by British squadron at Uleaborg.

My Lord, *Doctors' Commons, October* 14, 1854.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 7th October, stating that, with reference to my report of the 28th September,* upon the claim of Messrs. Lewin, he was directed to transmit to me, together with the former papers, a letter from the Admiralty, dated the 2nd October, inclosing Rear-Admiral Plumridge's reports respecting the destruction of property at Uleaborg by the squadron under his command, and to request that I would take the same into consideration, and report to your Lordship my opinion what answer should be returned to the letter of Messrs. Scott, Tahourdin, and Shaw, of the 8th September, on Messrs. Lewins' case.

In obedience to your Lordship's commands I have taken the case into consideration, and have the honour to report—

That (subject to the remarks in my former report as to the doubtful propriety of continuing any correspondence with Messrs. Scott, Tahourdin, and Co., in this matter,

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* No. 190.

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No claim.

they being the London attornies of the claimants, Messrs. Lewin and Co., of Boston, Lincolnshire), I am of opinion that Admiral Plumridge's report affords no sufficient grounds for inducing your Lordship to consider that Messrs. Lewin and Co. have any just or legal claim on Her Majesty's Government for compensation, and that they may be so informed.

I have, &c.
(Signed) J. D. HARDING.

No. 205.

The Queen's Advocate to the Earl of Clarendon.—(*Received October* 17.)

My Lord, *Doctors' Commons, October* 16, 1854.

Hanoverian vessel captured for breach of blockade.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 10th instant, stating that he was directed to transmit to me a note from the Hanoverian Minister at this Court, stating the grounds on which the Hanoverian Government think that the Hanoverian ship "Reinhard," captured for an alleged breach of blockade in the Baltic, should be liberated, and to request that I would take the same into consideration, and report to your Lordship my opinion thereupon.

In obedience to your Lordship's commands I have taken the note into consideration, and have the honour to report—

Cannot release on *ex parte* statement. Must await decision of Prize Court.

That I am informed by the Queen's Proctor that on the 5th October he was instructed by the Admiralty to take proceedings against this ship, which he has done. The witnesses are about to be examined, and the ship's papers to be translated as usual in such cases. Until this is done (which may occupy about fifteen days) and the result laid before me, it is impossible for me to form any opinion at all upon the case. As soon as I can see the papers I will (as I did in the "Ostsee") direct the Queen's Proctor to offer to restore the ship upon proper terms, if I consider it a proper case for such an offer. Otherwise, it will come on in regular course before the Prize Court, and be there decided, unless I should in the meantime be favoured with any special instructions from your Lordship on the matter.

It is to be observed that Count Kielmansegge's application was not made until after proceedings had been instituted, and that it is only in very special cases that Her Government can be advised to abandon a suit upon the *ex parte* statement of those interested in the result, even when made through their Government.

Count Kielmansegge can, I apprehend, only derive his information in this matter from the claimant.

I have, &c.
(Signed) J. D. HARDING.

No. 206.

The Queen's Advocate and the Solicitor-General to the Earl of Clarendon.—(*Received October* 21.)

My Lord, *Doctors' Commons, October* 16, 1854.

British subjects remaining in Russia, employed as Professors of Arts and Sciences.

WE beg to acknowledge the receipt of Mr. Hammond's letter of the 10th instant, stating that he was directed by your Lordship to transmit to us a letter from Mrs. Mary Berg, requesting to be informed whether Englishmen remaining in the Russian service lose their rights as British subjects, and further stating that he (Mr. Hammond) was to request that we would take this paper into our consideration, and favour your Lordship with our opinion as to the answer which should be returned to the applicant.

In obedience to your Lordship's desire we beg to state that the answer which we recommend should be returned is as follows:—

No offence against English law. But high treason if in army or navy.

If a British subject, after a declaration of war by his Sovereign, remains in the military, naval, or political service of the country with which war is so declared, he will be guilty of the crime of adhering to the Queen's enemies, and may incur the penalties of high treason. But civilized nations do not make war against literature or science, nor do they desire to prevent their progress, even in the country of an enemy, and they regard those who are engaged in the advancement of learning, whatever may be the country in which they labour, as employed for the general benefit of mankind.

A British subject, therefore, who, at the commencement of the present war, was resident as a Professor of Art, Literature, or Science in a Russian University (not being a mere naval or military school) will not, by remaining in his occupation, be guilty of any offence against English law, and certainly will not on his return to this country be deprived of any of the rights or privileges of a British subject.

We have, &c.
(Signed) J. D. HARDING.
RICHARD BETHELL.

No. 207.

The Queen's Advocate to the Earl of Clarendon.—(*Received October* 21.)

My Lord, *Doctors' Commons, October* 19, 1854.

Fictitious sales of Russian vessels to Lubeck citizens.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 10th October, stating that he was directed to transmit to me a despatch received from Her Majesty's Chargé d'Affaires at Hamburgh, inclosing copies of letters from Her Majesty's Vice-Consul at Lubeck as to the fictitious sale of two Russian vessels to Lubeck citizens, and to request that I would take the same into consideration, and report to your Lordship my opinion thereupon.

In obedience to your Lordship's commands I have taken the same into consideration, and have the honour to report—

That, inasmuch as nothing is stated as to the (supposed) dates of these transfers of ships from Russian to neutral flags, I cannot at once recommend their being captured, I can only suggest that the particulars should be communicated to the Admiralty, the Customs, and (as to the "Dufvan") to Her Majesty's Consul at Stockholm.

May be captured if transferred after war was imminent.

If the transfer of the ownership from Russians to neutrals took place after war was known to be imminent (say in or since March), each particular vessel so transferred (to whatever flag or in whatever port) may, as a general rule, if at sea, be captured, and, if in a British port, be seized with a fair prospect of condemnation ensuing, but not otherwise, excepting under special circumstances. It is much to be desired that Her Majesty's Consuls should send full information of all such cases, of which there have been a great many in Baltic ports. They should, if possible, specify the supposed date of the transfer as nearly as may be practicable, and perhaps communicate with any of Her Majesty's ships which may be likely to meet with the vessels in question.

I have, &c.
(Signed) J. D. HARDING.

No. 208.

The Queen's Advocate to the Earl of Clarendon.—(*Received October* 21.)

My Lord, *Doctors' Commons, October* 20, 1854.

Fictitious sale of Greek vessels to Ionian subjects

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 16th October, stating that, with reference to the opinion of the Law Officers of the Crown of the 16th July last,* relative to the course to be pursued by the Lord High Commissioner of the Ionian Islands in regard to the fictitious sale of certain Greek vessels to Ionian subjects, he was directed to transmit to me a further letter from the War Department upon the same subject, and that, as it appears to your Lordship to be very desirable that Sir Henry Ward should act in accordance with the opinion of the Procurator-General of the Ionian Islands, Mr. Hammond is pleased to request that I would state to your Lordship whether I see any objection to the course proposed by the Duke of Newcastle.

In obedience to your Lordship's commands I have taken the letter into consideration, and have the honour to report—

Lord High Commissioner's discretionary power of granting passes.

That I do not see any objection to the course proposed by the Duke of Newcastle, viz., to direct Sir Henry Ward to continue, under existing circumstances, to exercise discretionary power of granting passes which he has lately done. The Law Officers' Report of the 24th July last stated that he had that discretionary power, the only question is as to the particular circumstances under which it should be exercised, and

* Query 24th July. See No. 155.

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this power Sir Henry Ward will no doubt exercise with proper caution under the advice of the Procurator-General, having received information of the Law Officers' opinion.

I may add that it might possibly be found more expedient to alter the Ionian laws, which afford such facilities for fraud in the assumption of Ionian nationality, than to impose on the Lord High Commissioner the somewhat critical and invidious duty of refusing sanitary papers to vessels bearing the Ionian flag and papers, (whose crews are quite healthy) because he may suspect their nationality, and that, if the refusal of such sanitary papers is the only check upon palpable frauds habitually practised by foreigners in assuming the Ionian flag, such a state of things appears urgently to require some local legislative enactment.

I have, &c.
(Signed) J. D. HARDING.

No. 209.

The Queen's Advocate to the Earl of Clarendon.—(*Received November* 4.)

Doctors' Commons, November 1, 1854.

My Lord,

Dutch vessels detained off Sulina, and afterwards released.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 26th October, stating that, with reference to my reports of the 29th July, 16th August, and 12th October,* upon the case of the two merchant vessels "Catherine" and "Sjouke Alida," detained off Sulina by the cruizers of Her Majesty's squadron, he was directed by your Lordship to transmit to me, together with the former correspondence which has taken place upon this subject, a note from the Netherlands Minister at this Court, claiming, on the part of his Government, compensation for the losses sustained by the captains of the above-mentioned vessels in consequence of their detention.

Lord Wodehouse is pleased to request that I would take Baron Bentinck's note, together with the previous papers relating to this case, into consideration, and report to your Lordship at my earliest convenience whether the facts stated in Baron Bentinck's note correspond with those upon which I reported in my letter of 12th October, my opinion that the "Catherine" and "Sjouke Alida" should be restored on condition of their owners making no further claims respecting them, or whether the facts now stated would entitle the owners to compensation as well as to the restoration of the vessels.

In obedience to your Lordship's commands I have taken the papers into consideration, and have the honour to report—

That, adverting to my reports of 16th August and 12th October, I perceive that I have probably in my report of the 12th October misapprehended the precise condition of these two vessels, which, I now perceive from Admiral Dundas' letter of the 29th June (No. 4 in Lord Stratford's No. 360) were not finally captured, but appear to have been released after some detention by his orders. Other vessels appear to have been captured for breaking the blockade of the Danube, the mode as to dealing with which cases I reported on the 16th August, and when I reported on this case on the 12th October, I was under the erroneous impression that these two Dutch vessels had been also captured, and were still detained with the other prizes at Constantinople, I therefore suggested their being "restored."

As I now understand the facts, they were released by Admiral Dundas, but Baron Bentinck, on behalf of the Netherlands Government, now demands compensation for their detention.

I beg to suggest that, before any definite answer is returned to Baron Bentinck's application, the attention of Admiral Dundas, or, at all events, of some of the officers immediately concerned in this particular transaction, should be directed to my report of the 29th July, in order that it may be ascertained that I have correctly assumed the facts to be as therein stated, and that such further remarks may be suggested in explanation or mitigation of the damages claimed as the circumstances may admit of.

Moderate compensation might be given.

My present impression is in accordance with my report of the 29th July, to the effect that the detention of these vessels was irregular, and that the owners may be fairly entitled, on the application of a friendly Government, to some moderate compensation, but chiefly, if not solely, by reason of their not having been released at Custange, but taken on to Baltschick, and this (as also other points in the case) may be capable of explanation by those conversant with the particular facts of the case, who

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* Nos. 159 and 200. Also No. 171 (?).

may be able to furnish some further arguments against the right of the owners to be compensated.

Had the vessels been sent before a Prize Court, and had their owners rejected an offer of "restoration without costs or damages," I am of opinion that the Court would not have decreed them any costs or damages, and this was my reason for suggesting such an offer (see my report as to the ship "Ostsee," October 14, 1854)* much, for instance, would, in my opinion, depend upon the answer which can be given to the question "Whether when these vessels sailed from Constantinople they had any and what reason to expect that a blockade of the Danube might or would be established before they could enter.

I have, &c.
(Signed) J. D. HARDING.

No. 210.

The Queen's Advocate to the Earl of Clarendon.—(*Received November* 3.)

Doctors' Commons, November 3, 1854.

My Lord,

Blockade of Gulf of Bothnia raised.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 1st instant, stating that he was directed to transmit to me a letter from the Admiralty, inclosing a copy of a despatch from Vice-Admiral Sir Charles Napier, announcing his having raised the blockade of the Russian ports in the Gulf of Bothnia, and to request that I would take these papers into consideration, and, if I am of opinion that a public notice of the same is necessary, that I would prepare and communicate to your Lordship a notification for insertion in the "Gazette."

In obedience to your Lordship's command I have taken the papers into consideration, and have the honour to report—

That I am of opinion that a public notice of the raising of the blockade of these ports will be right and proper and agreeable to the constant usage of Her Majesty's Government in such cases, and I have accordingly prepared, and herewith transmit, the draft of such notification for insertion in the "Gazette."

I have, &c.
(Signed) J. D. HARDING.

Inclosure in No. 210.

Notification.

Foreign Office, November 3, 1854.

Notification.

IT is hereby notified that the Earl of Clarendon, Her Majesty's Principal Secretary of State for Foreign Affairs, has received from the Lords Commissioners of the Admiralty a copy of a despatch dated "'Duke of Wellington,' off Taro Sound, 21st October, 1854," from Vice-Admiral Sir Charles Napier, K.C.B., Commander-in-chief of Her Majesty's Naval forces in the Baltic, informing their Lordships that he had raised the blockade of the Russian ports undermentioned from that date:—

"Islands of Aro, Uto, the Alanet Archipelago, Nystach, Bjorneborg, Christianstad, Wasa, Walgrund Islands, Little Carleby, Jacobstad, Great Carleby, Lotto, Kalajoki, Brahistad, Uleaborg, Karle Island, Ijo, Gestila, Kerni, and all intermediate Russian ports to Neder Tornea, situated at the head of the Gulf of Bothnia, in latitude (about) 65° 50′ north, longitude 24° 15′ east."

No. 211.

The Queen's Advocate to the Earl of Clarendon.—(*Received November* 4.)

Doctors' Commons, November 4, 1854.

My Lord,

Vessels of belligerent subjects who have become Danes since war began, not entitled to Danish protection.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 3rd of November instant, stating that he was directed to transmit to me a despatch from Her Majesty's Minister at Copenhagen, inclosing a circular issued by the Danish Government to its authorities, informing them that vessels belonging to the subjects of belligerent Powers who have become citizens of Denmark subsequently

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* No. 202.

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to the commencement of the war will have no claim to Danish protection. I have to request that I may be authorized to communicate to the Admiralty Proctor the circular in question, herewith returned, as it will have an important bearing upon several prize cases now pending. I also further request that the inclosed copy may be again returned to me, to enable me to report thereon.

I have, &c.
(Signed) J. D. HARDING.

No. 212.

The Queen's Advocate to the Earl of Clarendon.—(Received November 9.)

My Lord, *Doctors' Commons, November* 8, 1854.

Russian vessels transferred to American citizens at neutral ports.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 16th October last, stating that he was directed to transmit to me two despatches from Her Majesty's Minister at Washington, inclosing opinions from the counsel to Her Majesty's Legation and from the United States' Attorney-General, relative to the transfer of Russian vessels to citizens of the United States in neutral ports, and to request that I would take these documents into consideration, and report to your Lordship any observations which might occur to me thereupon.

In obedience to your Lordship's commands I have taken these documents into consideration, and have the honour to report—

That I perceive that the United States' Government, by way of answer to Mr. Crampton's inquiries, simply incloses to him a copy of the opinion of the United States' Attorney-General.

This appears to be a somewhat inconvenient course. If Mr. Attorney-General Cushing's opinion is, under the circumstances, to be treated as the official answer of the United States to Mr. Crampton's inquiries, it may possibly require a somewhat lengthened and technical reply, which I abstain from attempting until furnished with further instructions from your Lordship to that effect.

As to what papers are necessary to constitute them American vessels.

Legal authorities.

In the meantime I would beg to observe that the second and third questions put by Mr. Crampton (although treated by the United States' Attorney-General as secondary questions) are, in fact, those of the utmost practical importance, and to these questions he really gives no answer at all in the last three or four pages of his opinion. He concludes by saying "the question of what particular documents shall be issued from the Treasury or State Department to a foreign-built ship lawfully owned by a citizen of the United States in the absence of any special legislation on the subject, seems to me a proper one for the consideration of the Executive and of Congress." Upon this subject Mr. Marcy's attention may perhaps be directed to the opinion of a former United States' Attorney-General. "The people of the United States seem to have contemplated the National Government as the sole and exclusive organ of intercourse with foreign nations. It ought, therefore, to be armed with power to satisfy all fair and proper demands which foreign nations may make on our justice and courtesy, or, in other words, with power to reciprocate with foreign nations the fulfilment of all the moral obligations, perfect and imperfect, which the law of nations devolves upon us as a nation. In this respect our system appears to be crippled and imperfect."—Opinions of the Attorneys-General of the United States, vol. 1 page 392. Her Majesty's Government asks "what are the requisite documents?" The United States' Attorney-General answers, in effect, "whatever the Executive and Congress may hereafter choose to require." Possibly it may be proper to point this out with all courtesy to Mr. Secretary Marcy, and to request further and more definite information from him. It may be remarked that numerous neutral States have already fully answered this as well as the other questions now put to the United States' Government, and have even supplied full and accurate lists, descriptions, and copies of the documents which all merchant vessels lawfully entitled to claim their nationality ought to have on board. This information is, for obvious reasons, much needed by belligerents from all neutral and friendly maritime States; it is asked for in the most candid and amicable spirit, but it is not furnished by Mr. Attorney-General Cushing, and Her Majesty's Government is still, in my opinion, much in want of it.

I may add (in confidence) that I strongly incline to the opinion that Mr. Carlisle is right and the Attorney-General wrong, as to the main points on which their opinions so entirely differ, particularly as to foreign-built vessels being entitled to United States' nationality as soon as purchased by United States' citizens abroad, and without registration or any United States' documents on board, and that if the Attorney-General's opinion is to be treated as the formal and official answer of the United States' Government, there are some other important points in it not immediately bearing on this question (especially as to the decisions of British Prize Courts not being in accordance with the universal law of nations) which may require serious notice, the more so because Mr. Attorney-General Cushing seems disposed to adopt views on this subject totally at variance with those entertained by Chief Justice Storey and Chancellor Kent, hitherto considered the highest authorities in the United States, and the whole tone of his opinion is not only somewhat controversial and unfriendly to Great Britain, but calculated to put forward and maintain a very vague and undefined right to cover with the United States' flag any vessels and cargoes in which United States' citizens may be interested, though not fairly entitled to it by international law. I beg to refer to my report of the 29th of May[*] (on Mr. Buchanan's note), and to repeat the observation therein made, that I suspect that there is some design in this opinion of the Attorney-General of the United States, and to observe that the recent concession made by Her Majesty in favour of the flag as covering the cargo, makes it more than ever important to prevent the abuse of the United States' flag. It appears to me desirable to avoid all discussion with the United States' Government as to abstract, belligerent, and neutral rights, and principles of international or prize law, and to elicit, if possible, a practical answer to the plain question "What United States' ships' papers ought every United States' merchant vessel, by United States' law, to have on board, either in peace or war?"

I abstain from going further at present. I beg to refer to my report of the 13th October,[†] upon Count Walewski's application as to the purchase of Russian ships in the United States by British subjects, and to point out that it ought to be borne in mind that our own legislation and regulations on this subject would not be considered as very satisfactory by belligerents if Great Britain were a neutral. This state of things will, however, be remedied to a considerable extent on the 1st May, 1855, by Statute 17 and 18 Vict., cap. 104.—"The Merchant Shipping Act, 1854."

Difference of opinion between United States' Attorney-General and Counsel to Her Majesty's Legation.

In conclusion, I have only to observe that if the law of the United States be as stated by Mr. Carlisle, it must be satisfactory to belligerents, and appears, if vigilantly enforced, to be well calculated to prevent any fraudulent abuse of the United States' flag. If, on the contrary, it is as stated by Mr. Attorney-General Cushing, it is obviously open to every species of abuse and likely to involve the United States with the belligerent Powers.

I have, &c.
(Signed) J. D. HARDING.

No. 213.

The Queen's Advocate to the Earl of Clarendon.—(Received November 15.)

My Lord, *Doctors' Commons, November* 10, 1854.

Explanations. Dr. Deane's "Instructions" to Consuls.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of October 10, stating that he was directed to state to me that Mr. Consul Taylor will be instructed to endeavour to obtain the information respecting the blockade of the Russian ports in the Baltic suggested in my letter of October 5;[‡] but Mr. Hammond is to observe to me, with regard to my statement "that Dr. Deane has recently sent particular instructions to Mr. Taylor on that point," that Dr. Deane had no authority whatever to send any instructions to any of Her Majesty's servants under the Foreign Office, and that your Lordship would be glad to have an explanation of the grounds on which he felt himself authorized to do so.

Charge of negligence against Consuls in Baltic.

Mr. Hammond is pleased at the same time to state to me that, with reference to that passage in my Report in which I said "that Her Majesty's Consular Officers in the Baltic are, from commercial connections and habits, not so diligent or effective in this matter as could be wished," your Lordship cannot permit the general charge of negligence against the whole of the Consuls in the Baltic, brought by the Legal Adviser of the Foreign Office, to pass unnoticed, and that your Lordship would be obliged to me for specific and detailed information respecting each Consul who has failed in the performance of his duty.

In obedience to your Lordship's commands I have the honour to report—

That, with reference to that portion of my Report which alludes to Dr. Deane as

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[*] No. 122.

[†] No. 201.

[‡] No. 196.

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having recently "sent instructions on this point," I have the honour to state that Dr. Deane having been sent out to the Baltic by the Admiralty (as I understand), and at the suggestion of the Queen's Proctor, expressly to collect legal evidence to be used in the Prize Court on behalf of the Crown as to the existence and knowledge of the blockade of Russian ports in the various neutral ports in the Baltic, was (I believe upon my application) assisted by a "Circular" sent from the Foreign Office to the Consuls to afford him assistance, which they did. He did not see Mr. Taylor, and therefore necessarily wrote to him a letter containing detailed "instructions" (not in the *official*, but strictly in the *legal*, sense of the word) as to the shape and contents of the Consular certificate, or affidavit, or evidence which it was hoped that Mr. Taylor could supply.

I believe that Dr. Deane did not himself use the word "instructions," which was mine, and is that habitually used by all lawyers; as, for instance, "I have sent him instructions for his affidavit," "I am instructed to state, &c." I did this without any idea of thereby suggesting that Dr. Deane (who is not in Her Majesty's service) had assumed or was entitled to assume the slightest official authority over Mr. Taylor, or to send him or any other of Her Majesty's servants acting under the Foreign Office any other than *legal* instructions *on this particular subject*. I have had but little official experience, but I well know Dr. Deane had no such authority.

In corroboration of this explanation I beg to annex a note I wrote to Dr. Deane for explanation on this point, together with his reply and an inclosure. I shall anxiously hope for some intimation from your Lordship that Dr. Deane, at least, is free from blame in a matter in which he has diligently and successfully exerted himself, and in which I venture to submit that he only did what was actually necessary in "instructing" Consuls how to procure and in what shape to send *legal evidence*, which in any other shape would have been useless; he did not himself use the objectionable word. I stated in my Report what I conceived to be the substance of what he told me on his return.

I beg, moreover, distinctly to state that Dr. Deane was not sent out or selected or recommended by me; that I never saw or wrote to or heard from him before he went or during his absence.

When I was told by the Queen's Proctor that he should suggest to the Admiralty the sending Dr. Deane, I merely expressed my approval. If I have done wrong in using the word "instructions" in this matter, I have most respectfully to express my regret for it. In the great pressure of business I may often use an inaccurate expression, but I own that I cannot at present see my error in this particular instance.

I now proceed, with much reluctance, but in obedience to your Lordship's distinct and official instructions, to lay before your Lordship, as well as I can, the specific and detailed information which induced me to form and express the opinion that "Her Majesty's Consular Officers in the Baltic are not, from commercial connections and habits, so diligent and effective in this matter as could be wished." This expression your Lordship considers to amount to a general charge of negligence against the whole of the Consuls in the Baltic.

I beg to state distinctly that I did not and do not mean to impute or to insinuate against any of these gentlemen that they are actuated by any improper motives whatsoever. What I alluded to by the words "commercial habits and connections" was that, from the long duration of peace, and from some of their number being merchants, I considered that they had acquired the habit of facilitating, rather than impeding, all commercial transactions, and they seemed hardly sufficiently alive to the legal effects and consequences of war. As an illustration of my meaning, I would refer to my Report of April 6, 1854,[*] on Mr. Michele's conduct in relation to an application forwarded by him relating to a proposed trading with the enemy, by which it will be seen that Her Majesty's Consul at St. Petersburgh had no idea of there being any impropriety in trading with the enemy during war.

I proceed to state the reasons which have produced upon my mind the impression of their being not so diligent or effective as could be wished. I am not in a position to do more than this, or to furnish "specific and detailed information respecting each Consul who has failed in the performance of his duty." I alluded rather to their not having done all they might have done than to specific charges against individuals, which I have no intention to make, and I only mention particular names and facts in order to afford your Lordship the means of judging whether my opinion is or is not well founded.

I may perhaps be permitted to observe that the duties devolving upon the British

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[*] No. 62.

Consuls in the Baltic ports on the war becoming imminent, and on its actual occurrence, were in my opinion widely different from those discharged by them during the recent forty years' peace.

Consuls should have given information as to evasion of belligerent rights, &c.

I presume that they must have received some special instructions in reference thereto; if none such were issued, it is not to be wondered at that they did not always understand what they were to do or not to do; but their sense of duty and general intelligence and experience would have been a sufficient guide to them in all cases of a very obvious and palpable aspect, and I presume that amongst their most important duties would be that of obtaining and conveying to your Lordship early and detailed information as to all attempts by neutrals to evade Her Majesty's belligerent rights, especially by fictitious sales and changes of flag, attempts to break or elude blockade, and generally in all matters connected with trade and shipping.

Fictitious sales, &c.

No sooner was war imminent than every effort was made to shield Russian ships from capture by the help of simulated papers and fictitious sales to pretended neutral owners, so as to "cover" these vessels by the fraudulent assumption of neutral flags. This system was resorted to in anticipation of blockade especially, and was closely connected with it. Neutral ships must receive actual notice of a blockade before they can be captured for breaking it, and if they can successfuly break it, and finish that particular voyage, they cannot be afterwards captured for breaking such blockade. Neutral ships even in a blockaded port are allowed free exit, and their cargoes laden before blockade are respected. There was a sudden demand for neutral ships in all Russian ports, and every device was resorted to to "manufacture" Russian ships into neutrals, so as to supply this demand. These simulated sales I have strong reason to believe to have been very numerous. At least nine of such cases have come before the Prize Court, the vessels having been actually seized in British ports.[*] No less than four[†] are claimed by one gentleman, Mr. Sorensen, born and bred in Russia, the son of the Danish Consul at Libau, but claiming to be a Dane.[‡] A much larger number have either not come into British ports, or have escaped detection and seizure whilst there.

A change of the Russian flag to a neutral flag on the eve of or during war must always attract general notice in any port in which it may happen, and is a matter, I humbly conceive, particularly proper for the vigilant attention and special communication to your Lordship on the part of all British Consuls. Some of them evidently so consider it, and have, on more than one occasion, sent specific information of such cases, especially the Consul at Lubeck and Colonel Hodges, as also Mr. McBean, at Leghorn, but in none of these nine cases of ships seized here for simulated sales, with one exception (the "Christine") have the Consuls sent any information at all, that I am aware of; none such has reached the Admiralty Proctor in any of those cases, to whom it would be naturally communicated. The absence of information in so many cases first impressed me with the idea that greater vigilance might have been used.

Many Baltic merchants at different ports were interested in each of these vessels and in their cargoes; the vessels were generally well known in the Baltic; each touched at one or more Baltic ports or passed the Sound, duly reporting themselves at Elisnore shortly before and shortly after their pretended change of flag, and the existence of a regular system of fraudulent transfer must have been notorious throughout the Baltic. The Danish flag was generally used, often without the vessel ever having visited a Danish port, and the scheme was carried on with the assistance of several agents and correspondents at different ports.

British Consular certificates granted.

In no less than *four*[§] out of these *nine* cases, British *Consular certificates* have been found on board, showing, at all events, that Mr. Consul Sannoby,[‖] of Libau, so far from sending any information, was induced to lend his sanction to such transactions, and to issue official documents in connection therewith.[¶] The practical effect of such certificates, or of any similar document in an official form from a British Consul, would be in most cases to secure perfect impunity to all concerned and to carry out the fraud. Most naval officers, for instance, would shrink from the responsibility of capturing a neutral vessel with a British Consular certificate amongst her papers; and such documents are always strongly relied upon by claimants in proof and argument in the Prize Court.

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[*] "Ernest Merek," "Baltica," "Soglasie," "Christine," "Rapid."

[†] "Æolus," "Amalie," "John," "Johan Cristophe."

[‡] I believe that two or three more have come before the Court, in which, however, I have not seen the papers.—J. D. H.

[§] "Æolus," "Amalie," "John," "Johan Cristophe,"

[‖] Query Schnobel.

[¶] The dates are to be observed; war being imminent February 6, and declared March 29.—J. D. H.

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The discovery of such certificates on board so large a proportion of the vessels seized for simulated sale confirmed my impression of want of vigilance on the part of Consuls, and I beg to append an extract from the Judgment of the High Court of Admiralty as to one of such certificates.* Copies of all the papers in each case are with the Admiralty Proctor. The originals are in the Admiralty Registry.

With respect to the question of the knowledge of the blockade of Riga (especially), which some of these very vessels in their neutral disguise succeeded in breaking, the main point on which information has been, and still is wanted is, "when and how was it first known at that Riga was blockaded?"

Date when blockade of Riga was known.

It is obvious from the following facts and dates that the existence of a blockade of several ports, especially Riga, was known in the Baltic ports by the end of April or early in May, and long before the "Gazette" notice of it on June 16. The blockade of Riga was established on the 17th April, and constantly thereafter maintained. More than 150 vessels were warned off by the blockading force. Most of such vessels must have put into various Baltic ports or passed through the Sound, stopping and reporting themselves at Elsinore. By this or other means a clear knowledge of the existence of the blockade soon spread rapidly by means of telegraphs, newspapers, and commercial advices, and was diffused all over the Baltic in a very short time; this is quite in accordance with experience, which shows how quickly such important commercial intelligence is always made known to all interested, and it is now clearly established by legal proof procured by means of Dr. Deane's exertions. Colonel Lloyd Hodges, in an affidavit sworn at Hamburgh, October 4, deposes that the blockade of Libau and the Gulf of Riga "were matters of *public notoriety* in Hamburgh and Bremen as early as *the end of April;* that such blockades were referred to in the journals published daily in Hamburgh, Lubeck, Bremen, the ports of the *Duchies of Holstein and Schleswig*, Mecklenburgh Schwerin, Prussia, and other ports of the Baltic, and generally throughout Germany amongst ship-owners, masters of vessels, and others connected with shipping and trade at the sea-ports of the north of Europe."

This is corroborated by newspapers forwarded by him; for instance, by a Hamburgh newspaper of the 22nd April, containing, as news from Memel of the 19th April, an announcement of some of the blockading squadron being then on the spot, and by a Hamburgh newspaper of the 27th April, which speaks of the blockade as then existing.

The question upon which information from Mr. Taylor and from other Consuls was and still is desired, is obviously not when it was officially notified by the British authorities or the neutral Governments, but when and how merchants generally first heard and knew it. I apprehend that they did know it by the end of April at latest all over the Baltic, according to Colonel Hodges.

It is with regard to this state of facts that I did not consider Mr. Taylor's despatch to your Lordship of the 19th September as very satisfactory. I have since received a copy of his despatch of 18th October, which calls for no special remark.

I cannot consider that the accompanying affidavit, which is all the information, I presume, that can be obtained from Mr. Larlham, at Elsinore, on the same point, is more satisfactory than Mr. Taylor's despatch of the 19th September.

If (as Colonel Lloyd Hodges proves) the blockade was well known all over the Baltic, especially in the ports of Schleswig and Holstein, by the end of April; if it then was publicly notorious at Hamburgh, and published in the Hamburgh newspapers of the 22nd and 27th April, I cannot persuade myself that the mercantile community at Copenhagen and Elsinore remained ignorant of it until June, and that no notice of it appeared in the Danish newspapers, or was circulated amongst Danish merchants by commercial "advices," or by ships putting into Danish ports.

I have strong reasons for believing that Danish ships were warned off from Russian blockaded ports by Her Majesty's ships and actually put into Danish ports before the middle of May. I am quite aware of the extreme reluctance (adverted to by Mr. Taylor) which is shown by foreign merchants and by foreign Governments to admit anything on this subject. It is this very reluctance which rendered it necessary for the Crown to call upon the Consuls for their active exertions in this matter; but considering the rapid and regular communication between various Danish ports (*e. g.*, Altona and Flensburg) and such places as Hamburgh, I cannot avoid coming to the conclusion that many of the Baltic merchants in London are in a better position as to information on this point *from Denmark* than the Crown is even at the present moment, although that condition is improved since my report of the 5th October; and

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* The "Johan Cristophe."

it was with reference to the state of things *then* existing that I used the term "not very satisfactory," having observed that Mr. Taylor, in his first despatch of the 19th September confined himself to the various *official* notifications, and did not even state that he had *attempted* to obtain the necessary information from merchants, by searching files of newspapers, or by any similar means.

I am *now* aware of some valuable information having been recently received, especially from Her Majesty's Consular Officers at Lubeck and Flensburgh (in consequence of Dr. Deane's exertions) which tends to corroborate Colonel Hodges' statement that the blockade was known to exist by the end of April, but no such information had been received by me from any Consular authority in the Baltic when I addressed to your Lordship my report of the 5th October.

Again, as to the date at which it was known *at Riga itself* that the port was blockaded, bearing in mind that it was so at least from the 17th April;* that the blockading squadron was occasionally seen from Riga itself, and frequently from the neighbouring Russian coast, and that Captain Key's public notification was publicly advertised by Her Majesty's Consul at Memel on the 17th, 18th, and 19th May, and published in a Stettin newspaper of 20th May, and that letters sent by the post from Memel to Riga arrive there on the next day but one, it must be obvious that the despatch of Mr. Plaw (from Dantzig) to your Lordship of September 2, and that of Mr. Brockmann (from Koningberg) of August 14, purporting to convey the best information they could obtain from Riga on this point, conveyed only very imperfect and erroneous information. I do not mean to say that this is to be imputed to them as a serious fault, because they were (and doubtless designedly) misinformed by their Riga correspondents; but I must observe that they do not in their despatches point out that this information was incorrect or even suspicious, and that the fact must have been otherwise, of which a very little consideration would nevertheless have convinced them. I am of opinion that no merchant of ordinary ability would have believed such information from a Riga correspondent under the existing circumstances.

I have thus endeavoured, in compliance with your Lordship's instructions, to put your Lordship in possession of the principal facts upon which I have formed the impression of some want of diligence and efficiency on the part of the Consuls in the Baltic in these matters. Having formed that impression, I conceived it to be my official duty to convey it to your Lordship, more especially because of my being particularly charged with the protection of the interest of the Crown in prizes, and acting as counsel to the Crown in almost all such cases in the Prize Court, I enjoy peculiar opportunities of information. I am well aware of the various powerful interests arrayed against the Crown in neutral ports, and of the great difficulties Consuls have to encounter in discharging their duty in this respect; but having observed that in *four* cases out of *nine* at least one British Consul had allowed his vigilance to be so far eluded as to furnish (after war had broken out) official documents which were intended to be used, and were used, against the Crown, and also that the Crown, instead of having the best information, was somewhat worse informed as to matters of commercial interest and notoriety than many private merchants, I addressed to your Lordship the particular observations now in question in my report of October 5, which observations I most respectfully submit were not unjustifiable under all the circumstances of the case.

I have, &c.
(Signed) J. D. HARDING.

No. 214.

The Queen's Advocate to the Earl of Clarendon.—(*Received November* 14.)

My Lord,
Doctors' Commons, November 13, 1854.

Blockades: Notices of, communicated to Foreign Ministers.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 11th instant, stating that, by agreement with the French Government, notice has been given by letter to Foreign Ministers in London and Paris of the institutions of blockades by the allied forces, inclosing to them at the same time the notifications published respectively in the "London Gazette" or the "Moniteur."

Lord Wodehouse further states that he is directed by your Lordship to request

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* "On what date was it first commonly supposed at Riga that the port was blockaded?"—(See my Report, August 7.) See No. 162.

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that I would report to your Lordship, at my earliest convenience, my opinion whether, on the publication in the "London Gazette" of a notice that a blockade has ceased, it is equally necessary that a letter should be addressed to foreign Ministers for the information of their Governments.

In obedience to your Lordship's commands I have the honour to report—

Raising of blockades to be equally so communicated.

That I am of opinion that the raising of a blockade should be notified in the same manner and form as its institution may have been notified, and that consequently it appears to me to be proper that such a letter as suggested should be addressed to foreign Ministers on the publication in the "London Gazette" of a notice that a blockade has ceased.

I have, &c.
(Signed) J. D. HARDING.

No. 215.

The Queen's Advocate to the Earl of Clarendon.—(Received November 17.)

My Lord,
Doctors' Commons, November 16, 1854.

Dutch vessel building at Libau, contracted for in 1853.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 11th November instant, stating that he was directed to transmit to me a note from the Netherlands Minister at this Court, stating the circumstances under which Mr. Hogendyk, a Dutchman, contracted, in October 1853, with a ship-builder at Libau, for the construction of a merchant schooner, and actually paid five-eighths of the purchase-money.

That Mr. Hogendyk considering the vessel as his own property, is stated to have applied to the Admiralty for permission to take her out of the Porte of Libau, and to have been informed, in reply, that his request would not be granted.

Lord Wodehouse is pleased to add that Baron Bentinck now requests that Her Majesty's Government will reconsider their decision on this matter, and will allow Mr. Hogendyk to bring his vessel away from Libau.

And Lord Wodehouse is pleased to request that I would take this case into consideration, and, at my earliest convenience, report to your Lordship my opinion as to the answer which should be returned to Baron Bentinck.

In obedience to your Lordship's commands I have taken the case into consideration, and have the honour to report—

Cannot be brought out of port of Libau.

That Baron Bentinck should be informed that Her Majesty's Government must decline to give any special permission in favour of Mr. Hogendyk, or in regard to the vessel in question which is being built at Libau.

I have, &c.
(Signed) J. D. HARDING.

No. 216.

The Queen's Advocate to the Earl of Clarendon.—(Received November 21.)

My Lord,
Doctors' Commons, November 19, 1854.

Hanoverian ship "Reinhard" before Admiralty Court.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 9th November instant, stating that he was directed to transmit to me the accompanying note from Count Kielmansegge, Hanoverian Minister at this Court, stating that the case of the Hanoverian ship "Reinhard," now before the Admiralty Courts, has reached that state in which Her Majesty's Government will be able to decide as to the propriety of liberating that vessel at once. Lord Wodehouse also states that he is further directed to transmit to me the former correspondence on this subject, and to request that I would take these papers into consideration, and report to your Lordship my opinion thereupon.

In obedience to your Lordship's commands I have taken the papers into consideration, and have the honour to report—

Should be left to decision of Prize Court.

That having perused the depositions and ship's papers in the case of the "Reinhard," I am of opinion that upon the whole it is not a case by any means favourable to the *bona fides* of the claimants, or one in which the Crown ought to forego its rights, and I am of opinion that the case should be left to the decision of the Prize Court. I do not consider it necessary, until further instructed to this effect by your Lordship, to state the grounds upon which I have arrived at this conclusion, which I could not do without referring at considerable length to the facts of the case and the law applicable to those facts.

I observe that Count Kielmansegge, in his communication to your Lordship of the 4th November, refers to and incloses a statement which he describes as that of the legal adviser of the "Reinhard." I beg to observe that this gentleman is a proctor, occupying much the same position in the Court of Admiralty as an attorney in a Court of Law, or a solicitor in a Court of Equity, and that no opinion of any advocate favourable to the case of the claimant is annexed or referred; it may be not unfairly inferred that no such could be obtained. However this may be, a proctor's statement of his views of his own client's case appears to me to be a document with which a foreign Minister need scarcely trouble your Lordship.

Count Kielmansegge, in the same communication, also alludes to "the papers for the defence handed into the Court of Admiralty, namely, an important affidavit of the sworn ship's brokers, and the Bill Brief of the ship 'Reinhard.'" I beg to state distinctly that this description, if I am rightly informed by Her Majesty's Procurator-General, is not correct. No such papers have been handed in to the Court or are before it, so far as I can ascertain. In order to ascertain the truth as to such papers, Her Majesty's Procurator-General has, by my desire, applied to the proctor for the claimants, Mr. Rothery, for these papers, and has informed me that Mr. Rothery states that he has no knowledge whatsoever of them.

Under these peculiar circumstances, I would suggest that this part of the case should be closely followed up in whatever manner may seem fit to your Lordship. Perhaps Count Kielmansegge's attention should be invited to this point, and he should be requested forthwith to furnish copies of them to your Lordship, and to explain when and by whom they were "handed to the Court of Admiralty." These documents may be of great importance to the decision of the case, and it will be desirable to sift this matter to the bottom, and to ascertain whether they had been seen by Count Kielmansegge when he wrote to your Lordship, or who had informed him that they were before the Court, and what are the real facts in regard to them. I may perhaps usefully explain that the "Bill Brief" is the document nearly answering to the British Certificate of Registry, containing the dimensions and description of the vessel and her owners' names. It is the most important document relating to a Hanoverian ship as establishing her nationality; it is expressly required by the Hanoverian Royal Decree of 1840 to be carried by all Hanoverian vessels, and this document is wanting; it is not with the other ship's papers of the "Reinhard." Its absence, coupled with the fact that the "Reinhard" was at one time navigated under Russian colours and had Russian colours on board when captured, are amongst the causes of suspicion against her. It may be of importance to find out how and when Count Kielmansegge first saw the "Bill Brief" of the "Reinhard," in whose hands it then was, and now is; how it came into such hands, and why it was not on board with her other ship's papers, as expressly required by the Hanoverian law.

I have, &c.
(Signed) J. D. HARDING.

No. 217.

The Queen's Advocate to the Earl of Clarendon.—(Received November 21.)

My Lord,
Doctors' Commons, November 20, 1854.

Russian subject serving as mate on board a British vessel.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 14th of November instant, stating that he was directed to transmit to me a letter from the Board of Trade respecting the case of Carl Anders, a Russian subject, who has qualified to serve as mate on board a British vessel, and to request that I would report to your Lordship my opinion as to the answer which should be returned to the letter from the Board of Trade—

In obedience to your Lordship's commands I have the honour to report—

No objection.

That it is only stated by the Board of Trade that Carl Anders Stinstrom is a Russian subject and a native of Helsingfors. No further particulars whatsoever are given respecting him. Under these circumstances I can only say that I am not aware

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of any legal objection to his receiving the certificate in question, arising from the mere facts that he was born in Russia and is a Russian subject.

I have, &c.
(Signed) J. D. HARDING.

No. 218.

The Queen's Advocate to the Earl of Clarendon.—(Received November 21.)

My Lord, *Doctors' Commons, November 20, 1854.*

Claim of M. Radtchich to Tuscan nationality for his vessel.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 10th November instant, stating that he was directed to transmit to me a letter from M. Radtchich, claiming Tuscan nationality for his vessel the "Nicolas Ier," and requesting that it may be allowed to put to sea without fear of molestation by British or French cruisers; and Lord Wodehouse is pleased to request that I would take M. Radtchich into consideration, and report to your Lordship my opinion as to the reply to be returned to it.

In obedience to your Lordship's commands I have taken the letter into consideration, and have the honour to report—

No proof.

Must decline.

That I am of opinion the applicant should be informed that your Lordship must altogether decline to accede to his request. I observe that he does not state any particulars as to his parentage, birthplace, domicile, or allegiance, nor does he give any reference whatsoever as to his respectability or as to the truth of his statement.

I have, &c.
(Signed) J. D. HARDING.

No. 219.

The Queen's Advocate to the Earl of Clarendon.—(Received November 22.)

My Lord, *Doctors' Commons, November 21, 1854.*

Danish Circular. Vessels of belligerents who have become Danish subjects since war began, not entitled to Danish protection.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 3rd of November instant, stating that he was directed to transmit to me the accompanying despatch from Her Majesty's Minister at Copenhagen, inclosing a Circular issued by the Danish Government to its authorities informing them that vessels belonging to the subjects of belligerent Powers who have become citizens of Denmark subsequently to the commencement of the war will have no claim to Danish protection; and to request that I would take the same into consideration, and report to your Lordship my opinion thereupon.

In obedience to your Lordship's commands I have taken the papers into consideration, and have the honour to report—

That the "Circular" in question is so far satisfactory as that it indicates some desire on the part of the Danish Government to check the frequent abuses of the Danish flag which have been committed during the present war. Instances of such abuses have been far more frequent under the Danish flag than under all other flags together.

Similar to Ordinance of 1803.

Adverting, however, to the provisions of Article III of the Danish Ordinance of May 4, 1803:—"Pour obtenir le certificat ordonné par l'article précédent, il faut être notre sujet, né dans nos Etats, ou avoir acquis, avant le commencement des hostilités entre quelques Etats maritimes de l'Europe la jouissance complète de tous les droits de sujet domicilié, soit de nos pays, soit de quelqu'autre Etat neutre. Le propriétaire du navire, pour lequel on demande le certificat, devra, dans tous les cas, résider dans quelque endroit de nos Royaumes ou des pays à nous appartenants."

Hitherto violated.

The Circular would seem to have been rendered necessary only by reason of the frequent violations of that Ordinance, which the Danish Government must be well aware have occurred with the sanction or connivance of the Danish authorities during the present war. It may appear to your Lordship proper to inquire of the Danish Government what course it proposes to adopt with reference to those persons who have actually obtained Danish documents for Russian ships without being Danish subjects by birth or by allegiance before the war, contrary to the spirit and terms of the Ordinance and the Circular.

Some of such cases have been and are still before the High Court of Admiralty, in which the claimants are doing their utmost to maintain their right to Danish nationality in direct contravention of the Ordinance and of the Circular, and are insisting upon Danish official documents as legally clothing them and their ships with Darnish nationality, which document, as it now appears, must have been improperly issued to them by Danish authority, and which may, nevertheless, be successfully used against or (legally speaking) "in fraud of" Her Majesty's belligerent rights.

I have, &c.
(Signed) J. D. HARDING.

No. 220.

The Queen's Advocate to the Earl of Clarendon.—(Received November 25.)

My Lord, *Doctors' Commons, November 22, 1854.*

Dates when blockade of Russian Baltic ports was known at Copenhagen.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 8th instant, stating that he was directed to transmit to me the accompanying despatch which has been received from Her Majesty's Minister at Copenhagen, reporting on the period when the blockade of Russian ports might have been known at Copenhagen, and to request that I would take the same into consideration, and report to your Lordship my opinion thereupon.

In obedience to your Lordship's commands I have taken the despatch into consideration, and have the honour to report—

That being altogether unaware of the particular points in Mr. Buchanan's despatch upon which your Lordship desires my opinion, or of the object for which that opinion is required, and being wholly ignorant of what instructions Mr. Buchanan may have received from your Lordship as to the blockade of the Russian ports in the Baltic, I proceed with considerable diffidence, frankly and without reserve, to state to your Lordship the observations which occur to me as arising upon the face of that despatch, and I trust I shall be pardoned if, in consideration of these circumstances, I should appear to press anything unduly, or to adopt too harsh a tone. Subject to these considerations, it is to be observed that the question is simply:—"When was the existence of the blockade of the Russian ports in the Baltic known at Copenhagen, not officially, but as a matter of political and commercial intelligence?" This is the question upon which Mr. Buchanan is requested to give all the information and assistance in his power.

Subject to these considerations I observe—

(1.) That Mr. Buchanan does not clearly state his own knowledge, or impression, or opinion as to the date when the existence of the blockade was known at Copenhagen. I infer from the general tenor of his despatch that he thinks that it was known before June, but that he cannot prove it, or give any grounds or reason for so thinking.

(2.) That he does not state what particular steps he took to ascertain this. He merely says:—"The persons whom I employed to obtain this information, and who from their pursuits I had reason to believe would have been able to procure it, failed in their endeavours to meet my wishes." He does not state what information they did give him, or that they gave him any information at all, or to what means they had recourse in order to procure it.

A careful search both of all the Danish newspapers and of other newspapers circulated at Copenhagen, especially as to ship news, would appear to me to be an essential and obvious preliminary measure. If Mr. Buchanan has made such a search, and has found absolutely nothing, the complexion of the case is, I must admit, very much changed; if this has not been done, the first and most obvious measure to acquire the information has not as yet been taken.

I cannot, however, at present believe that all the Danish newspapers were absolutely silent for more than a month upon a topic of great public and local interest, as to which the newspapers of neighbouring countries were full of intelligence. The geographical position of Copenhagen renders it both easy and important to give notice there and at Elsinore of blockade in the Baltic, to all vessels entering the Baltic, which would thereby be rendered liable to capture if continuing their voyage to any blockaded port, as soon as they got three miles from the Danish coast. I cannot but suppose that the Admiral and Mr. Buchanan must have concerted measures to insure this being done as early as practicable; and I cannot understand how such measures have entirely failed in securing so essential an object.

Copenhagen and Elsinore are, moreover, great centres of communication in all

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that relates to shipping in the Baltic. Intelligence reaches Copenhagen from Hamburgh, as I understand, in about sixty hours. The actual existence of the blockade was a matter of notoriety at Hamburgh, and at all the ports of North Germany, where the newspapers often published and alluded to it before the end of April.

This is proved by the newspapers themselves, and by affidavits made to this effect in the Prize Court by Colonel Lloyd Hodges and Lord Bloomfield.

I beg also to refer to the "Times" newspaper of the 4th May, which contains, under the head "Hamburgh, April 30," the following passages:—"A private letter from the fleet off Gottske Sound, and dated the 19th instant, contains the following remarks:—Most of our time has been spent blockading the various passages through which strange vessels can properly sail into the Gulphs of Bothnia and Finland;" and further on this passage occurs:—"A letter from the fleet, dated Copenhagen, April 27, states that Sir C. Napier, with the line-of-battle ships under Admirals Corrie and Chads, were by the latest accounts keeping up a rigorous blockade of the Gulf of Finland, which would render the escape of a single vessel impossible. Cruizers are stationed off Revel, Memel, Riga, Dantzig, Stockholm, Gothland, Bornholm, in the Sound, Kattyal, and Gulf of Kiel, so that the whole Baltic Sea and coasts were under strict guard. The 'Tribune' left Copenhagen for England on the 26th April with one of her prizes, having captured six."

I request that these papers may be duly considered in connection with my Report of the 10th November instant.*

Mr. Buchanan knew before Sir C. Napier left Keoge Bay that it was his immediate intention to blockade all the Russian ports, for which the Admiral had an ample force. He states that he received letters from Sir C. Napier, dated off the Gulf of Finland, as early as the 17th April.†

It is most probable that many vessels touched at Copenhagen and Elsinore coming from the fleet, or having been warned off by it, during April and May. The Hamburgh papers of the end of April must have reached Copenhagen three days after date. The "Times" of May 4 (above alluded to) must, I presume, have reached Copenhagen by the 12th or 15th May.

I own that I cannot comprehend how it happened that on so important a subject Mr. Buchanan remained without any definite information as to the blockade having been established until June.

The question whether there really did exist a *de facto* blockade or not was one of very great importance. Mr. Buchanan was constantly applied to for certificates to prove the fact. He states that he did not consider himself justified in giving any definite certificates until he received Sir C. Napier's despatch of May 27. He must have long felt himself in a painful state of uncertainty and embarrassment on the subject, and I presume that he made every possible effort to put an end to such uncertainty; but I own that I do not understand how all such efforts proved unavailing.

With respect to the certificates of the blockade which Mr. Buchanan was requested to grant, I have only to observe that the circumstances which he himself states would, in my opinion, have justified him in giving a certificate that to the best of his knowledge and belief such blockade existed, and I do not see how he could, under any circumstances, have strictly certified to anything beyond this.

In conclusion, I have to observe that in the present doubtful state of the matter in question I would venture to suggest that no direct answer can conveniently be given to the note of the Danish Chargé d'Affaires, of September 28, transmitted to me with Mr. Hammond's letter on October 3; or to another such note of the 20th October, transmitted to me with Mr. Hammond's letter on October 25.

I consider that not only considerable pecuniary interests, but that the credit of the Government, is involved in proving, if possible, that due regard was paid to neutral rights by Her Majesty's ships, and that the masters of captured vessels now before the Prize Court, as well as the Danish authorities and commercial public, were not ignorant of the blockade for a month after all North Germany knew of it. Indeed, at first sight, this affected ignorance on their part is absolutely incredible. I cannot as yet believe it to be a real, honest, *bonâ fide* ignorance; but I much fear the result both upon the Prize Court, and upon public opinion of the evidence of Mr. Buchanan, as contained in an affidavit he has made, which is confined to the official communications as to blockade, and his absolute silence as to his own knowledge or belief on the subject, coupled with a similar silence on the part of Mr. Taylor and Mr. Larlham. It will, I fear, be asked, and argued with great weight:—"How can the Crown pretend to say that this was a valid blockade, and was known to be existing in April or May, when even its own servants in Denmark do not say that they had any information or belief whatever upon the point until June?" And I do not see how this is easily answered.

I have, &c.
(Signed) J. D. HARDING.

P.S.—I beg to observe that many of the above points, which appear to me to be obscure and open to remarks, may not improbably be easily explained by reference to other papers which I may not have seen.

J. D. H.

No. 221.

The Queen's Advocate to the Earl of Clarendon.—(Received November 30.)

My Lord, *Doctors' Commons, November* 29, 1854.

Transfer of ships from Russian to neutral flag at Messina.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 25th November instant, stating that he was directed to transmit, for my information, the accompanying copy of a despatch, and its inclosures, in original, from Mr. Rickards, the Acting British Consul at Messina, containing information respecting the transfer of ships from Russian to neutral flags.

In obedience to your Lordship's commands I have taken the papers into consideration, and have the honour to report—

That the "Soglosie" has been seized and proceeded against in the Prize Court; further proof has been ordered by the Court, and the case is pending.

That with reference to the other vessels mentioned by Mr. Rickards, I would venture to suggest that the attention of the Admiralty and of the Customs may be usefully directed to them. Mr. Rickards can communicate further information as to the sailing and destination of some of them, especially the "Grossfurst Alexander," *alias* "Hermann," which seems a particularly suspicious case, she having assumed the Danish flag after the war and whilst in a Neapolitan port, where she still is.

Facilities for improper use of Danish flag.

I beg to observe that this communication affords further proof of the great facilities afforded by the Danish Government to the improper use of its flag to cover Russian interests, to which I have on former occasions adverted.

I have, &c.
(Signed) J. D. HARDING.

No. 222.

The Queen's Advocate to the Earl of Clarendon.—(Received December 1.)

My Lord, *Doctors' Commons, November* 30, 1854.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 29th November instant, stating that he was directed to transmit to me a note which your Lordship has received from the French Ambassador at this Court, stating the opinion of his Government on the question of the detention in certain cases of vessels belonging to neutral Powers, and that his Excellency requests to be informed whether the opinion of Her Majesty's Government coincides with that of the French Government; and Lord Wodehouse was pleased to request that I would take Count Walewski's note into my immediate consideration, and report to your Lordship at my earliest possible convenience what answer should be returned to his Excellency.

In obedience to your Lordship's commands I have taken this subject into consideration, and have the honour to report—

Expeditions fitted out in friendly States.

That with reference to the general principles of international law applicable to cases of attempts made by the subjects or citizens of one friendly Power to interfere by force of arms with those of another friendly Power, I beg to refer to my report of the 15th February last, upon expeditions then supposed to be fitting out in United States' ports, designed against Mexico and Central America, and more especially to the first portion of that report.

With reference to the non-existence of any general right of capturing upon the

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* No. 213.

† He does not state what accounts as to blockade were contained therein, or whether he afterwards received others of an earlier date than May 27.

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As to seizure of neutral vessels with arms not intended for Queen's enemies.

high seas neutral vessels conveying arms and ammunition from neutral ports not destined for the use of the Queen's enemies, I beg to refer to my report of the 25th March last* upon the instructions of your Lordship to the Admiralty as to certain vessels conveying arms from Belgium to the revolted subjects of the Sultan, and especially to the latter portion of that report. Subject to the principles laid down in those reports (which will, I trust, be found to bear upon the present question), I beg to observe, with reference to Count Walewski's note, that all the earlier portion of it which defines certain acts as not amounting to piracy, *jure gentium*, and which states the strict legal limits beyond which even friendly nations must not pass in their desire to check such lawless enterprizes as those alluded to, appears to me to contain a generally correct statement of international law and usage to which Her Majesty's Government may properly assent.

(With reference to attack on Cuba by United States' citizens.)

I am by no means sure that I clearly understand the meaning of the last two pages of Count Walewski's note, commencing with the words, "Il y a une hypothése," &c. The real question for consideration (as I apprehend it) is, what steps may Great Britain and France justly take by international law for the purpose of preventing the success of forcible and irregular attempts made or supported by citizens of the United States against Spanish authorities in Cuba? If by this last passage, and especially by the words "le droit d'avertissement ou d'empêchement passif," his Excellency means to suggest that although vessels under the United States or other friendly flags, carrying men, or arms, or ammunition, destined to make or support an internal revolt in, or a forcible attack on, Cuba, cannot be captured on the high seas nor seized within French or British jurisdiction, unless by virtue of some positive law which they have actually violated within such jurisdiction, yet that they may be watched and followed, and every warning and information and indirect assistance may be given to secure the defeat of their object and the apprehension and condign punishment by Spanish authorities of all concerned, then it will be seen, by reference to my Report of the 15th February, I entirely concur with this view. If I should have misapprehended the meaning of his Excellency, I must request to be favoured with some further explanations.

It will, of course, be desirable that the instructions issued by France and by Great Britain to their naval officers on this subject should be mutually communicated, and, if possible, be identical.

I have, &c.
(Signed) J. D. HARDING.

No. 223.

The Queen's Proctor to the Earl of Clarendon.—(*Received December* 1.)

Doctors' Commons, November 30, 1854.

My Lord,

Blockade of Riga.

As to fixing date.

WITH reference to the blockade cases I am conducting in the High Court of Admiralty on the part of the Crown, and which are to be adjudicated upon very shortly, I have the honour to request your Lordship's assistance in order that I may be immediately furnished with the names of one or two persons in or near London who have been at Riga, and who can speak to the circulation of the English "Times" newspaper, and also to the circulation of certain foreign newspapers in that port.

It is also most desirable that I should obtain some evidence as to the communication by post between Memel and Riga.

I should not have troubled your Lordship with this request if I had not previously exhausted, without effect, every means of obtaining the desired information in the City of London.

I have, &c.
(Signed) F. H. DYKE.

No. 224.

The Queen's Advocate to the Earl of Clarendon.—(*Received December* 1.)

Doctors' Commons, December 1, 1854.

My Lord,

IT is very desirable in causes now pending in the Prize Court relative to the blockade of Riga, for the Crown to offer legal proof, by affidavits from persons who can speak from personal knowledge, that whatever matters of public interest (as blockades) are known at Memel, are also known at Riga within two or three days, and that the Hamburgh and North German newspapers are regularly received there. The Queen's Proctor, notwithstanding his active exertions in the matter, has from various causes hitherto failed in procuring such proof.

Blockade of Riga.

As to fixing date.

If there are any gentlemen in or near London who can make the necessary affidavits from personal knowledge, especially any who were in Riga or Memel in May last, I would venture to suggest that their names and addresses might be forthwith sent to the Queen's Proctor. The affidavits must be before the Court by 7th December at latest.

I have, &c.
(Signed) J. D. HARDING.

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[*] No. 47.

No. 225.

The Queen's Proctor to the Earl of Clarendon.—(*Received December* 2.)

Doctors' Commons, December 1, 1854.

My Lord,

Riga blockade.

SINCE I had the honour of addressing your Lordship yesterday, I have been referred to, and had an interview with, Madame Lousada, the lady of the Marquis de Lousada, Her Majesty's late Consul at Riga, and she has informed me of the steps which the Marquis took to make the blockade of the Russian ports known to the merchants and others residing there.

Consul Lousada's evidence wanted.

The evidence which he can afford appears to be so important, and which cannot be supplied by any other person, that I have to request your Lordship will be pleased to direct him to be summoned home by the electric telegraph, and to bring all documents which may in any wise relate to the blockade with him.

I beg leave to add that if the Marquis is here by Tuesday or Wednesday it will be in sufficient time; and, looking to the great importance of the cause, I should be sorry if his arrival were longer delayed.

The Marquis' address is "Hotel de France, Baden Baden."

I have, &c.
(Signed) F. H. DYKE.

No. 226.

The Queen's Advocate to the Earl of Clarendon.—(*Received December* 6.)

Doctors' Commons, December 5, 1854.

My Lord,

Blockade of Black Sea ports.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 2nd of November instant, stating that he was directed to transmit to me a letter from the Admiralty, inclosing the copy of the draft of a notification of blockade of the Russian ports in the Black Sea which Admiral Dundas proposes to issue, and to request that I would take this draft into consideration, and report to your Lordship my opinion whether this is a proper notification.

In obedience to your Lordship's commands I have taken the papers into consideration, and have the honour to report—

Notification.

That with a view to making the proposed draft notification more clear and intelligible, I have introduced various alterations and amendments therein (in a fresh draft herewith sent), as to which I have had the benefit of the assistance of Captain Washington, R.N., of the Admiralty. I would, however, recommend the careful reconsideration of the notification by the Admiralty in conjunction with Admiral Dundas' draft.

Names should be clearly stated.

With a view of avoiding any mistake in the description of the ports, rivers, and coasts intended to be blockaded, I consider it to be unadvisable in a notification to refer to lines supposed to be drawn upon a chart; the ports, places, and coasts to be blockaded should be clearly and distinctly described, so as to be unmistakeably clear, and not open to cavil or doubt, and in the manner in which I have endeavoured to describe them without reference to their being north of any particular line supposed to be drawn on a chart.

With reference to the blockade of the ports of Eupatoria and Balaclava, contem-

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plated by Admiral Dundas, I have the honour to report that, considering such a measure to be fraught with the most injurious consequences to the interests of the allies, I obtained an interview with the First Lord of the Admiralty on the point, and I was informed by him that, regard being had to the existing circumstances, Balaclava ought certainly not to be blockaded, nor should Eupatoria be blockaded if it still remains in the occupation of the allies. I have accordingly, for this reason, expressly excepted these two ports from the notification.

As to Eupatoria and Balaclava.

I observe that Admiral Dundas contemplates the complete and simultaneous blockade, on and from the same day, of all the Russian coasts and ports in the Black Sea and the Sea of Azoff; this will, of course, be legal, if completely and simultaneously effected; but looking to the extent of coast, and the very different positions of the principal ports, I would venture to submit that it might be more advisable to notify the blockade of the principal commercial ports (such, for instance, as Odessa) as and when it may be actually established in the case of *each*, and without waiting for one general and simultaneous notification.

Recommends separate notices for blockade of principal ports,

The object of the blockade being to prevent commercial intercourse, the large trading ports of the enemy are the chief object; the smaller ports and the lines of coast without ports being comparatively unimportant. Bearing this in mind, I would respectfully suggest that at least one vessel should be stationed as near to each principal port as practicable, independently of any line of blockade to be generally maintained. This, however, is a question for the decision of Her Majesty's Government, in conjunction with its allies. I presume that the naval force of the allies is adequate for the purpose, and that it will be so disposed as to make the ingress to and egress from, each and every port and river blockaded impossible, at least without great and obvious danger of capture.

Adverting to the absence of any blockade of these ports hitherto, excepting as to the Danube, and to the extensive neutral trade and commercial interests connected with some of them, I would venture to suggest the expediency of the Senior Naval Officer in each case communicating by flag of truce or otherwise, as may be most convenient, particularly to the neutral Consuls at each port in which there may be neutral vessels lying, the fact of the establishment of the blockade, so as to prevent any possible ignorance of it (whether real or pretended) on the part of the masters of such vessels.

And communication by fleet to neutral Consuls at ports to be blockaded.

I observe that there is no reference in the Notification to the naval forces of Turkey. I presume that this is intentional.

I have, &c.
(Signed) J. D. HARDING.

Inclosure in No. 226.

Notification.

Notification.

IT is hereby notified that on and from the day of 1854, all ports, roads, havens, creeks, and rivers from the St. George's mouth of the River Danube, in latitude 44° 52′ north, and longitude 39° 38′ east (and which, together with the other mouths of that river, is already blockaded*), to Ashampé Point, situated between Soujak and Ghelindjik, and in latitude 44° 34′ north, longitude 37° 44′ east, excepting only the ports of Eupatoria and Balaclava, and including especially the River Dniester, the ports of Odessa, Akerman Ovidiopol, and all those between Ackakow Point and Kimbowron Point, including the ports of Nicolaieff and Kherson, the Rivers Boug and Dnieper, also the ports between Kimbowron Point and Cape Tarkan, including the ports in the Gulf of Perekop, the ports of Sebastopol, Kaffa, and Theodosia and Kertch, the Straits of Kertch, the entrance to, and all the ports in, the Sea of Azof, including especially the ports of Berdiansk and Taganrog, the River Don, and the ports of Anapa and Soujak, were strictly blockaded by a competent force of the allied fleets of France and England.

The ports of Eupatoria and Balaclava are and will remain open and free from all blockade until further notice. And it is hereby further notified that all measures authorized by the law of nations, and the respective Treaties between Her Majesty the Queen of Great Britain and Ireland and His Imperial Majesty the Emperor of the French and the different neutral Powers, will be adopted and executed with respect to all vessels which may attempt to violate the said blockade.

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* I presume that this is so.—J. D. H.

No. 227.

The Queen's Advocate to the Earl of Clarendon.—(Received December 7.)

Doctors' Commons, December 7, 1854.

My Lord,

WITH reference to my Report of the 10th of November as to Mr. Taylor and the Consuls in the Baltic, and to my Report of the 22nd of November,* upon a despatch from Her Majesty's Minister at Copenhagen, I have now the honour to report—

Blockade of Riga, &c.

Dates when known at Copenhagen.

That since the date of the latter Report (22nd November) I have been referred by the Queen's Proctor to certain Danish newspapers published at Copenhagen, and sent to him by Mr. Buchanan under date of the 10th November. Some of these newspapers, published at Copenhagen on the 19th of May, contain a distinct notice of the blockade of Riga, Windau, and Libau, and I would respectfully submit that they tend to corroborate and confirm some of the observations I have made in those Reports.

I have therein particularly adverted to the difficulty I felt, and the strong doubts I entertained on the subject of the remarkable ignorance which is alleged to have existed throughout Denmark, both on the part of the Danish authorities and of Her Majesty's Consular and Diplomatic servants of the actual establishment of any blockade of Russian ports in the Baltic until the month of June last, although the blockade was announced in German newspapers and was notorious throughout North Germany by the end of April.

It is now apparent that, at all events, the Danish newspapers of the 19th and 20th of May contained a distinct notice of such blockade.

I am not, however, as yet by any means satisfied that this was the earliest date at which the blockade was known in Denmark.

I have, &c.
(Signed) J. D. HARDING.

Inclosure in No. 227.

Extracts from Danish Newspapers.

From the "Fredrelandet" of May 19, 1854.

(Translation.)

THE English have declared Riga, Libau, and Windau in a state of blockade.

From the "Berlingske" of May 19, 1854.

Hamburgh, May 19, 3 *o'clock* (B.H.).

The British have declared Riga, Libau, and Windau in a state of blockade.

From the "Dagbladet" of May 20, 1854.

Hamburgh, May 19, 3·50 *o'clock.*

According to official communication the blockade of the Russian ports of Riga, Libau, and Windau is now effectually established.

No. 228.

The Queen's Advocate to the Earl of Clarendon.—(Received December 9.)

Doctors' Commons, December 8, 1854.

My Lord,

Danish Company for purchase of Russian ships.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 27th November last, stating that he was directed to transmit to me a note which has been addressed to your Lordship by the French Ambassador at this Court, inclosing a list of the Society which has been formed in Denmark for the purpose of purchasing Russian vessels, that Count Walewski states that this list is forwarded as a

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* Nos. 213 and 220.

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sequel to Mr. Baudin's note of the 1st September last, upon which a report has already been received from me; Lord Wodehouse is therefore pleased to request that I would take his Excellency's note, together with the former papers, into consideration, and report to your Lordship any further observations I may wish to make upon the subject.

In obedience to your Lordship's commands I have taken his Excellency's note into consideration, and have the honour to report—

Wants further information.

That I should much desire to be furnished with the information which has doubtless been already obtained, and probably been transmitted to your Lordship, as to the Company in question, by Her Majesty's Diplomatic or Consular servants in Denmark.

In the absence of any such information, I trust I shall be excused for suggesting that I cannot place entire reliance upon the somewhat vague and general statement of the origin, objects, and proceedings of this Company which are contained in the communications of his Excellency the French Ambassador. The British Government is doubtless well informed on this subject by its own servants, and if I were put in possession of such information I could advise with greater satisfaction. The legal designation and place of business of this Company, the name or names under which it holds ships, and the names and descriptions of the vessels purchased by the Company, and the dates and places of each purchase, would be at all events desirable.

I have, &c.
(Signed) J. D. HARDING.

No. 229.

The Queen's Advocate to the Earl of Clarendon.—(Received December 15.)

Doctors' Commons, December 13, 1854.

My Lord,

Fraudulent assumption of Mecklenburgh colours by Russian vessel "Ernst Merck."

I BEG to bring under your Lordship's notice the case of the ship "Ernst Merck," which was seized at Hull in June last under Mecklenburgh colours, and with Mecklenburgh papers, and claimed as the sole property of citizens of Mecklenburgh. Further proof was permitted to the claimants, and after elaborate argument she was condemned as Russian property by the Admiralty Court on the 6th December.

The Judgment pronounced by the Court (a copy of the short-hand writer's report of which I have the honour to transmit herewith) fully explains all the circumstances of the case, and all the papers can be obtained, if necessary, from the Admiralty Proctor. I have marked in pencil some passages at pages 33–39 of the Judgment referring to her false Mecklenburgh papers, and to the conduct of the Mecklenburgh authorities in the matter, and it is especially to be observed that the master was, as alleged by the claimants, naturalized under the Great Seal of Mecklenburgh without ever having been in the dominions of the Grand Duchy for more than two days, and the vessel obtained Mecklenburgh papers when lying in a Russian port, and without having been in a Mecklenburgh port at all; and the Court appears to have been of opinion that there was some ground for suspecting very culpable misconduct or remissness on the part of the Mecklenburgh authorities. Under these circumstances your Lordship might perhaps think it proper to bring this case formally to the notice of the Mecklenburgh Government.

I have, &c.
(Signed) J. D. HARDING.

No. 230.

The Queen's Advocate to the Earl of Clarendon.—(Received December 15.)

Doctors' Commons, December 13, 1854.

My Lord,

Baltic blockade. Raising of.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of this day's date stating that he was directed to transmit to me the accompanying letter from the Admiralty, inclosing copies of two reports from Rear-Admiral Chads respecting the cessation of the blockade of Russian ports in the Baltic, and to request that I would take the same into my consideration and draw up and transmit to your Lordship a proper notification of the cessation of the said blockade for insertion in the "Gazette" of Friday next, the 15th instant, if I should be of opinion that such notification is required.

In obedience to your Lordship's commands I have taken the papers into consideration, and have the honour to report—

Notification necessary.

That I am of opinion that a formal notification of raising of the blockade in question is necessary, and I have accordingly prepared, and herewith transmit, a notification for insertion in the "London Gazette."

I observe with reference to Admiral Chad's letters: (1.) That in the longer letter dated "Her Majesty's ship 'Edinburgh,' Kiel, December 8" (marked No. 3), the Admiral expressly enumerates the ports the blockade of which he states "has been raised from this date" (December 8).

As to dates, &c.

In the shorter letter of the same date (not numbered or otherwise identified) Admiral Chads states that "the 'Imperieux' and 'Dragon' have arrived from the Gulph of Finland, consequently the blockade of the Russian ports now ceases." He incloses a letter to himself from Captain Watson of Her Majesty's ship "Imperieuse" (also dated Kiel, December 8), from which I should apprehend that the blockade was in fact raised on or before December 4; inasmuch, however, as Admiral Chads distinctly states the 8th as the date from which the blockade was raised, I have adopted this date in the notification.

Insertion of names.

I have further ventured, with some hesitation, to include in the notification "Oro" and "Abo," which were named in the "Gazette" notice of June 16, but which were not named in the notification of the raising of the blockade of the 3rd November, and are not referred to or included in the limit given by Admiral Chads.

I conclude that the fact is there no longer exists any blockade of these or of any other Russian ports or places in the Baltic. It may perhaps be proper before publishing this notification to communicate this Report and a copy of the draft notification to the Admiralty, with a view to insure the correctness of the notification.

I have, &c.
(Signed) J. D. HARDING.

Inclosure in No. 230.

Notification.

Notification.

IT is hereby notified that the Right Honourable the Earl of Clarendon, Her Majesty's Principal Secretary of State for Foreign Affairs, has received from the Lords Commissioners of the Admiralty a copy of a despatch dated "Her Majesty's ship 'Edinburgh,' Kiel, December 8," from Rear-Admiral Chads, commanding Her Majesty's naval forces in the Baltic, informing their Lordships that the blockade of the Russian ports under-mentioned had been raised from that date: "Libau, Windau, Riga, and Pernan, and all Russian ports, roads, havens, and creeks from latitude 55° 5′ north longitude, 21° 3′ east to Cape Dager Ort, in latitude 58° 55′, longitude 22° 0·5′ east. The ports of Hapsal, Warmso Islands, Port Baltic, Revel, and all Russian ports, roads, havens, and creeks from Cape Dager Ort to Eckholm Light, situated in latitude 59° 43′ and longitude 25° 48′ east."

"The ports of Helsingfors and Sweaborg, and all Russian ports, roads, havens, and creeks to the westward of Helsingfors as far as Hango Head inclusive, in latitude 59° 48′ north, longitude 22° 53′ east; the ports of Oro and Abo, and lastly the whole of the ports, roads, havens, and creeks eastward of Helsingfors on the Finland shore, and Eckholm Light on the coast of Esthonia to Cronstadt and St. Petersburgh, both inclusive."

No. 231.

The Law Officers of the Crown to the Earl of Clarendon.—(Received December 15.)

Doctors' Commons, December 14, 1854.

My Lord,

WE are honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 28th November last, stating that he was directed to transmit to us the

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Russian prisoners arrived at Hamburgh from Hull in neutral vessel.

accompanying despatches from Her Majesty's Chargé d'Affaires at Hamburgh, reporting the steps taken by him with reference to the arrival in that city by a Hamburgh steamer from Hull of seven Russian prisoners, and to request that we would take the same into consideration, and report to your Lordship our opinion as to any steps which it might be practicable to take under the circumstances.

In obedience to your Lordship's commands we have taken the despatches into consideration, and have the honour to report—

Cannot interfere with them.

That the Russians in question having left England in a neutral vessel, and arrived in a neutral country, it will not be practicable for Her Majesty's Government to take any further steps with reference to them.

We have, &c.
(Signed) J. D. HARDING.
A. E. COCKBURN.
RICHARD BETHELL.

No. 232.

The Queen's Advocate to the Earl of Clarendon.—(Received December 16.)

Doctors' Commons, December 16, 1854.

My Lord,

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 20th November last, stating that he was directed to transmit to me a despatch and its inclosures from Her Majesty's Minister at Brussels respecting a claim preferred by Her Majesty's Consul at Antwerp to receive a share of prize-money in the case of the "San Spiridion," which vessel was detained at Malta on account of her having on board a quantity of arms for the Greek Government as well as some "armes de luxe" consigned to a private house at Athens.

Consul's claim to share of prize money for having given information leading to condemnation of vessels.

Lord Wodehouse is further pleased to state that your Lordship is not aware that the "San Spiridion" has been condemned, and requests that I would take Consul Johnson's claim into consideration, and report to your Lordship what are the law and practice in regard to awarding to Consuls a share of prize-money in cases in which vessels have been condemned as prize in consequence of information furnished by them.

In obedience to your Lordship's commands I have taken the papers into consideration, and have the honour to report—

That with reference to the law and practice in question, I have to observe:—

Prizes seized in British ports are property of Sovereign.

1. That all vessels seized as prizes of war in British ports (as distinguished from those captured at sea) become, upon condemnation, "droits of Admiralty," they vest in the Sovereign in her office of Admiralty, and not, strictly speaking, *jure coronæ*. These droits being made a part of the Consolidated Fund by Statute 1 Vict., c. 2, s. 2, it is competent to the Lords Commissioners of the Treasury to direct any payment to be made as a reward for information or otherwise, either to a Consul or to any other person out of the proceeds of such droits. Such payments are expressly contemplated and provided for by the same Act, section 12. During the late war such rewards were (as I am informed) often given.

Informants may be rewarded from proceeds.

Prizes captured by Revenue cruizers, ditto.

2. With respect to prizes of war captured at sea by revenue cruizers, these are by the Prize Act 17 and 18 Vict., cap. 18, sec. 13, upon condemnation, vested in the Queen in her office of Admiralty. Her Majesty may, by Sign Manual, dispose thereof absolutely at her discretion, and she may consequently reward out of the proceeds all persons giving information.

Prizes captured by Royal Navy are property of captors. Informants cannot be rewarded from proceeds.

3. With respect to prizes captured at sea by ships of the Royal Navy, commanded by naval officers, the proceeds thereof are by the Prize Act, section 5, upon condemnation, vested in the captors, and must be divided amongst them according to the Royal Proclamation of March 29, 1854.

Persons giving information as to such vessels cannot, therefore, legally be rewarded out of the proceeds, they must be left to the bounty of the Crown.

With reference to the case of the "San Spiridion," I beg to state that notwithstanding Mr. Johnson's distinct and official assertions to the contrary: (1). There is no Prize Court at Malta. (2). That the "San Spiridion" has not been condemned at all; proceedings are now pending against her in the High Court of Admiralty.

I have further to observe that as far as relates to prizes of war, I am ignorant of any law or practice to the effect stated by Mr. Johnson, viz.: "When contraband

goods are seized upon the information of a Consul he is entitled to a share of the prize money."

I beg distinctly to disclaim any intention of making any charge against Mr. Consul Johnson, but I am certainly unable to discover upon what authority he officially states either the facts or the law as he does.

Consuls might be rewarded for information.

I may in conclusion be perhaps permitted to suggest that in my opinion the giving liberal rewards to Consuls for information leading to seizures and captures in war would be both just and expedient.

I have, &c.
(Signed) J. D. HARDING.

No. 233.

The Queen's Advocate to the Earl of Clarendon.—(Received December 16.)

Doctors' Commons, December 16, 1854.

My Lord,

Treaties with Denmark exempting vessels from confiscation for breaking blockades.

I BEG to report that in the case of the "Francisca," a Danish vessel captured for breach of blockade in the Baltic, and which is to be heard in the Admiralty Court on the 20th December, the claimants have, upon application to the Danish Legation at this Court (as I understand), been furnished with extracts from the Treaty of 1670 between Great Britain and Denmark (Art. XVI), and from the Treaty between those Powers of 1814 (Art. XIII).

They will, perhaps, at the hearing of the case, contend that under Art. XVI of the Treaty of 1670, revived by Art. XIII of the Treaty of 1814, Danish ships are protected from confiscation even in cases where they may attempt (without having contraband of war on board) to violate blockades, or they will attempt some argument of this nature.

Wants information.

As I was not previously aware of these Treaty stipulations, and as I do not remember that the Danish Government has, in any of the various communications which it has made to your Lordship (at least, in any which I have seen) on the subject of the war, and of captures of Danish vessels for breach of blockade, made any allusion to these Treaties, or attempted any such arguments in reference thereto as will now be attempted or contended for any exemption for their merchant vessels from the penalty of confiscation for breaking blockade, I should be glad to be favoured with any information which may be in your Lordship's possession upon this subject at the earliest possible period, in order to assist me, as Counsel for the Crown, in dealing, on the 20th instant, with the arguments which may be expected from the Counsel for the Claimants, who are assisted, apparently, in this matter by the Danish Legation.

I have, &c.
(Signed) J. D. HARDING.

No. 234.

The Queen's Advocate to the Earl of Clarendon.—(Received December 16.)

Doctors' Commons, December 16, 1854.

My Lord,

Treaties with Sweden exempting vessels from confiscation for breaking blockades.

IN the cases of the "Johanna Maria" and the "Nornen," two Swedish vessels captured for breach of blockade, and which are to be heard in the Admiralty Court on the 20th December, the claimants appear disposed to rely upon the XIth Article of the Treaty between Great Britain and Sweden of 1661, revived by the IInd Article of the Treaty of Orbro in 1812, as exempting Swedish vessels from confiscation for breach of blockade.

Wants information.

I should be glad to be furnished with any information upon this question of which your Lordship may be in possession, in order to enable me, on behalf of the Crown, to answer the arguments which the Claimant's Counsel may adduce on the 20th instant.

I have, &c.
(Signed) J. D. HARDING.

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No. 235.

The Queen's Advocate to the Earl of Clarendon.—(*Received December* 20.)

Doctors' Commons, December 19, 1854.

My Lord,

Export of grain from Russian ports by Tuscan merchants.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 8th December instant, stating that he was directed to transmit to me a letter from the French Ambassador at this Court, relative to the equivocal proceedings of certain merchants at Leghorn respecting export of grain from Russian ports, and to request that I would take this letter into consideration, and report to your Lordship, at my earliest convenience, my opinion as to the course proposed by Count Walewski with a view of checking those proceedings.

In obedience to your Lordship's commands I have taken the letter into consideration, and have the honour to report—

Best remedy is a rigorous blockade.

That the most effective course proposed by Count Walewski, with a view of checking these proceedings, appears to me the establishment of a rigorous blockade of Odessa and of the Russian ports in the Black Sea, and the preventing the egress of all neutral vessels unless with cargoes actually laden at the date of the commencement of such blockade, together with the exertion of proper vigilance generally by the allied cruizers, especially as to Greek, Tuscan, and Ionian ships.

I do not consider that there is any reasonable chance of proving, to the satisfaction of a British Prize Court, that grain exported from Russia by neutrals under the circumstances indicated can be considered as Russian property, although bought and paid for by the exporter, or that a neutral owner of it could be fairly considered or treated as the Agent of the Russian Government.

Warning is no use.

With reference to his Excellency's suggestion of addressing a warning to the Tuscan Government of the dangers which its subjects may incur by taking advantage of the permission of the Russian Government for the export of cereals, I greatly doubt the practical result of such a measure. It can hardly be expected that the Tuscan Government will interfere to check the trade of its subjects with Russia, especially considering the tone and spirit exhibited by the Tuscan Government in relation to the facilities afforded for the use of their flag by Russian ships alluded to in my reports of July 1, July 15, and July 26, 1854.

I do not consider that the Tuscan or any other neutral Government is entitled to expect any such warning; the allies will, in my opinion, be perfectly justified in resorting, without previous warning, to a blockade of any Russian harbours which will be attended with the usual consequences to all neutrals concerned. Such warning has been, to a certain extent, given by the letter recently addressed by the Admiralty to the Chairman of Lloyds, of which (having no copy) I cannot give the date.

If any neutrals are entitled to favourable consideration, or to any friendly intimation in regard to such a blockade, I would venture to suggest that, having regard to existing political circumstances and combinations, Austria may possibly be considered by Her Majesty's Government to be favourably distinguished from other Powers in this respect.

I would venture, in conclusion, to point out that I presume that some very sufficient reasons (with which I am unacquainted) have hitherto prevented the blockade of Odessa, and other Russian harbours in the Black Sea, and it will be for your Lordship to consider whether the permission to Tuscans to export grain from the harbours (alluded to by Count Walewski) is likely to have such an important effect as to determine the allies to resort to such a blockade.

I have, &c.
(Signed) J. D. HARDING.

No. 236.

The Queen's Advocate to the Earl of Clarendon.—(*Received December* 20.)

Doctors' Commons, December 20, 1854.

My Lord,

Billeting of Austrian soldiers on British subjects in Principalities.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 7th December, stating that he was directed to transmit to me a despatch from Viscount Stratford de Redcliffe, together with its inclosure, respecting the billeting of Austrian soldiers on British subjects in the Principalities; and to request that I would report to your Lordship my opinion upon the instruction given by Lord Stratford to Mr. Colquhoun upon this subject.

In obedience to your Lordship's commands I have taken the papers into consideration, and have the honour to report—

That I am not aware of any principle upon which, independent of Treaty stipulations, British owners of houses in foreign countries are placed in a different position as regards the obligation of lodging soldiers from British tenants of such houses.

British subjects must be treated as natives, in absence of Treaties.

British subjects, whether owners or tenants of houses under such circumstances, cannot, as far as I am aware, strictly or legally claim to be treated differently from the other inhabitants. In the absence of positive Treaties, laws, or regulations on the subject, they must, I apprehend, submit to the requirements of the military officer or Commander, who must judge of the necessity of quartering troops upon them. Subject to this observation, I concur in his Lordship's instruction to Mr. Colquhoun.

I have, &c.
(Signed) J. D. HARDING.

No. 237.

The Queen's Advocate to the Earl of Clarendon.—(*Received December* 23.)

Doctors' Commons, December 21, 1854.

My Lord,

Hanoverian vessel "Reinhard."

Further documents not produced to Prize Court.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 8th instant, stating that, with reference to my report of the 19th ultimo, he was directed to transmit to me therewith a note from the Hanoverian Minister at this Court, inclosing copies of the documents relating to the case of the Hanoverian vessel "Reinhard," now before the Admiralty Prize Court, and which documents Count Kielmansegge inadvertently omitted to be handed into that Court; and to request that I would take these papers into consideration, and report to your Lordship my opinion as to the reply which should be returned to Count Kielmansegge.

In obedience to your Lordship's commands I have taken the papers into consideration, and have the honour to report—

That inasmuch as there is not with the papers any copy of your Lordship's note of the 25th November, to which the Count's note of the 7th is an answer, I am scarcely in a position to say whether the Count's note requires any reply. Subject to this observation, I would venture to suggest that, if any reply should be considered requisite, it may be to the effect that it now appears clearly that the bill brief was not given up by the master with the other ship's papers, and is not even now before the Prize Court; that this fact, coupled with other circumstances in the case, make it, in your Lordship's opinion, necessary that the case should be left to the decision of the Prize Court.

Send to Queen's Proctor.

I would further suggest, that the papers transmitted by Count Kielmansegge (affidavit of Caslientieck and Scplators, affidavit of Bolwin, and document, described as brief bill, of the "Reinhard") should be transmitted to the Queen's Proctor.

I have, &c.
(Signed) J. D. HARDING.

No. 238.

The Queen's Advocate to the Earl of Clarendon.—(*Received December* 27.)

Doctors' Commons, December 26, 1854.

My Lord,

Russian subjects in Turkey trading with England.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 7th December instant, stating that he was directed to transmit to me a letter from Mr. R. L. Fraser, inclosing a copy of a communication addressed by him to the Lords Commissioners of the Treasury respecting the carrying on of trade with this country by Russian subjects domiciled in Turkey, and to request that I would take the same into consideration and report to your Lordship my opinion upon the principles laid down by Mr. Frazer in his letter to the Treasury.

In obedience to your Lordship's commands I have taken Mr. Fraser's letter into consideration, and have the honour to report—

That I cannot concur with Mr. Fraser as to the application of the principles of international law alluded to by him to the particular transaction in question.

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Not considered an enemy if domiciled in Turkey.

A Russian subject by birth, if commercially domiciled in the Turkish dominions, will not be considered and dealt with as an enemy in a British Prize Court; a British merchant residing here and trading with such a person is not guilty of "trading with the enemy;" the national character of parties is not in such cases determined by the place of their birth, but by that of their domicile. I presume that the Russian subject in question, who is domiciled at Smyrna, is under the protection of the Consul of some European State, and is treated by the Turkish Government as the subject of such State, and as a friend and not an enemy; his precise legal "national character" may be a matter open to some doubt, but he cannot, in my opinion, be considered under the circumstances stated as "an enemy of the Queen."

Property not liable to capture.

A Greek merchant domiciled at Liverpool is, in my opinion, not acting illegally in dealing with such a person, nor is the property of either party embarked in the course of such dealing liable to capture or confiscation.

Recent Order in Council permits trade with enemy, and protects enemy's goods in neutral vessel.

I have further to observe that although all trading with the enemy by British subjects was formally illegal and subjected all goods engaged therein to capture and confiscation, yet that such trading has been recognized, permitted, and sanctioned by Her Majesty's Order in Council, 15th April, 1854, and cannot now be considered as illegal, at least according to my interpretation of that Order.

If this particular question be considered important I should much desire to have the assistance of the Attorney- and Solicitor-General thereon.

I may add that the madder roots in question, even if enemy's property, would, if laden on board a neutral vessel, be protected by Her Majesty's Declaration of March 28.

I would venture to submit to your Lordship that it may not be expedient to enter fully into any explanation of these abstract principles of international law with Mr. Frazer (who will perhaps publish any answer which he may receive), but that it may be sufficient to inform him that Her Majesty's Government have no intention of interfering with the particular transaction in question, which does not appear to them to be illegal.

I have, &c.
(Signed) J. D. HARDING.

No. 239.

The Queen's Advocate to the Earl of Clarendon.—(*Received January* 9.)

Doctors' Commons, January 8, 1855.

My Lord,

Dutch vessel detained off Sulina.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 21st December last, stating that with reference to my Report of the 1st November,* upon the case of the two merchant-vessels "Catherine" and "Sjouke Alida," detained off Sulina by the cruizers of Her Majesty's squadron, he was directed to transmit to me, together with the former papers, the draft of a letter which your Lordship caused to be addressed to the Admiralty, requesting that Department to procure the information which I stated in my above-mentioned Report I considered necessary before arriving at a decision in this matter.

Lord Wodehouse is pleased to inclose the answer which has been received from the Admiralty, and to request that I would take the same, together with the former papers, into consideration, and report to your Lordship any further observations I may have to offer upon this case.

In obedience to your Lordship's commands I have taken the papers into consideration, and have the honour to report—

That I see no sufficient reason for modifying the opinion which I have expressed on this case in my Report of the 29th July, 1854.

In accordance with that report the principal question now to be considered is whether I correctly assumed and apprehended the facts to be as therein stated.

That Report was, I presume, submitted to Admiral Dundas for his observations, which observations appear to be contained in the Admiral's letter to the Admiralty dated "Britannia, off the Katacha, November 26, 1854." (No. 626 in Admiralty of December 15, 1854.)

Cargoes partly contraband of war.

If this be so, I have only further to observe that it appears to me that the facts must be taken as admitted by the Admiral to be in effect as assumed in my Report of the 29th July, with the important exception that he states the cargoes of the ships in question to have been "partly contraband of war." Inasmuch, however, as the Admiral gives no particulars, I am unable to arrive at any satisfactory conclusion on this particular point. The bills of lading, invoices, and other ship's papers, which will, of course, be produced by the Netherlands Government will, I presume, enable Her Majesty's Government to form a correct opinion on this particular subject.

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* No. 209.

Excludes claim for compensation. Vessels might have been captured although no blockade existed.

I may observe that if these vessels were in fact even partially laden with articles "contraband of war" destined for the use of the enemy, this will effectually exclude any claim for compensation; the vessels might have been lawfully captured and sent in for adjudication on this ground, quite irrespectively of any question of blockade, and it is only to be regretted that this course was not adopted.

The Admiral further states that he "has no doubt that the masters of the vessels were fully aware of the illegal nature of their proceedings, and that a blockade would probably be soon established, but that he has means of substantiating this."

With respect to the alleged illegality of these proceedings, I have already in my Report of the 29th July remarked that if I have rightly apprehended the facts their proceedings were not illegal, and I do not understand to what particular illegality the Admiral adverts. If this consisted in carrying contraband of war to the enemy, I can only say that he did not treat them as guilty of so doing.

With respect to their knowledge of an impending blockade I must observe that if the Admiral is not only unable to substantiate this conclusion, but also unable to adduce any facts or arguments whatsoever in support of it, I fear that it cannot be safely assumed or insisted upon as correct by Her Majesty's Government.

In conclusion, I would venture to suggest, that the Netherlands Government may perhaps be informed that before Her Majesty's Government can entertain any question of compensation, it must be clearly shown that there was no contraband of war on board either vessel, and that the masters had no reason on quitting Constantinople to apprehend that any blockade of the Danube was in immediate contemplation.

I may further state, that in not absolutely refusing any compensation in this case, I consider that Her Majesty's Government will have acted very liberally, will have evinced a very scrupulous regard to neutral rights, and an earnest desire both to conciliate a friendly Government (which in the recent case of the "Yonge Albert" acted under trying circumstances with a strict regard to Her Majesty's belligerent rights), and to avoid the infliction of any unavoidable personal hardships upon innocent individuals. The complexion of the case would, of course, be materially affected should it transpire that there really was any want of good faith, either as to the nature and destination of the cargoes or the previous knowledge that a blockade was immediately impending, or as to any other material fact.

I have, &c.
(Signed) J. D. HARDING.

No. 240.

The Queen's Advocate to the Earl of Clarendon.—(*Received January* 9.)

Doctors' Commons, January 9, 1855.

My Lord,

Supplies from Danube to French army in Crimea. Would grant of passes for vitiate the blockade?

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 1st January instant, stating that he was directed to transmit to me the accompanying letter from the Admiralty, inclosing a correspondence between Admirals Dundas and Hammelin, respecting a proposal made by the latter officer that certain merchant-vessels should be furnished with a pass to enable them to carry supplies from the Danube to the French army in the Crimea; and to request that I would take these papers into consideration, and report to your Lordship my opinion, at my earliest convenience, whether the grant of such passes would vitiate the blockade of the Danube.

In obedience to your Lordship's commands I have taken the papers into consideration, and have the honour to report—

That Admiral Hammelin's expressions in his two letters to Admiral Dundas are so indefinite that I must confess my inability to understand the real meaning and extent of the proposed relaxation of the blockade of the Danube. I do not understand from what places within the mouth of the Danube, or from whose dominions, the corn is to be exported; I do not understand whether the vessels which are to have the passes in question, are French, British, Turkish, neutral, or of all these denominations; nor do I understand whether they are simply to act as transports

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Vagueness of question.

chartered by or employed in the public service of the French Government, or whether it is intended to grant passes to vessels of all nations in order to enable them to enter the Danube, and export from whatsoever place they may select (whether in the actual possession of the allies or of the enemy), cargoes of corn which are afterwards to be disposed of to the French army for the private profit of merchants, contractors, or others concerned as an ordinary commercial enterprize or speculation. It is obvious that very different considerations apply to these very different cases.

Passes would hazard validity of blockade.

In the absence of any more distinct information, I can therefore only say that in my opinion the validity of the blockade would be exposed to considerable hazard, legally speaking, by the blockading squadron permitting any general commercial intercourse to be carried on by neutrals, and especially with places in the possession of the enemy under a system of passes from a French Military Intendant such as appears to be contemplated.

Licences by the Sovereign are allowable.

This intercourse might legally be carried on by licence, but a licence is considered by British Prize Courts to be an act of sovereignty, and cannot be issued by a civil or military officer of his own authority.

I am not aware whether the pass of the French Military Intendant would be considered in France as equivalent to the licence of the Sovereign, but I presume it would not be so considered. The form of pass should, in my opinion, be that of a licence issued by Sovereign authority, if it be desired to avoid risking the validity of the blockade.

Belligerent Power might export its own property in its own transports.

If, however, one of the belligerent Powers engaged in the blockade should desire to export its own national property in its own transports, such a proceeding, not being of a commercial character, is open to very different, and more favourable considerations, even if merely sanctioned by such a pass as proposed. I am not, however, aware of any precedent for such a relaxation, and should be glad to be referred to any which may be in existence.

Upon the whole, I must observe that, inasmuch as by means of a licence from the Sovereign, either the operations in question, or any other commercial intercourse, even with the enemy, may be legalized without seriously hazarding the validity of a blockade, I fear that any expedient falling short of this in its essential character, by virtue of which commercial intercouse with places in the enemy's possession is permitted by the blockading squadron, must be considered as likely to expose the validity of the blockade to question and hazard.

I regret that, owing partly to the obscurity of Admiral Hammelin's expressions, and partly to the absence of any precedents in point, I am unable to give a more definite answer.

I have, &c.
(Signed) J. D. HARDING.

No. 241.

The Queen's Advocate to the Earl of Clarendon.—(*Received January* 11.)

Doctors' Commons, January 10, 1855.

Blockade of Black Sea ports.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 3rd January instant, stating that he was directed to transmit for my information the accompanying letter from the Admiralty, inclosing a communication from Vice-Admiral Dundas, and of the answer returned by that Department, on the subject of the blockade of certain Russian ports in the Black Sea. Mr. Hammond states that he is also directed to transmit to me the papers as noted in the margin of his letter which bear on this subject, and to request that I would take the same into consideration, and report to your Lordship any observations which I may have to offer on the letter from the Board of Admiralty of the 1st instant.

In obedience to your Lordship's commands I have taken the papers into consideration, and have the honour to report—

That I do not see that I can usefully offer any observations upon the letter of the Board of Admiralty of the 1st of January.

Eupatoria and Balaclava.

From that letter, and its inclosures, it would appear that a copy of my Report of the 5th December, 1854,* has been transmitted to Admiral Dundas, and it also appears that the serious objections to the intended blockade of Eupatoria and Balaklava, to which I adverted in my report, have also attracted the attention of the French Government.

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* No. 226.

As to notifying a simultaneous blockade instead of each port separately.

In the absence of any information as to the motives or objects of the Admirals in attempting a general and simultaneous blockade of the whole of the Russian coasts of the Black Sea, after leaving all the Russian ports in that sea unblockaded up to the present moment, and in now giving one general notification thereof, I can only reiterate the opinion I have already expressed of the serious objections to such a measure in a legal point of view, and of the superior advantage of blockading and notifying the blockade of each of the prinicipal ports, *as* and *when* the same may be actually established, especially (for instance) *Odessa*, the blockade of which should not, in my opinion, be connected with and dependent on that (say) of *Kertch*, as proposed.

I trust that the naval officers employed in the blockade will have been furnished with copies of a memorandum on blockade which has been printed by the Admiralty, and that such instructions may be given both to Her Majesty's Naval and Consular officers as may at least tend to prevent the recurrence of the errors committed in the Baltic blockade, a recurrence of which may not unreasonably be apprehended in the case of the Black Sea, unless timely precautions are taken.

I have, &c.
(Signed) J. D. HARDING.

No. 242.

The Queen's Advocate to the Earl of Clarendon.—(*Received January* 11.)

Doctors' Commons, January 10, 1855.

As to Treaty right of Denmark and Sweden to a special warning in cases of blockade.

My Lord,

WITH reference to my letter of the 16th December,* on the subject of the argument attempted to be relied upon by the claimants in the Admiralty Court in several Danish and Swedish prize cases now pending, I have the honour to state that the argument (which there is some reason to suppose has been suggested by the Danish or Swedish Legation here, and which is certaintly urged with their knowledge and sanction) appears to be in substance that the Treaty with Denmark of 1670, although it did not wholly exempt Danish vessels violating or disregarding a blockade from confiscation (which is not contended) yet secured to such vessels the privilege of a previous actual and individual warning on the spot from a cruizer; that this appears from the instructions to Her Majesty's vessels issued in June 1793, and formally communicated to the Danish and Swedish Governments by Diplomatic notes ("Annual Register, 1793," p. 174) to be the interpretation put by the British Government upon the Treaty; that the Treaty is in this as well as other portions confirmed by the Act of Accession of Denmark to the Treaty between Great Britain and Russia of 1801, and by the Treaty of Kiel of 1814; that this further appears to be the case from the fact of an explanatory Treaty having been entered into between Sweden and Great Britain in 1803, as to contraband of war, adverting to a Treaty with that Power of 1661, in the same words as that with Denmark of 1670.† With the able assistance of Dr. Jenner, the Junior Counsel for the Crown, I contended—

Arguments used before Prize Court.

(1.) That the Treaty of 1670 contained no allusion to any particular form of notice.

(2.) That the Danish Government had never in any previous case hitherto contended for any peculiar privilege under the Treaty of 1670 in this respect.

(3.) That it had not done so internationally in the present case, and that the absence of any existing distinct Treaty stipulation might be thence reasonably inferred.

(4.) That it did not appear that the Instructions of 1793 were based upon the Treaty of 1670, but that they might have been founded upon other considerations.

(5.) That if any such right could have been insisted upon under the Treaty of 1670, yet that the Treaty with Russia of 1801, acceded to by Denmark, especially by Articles 3, 4, 5, 6, 7, 8, must be considered as having, in effect, abrogated the Treaty of 1670, if not wholly, yet, *quoad hoc*, at all events.

(6.) That the silence of the Explanatory Treaty of 1803 with Sweden on this point affords a strong inference against the construction now set up.

I anticipated the renewal and extension of these arguments in other cases, and

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* Nos. 233 and 234.

† The Agreement with Denmark as to Sound Duties, August 13, 1841, Article 39, and the Danish Ordinance of 1803, republished in April 1854, and communicated to Her Majesty's Government, were also quoted to show that the Treaty of 1670 was in existence.

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also the probability of an appeal in the event of the Court deciding in favour of the Crown, and, therefore, I have thought it my duty to keep your Lordship informed of the state of this matter, and should there be any further information in your Lordship's possession bearing upon it, especially as to anything amounting to an admission by the Danish or Swedish Governments that either the Treaty of 1670 or 1661, or the peculiar privilege now insisted upon under such Treaty, was no longer in force, I respectfully request to be furnished with it, at as early a period as may be convenient. I may add that the same arguments as those already urged on behalf of Denmark will doubtless be urged on behalf of Sweden.

I have, &c.
(Signed) J. D. HARDING.

No. 243.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received January* 15.)

Doctors' Commons, January 13, 1855.

My Lord,

British subjects contracting to supply ships of war to Russia.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 2nd January instant, stating that he was directed to state to us that Her Majesty's Government have been informed that the Emperor of Russia has contracted for the building and equipment of seventeen screw ships of the line, and that certain British subjects have undertaken to furnish engines for these vessels and even to construct the hulls of five of them; and further, that another British subject is at this moment in treaty with the Russian Government to provide the machinery of eight steam gun boats, to be ready in the ensuing spring. That it is further stated, that some at least of the English houses established in Russia have taken the chief contracts in connection with the above-mentioned vessels, and that they have severally accepted from the Emperor of Russia an advance of capital to the amount of fifty thousand pounds, to enable them to erect the necessary building and to purchase the requisite tools for the completion of their contracts; and Mr. Hammond was pleased to request that we would take the circumstances above stated into consideration, and report to your Lordship as soon as possible whether British subjects engaged in such transactions are guilty of any offence punishable by law; and in that case whether it would be advisable to issue a proclamation as a warning, stating what constitutes an offence, and to what punishment the offenders are liable.

In obedience to your Lordship's commands we have taken this subject in to consideration, and have the honour to report—

May be indicted for high treason.

That we are of opinion that all British subjects, whether resident in this country or abroad, who may equip or furnish materials for the equipment of ships of war for the service of the Emperor of Russia will be guilty of high treason. We think that all such persons so acting as are within reach of a British Court of Criminal Justice should be at once arrested and indicted for the crime they have been guilty of.

Those abroad may be warned by a Proclamation.

With respect to British subjects who are either resident in foreign countries, or who may have entered into contracts but not yet acted under them, a proclamation may be expedient stating the crime they will commit and the penalty they will incur by such conduct, and that they will be proceeded against with the utmost vigour of the law whenever they shall be found within the jurisdiction of a British Court of Justice.

We have, &c.
(Signed) J. D. HARDING.
A. E. COCKBURN.
RICHARD BETHELL.

No. 244.

The Queen's Advocate to the Earl of Clarendon.—(*Received January* 16.)

Doctors' Commons, January 13, 1855.

My Lord,

Danish Society for purchase of Russian vessels.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 28th December last, stating that he was directed to transmit to me two despatches from Her Majesty's Minister at Copenhagen, containing the information

relative to the supposed Danish Society for the purchase of Russian vessels, which I requested, to enable me to report upon the correspondence with the French Ambassador at this Court, submitted to me, for my consideration, on the 27th November.

In obedience to your Lordship's commands I have taken the papers into consideration, and have the honour to report—

Cannot advise capture.

That inasmuch as neither Mr. Buchanan's nor Mr. Taylor's information corroborates that communicated by the French Legation on the subject of the particular Company in question, I cannot advise the capture or seizure of the vessels which are supposed to be its property (as recommended by France). The propriety of so doing may be left to the consideration of the French Government.

I observe that Mr. Buchanan makes use throughout of the general terms "ships" and "parties," and never gives the names of either, which is to be regretted. Mr. Taylor (as I understand his meaning) admits the lists of names furnished by the French Legation are correct, and that they own the "Mercurius" and "Helsingor," which they purchased from the previous Russian owners before the war. Mr. Taylor does not mention the date and place of the purchase of each, or give any information as to where they now are, which will be desirable. Mr. Taylor also alludes to the purchase of another Russian vessel, since lost, by some or all of the same persons since the war. He does not give her name or any other details.

More details wanted.

I have the honour to request that the attention of Messrs. Buchanan and Taylor may be invited to the necessity of full details being always given in these cases; such as the name, rig, tonnage, master's name, owner's name, and the port or voyage in which the vessel now is. I had, in my Report of the 8th December, requested to know these particulars, without which it is impossible for me to advise as to seizing or capturing the ships.

Discreditable conduct of Denmark with reference to fictitious sales, &c.

I have already, on several occasions, and I shall soon again call your Lordship's attention to the general conduct of the Danish authorities connected with the fraudulent sales of Russian ships to persons pretending to be Danes, and obtaining Danish documents, and every other support and facility, often contrary to Danish Law. In this and other points, especially in what relates to the blockade of the Russian ports in the Baltic, I am of opinion that the conduct of Denmark has been discreditably conspicuous, and very different from that of other neutral maritime Powers, such, for instance, as Holland, Prussia, and the Hans Towns.

Steps to be taken.

It may be proper for your Lordship to consider the propriety of at least issuing particular instructions for the exercise of great vigilance as to all vessels under the Danish flag, or of taking such other steps as may appear to Her Majesty's Government to be requisite to check or counteract the apparent tendency of Denmark to lend its sanction to operations adverse to the belligerent rights and interests of Her Majesty.

I have, &c.
(Signed) J. D. HARDING.

No. 245.

The Queen's Advocate to the Earl of Clarendon.—(*Received January* 15.)

Doctors' Commons, January 13, 1855.

My Lord,

Liverpool claim against Russian Insurance Company of St. Petersburgh.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 28th December last, stating that he was directed to transmit to me a letter from Messrs. Herring respecting the claim of certain persons at Liverpool against the Russian Sea and River Insurance Company at St. Petersburgh, who are stated to have discontinued their payments to their Agents in England since the declaration of war against Russia; and to request that I would take this case into consideration, and report to your Lordship my opinion as to the answer which should be returned to Messrs. Herring.

In obedience to your Lordship's commands I have taken the letter into consideration, and have the honour to report—

Her Majesty's Government cannot assist. Russian Government not bound to pay.

That Messrs. Herring may be informed that your Lordship cannot hold out any hope that, on the termination of the war, you can assist the creditors of the "Russian Sea and River Insurance Company" to recover their debts from the Company, and that

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your Lordship does not consider that the Russian Government is entitled to (by which is meant "bound to") pay the debts of the Company.

I have, &c.
(Signed) J. D. HARDING.

No. 246.

The Queen's Advocate to the Earl of Clarendon.—(*Received January* 18.)

Doctors' Commons, January 16, 1855.

My Lord,

Contraband of war supplied to Russia through Prussia.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 30th December last, stating that he was directed to transmit to me two despatches from Her Majesty's Minister at Berlin, calling the attention of Her Majesty's Government to the facilities existing for the transit to Russia through the Prussian dominions of lead and other articles contraband of war, and referring to the prohibition to export horses from Prussia recently issued by the Prussian Government; and to request that I would take these despatches into consideration, and report to your Lordship whether, in my opinion, Her Majesty's Government should address any application to the Government of Prussia, founded on our rights as belligerents, against the transit of warlike stores through Prussia to an enemy.

I am also honoured with Lord Wodehouse's letter of the 6th instant in reference to the above, and transmitting a further despatch on the same subject, which has been received from Lord Bloomfield.

In obedience to your Lordship's commands I have taken the despatches into consideration, and have the honour to report—

Her Majesty's Government may remonstrate, if such transit is illegal in Prussia.

That I must assume the entire absence of any Treaty stipulation on the subject; on this assumption I am of opinion that Her Majesty's Government will be entitled to address a formal application to the Government of Prussia, founded on Her Majesty's rights as a belligerent, against the transit of warlike stores through Prussia to the enemy, only in the event of such transit as is alluded to being illegal in Prussia, and the law of Prussia being, nevertheless, easily and constantly evaded. If this be really so, as I understand Lord Bloomfield to state, and if "all kinds of articles for warlike purposes are continually finding their way through Prussia," in evasion or violation of the law of that country, the Prussian Government may, in my opinion, be fairly called upon by Her Majesty's Government as a belligerent to enforce the Prussian law, both in letter and in spirit, and to take every reasonable precaution against its being violated or evaded.

I would suggest that every effort should be made on behalf of Her Majesty's Government either to put the Prussian law in force, or, at least, to establish judicially that it is systematically violated or evaded, by instituting proceedings, or by giving formal information to the proper authorities, and requiring them to act, or by any other means which may be most available.

If this cannot be successfully done, at all events, definite information may probably be procurable of the dates and names of the persons concerned, the qualities, quantities, and description of the goods, and so forth.

Legal advice should be taken.

I would, however, venture to suggest that the Prussian law and the evidence procurable should be carefully considered under good legal advice, and the other information I have suggested be collected and considered before any formal representation is made to the Prussian Government.

It will not be advisable, in my opinion, to make any application to the Prussian Government without further information, and if it should turn out that no satisfactory proof can be given that any legal offence has been committed in Prussia, or that the Prussian law is not palpably and systematically evaded, the complexion of the case will be much altered.

It does not appear to me that any argument can be fairly founded upon the recent prohibition of the exportation of horses from Prussia. Her Majesty's Government, as a belligerent, cannot justly complain of it, and the Prussian Government appears to have had some financial and commercial reasons for the measure quite independent of the existing war, reasons which would not apply to warlike stores.

As to capture of vessels on their way to Prussia.

I may, perhaps, in conclusion, suggest that information as to the ships bringing these articles into Prussia might be useful, as, if the real destination of the articles should be hostile, the capture of such vessels may be justifiable. I presume that, having regard to the probable transit of contraband of war by sea to Russia, and to other matters, a sufficient force of Her Majesty's ships of war are still in the harbours or upon the coasts of Prussia (if they continue open), so that any particular ship might be searched, detained, or captured, according to circumstances. An intimation that all vessels bound to Prussian ports would be strictly searched for contraband of war, unless some more stringent measures were taken in this matter by the Prussian Government, may not improbably be advisable (*sic*).

I have, &c.
(Signed) J. D. HARDING.

No. 247.

The Queen's Advocate to the Earl of Clarendon.—(*Received January* 18.)

Doctors' Commons, January 17, 1855.

My Lord,

Russian Ukase prohibiting export of grain from Odessa.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 4th January instant, stating that he was directed to transmit to me a letter from Mr. Edmond of Aberdeen, inquiring whether there is any official evidence in the Foreign Department of the Russian Ukase prohibiting the exportation of corn or bread-stuffs from Odessa in the month of March last, to which a subject of this country could have recourse in a civil question with another subject; and requesting that, if there is such evidence, to be furnished with the particulars, if that can be done with propriety.

Mr. Hammond states that he is further directed to transmit to me a draft of the answer which your Lordship proposes to return to Mr. Edmond's application; together with three despatches from Mr. Yeames, late Her Majesty's Consul at Odessa, upon which that answer is founded; and to request that I would take these papers into consideration, and report to your Lordship my opinion thereupon.

In obedience to your Lordship's commands I have taken the papers into consideration, and have the honour to report—

Not expedient to answer Mr. Edmond's question.

That I am not aware of the position which Mr. Edmond of Aberdeen holds either in Her Majesty's service, or otherwise, or of his occupation or business. I am, therefore, in the absence of any information on these points, unable to form any opinion as to whether he is fairly entitled to be supplied with particular official information by your Lordship from the papers in the Foreign Office, in order that he may make use of it, as he states, "in a civil question with another subject." It is to be remarked that he does not even state that he is individually interested in this "civil question," or, how the "civil *question*" has arisen—whether in the shape of a civil suit, or of a wager, time bargain on the Stock Exchange, or otherwise. Under these circumstances I certainly cannot advise your Lordship to give him any answer whatsoever. Assuming, however, that your Lordship is satisfied upon these points, and should decide upon giving him any information, I would respectfully venture to submit the inexpediency of disclosing to him, or to any other applicant, the precise amount of the information in your Lordship's possession on this subject, or the exact source from which it has been derived. The adoption of such a course would appear to me to be objectionable, and likely to induce further applications, and possibly to end in summoning your Lordship, or some of the gentlemen in Her Majesty's service, to give evidence before a legal Tribunal on the subject, which is not desirable.

It appears to me that there is really no "official evidence in the Foreign Department of the Russian Ukase" in question; and that if there be any such evidence, it will be more prudent not to disclose it.

Mr. Yeames does not appear to have forwarded any authenticated copy of the Ukase, or even to have seen one. If, therefore, Mr. Edmond is to receive any answer at all (a question which I must leave to your Lordship's decision), I would venture to suggest that it should be to the effect that your Lordship is unable to give any further information upon the subject than that you have good reason to believe that some official order was issued in March last by the Russian Government, to the effect suggested.

I have, &c.
(Signed) J. D. HARDING.

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No. 248.

The Law Officers of the Crown to the Earl of Clarendon.—(Received January 18.)

Doctors' Commons, January 17, 1855.

My Lord,

Capture of Dutch vessel "Wilmina."

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 30th December last, stating that with reference to our report of the 11th August last,* upon the capture of the Netherland vessel "Wilmina" by Her Majesty's ship "Archer," he was directed to transmit to us, together with the previous correspondence which has passed on this subject, a note from the Netherland Minister at this Court, demanding compensation on behalf of the owners of the "Wilmina" for the losses they sustained in consequence of the detention of that vessel at Pillau from the 19th of July to the 25th of August last, and to request that we would take the inclosed papers into consideration and report to your Lordship our opinion as to the course which it would be proper for Her Majesty's Government to pursue with regard to the claim now advanced by Baron Bentinck in this matter.

In obedience to your Lordship's commands we have taken the papers into consideration, and have the honour to report—

Her Majesty's Government should pay compensation for wrongful detention.

That it appears to us to follow from our previous Report that some reasonable compensation is due to the owners of this vessel for her wrongful detention.

The compensation demanded in the shape of demurrage appears to us to be unobjectionable in principle and moderate in amount, and we are of opinion that the claim advanced by Baron Bentinck should not be resisted by Her Majesty's Government.

We have, &c.
(Signed) J. D. HARDING.
A. E. COCKUBRN.
RICHARD BETHELL.

No. 249.

The Queen's Advocate to the Earl of Clarendon.—(Received January 20.)

Doctors' Commons, January 18, 1855.

My Lord,

Blockade of the Danube.

As to relaxations in favour of neutral ports.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 9th January instant, stating that he was directed to transmit to me a note, dated January 8, 1855, which has been received from the Austrian Minister at this Court, inclosing a Memorandum pointing out the injury inflicted on the trade of the countries bordering on the River Danube by the blockade of the mouths of that river, and suggesting a plan by which the general trade of Europe might be relieved from the restrictions imposed upon it by the blockade without any facilities being given to the trade of Russia, and to request that I would take Count Colloredo's note, and its inclosure, into consideration and report to your Lordship, at my earliest convenience, my opinion thereupon.

In obedience to your Lordship's commands I have taken the papers into consideration, and have the honour to report—

That the note in question, so far as it alludes to the blockade of the Danube inflicting no loss or injury upon Russia, but rather conferring a benefit upon that Power, raises a question either of fact, opinion, or political economy, rather than of law, which is beyond my province.

I confess that the ingenious observations upon that question contained therein have failed to convince me that the blockade has not caused, and will not cause, serious injury to Russia, although it doubtless may also injure the commercial interests of neutrals, and even those of the subjects of the Allies. The raising of the whole blockade *simpliciter* may be advisable, and will of course be legal.

The events of the war have caused, and are constantly causing, such great changes in the actual occupation and national character of the various countries and places on the banks of the Danube, that it is impossible for me, without much fuller information than I at present possess, to advise with much confidence as to the best course to be pursued with a view of partially relaxing the existing blockade in favour of the fluvial ports of countries not in Russian occupation. All partial relaxations of blockade are attended with more or less legal risk of invalidating the whole blockade.

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* No. 168.

I observe that doubts are suggested in the early part of the notes as to the legality of the blockade of the Danube so far as relates to the neutral territories and ports upon its shores, and these doubts are not, in my opinion, wholly unfounded, although authority preponderates in favour of the validity of the entire blockade both as regards the enemy's ports and other ports on the river.

Recommends issue of licences.

The object in view might, in my opinion, be safely attained by the issuing of licenses under the Sign-Manual, which would, legally speaking, be the safest course. Such licenses might be issued on the terms or with the precautions which might be most advisable according to circumstances in each particular case.

No system, such as suggested in the note, of issuing passes not amounting to licenses, and yet maintaining the blockade as against all vessels not provided therewith, will be legally safe.

I have, &c.
(Signed) J. D. HARDING.

No. 250.

The Queen's Advocate to the Earl of Clarendon.—(Received January 19.)

Doctors' Commons, January 18, 1855.

My Lord,

Case of the "Steen Bille."

I HAVE the honour to acknowledge the receipt of Lord Wodehouse's letter of the 15th instant (which only reached me yesterday morning) in which his Lordship calls my attention to two passages marked in the accompanying Report of the "Times" newspaper of my observations in the case of the "Steen Bille" in the Admiralty Court on the 12th instant, and requests that I will inform your Lordship whether this report is correct. A copy of the "Times" of January 13 (?) accompanies his Lordship's letter.

His remarks in Admiralty Court respecting Denmark and the Danish Minister.

I beg to state that the two passages marked therein are a substantially correct report of what I said, with the exception that the word "not" occurring before the word "obtained" in the first passage should be omitted. My observation was "that the claimant had obtained the assistance of the Danish Legation."

Neither of these particular passages, however, nor my other observations in the cause are intelligible without reference to the depositions, affidavits, and other documents exhibited and referred to therein (but not given in the report) and also to the conduct of the cause on behalf of the claimant, as well as to the arguments and observations of his counsel, to which mine were a reply.

I shall of course be ready at any time to offer any explanation upon the whole matter which your Lordship may desire.

I have, &c.
(Signed) J. D. HARDING.

Inclosure in No. 250.

Extract from the "Times" of January 13, 1855.

Passage extracted from the Observations of the Queen's Advocate in the case of the "Steen Bille," before the Admiralty Court, January 12, 1855.

Report of Queen's Advocate's speech

THAT led him (the Queen's Advocate) to a subject of primary importance in this case, namely, whether the XVIth Article of the Treaty of 1670 was in operation or not. He had offered the fairest test by agreeing to admit a certificate from the Danish Legation, but the offer had not been accepted. That fixed bad faith on the whole case. The Danish Legation were doing in Doctors' Commons what they would not do in Downing Street. If Count Reventlow Criminil had given the certificate which he had done in this case, accompanying the Article of the Treaty, and knew that that Treaty was not in force, his cheek might well assume the colour of the Danish national flag. Either the Treaty was in existence, and the "Steen Bille" had been seized in flagrant violation of it, or it was not. The claimant had not obtained the assistance of the Danish Legation to set it up. Unless the matter could be satisfactorily explained, suspicion must attach to every document issued by that Legation. In every case that

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came before the Court, words indicating Danish property must be branded on every Danish ship. Were they not to have Danish faith and Danish truth if there were such words in the Danish language? If Count Reventlow Criminil knew that the Article in question was not in force, he was bound not to let the Proctor's clerk, to whom it was given, be misled. The certificate produced from the merchants at Copenhagen, alleging that they had never heard of the blockade as a matter of rumour up to June was one of the most disgraceful documents ever produced in a Court of Justice. If that statement were true, the captors were very much out of Court as to notoriety; if false, what became of the case?

No. 251.

The Queen's Advocate to the Earl of Clarendon—(*Received January* 23.)

My Lord, *Doctors' Commons, January* 22, 1855.

Blockade of Baltic. When known in Denmark.

I AM honoured with Mr. Hammond's letter of the 20th January instant, stating that with reference to the letters from the Foreign Office of the 30th December last and 9th January instant, inclosing despatches from Her Majesty's Minister at Copenhagen relative to the time at which the blockade of the Russian ports in the Baltic was known in Denmark, he was directed by your Lordship to transmit, for my information, a further despatch on the same subject which has been received from Mr. Buchanan.

With reference to the above despatch, I have the honour to report—

Dates wanting.

That, inasmuch as the list of vessels furnished by the Danish Government (and herewith returned) contains neither the date when each of the vessels in question was warned off by Her Majesty's ships, nor the date when this fact was in each case first known in Denmark, nor the date when each vessel first returned to a Danish port after having been warned off, the list is of no utility.

Had these dates been supplied, it might have been a document of great importance and advantage to Her Majesty's Government, and I request that some attempt may be made even now to supply these dates.

I have, &c.
(Signed) J. D. HARDING.

No. 252.

The Queen's Advocate to the Earl of Clarendon.—(*Received January* 24.)

My Lord, *Doctors' Commons, January* 23, 1855.

Blockade of Danube. France contends that a blockade may be partial.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 18th January instant, stating that on the 9th January Lord Wodehouse forwarded for my opinion a note and a Memorandum* from the Austrian Minister at this Court on the subject of the blockade of the mouths of the Danube. His Lordship transmits to me a note which has been received from the French Ambassador at this Court, contending in support of the Austrian Memorandum that a blockade may be partial, and urging on the consideration of Her Majesty's Government the expediency of the mouths of the Danube being only partially blockaded, and Mr. Hammond was pleased to request that I would take Count Walewski's note, together with the former papers, into consideration, and report to your Lordship at my earliest convenience my opinion thereupon.

In obedience to your Lordship's commands I have taken the subject into consideration, and have the honour to report—

That not being favoured with any indication of the views or opinions of Her Majesty's Government as to the commercial, military, or political aspect of this very delicate and peculiar question, I confine myself altogether to the legal points involved therein.

Suggests giving over Danube blockade to the French.

I would venture, however, respectfully to suggest one mode of practically solving the difficulty (which, indeed, is so obvious that I presume there exist some insuperable obstacles against its adoption)—I allude to the expediency of withdrawing the British naval force employed in this particular blockade, and leaving the maintenance of the blockade of the Danube entirely to Her Majesty's allies, who may admit those relaxations which circumstances may appear to them to require. I would further observe that the British Prize Courts being entirely independent of the influence and control of Her Majesty's Government, present a peculiar obstacle to such legal experiments as those suggested, which do not exist to the same extent elsewhere, and of the operation and effect of which it is difficult to convince foreign Governments, which are in the habit of (erroneously) assuming that Her Majesty's Government can do as it thinks fit in such cases as the present.

Her Majesty's Government cannot control Prize Courts.

Blockade may be limited to Kilia branch if it can be isolated.

The question of the blockade of the Danube (as I have already observed) is one of so local a nature, and so much affected by the frequent changes caused by military and political circumstances now taking place upon its banks, that it is fraught with considerable difficulty, especially as I am in complete ignorance of the actually existing state of military and political affairs on the river; assuming, however (as Count Walewski states), that the "Kilia branch from Reni to the sea" is all that Russia occupies, and further assuming (what is not stated) that the allies have the means of completely closing against all vessels the interior or upper extremity of all the other mouths or arms of the Danube, so as to prevent all internal communication by water on the part of vessels entering the other mouths with the Kilia branch, or with any part of the country in Russian occupation, then I am of opinion that the limiting of the blockade to the Kilia mouth will be legal, as long as this state of circumstances continues.

I do not, however, recommend Her Majesty's Government to attempt any such measure if any other course can be followed, owing to my opinion of the inexpediency of raising these questions against neutrals in British Prize Courts.

Suggest issue of licences.

I would, of course, further advert to the possibility of issuing licenses, adverted to in my report of the 18th January; a measure which will not only be free from legal objections, but has the great practical advantage of adaptability to the circumstances of each case as and when it may arise, and also of maintaining a complete check and control over the traffic, and insuring full information as to what is really being done by the merchants and others concerned.

I have, &c.
(Signed) J. D. HARDING.

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* Reported on by me, January 18 (No. 249).—J. D. H.

No. 253.

The Queen's Advocate to the Earl of Clarendon.—(*Received January* 24.)

My Lord, *Doctors' Commons, January* 23, 1855.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 6th January instant, stating that he was directed to transmit to me the accompanying letter from Messrs. C. and A. Giles, requesting to be informed of the state of the English law with regard to the purchase and employment of Russian vessels under the circumstances stated by them; and to request that I would take the same into consideration, and report to your Lordship my opinion as to the answer to be returned to Messrs. Giles.

In obedience to your Lordship's commands I have taken the letter into consideration, and have the honour to report—

That although now somewhat familiar with the extravagant ideas which various individuals are in the habit of forming of the extent of your Lordship's official duty and inclination to answer all sorts of questions, I own that I am somewhat surprized by the letter of Messrs. C. and A. Giles.

Questions as to purchase of enemy's ships.

These gentlemen gravely submit to your Lordship three somewhat abstruse legal questions touching the purchase of a Russian ship on behalf of a person whom they simply describe as a "correspondent" of their "house in Hanover." They do not state his name, his national character, or his occupation. I must own to some doubts as to his *bonâ fide* existence and character. It is by no means impossible that some hostile interest may be at the bottom of the whole scheme.

These questions (to which an answer might be obtained from any advocate in Doctors' Commons upon a full statement of all the circumstances of the case, and upon the payment of a moderate fee) the applicants conceive themselves entitled to put to your Lordship without any statement of the facts, circumstances, dates, or names, in order that they may obtain an official answer at the public expense.

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Inexpedient to answer.

I cannot too strongly express my opinion as to the inexpediency of giving them any answer at all.

This, however, is a matter entirely for your Lordship's consideration, and having frankly stated my view of the character of the application, I proceed to answer the questions:—

1. "Whether, according to the English laws, he may safely buy and navigate a Russian ship which during last summer lay in a neutral port?"

Legal, if *bonâ fide*.

Answer. He may do so, provided the purchase is complete and made *optimâ fide*, and without any reservation of hostile interest. Such purchase being always open to suspicion, whatever may be the real facts, the vessel may be exposed to capture or seizure and to proceedings in the Prize Court; it does not follow that, if restored, any costs or damages would be decreed.

2. "If our laws permit the free navigation of a Russian vessel sold under legal process for liquidation of debt?"

Answer. Yes, subject to the same qualification.

3. "Whether the purchase of an enemy's ship which has been stranded and sold would thereby be protected?"

Answer. Yes, subject as above.

I have, &c.
(Signed) J. D. HARDING.

No. 254.

The Queen's Advocate to the Earl of Clarendon.—(Received January 24.)

My Lord, *Doctors' Commons, January* 23, 1855.

Fraudulent transfer of Russian and Greek vessels to Ionian flag.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 12th January instant, stating that in my letter of the 20th October last[*] I concurred in the instructions which the Duke of Newcastle proposed to give to the Lord High Commissioner of the Ionian Islands to take such measures as he might think best calculated to put a stop to the fraudulent assumption of the Ionian flag by Greek and Russian vessels, he was directed to transmit to me a letter from the War Department, inclosing a despatch from Sir Henry Ward, detailing the measures which he thinks best adapted for putting a stop to the abuse in question; and to request that I would take these papers into consideration, and report to your Lordship whether, in my opinion, there exists any objection to Her Majesty's Government issuing the orders to Her Majesty's Consuls, and to the Commanders of Her Majesty's ships-of-war, as suggested by Sir Henry Ward.

Mr. Hammond likewise incloses the former papers, which are herewith returned.

In obedience to your Lordship's commands I have taken the papers into consideration, and have the honour to report—

That I request that my report of the 20th October last on this matter may be referred to, in connection with that of the Law Officers of the 25th July upon the same subject.

It does not appear to me that I have therein expressed my opinion in favour of the Lord High Commissioner being authorized to take "such measures as he might think best calculated to put a stop to the fraudulent assumption of the Ionian flag by Greek and Russian vessels." It is obvious that the fraudulent assumption of the Ionian flag by a Greek (or neutral) vessel is quite a different thing from the assumption of it by a Russian or enemy's vessel, but the best remedy for the evil complained of in either case is only to be found, as I believe, in the alteration of the Ionian law, as I have already pointed out in my previous report of the 20th October.

Ionian law should be altered.

The two measures suggested by Sir Henry Ward are of a very different character—

First. The Ionian Law, as I understand the matter, is to remain unaltered.

Secondly. The Lord High Commissioner is to exercise a large discretionary power under the limitations pointed out in the Law Officers' report of the 25th July, 1854,[†] and to my separate report of the 20th October, 1854.

Thirdly. New and special orders are now proposed to be issued by Her Majesty's Government to Consuls and to naval officers on the subject of Ionian vessels. I shall confine my attention to the newly suggested orders.

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[*] No. 208.

[†] No. 155.

I am not, with reference to the proposed orders to Her Majesty's Consuls, sufficiently informed of the exact state of the Ionian Law as to the property in, and the papers required by, Ionian ships, to judge of the propriety of giving the proposed "stringent order" to Her Majesty's Consuls "to give no passes to unregistered Ionian vessels except to the Island to which they belong. As far as I understand the matter, I can see nothing illegal in the issuing of such an order, which appears to me justifiable under the circumstances stated. I cannot, of course, foresee its practical result upon Ionian commercial interests. Some reasonable notice should be given of the issuing of such an order, so that Ionians may not be taken by surprise, considerable laxity having hitherto been tolerated in this matter, and the opinion of the Law Officers of the Ionian Government should be obtained.

Consuls to refuse passes, &c.

Her Majesty's Consuls will have, I presume, been instructed to exercise the utmost vigilance to secure the capture or seizure of all vessels suspected to be Russian, whether sailing under British, Ionian, or any other flags or papers. I fear that a large number of fraudulent cases of assumption by Russians of neutral flags pass without notice or detection in foreign ports.

Her Majesty's ships not justified in capturing, in all cases.

The Commanders of Her Majesty's ships-of-war will be justified in visiting all vessels under the Ionian flag, and reporting any circumstances relating to them which they may be ordered to report; but they will not be justified in capturing ships under the Ionian flag, unless there may exist a reasonable suspicion in each particular case of the vessel being in fact enemy's property. I cannot advise the issuing of any new orders to them as to Ionian vessels.

I am, therefore, of opinion, as at present advised,—

1. That the orders suggested may be issued to Consuls, if your Lordship considers it expedient to issue them.

2. That the orders suggested cannot properly be issued to the Commanders of Her Majesty's ships.

I have, &c.
(Signed) J. D. HARDING.

No. 255.

The Queen's Advocate to the Earl of Clarendon.—(Received January 24.)

My Lord, *Doctors' Commons, January* 24, 1855.

Supplies from the Danube for French forces in Black Sea.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of this day's date, stating that, with reference to his letter of the 18th instant, inclosing a letter from the French Ambassador at this Court respecting the blockade of the Danube, and with reference also to his previous letter of the instant and to my Report of the instant,[*] respecting the wish of the French Government to draw supplies from the Danube for the use of the French forces in the Black Sea, he was directed to transmit to me therewith a further letter from the French Ambassador on those matters, and to request that I would take the same into consideration, and report to your Lordship my opinion thereupon at my earliest convenience, as your Lordship is anxious to return an answer to Count Walewski as soon as possible.

In obedience to your Lordship's commands I have taken the papers into consideration, and have the honour to report—

That with especial reference to my Report of the 9th January, I must beg to observe that I am still without the particular information as to facts alluded to therein.

Count Walewski's note of the 22nd January, however able and forcible, does not contain any definite statement of any of those facts. His Excellency, as I understand the purport of his note, makes two distinct proposals:—

As to blockade of Kilia mouth of Danube only.

1st. He again urges the expediency of raising the blockade of all the mouths of the Danube excepting the Kilia mouth, and opening all those mouths generally, and without exception, to the commerce of all the world.

My Report of the 22nd (sent herewith, and to which I have nothing at present to add) deals with this question.

Imperial licences would not vitiate the blockade.

2nd. Count Walewski proposes (at the end of his note) that the French Government should, instead of the passes of an intendant previously adverted to, issue

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[*] See Nos. 240 and 252.

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licenses under the Imperial authority, and, I presume, in the form hitherto always used in France in such instruments. I am of opinion that the permitting vessels furnished with such licenses to pass would not vitiate the blockade.

As to passes. Her Majesty's Government cannot control decisions of Prize Courts.

I observe, however, that Count Walewski urges upon Her Majesty's Government the necessity of "covering with a common responsibility the measures which the commanding officers of the allied armies and fleets have adopted;" I assume, therefore, that the measure in question, viz., permitting access to vessels furnished with passes only, has been carried into effect, and is in actual operation, and in reference thereto I can only repeat that it is not Her Majesty's Government but the British Prize Courts which have here the power of deciding on the validity of blockades, and that it is a maxim of those courts that a blockade imposed for the purpose of obtaining a commercial monopoly for the private advantage of the state which lays on such blockade is illegal and void on the very principle on which it is founded.

Blockade illegal if reserving monopoly of trade to blockading Power.

This is, I apprehend, precisely what the allied commanders propose to effect by these passes, and the urgency of the wants of the state will not, in my opinion, affect the question legally.

Danube should be blockaded by France and Turkey only.

I will only add, in conclusion, that Count Walewski's note of the 22nd January impresses me more than ever with the advantage which would result in the present critical and complicated state of this matter from leaving the blockade of the Danube in the hands of France, or France and Turkey exclusively.

I have, &c.
(Signed) J. D. HARDING.

No. 256.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received January* 26.)

My Lord,
Doctors' Commons, January 25, 1855.

Detention of Russian letters by Postmaster at Hong Kong.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of September 23 last, stating that he was directed to transmit to us a letter from the Board of Treasury calling attention to the proceedings of the Postmaster at Hong Kong in detaining letters addressed to Russian subjects, passing through the post-office at Hong Kong; and to request that we would take this letter and its inclosures into consideration, and report to your Lordship our opinion on the subject to which they relate.

In obedience to your Lordship's commands we have taken the papers into consideration, and have the honour to report—

Illegal unless an Ordinance is passed.

That the Governor had no power to direct the Postmaster to detain, and deliver to him, letters addressed to persons in the Colony; and that such an order as was issued by the Governor would not be an indemnity to the Postmaster on proceedings being instituted against him in consequence thereof.

If it is deemed expedient that such a power should exist in the Colony, an Ordinance should be passed conferring on the Governor powers with reference to the detention of letters, similar to those possessed by a Secretary of State in Great Britain under 1 Vict. ch. 36.

We have, &c.
(Signed) J. D. HARDING.
A. E. COCKBURN.
RICHARD BETHELL.

No. 257.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received January* 25.)

My Lord,
Doctors' Commons, January 25, 1855.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 17th instant, stating that with reference to the last paragraph in our report of the 13th instant,[*] stating that a proclamation may be expedient, warning British subjects, who are either resident in foreign countries, or who may have entered into contracts for equipping or building ships-of-war for Russia without yet having acted under them, of the crime they will commit, and the penalty they will incur by such conduct; he was directed to request that we would draw up and transmit to your Lordship at our earliest convenience a Draft of Proclamation to meet the case in question.

British subjects contracting to build ships of war for Russia, &c.

Proclamation forbidding.

In obedience to your Lordship's commands we have drawn up and herewith transmit a Draft of Proclamation to meet the case in question.

We have, &c.
(Signed) J. D. HARDING.
A. E. COCKBURN.
RICHARD BETHELL.

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[*] No. 243.

Inclosure in No. 257.

Proclamation.

WHEREAS information has been received that certain acts of a highly treasonable nature have been, or are about to be, done or attempted by certain British subjects adhering to the Queen's enemies either within Her Majesty's dominions or in parts beyond the seas, such as building, or aiding and assisting in building or equipping, ships of war, providing stores or tackling, arms, and ammunition for such ships, or manufacturing, or fitting, or aiding, or assisting in manufacturing or fitting, steam machinery either for such ships or for other warlike purposes; or by entering into contracts, engagements, or agreements for some of the aforesaid purposes, or otherwise adhering to, aiding, assisting, or abetting the Queen's enemies in parts beyond seas, in levying or carrying on war against Her Majesty;

Now Her Majesty, by this her Royal Proclamation, doth warn all such persons engaging in any such treasonable designs or attempts as aforesaid, or otherwise adhering to, assisting, aiding, or abetting the Queen's enemies, that they will be liable to be apprehended and dealt with as traitors, and will be proceeded against with the utmost rigour of the law.

No. 258.

The Queen's Advocate to the Earl of Clarendon.—(*Received January* 26.)

My Lord,
Doctors' Commons, January 25, 1855.

Black Sea blockade.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 13th instant, stating that with reference to my report of the 10th instant,[*] he was directed to transmit to me a despatch and its inclosures, received from Viscount Stratford de Redcliffe, respecting a correspondence which has passed between his Excellency and Vice-Admiral Dundas concerning the blockade of Russian ports in the Black Sea.

Mr. Hammond is pleased to request that I would report to your Lordship any observations which I may have to make on this subject.

In obedience to your Lordship's commands I have taken the papers into consideration, and have the honour to report—

Joint notification of British and French Admirals.

That the particular document to which I apprehend my attention is meant to be directed, is the so-called notification in French signed by Admirals Dundas and Hamelin, dated "En route de Kamiesh, Décembre 12, 1854," which I presume has been duly published. I observe that it commences "Au nom des Gouvernements de France et de la Grande Bretagne, nous soussignés commandants des forces navales alliées dans la Mer Noire, conformément aux instructions que nous avons reçues de nos Gouvernements respectifs, donnons avis, &c."

As to Eupatoria and Balaklava.

I observe that it announces an intention to blockade Eupatoria and Balaklava, against which I have already stated my objections.

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[*] No. 241.

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In the absence of any knowledge or information as to the particular instructions which the Admirals, either or each of them, may have received in this matter, it is difficult for me to offer any very confident or relevant observations on this document, as to the form and publication of which I do not find that the Admirals previously secured the advice and concurrence of the Ambassadors of their respective States at Constantinople.

The document, however, has been issued, and cannot well be revoked or annulled, especially after the publication of the letter from the Secretary of the Admiralty to the Secretary of Lloyds, dated January 10, 1854, upon which I had no official communication with the Admiralty or your Lordship, and which I have only seen in the newspapers.

It is to be hoped that the mischief which might ensue as to Eupatoria and Balaklava from rumours of an impending blockade of those ports has been guarded against, and there may be some special grounds (with which I am unacquainted) for hoping that the notification in question will at least do no harm.

I can only say that I am not aware of any precedent for such a document, excepting in the case of Sir Charles Napier's letter to Mr. Buchanan from Kioge Bay last year, upon which I reported adversely on April 20, 1854.

Difficulties may arise in Prize Courts from announcement of simultaneous blockade of all ports.

I cannot undertake to say that this notification will not give rise to difficulties hereafter with neutrals, especially in the Prize Courts. Circumstances, for instance, may prevent the Admirals from carrying their intentions therein announced of blockading on one and the same day, according to the alleged instructions of their Governments, all the Russian coast of the Black Sea. Neutrals may complain of being misled by it, or otherwise hereafter use it to throw doubts on the legal validity or notoriety of the blockade consequent thereon. I must frankly state that as I am in total ignorance of the real object proposed to be attained by the publication of the document, I cannot express any opinion as to its practical results hereafter, and, as at present advised, I can only regret that it was published.

It will not legally operate as a notice or notification of blockade, or bind neutrals so as to expose their ships or goods to confiscation for disregarding it.

Notice of *de facto* blockade will be necessary.

A subsequent and distinct notice from some competent authority of the actual existence of a *de facto* blockade, and also the publication of a formal notification in the "Gazette," on behalf of Her Majesty's Government will be necessary; of this Lord Stratford appears to be aware.

I beg to call attention to my Confidential Memorandum on blockade printed by the Admiralty for the use of Naval officers, and to impress upon all concerned the necessity (therein adverted to) of a competent force so stationed as to close each and every port meant to be blockaded.

I also beg leave to refer to my report of April 20, 1854, on Sir Charles Napier's letter to Mr. Buchanan as well as to my other reports, especially December 5, 1854, and January 10, 1855,* as to the particular blockade now in question.

I have, &c.
(Signed) J. D. HARDING.

No. 259.

The Queen's Advocate to the Earl of Clarendon.—(*Received January* 29.)

Doctors' Commons, January 27, 1855.

My Lord,

His remarks about Denmark and the Danish Minister, in Prize Court.

Case of the "Steen Bille."

I AM honoured with Lord Wodehouse's letter of the 24th January, stating that, with reference to my letter of the 18th January,† which stated that the passages occuring in the report of the "Times" newspaper of my observations in the case of the "Steen Bille," recently tried in the Admiralty Court, to which my attention was called in Lord Wodehouse's letter of the 15th January, were substantially correct, and offering to furnish any further explanations which might be desired, his Lordship was directed by your Lordship to state that you would be glad to receive the further observations offered by me, as your Lordship read, with much regret, my remarks, which, coming from an officer holding my high position, are calculated to give offence to the Government of a country in alliance with Her Majesty, and which your Lordship knows have given pain to the gentlemen specially mentioned by me. Those remarks, as far as your Lordship's information upon the case permits you to judge, appear to be characterized by unnecessary harshness.

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* Nos. 77, 226, and 241.

† No. 250.

I accordingly proceed to offer some explanation of the circumstances which gave me an impression that the Danish Legation, having intervened in the case of the "Steen Bille," had not therein shown that perfect good faith and candour which is always looked for in judicial proceedings at the hands of the Representatives of foreign Governments in international questions.

I offer this explanation in obedience to your Lordship's intimation and in justice to myself, but without any expectation of altering the adverse impression of my conduct which your Lordship has already been pleased to form and to express.

Explanation of facts of the case.

Treaty of 1670.

The "Steen Bille" was captured in the Baltic on the 25th May for breach of blockade; proceedings were instituted against her July 18; a claim was given in on the 7th August, and her case was discussed in common with others and "further proof" ordered therein by the Court on the 30th August. It is not a little remarkable, and scarcely consistent with perfect international candour and fair dealing, that the Danish Legation did not, as far as I am aware, either to your Lordship or to the Prize Court, insist upon or even allude to the existence or relevancy of the Treaty of 1670 at this or any previous time, or until the case came on for "further proof" in this month, when amongst the proofs brought in against the Crown by the claimant was the affidavit annexed. A slightly different affidavit was also given in the case of the "Francisca."

The effect of these affidavits standing might have been fatal to the case of the Crown, and it was my duty and my object to get rid of them or to diminish their effect by every lawful means. It is submitted to your Lordship, confidently, that Count Reventlow must well have known the use which was intended to have been made of these documents.

The claimant's counsel insisted upon them as decisive in his favour, and charged Her Majesty's Government with deliberate breach of Treaty. I pointed out that the conduct of Denmark in acceding to the Treaty between Great Britain and Russia in 1801, and in publishing her own Letters Patent of April 20, 1854 (reviving the Ordinance of May 4, 1803), Article 15, to which I request your Lordship's particular attention, and by her silence on the subject of the Treaty of 1670 when the war broke out, and when these Danish vessels were captured for breach of blockade, and up to that moment, was wholly inconsistent with an honest belief in the existence, operation, or binding effect of that Treaty, or of its having any bearing on these cases; and that either the claimant or the Danish Legation was endeavouring to mislead the Court on the subject; but I expressly stated that if the claimant had been properly informed by the Legation, and had, nevertheless, endeavoured to mislead the Court, then the Legation was exonerated from the charge of bad faith which must fall exclusively upon the claimant.

The claimant (be it remembered) had by his counsel repeatedly charged Her Majesty's Government with bad faith, and its officers with perjury, and that claimant was in close communication with the Legation, which was affording him every assistance. I admit that these charges, to some extent, excited me, and influenced the tone and temper of my reply, and I think not unreasonably.

The result of these remarks of mine, and of the offer I made to admit a certificate from the Danish Legation that the XVIth Article of the Treaty of 1670 was still subsisting and in full force, was the subsequent production of the certificate of Baron Oxholm of January 17 (No. 3 annexed). This certificate contains a very singular qualification at the end, which is not, in my opinion, wholly consistent with candour, regard being had to all the circumstances of the case, and to the two previous affidavits; and upon this document the claimant's counsel was driven to the argument of "punctuation," and the Court (interposing of its own accord) made some strong and disparaging remarks upon the ambiguous wording of the certificate (see paragraph No. 4, "Times" report annexed).

A perusal of the Certificate No. 3 will at once demonstrate that the Danish Legation felt itself unable seriously to maintain the continued existence and operation upon this case of Article XVI of the Treaty of 1670, notwithstanding its previous unqualified authentications thereof, and the complexion up to that moment endeavoured to be given to the bearing of that Article on the cases of the "Francisca" and "Steen Bille."

The true question after all is, not whether there was in fact any bad faith in any quarter, but whether I was not justified at the time and under the circumstances (and before I had seen the qualified certificate of Baron Oxholm) in making the observations

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in question upon the Legation, which had furnished the claimant with the unqualified documents (Nos. 1 and 2), on which he relied to convict the Crown of bad faith. At the same time I placed myself unreservedly in the hands of the Court on this point, and I expressly stated (on the earliest opportunity) that, if the Court was of opinion that I had said anything which I ought not to have said, I would be the first to apologize, upon which the Court made no remark. (See paragraph No. 6, "Times" report of the "Nornen," January 19, annexed.)

I feel persuaded that, had it not been for my strenuous and perhaps too forcible resistance, the device might have succeeded. I could have no personal feeling in the matter. It would have been far more easy and agreeable for me not to have pressed the point, but to have left the Legation and its documents unmolested. In case of success, I felt certain that I should receive no official approbation; in case of failure I well knew I should run the risk of official censure, and be exposed to all the complaints which the Danish Legation could induce your Lordship to listen to. My only object and motive was to do my duty as Counsel for the Crown at all hazards.

I cannot conclude without respectfully but most firmly submitting to your Lordship that, in the discharge of a most arduous public and professional duty, conducted under disadvantages so serious as to have been pointedly adverted to by the Court, my remarks did *not* (all things considered) exceed the limits of that professional freedom always hitherto conceded to English advocates, and which was not checked in this case by a Court sitting to administer international law, and which would not have silently tolerated any excess; a Court before which I must be excused for stating that I have practised for eighteen years without ever receiving a rebuke for making too severe remarks upon any individual.

With reference to your Lordship's observation that my remarks have given pain to Count Reventlow, I have no hesitation in expressing my regret for having caused pain to a gentleman towards whom I had not the slightest personal feeling, and of whom I had no personal knowledge.

I have, &c.
(Signed) J. D. HARDING.

Inclosure 1 in No. 259.

Extract from Treaty between Great Britain and Denmark, signed at Copenhagen, July 11, 1670.*

(Translation from the Latin.)

ARTICLE XVI.

IT shall be lawful for either of the Confederates and their subjects or people to trade with the enemies of the other, and to carry to them, or furnish them with, any merchandizes (prohibited only, which they call contraband excepted) without any impediment, unless in ports and places besieged by the other, which, nevertheless, if they shall so do, it shall be free for them either to sell their goods to the besiegers or betake themselves to any other port or place not besieged.

ARTICLE XXXIII.

But if also in the ships taken by the subjects of either Confederate and brought into any port belonging to the other, there be found any seamen or other person who are subjects of that Confederate into whose ports or rivers the prize shall be brought, they shall be civilly used by those who have taken them, and restored to their liberty forthwith and without ransom.

ARTICLE XXXV.

And for the greater security of the subjects of both Kings, and for preventing all violence towards them from the said ships of war, all commanders of any of the ships of war belonging to the King of Great Britain, and all other his subjects whatsoever, shall be strictly charged and required that they do not molest or injure the subjects of the King of Denmark, if they shall do otherwise they shall be liable to answer it in their persons and estates, and shall therein stand bound until just satisfaction and compensation shall be made for the wrongs by them done and the damage thereby sustained or to be sustained; in like manner, shall all commanders of the ships of war belonging to the King of Denmark, and all other his subjects whatsoever, be straightly under the same penalties charged and required that they do not molest or injure the said subjects of the King of Great Britain: provided, nevertheless, that all the aforesaid action be examined and adjudged by due and legal proceeding in the Court of Admiralty of both Kings, or if it shall rather seem meet to either of the parties, being a stranger in the place where the controversy is to be decided, they shall be examined before certain Commissioners, which both Kings, as soon as they shall be desired, shall appoint to that end, that so proceedings by this means may be not only carried on without great expenses but also ended within three months at farthest.

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* Renewed by Article XIII of the Treaty of Kiel, 1814.

ADMIRALTY PRIZE COURT.

The "Steen Bille," Peter Hansen Beck, Master.

Appeared personally, William May the younger, of Catherine Court, Tower Hill, in the County of Middlesex, Ship and Insurance Agent, and made oath as follows:—

I am the agent for the owners of the above-named Danish vessel "Steen Bille," which has been detained by Her Britannic Majesty's steam-ship of war "Conflict," and sent to this country for adjudication in the Admiralty Prize Court on a charge of attempting to commit a breach of blockade of the Russian Baltic ports. On the 7th instant, I received from Alfred Frantz Carl, Count of Reventlou-Criminel, late the Chargé d'Affaires of His Danish Majesty the King of Denmark at the Court of St. James, but now Secretary to the Danish Legation in London, the document hereto annexed, and marked with the letter (A), being a copy of the XVIth, XXXIIIrd, and XXXVth Articles of a Treaty entered into on the 11th of July, 1670, between their Majesties Christian the Vth, King of Denmark and Norway, and Charles the IInd, King of Great Britain; and I lastly make oath that I believe the same to be a true and genuine copy of the said three Articles of the above-mentioned Treaty, inasmuch as the said Alfred Frantz Carl, Count of Reventlou-Criminel, has attached or set his signature at the foot or end of the said copy in verification thereof, and the Exhibit (B) to be a true translation thereof.

(Signed) W. MAY, Jun.

On the 8th day of December, 1854, the said William May the younger was duly sworn to the truth of this affidavit.

Before me,
(Signed) TRAVERS TWISS.

Inclosure 2 in No. 259.

(A.)—*Extract from Convention and Treaty of Commerce between the Most Serene Princes Christian V, King of Denmark and Norway, &c., and Charles II, King of Great Britain, &c.—Havince, July* 11, 1670.

(Translation from the Latin.)

ARTICLE XVI.

IT shall be lawful for either of the Contracting Parties and their subjects or people to trade with the enemies of the other, and to convey and supply them any merchandize whatever (excepting only those prohibited goods which are called contraband) without any impediment, unless in ports and places besieged by the other, which if they should do, they shall nevertheless be at liberty either to sell their goods to the besiegers or to carry them to any other port or place not besieged.

I, William Webb Venn, of London, Notary Public by Royal authority, duly admitted and sworn, undersigned, do hereby certify and attest unto whom it may concern, that the foregoing writing is a true and faithful translation of the writing in the Latin language contained on the document hereunto annexed under my official seal, and that full faith and credit may and ought to be given to the said translation in

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Courts of Judicature and thereout. In testimony whereof I have hereunto set my notarial firm and said seal of office, to serve and avail where needful. London, the eighteenth of November, 1854.

In fidem,
(Signed) WILLIAM W. VENN.

(B.)—*Extract from Treaty of Peace between Denmark and Great Britain, concluded at Kiel, January* 14, 1814.

(Translation from the French.)

ARTICLE XIII.

All the former Treaties of Peace and Commerce concluded between the predecessors of their Danish and Britannic Majesties are renewed by the present Treaty, and re-established in force in their entire tenor and in the whole of their clauses, so far as they are not contrary to the stipulations contained in the Articles of the present Treaty.

I, William Webb Venn, of London, Notary Public by Royal authority, duly admitted and sworn, undersigned, do hereby certify and attest, to whom it may concern, that the above writing is a true and faithful translation of the writing in the French language contained on the document hereunto annexed under my official seal, and that full faith and credit may and ought to be given to the said translation in Courts of Judicature and thereout. In testimony whereof I have hereunto set my notarial firm and said seal, to serve and avail where needful. London, the eighteenth of November, 1854.

In fidem,
(Signed) WILLIAM W. VENN, *Notary Public.*

ADMIRALTY PRIZE COURT.

The "Franciska."

Appeared personally, George Andrew Rogers, clerk to Mr. Deacon, the Proctor for the claimant of the above-named ship, and made oath that the paper writings hereunto annexed, marked (A) and (B), were delivered to him by Count Reventlow, the Secretary to the Danish Ambassador in London, and that the same are now in all respects in the very same state and condition as when so delivered to him, save and except the letters (A) and (B) since marked thereon, and the notarial translations of the said papers which have been since annexed thereto.

(Signed) G. A. ROGERS.

On the 29th day of November, 1854, the said George Andrew Rogers was duly sworn to the truth of this affidavit.

Before me,
(Signed) TRAVERS TWISS.

Inclosure 3 in No. 259.

Certificate.

AT the request of Captain Beck, of the "Steen Bille," Danish schooner, it is hereby certified that His Danish Majesty's Government considers the Treaty of Alliance and Commerce between the Crowns of Denmark and Great Britain of the 11th July, 1670, as being still in force, as well with regard to the XVIth Article of the same as to every other part of it which has not been expressly changed or modified by subsequent Treaties.

Royal Danish Legation, London, January 17, 1855.

(Signed) W. OXHOLM,
His Danish Majesty's Envoy Extraordinary and Minister Plenipotentiary.

Inclosure 4 in No. 259.

Extract from the "Times" of January 19, 1855.

THE "NORNEN."

Dr. Twiss.—THE master said that the officer spoke to him in English; and the fair and candid interpretation was that he was on board an English ship of war. It was not necessary that the information should have been given by the squadron; it was sufficient if the vessel was an English man-of-war. There was a passage in Chancellor Kent's "Commentaries," vol. i, part i, section vii, p. 149, directly in favour of the "Nornen." He would now come to the question of the Treaty privileges. He must first refer, in order that they might be under no mistake, to the Danish Treaty of 1670, to a certificate which had now been brought in in the case of the "Steen Bille," from the Danish Legation, and which was to the following effect:—

"At the request of Captain Beck, of the 'Steen Bille,' Danish schooner, it is hereby certified that His Danish Majesty's Government considers the Treaty of Alliance and Commerce between the Crowns of Denmark and Great Britain, of the 11th of July, 1670, as being still in force, as well with regard to the XVIth Article of the same as to every other part of it which has not been expressly changed or modified by subsequent Treaties."

If that certificate was going to be disputed—

The Queen's Advocate.—The certificate was not going to be disputed. It stated that the XVIth Article was in force, in the opinion of the Danish Government, only so far as it had not been expressly changed or modified by subsequent Treaties. That was begging the whole question. It had been modified by the accession of Russia in 1803, and he contended that it had been modified by the subsequent Danish Law of 1854, reviving the Law of 1803, which Law of 1803 had been withheld from the Court, while the Law of 1854 was handed up to it.

Dr. Twiss must contend, as at present instructed, for what he held to be the legitimate purport of that certificate. If the punctuation was right, it ran thus:—"With regard to the XVIth Article of the same,"—there was a stop,—"as to every other part of it which has not been expressly changed, or modified by subsequent Treaties." If it was contended that that was a mere evasion—

The Court.—Was it not to be lamented, and greatly to be lamented, that, when what was asked for might have been expressed in the most plain, intelligible, and unambiguous terms, it was not done? What he understood was asked for was a certificate from the Danish Government, that the XVIth Article of the Treaty of 1670 was in full force and operation. Two lines would have expressed that idea.

Dr. Twiss had instructed the Proctor to communicate with the Danish Legation, and procure a certificate, to the effect that the Xth Article of 1670 was in force, and that was the certificate which had been sent down. The Court, if that question was before it, should have the application made to the Danish Legation.

The Court.—It was not a question of the application, but of the answer to it. It was to be lamented that the interpretation of it should depend on punctuation in a matter of that grave importance which the Court was called upon to determine.

Dr. Twiss.—If the Court was of opinion that the certificate was not of the purport he stated, another application should be made to the Danish Legation.

The learned *Judge* said he would treat with the greatest respect any certificate from a foreign Government, but he lamented that the one produced was couched in vague terms, on a subject which admitted of demonstration.

The Queen's Advocate, in reply, said that, first, with regard to the interpolation into this case of a document which belonged to that of the "Steen Bille" he would not complain of it, but in the "Steen Bille" it was everything or nothing. When the learned counsel who led in the case (Dr. Addams) stated that he believed this was the first instance in which the Crown had been permitted to bring in further proof of the existence of the blockade, the Court met him by observing—first, that in nearly one-half the cases in the late war the same thing was done; and, secondly, that allowing further proof was for the advantage of the claimants. The Treaty under which it was now contended that the ship was wrongly seized was withheld from the Court when the matter was discussed on the first occasion. A certificate having now been brought in from the Danish authorities, a preliminary question arose—did the Danish Government mean to say that the XIVth Article of the Treaty

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of 1670 was in force, or did it mean to admit that it was not in force, or did it mean to say neither one thing nor the other, and leave the claimant on his own responsibility to make what use he could of it? There being nothing to show whether the putting forward of that Treaty was simply the act of the claimant himself, or was suggested or sanctioned by the Danish Legation, which had so far assisted the claimant, certain strong observations were made by him, under those circumstances, upon the Danish Legation for so dealing with the case. If the certificate which had now been brought in had been before the Court when the "Steen Bille" was first argued, these observations would have been unnecessary, and would never have been addressed to the Court. But the result of the observations and the discussion was, that the Court had now before it, for the first time, a most valuable document, from which it appeared that the Danish Government did not mean to contend that the XVIth Article of the Treaty was now in force. He had a right to assume that the Danish Legation told the claimant so when he went before them to get the certified copy of the XVIth Article. There was no ground for supposing it did not, because it had put its own construction upon its own certificate, and, of course, the Legation spoke to the claimant with the same voice, and told him what it now told the Court and the world. He charged upon the claimant the clearest want of good faith. Having notice from the Danish Legation that they did not mean to insist positively that the XVIth Article was in force, the claimant now attempted to use it in a way in which the Legation not only did not sanction it, but, as he read it, they disavowed it and threw the whole responsibility on the claimant. The Danish Government had not set forth, and the claimants had only set forth by the argument of counsel, in what particular parts the Treaty of 1670 had been changed or modified, or in what particular parts it had been abrogated altogether. But Mr. McGregor's compilation of commercial tariffs had been presented to both Houses of Parliament. If Her Most Gracious Majesty was to be bound by everything presented to both Houses of Parliament, she would have a great deal more to answer for than she would be bound to do.

Dr. Twiss inquired whether he was to understand Her Majesty's Advocate to contend that that certificate had no other meaning than that the Treaty was in force only so far as it was not repealed by other Treaties? Did he mean to contend that the certificate of the Danish Legation did not bear out his (Dr. Twiss's) position, that the XVIth Article was in force? He wished the learned Advocate would answer that question categorically. He advised the Proctor to direct the Danish subject to make application to his Legation to certify that the Article was in force, and he understood that the certificate had been given in answer to that application, without any reservation or limitation. He contended, bearing in mind that that was a certificate from a foreign Embassy in the language of this country, that the fair and candid interpretation of it was what he had suggested to the Court, and that the Treaty was in force not merely in reference to that particular Article, but all other Articles not expressly set aside. He inferred from it that the Legation declined to certify merely to that particular Article, lest it should be supposed the other Articles were not in force.

The Court observed that it would have been very easy to guard against that.

Dr. Twiss had no doubt if that certificate was not sufficiently precise and accurate in its terms, that the Danish Legation would grant the necessary certificate.

The Queen's Advocate said that, it having been stated that such certificate had been admitted on another occasion, he instantly offered to admit one in the "Steen Bille," although he had a strict right not to allow anything of the sort. The Court had said that it was much to be lamented that when it was asked for in precise words it had not been so given; two lines would have been sufficient. Whether any other certificate should be given in must depend on the Court. He had been asked to state categorically whether the certificate did not support his learned friend's argument. He contended that it did not; in his opinion it was destructive of it. His learned friend had called upon the Court to express its opinion upon certain observations which he had made. If it did so, it would also listen to some other prayers made on behalf of the claimant's counsel. It had been said that Mr. Lousada's affidavit was false from the beginning to the end; that Mr. Hertslet's was the same; and that those who procured and used Mr. Lousada's affidavit ought to be subjected to the pointed censure of the Court. That was one of the matters with which the Court had to deal. It had been said that the last publication of Sir Charles Napier's despatches was an atrocity which must overwhelm the British Government. It was not Lord Aberdeen, or Lord John Russell, or Sir James Graham, that was to be charged with it; but somebody was, and the Court was entreated and urged to express an opinion upon it. He did not complain of flights of fancy—still, if the Court was to express an opinion

it must do so with respect to all of them. Dr. Twiss had spoken of the Baltic ringing with the oppression of the British Government, and inquired whether England was not to be bound by her Treaties? There were other facetious things of which he did not complain; but still, if his sins were to be set before him, other persons must be subjected to the same. When the Court expressed its opinion upon him it must do the same with respect to others. Every word would be listened to by him, and if the Court should be of opinion that he had said anything respecting anyone living which he ought not to have done, he would be the first to apologise. But to come to the facts of the case. It had been said that there could not be a blockade without notification, and that as to the last publication in the "Gazette" that was an atrocity. That was a matter of opinion, but there was the fact—the "Gazette" had notified that the blockade existed from the 17th of April. Certain vessels, it had been said, must be taken to have entered the port of Riga with the permission of the squadron, because it did not appear from the logs that they had been warned off. All the officers swore *una voce* that they diligently carried out their orders, and their orders were to turn back all ships. They warned all off except one, and that escaped. It had been contended that neutrals were entitled to warning from the blockading squadron, but no cases had been cited in support of it. Ships in port, it was said, were not bound to know of the blockade simply because they saw cruizers. That was an abstract proposition with which he was not concerned to deal. It appeared that five ships had succeeded in getting into Riga, but Captain Key stated that 154 vessels had been warned off—that proved how effective the blockade had been. The "Nornen" failed to show that she was visited by any English ship-of-war in the Baltic. He would not go over the ground again as to the Danish Treaty. It had not been shown that the Swedish Treaty had any reference to vessels coming out of harbour, and, therefore, it could not apply to the case of the "Nornen." The learned Advocate then referred to the various Treaties alluded to by Dr. Twiss, and contended that they afforded no support to the claimant's case.

Dr. Jenner followed on the same side, and submitted that the cases cited, when closely examined, were not decisions from which the "Nornen" could derive any benefit.

The learned Judge said it must now be understood that the argument on the general question was closed. With respect to the other blockade cases he would hear an argument on any distinctive features which they presented for consideration.

No. 260.

The Queen's Advocate to the Earl of Clarendon.—(Received January 29.)

Danube blockade.

Proposed raising of.

Doctors' Commons, January 29, 1855.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of January 28 instant, stating that he was directed to state to me that Her Majesty's Government are about to propose to the French Government that the blockade of the Danube should be raised altogether, and accordingly to request that I would prepare a notification of the raising of the blockade to be inserted in the "London Gazette."

Mr. Hammond is pleased to add that your Lordship would be glad to have the draft of such notification in the course of this day, in order that you may communicate it to the French Government previously to its being issued.

In obedience to your Lordship's commands I have the honour to report—

That I observe that the blockade of the Danube is still maintained, and that it is only intended to propose its being raised. I would venture to suggest that any formal "Gazette" notification is, under such circumstances, premature, and that when the measure is determined upon, orders should be sent to carry it into effect, and an immediate official answer thereto reporting the raising of the blockade required, whereupon a notification may be founded.

I am unable at present to prepare a proper form of notification of the raising of the blockade of the Danube in the absence of any information as to the form or manner in which Her Majesty's Government has received official information that such blockade has been actually raised, and of the date at and from which it was so raised.

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I have, however, prepared, and herewith transmit, a form of notification which may possibly be available for your Lordship's immediate purpose, and which will at all events serve to point out what is wanting.

I have, &c.
(Signed) J. D. HARDING.

Inclosure in No. 260.

Draft Notification.

Foreign Office, January , 1855.

Draft notification.

IT is hereby notified that the Right Honourable the Earl of Clarendon, K.G., Her Majesty's Principal Secretary of State for Foreign Affairs, has received a despatch from addressed to , and dated the of announcing that on and from the day of last the blockade of the Danube by the combined naval forces of Her Majesty and of His Imperial Majesty the Emperor of the French was raised.

No. 261.

The Queen's Advocate to the Earl of Clarendon.—(*Received February* 2.)

Doctors' Commons, January 31, 1855.

My Lord,

Danish Company for purchase of Russian vessels.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of January 18 instant, stating that with reference to my letter of the 13th reporting my opinion upon the despatches from Her Majesty's Minister at Copenhagen relative to the supposed Danish Society for the purchase of Russian vessels, which were inclosed in his letter of the 28th ultimo, he was directed to transmit to me, together with the former papers, a further despatch on the same subject which has been received from Her Majesty's Minister at Copenhagen, and to request that I would report to your Lordship whether there is anything in this despatch to alter the opinion already given in my letter of the 13th.

In obedience to your Lordship's commands I have the honour to report—

That the contents of this despatch have, to a certain extent, altered the opinion already given by me in my report of January 13.*

It now appears from the list of the names of the owners, furnished by Mr. Taylor, that there is such a community of interests in at least three of these ships as to give the purchase of each ship from the Russians by the particular persons in question the aspect of being not entirely accidental or in the ordinary course of business. One ship (the "Holger Danske"), since lost, is stated to have been purchased by some of these persons *flagrante bello* (see Mr. Taylor's letter to Mr. Buchanan, December 29).

Capture would be warrantable under the suspicious circumstances.

The refusal of the Danish Custom-house, when officially applied to by the Consul, to furnish the date or place where the purchase of each was effected, and to state where each ship actually was at the date of her purchase, is, in my opinion, a suspicious circumstance, and although Mr. Taylor does not state where these vessels, or any of them, now are, I consider that the impression of the affair derived by the French Government from its own separate sources of information is now sufficiently corroborated by that furnished to Her Majesty's Government to warrant the issuing orders to seize or capture these vessels, either at all events, or provided their papers or the answers of the Master show any irregularity, or that the purchase of either appears to have been made (say) since March last, as your Lordship may judge best. It is of course impossible for me to undertake to say that the particular vessels in question, or either of them, will be condemned, but I beg to state that very extensive frauds are practised in this matter especially by Danes, and that out of twenty-three ships hitherto seized in British ports on suspicion of being Russians falsely using British or neutral flags, and with false neutral papers, no less than twelve have been so seized under Danish colours and papers, of which twelve Danes only one has as yet established her innocence, whilst four of them have been already condemned (notwithstanding they were furnished with numerous and most formal Danish documents purporting to authenticate their legal *bonâ fide* purchase by Danish subjects) and a *primâ facie* case of strong suspicion has been established against four others in which I have a fair expectation of ultimate success on behalf of the Crown, although the legal detection of these ingenious frauds when carried on by regular Danish papers is not easy.

I have, &c.
(Signed) J. D. HARDING.

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* No. 244.

No. 262.

The Queen's Advocate to the Earl of Clarendon.—(*Received February* 3.)

Doctors' Commons, February 2, 1855.

My Lord,

His remarks on conduct of Danish Government and Legation before Prize Court.

WITH reference to your Lordship's communications to me, made through Lord Wodehouse, of the 15th and 24th January on the subject of certain observations addressed by me to the Court of Admiralty in the case of the "Steen Bille," reflecting upon the conduct of the Danish Government and of the Danish Legation, and characterizing that conduct as wanting in good faith, and in further corroboration of my answers thereto of the 18th and 27th January,* I have the honour to invite your Lordship's attention to the observations of the Court of Admiralty in the judgment deliver by that Court on January 27 in the case of the "Francisca" (reported in the "Times" of January 29). Amongst the proofs adduced in that case by the claimants and against the Crown was the affidavit of William May, with the documents attached from A to E inclusive.

With reference to the document A, the Court said: "We have been favoured with an argumentative note from the Danish Minister for Foreign Affairs which wholly, and, unfortunately, omits to notice the only point in question, viz., from what date had the Danish knowledge of the blockade?"

The Court said with reference to the document E: "That the Queen's Advocate had strongly commented upon the document, but not more strongly than it richly deserved. These gentlemen state (they do not swear, and I am glad to think so) that they had never here (at Copenhagen), not even as a loose rumour, heard that it had been really carried into execution. I hardly know how to treat this document; it requires considerable self-command; it is utterly unworthy of credit; and its arguments are upon a par with its credibility."

I give these expressions from a note I made at the time, and they are in substance to be found reported in the "Times" of January 29:—

Further corroboration of his views.

"The Court could not refrain from noticing a paper emanating from the Merchants' Society of Copenhagen, dated September 25, 1854. It had already been strongly commented upon, but he thought not more strongly than it richly deserved. Those gentlemen had thought fit to state that, having had great interest in observing anything connected with that blockade, they had never heard even the least rumour that it had been carried into execution until June 3. Truth required him openly to declare his opinion that that statement was utterly unworthy of credit. He did not stop to notice their arguments, which were about on a par with the credibility of their facts. Could he believe, on a comparison of all the evidence, that the fact of the blockade was not known at an early period in the month of May?"

Your Lordship will observe that this document was officially procured by the Danish Government, and by it forwarded to its Legation here, where the original remains, and whence the copy was furnished to the claimant for the purpose of being used against the Crown in the Admiralty Court, clothed with all the authority and credit which could officially be given to it by Denmark.

Duplicity of Denmark.

I am not aware whether it has been already transmitted to your Lordship from the Danish Legation. I abstain at present from all comment upon the document, which, notwithstanding its solemn and official character, as sanctioned by the Danish Government and supplied from the Legation (to which circumstances the attention of the Court was particulary called during the argument). The Court, nevertheless, declared that "it required considerable self-command" to speak with patience of it. I respectfully submit that these expressions of the Court tend in a great degree to

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* Nos. 250 and 259.

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justify the tone of my remarks upon the general want of good faith exhibited by the Danish Government and Legation.

I have, &c.
(Signed) J. D. HARDING.

No. 263.

The Queen's Advocate to the Earl of Clarendon.—(*Received February* 3.)

Doctors' Commons, February 3, 1855.

My Lord,

Blockade of Black Sea.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 1st February instant stating that he was directed to transmit to me a letter from the Admiralty, inclosing a despatch and its inclosures from Sir E. Lyons, relative to the blockade of Russian ports in the Black Sea; and to request that I would take the same into consideration, and prepare a proper notification for insertion in the "Gazette," provided I am satisfied with the measures taken to enforce the blockade in question.

In obedience to your Lordship's commands I have taken the despatch, &c., into consideration, and have the honour to report—

Admiral's notice insufficient.

That I am of opinion that the Notice signed by Admirals Lyons and Bruat, dated "Port of Kamiesh, 15th January," is not a sufficient notification of blockade.

The telegraphic despatch in French (not dated) is obviously not a correct or sufficient notification; it does not describe the ports to be blockaded, or the limits of the blockade. The words used are merely "principaux ports Russes de la Mer Noire."

Under these circumstances I cannot advise the official publication in the "Gazette" of these documents, or of anything founded upon them. I observe that "the notification of Admirals Hamelin and Dundas dated the 12th ultimo (December) is alluded to in Admiral Lyons' letter to the Admiralty of the 16th of January." I presume that this is the document already reported on by me on the 25th January,* to which Report I beg particularly to refer upon this subject.

I also observe that another notice has been given on this subject in the letter from the Secretary to the Admiralty to Lloyds', dated January 10, which has appeared in the newspapers, but not that I am aware of in the "Gazette." It is therefore probable that at least three official documents have already been published on this subject. None of these different documents is a proper notification of blockade, and they all materially differ from each other. I would also beg leave to refer to my Report of the 20th of April, 1854,† on a similar document issued by Sir Charles Napier, and to my Confidential Memorandum on blockade printed by the Admiralty.

Notice of intention to blockade is not legal.

I have, both in that Report and in that Memorandum, explained, as clearly as I could, that a notice of intention to blockade on a future day is not a legal notification of a blockade, and I have endeavoured to point out what is requisite in this respect.

I observe that what I have hitherto done in this matter has proved of no practical utility whatsoever; it has, I presume, either never reached the Admirals, or may not have been understood or attended to by them, and I shall be happy to do anything further which may be suggested to prevent the serious consequences which I have always anticipated, and fruitlessly endeavoured to guard against in this particular matter.

I speak with more confidence on this subject from the recent decision of the Court of Admiralty in the "Francisca" (Baltic blockade), in which the point now in question was discussed at great length both in the argument and in the judgment.

I have, &c.
(Signed) J. D. HARDING.

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* No. 258. † No. 77.

No. 264.

The Queen's Advocate to the Earl of Clarendon.—(*Received February* 6.)

Doctors' Commons, February 6, 1855.

My Lord,

Notification of blockade of Black Sea.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 27th January last, stating that he was directed to transmit, for my information, copies of two despatches which have been addressed to Her Majesty's Ambassador at Constantinople and to certain of Her Majesty's Consuls, respecting the notification of the blockade of Russian ports in the Black Sea, and to request that I would report to your Lordship any observations on this subject, if I should deem it necessary.

In obedience to your Lordship's commands I have taken the papers into consideration, and have the honour to report—

Memorandum of Instructions to Consuls.

That, considering the want of familiarity with cases of blockade which, after forty years peace, may be expected to prevail amongst Her Majesty's Consuls, and the difficult position in which many of these may find themselves suddenly placed without any means of speedily obtaining instructions how to act, I have ventured to prepare, by way of suggestion (herewith transmitted), a memorandum or circular which may be wholly or partially adopted, and may be used either in substitution or addition to that issued by Lord Stratford, and to that proposed to be issued by your Lordship, dated January 26th, as your Lordship may think fit.

I have kept in view the various difficulties and errors in this matter which I have observed to prevail in the recent case of the Baltic blockade; and I would venture respectfully to suggest the necessity of causing the consuls to understand that a new and serious duty was imposed upon them, requiring their constant and vigilant attention, and that the absence or delay of strictly official information or instructions on the subject ought not to paralyze their efforts or release them from their responsibility.

Possibly the instructions issued to Her Majesty's Consuls in this matter should be communicated to the French Government in order to secure combined action.

I trust that on this occasion I shall not incur your Lordship's disapprobation or be suspected of a desire to make any charges or insinuations against the efficiency of the Consular body, or any portion of it.

I must request to be favoured from time to time with copies of any instructions issued to Her Majesty's Consuls in this matter.

I have, &c.
(Signed) J. D. HARDING.

Inclosure in No. 264.

Draft Memorandum.

Memorandum.

Duties of Consuls in publishing fact of a blockade, &c.

A BLOCKADE of the Russian ports in the Black Sea being about to be forthwith established, it becomes the duty of Her Majesty's Consular officers to direct their vigilant attention to the subject of blockade, with which some of them may not have been as yet familiar. It is the peculiar duty of Her Majesty's consuls to take care that when a blockade is established all merchants and masters of ships receive notice of it, so that they cannot plead ignorance or doubt if they subsequently attempt to proceed towards any port blockaded.

As soon as consuls shall receive, from whatsoever official quarter, as, for instance, from any of Her Majesty's legations or naval officers, or from the Government of any of Her Majesty's allies, any notice of the imposition of the blockade in a formal or official shape, it will be their duty to give the utmost publicity to such notice, and especially to take care that the consuls, merchants, and masters of vessels belonging to neutral nations within their consular districts shall be prevented from being able to allege that they were either in ignorance or even in doubt upon the subject. They will carefully keep notes as to whom and the dates when such information is given.

Various false or erroneous reports or rumours on the subject may be expected as "that the blockade is only partial;" "that certain vessels have been permitted to pass

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in or out;" that various accidents, such as weather, hostile resistance, or other circumstances, have induced the blockading force to withdraw;" "that the blockade has been raised." Consuls will use their discretion in publicly contradicting or warning merchants not to rely upon such reports. A formal notification is not absolutely necessary in blockades; their legal validity will not be affected by the delay or absence of such notification.

It may often occur that a blockade may be well known as a matter of fact, or generally believed as a matter of notoriety, to exist without the consul having received any official notice of it. In such cases the consul will take care that any statement or admission he may make as to not being in possession of official notice (especially when this is in writing) is accompanied with a warning that he knows or believes (as the case may be) that the blockade is nevertheless in force.

It must be borne in mind that as blockade presents a serious obstacle to commercial enterprize, and as great commercial interests are injuriously affected thereby, much ingenuity is often employed by the various persons interested in disputing or denying either its existence or their own knowledge of it, and it is against the successful efforts of such ingenuity that the vigilant exertions of Her Majesty's consuls must be incessantly directed.

Their active and cordial co-operation and correspondence with the Foreign Office, Her Majesty's legations, and Her Majesty's naval officers is expected upon all matters connected with blockade, and they will be prepared to furnish full and correct details, with names and dates of all schemes, having for their object the evasion of any blockade instituted by Her Majesty and her allies.

They will bear in mind that this is a matter affecting the interests and character of Her Majesty's Government, to which consuls, especially those residing in neutral ports, have now a paramount and distinct duty to perform.

If they are at any time in doubt or in want of information on the subject, they will not fail to take the most prompt and certain measures to acquire the necessary information, or to ask for and receive instructions how to act.

No. 265.

The Queen's Advocate to the Earl of Clarendon.—(*Received February* 13.)

My Lord, *Doctors' Commons, February* 12, 1855.

Blockade of Odessa and Kertch.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 6th February instant, stating that he was directed to transmit to me two letters, dated the 3rd February, from the Admiralty, with their inclosures, from Rear-Admiral Sir Edmund Lyons, relative to the blockade of Odessa and Kertch, and to request that I would take the same into consideration, and report to your Lordship any observations which I may think fit to offer thereupon.

I am also honoured with Mr. Hammond's letter of the 9th February, stating that he was directed to transmit, for my information, a copy of a letter, dated February 7, from the Admiralty, inclosing copies of a letter from Rear-Admiral Sir E. Lyons, and its inclosures, reporting the delivery of notifications of blockades in Odessa and Kertch.

In obedience to your Lordship's commands I have the honour to report—

Notified by a flag of truce.

That I do not find with the papers any copy of the document called "the Declaration," which was sent on shore at Odessa, under a flag of truce, by Captain Brooke, of Her Majesty's ship "Gladiator," on the 19th January.

If a copy of this document could be supplied, I consider that it will be advisable to publish in the "Gazette" Captain Brooke's letter *verbatim*, with a copy of the Declaration, and its Address annexed, and also to publish in some shape the fact and date of the Declaration having been sent on shore, and to whom addressed at each of the other ports.

Captain Giffard's letter does not appear to me to be proper for publication *in extenso*. The last sentence (especially) may throw doubt on the validity of the blockades of Anapa and Kaffa, which cannot be effected by "occasional visits;" but if the fact be so, a notice might be inserted in the "Gazette," appended to Captain Brooke's letter, to this effect:—

Notice for "Gazette."

"Official information has been received at the Admiralty from Captain , of Her Majesty's ship , and Captain , of Her Majesty's ship

, that copies of this Declaration, addressed in each case to , were sent on shore and delivered, under a flag of truce, to a Russian officer as follows, at on the , at on the ."

This, however, will not amount to a notification, or dispense with the necessity for one, whenever the blockade is established (as I have repeatedly explained), and the notice for the "Gazette" will require care and accuracy in each case.

Formalities required by Law of France.

There is, I believe, a material difference between the Prize Law of France and that of England as to what amounts to notice of blockade. The French law requires (as I believe) actual warning by a cruizer, in order to render a neutral liable to confiscation for breaking blockade. Of this, I presume, Sir E. Lyons will be made aware by the French naval officers. Having regard to the different notices as to this blockade already published, and to the fact of all the Russian ports in the Black Sea having remained hitherto unblockaded, it may be advisable to caution Her Majesty's naval officers not to capture any vessels attempting to enter a blockaded port unless they are fully satisfied that she made or persisted in such attempt after she well knew not only that a blockade of that port was likely or was intended, but that it actually was in existence, and in doubtful cases to content themselves with warning the ship off, and endorsing her papers.

I would further suggest that it might be more convenient if all letters relating to blockade were confined to that subject (to the exclusion of all others), with a view to their being published or circulated *in extenso* if necessary without detriment to Her Majesty's service.

I have, &c.
(Signed) J. D. HARDING.

No. 266.

The Queen's Advocate to the Earl of Clarendon.—(*Received February* 17.)

My Lord, *Doctors' Commons, February* 16, 1855.

Danish remonstrance against Order in Council respecting blockades.

I AM honoured with your Lordships commands signified in Mr. Hammond's letter of the 3rd of October last, stating that, with reference to my Report of the 23rd of August, on the subject of the complaint made by the Danish Minister of the hardships attending upon the application of the Order in Council of the 11th of August, he was directed to transmit to me, together with the former papers,* a further note from the Danish Chargé d'Affaires at this Court, renewing the representations made by General Oxholm;† and to request that I would take the same into consideration, and report to your Lordship my opinion as to the reply to be returned to Count Reventlo.

I am also honoured with Lord Wodehouse's letter of the 25th of October last, stating that, with reference to the above, he was directed to transmit to me a further note which has been received from the Danish Chargé d'Affaires on the subject of the date at which the blockade of the Russian ports in the Baltic was known at Copenhagen; and to request that I would take the same into consideration, and report to your Lordship my opinion thereupon.

In obedience to your Lordship's commands I have taken the papers into consideration, and have the honour to report—

That with reference to these remonstrances and observations of the Danish Government, I reported on the 22nd of November, with reference to a despatch from Her Majesty's Minister at Copenhagen, that no direct answer could then conveniently be given to the notes of the Danish Minister.‡

This state of things is, however, materially altered in favour of Her Majesty's Government, and adversely to the Danish Government, by the recent Judgment of the Admiralty Court in the case of the "Franciska" (fully reported in the "Times" newspaper of the 29th January last).

By this Judgment the notoriety of the blockade throughout Denmark by the

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* Count Reventlow Criminil, October 20 and September 28; Queen's Advocate, August 23; to Count Reventlow Criminil, August 29; General Oxholm, August 15, 1854.

† September 28, 1854.

‡ Dated respectively September 28 and October 20, which had previously been submitted to me.—J. D. H.

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middle of May is fully established, and the Court made some striking remarks upon some of the documents which were adduced in proof against the Crown, some of which came directly from, and others were authenticated by, the Danish Government and Legation, especially upon the "Merchants' Certificate," officially procured by the Danish Government and transmitted to its Legation, and authenticated by the Legation, of which document the Court said that "it required considerable self-command to speak with patience." It is also to be borne in mind that the Crown produced in evidence copies of Danish newspapers, published at Copenhagen on the 19th and 20th of May, 1854, containing a distinct announcement, received viâ Hamburgh, that the blockade was then effectually established. It was also proved that the blockade was notorious at Hamburgh by the end of April, and that intelligence was conveyed from Hamburgh to Copenhagen in sixty hours.

Under these circumstances, I respectfully submit to your Lordship that the Danish Government was not justified in making, through its Legation here, the various official and direct statements which it has done on this subject on several occasions to your Lordship; such, for instance, as this:—

Pretence that blockade was unknown.

"En déclarant ainsi par ordre de mon Gouvernement qu'avant la date du 3 Juin dernier les autorités compétentes en Danemark *ignoraient le blocus*."—(In Count Reventlow's note of September 28.)

It will be for your Lordship to determine what communications should be now addressed to the Danish Government on this subject.

I beg to recall to your Lordship's attention a passage in my Report of the 23rd of August,[*] in which I anticipated what has since occurred in this matter on the part of the Danish authorities, and stated that "I have already seen many cases in which the Danish authorities have lent themselves with great facility to protecting Russian commercial interests during the war; and I suspect that a pretended or wilful ignorance of the blockade will be in many cases set up, and perhaps supported by the Danish officials at various Baltic ports."

I venture to remind your Lordship of the numerous occasions on which I have in other Reports adverted to the fraudulent evasions of Her Majesty's belligerent rights so frequently practised in Denmark.

Should any further communications pass with Denmark on this subject, or should your Lordship consider that there exists no just ground of complaint against the Danish Government or authorities by reason of their conduct and statements with reference to the blockade in question, I request to be informed thereof, in order that I may be thereby guided in the consideration of other Danish official documents, and in the prize cases in which Danish interests may be involved, several of which cases are still pending, and others which may be reasonably expected to arise.

I have, &c.
(Signed) J. D. HARDING.

No. 267.

The Queen's Advocate to the Earl of Clarendon.—(*Received February* 17.)

Doctors' Commons, February 17, 1855.

My Lord,

As to neutrality of Ionian vessels.

THE Ionian vessel "Lencade," bound, as alleged, from the Ionian Islands to Trebizond, was captured on May 14 by Her Majesty's ship "Firebrand," in the Black Sea, about forty miles from Kaffa, proceeding, as would appear by her course and by her papers, for Taganrog, or some port in the Sea of Azoff, with a cargo of olive oil. She seems to have applied at Constantinople for a clearance to Taganrog, which was refused. She is proceeded against in the Admiralty Court, and is claimed by her Ionian owners, Stematopulos Brothers of Santa Maura, by whom costs and damages are prayed, and it will probably be argued that she is an Ionian, is a neutral vessel, and therefore at liberty to trade with the enemy, and if so, unlawfully captured under the circumstances. The question is important in principle, and has been adverted to by Her Majesty's Ambassador at Constantinople, and by the Lord High Commissioner of the Ionian Islands, as would appear by a report of the Law Officers, May 19, 1854,[†] connected with the refusal of clearances to Ionian ships.

Wants information.

Under these circumstances I have the honour to request that I may be supplied with, or referred to, any information or authority coming from the Ionian Islands or elsewhere, tending to show that Ionian vessels cannot legally be considered as neutrals, or otherwise materially bearing on the subject.

The case comes on for hearing on February 22, and is not the only one of the class.

I have, &c.
(Signed) J. D. HARDING.

P.S.—Any reference to works giving a succinct historical account of the political vicissitudes of these Islands in modern times would be useful.

J. D. H.

No. 268.

The Queen's Advocate to the Earl of Clarendon.—(*Received February* 17.)

Doctors' Commons, February 17, 1855.

My Lord,

Evidence given in Danish Court by British Vice-Consul in blockade case, against British Crown.

I BEG to invite your Lordship's attention to the accompanying document, from which it will appear that Mr. Larlham, Her Majesty's Vice-Consul at Elsinore, was summoned in September, 1854, before a Danish Court, and there examined as a witness on behalf of a Danish claimant, and against the Crown in a prize cause then pending in the High Court of Admiralty here.

This examination was used and insisted upon on behalf of the claimants in the Admiralty Court, at the recent hearing of the "Steen Bille," and of the various cases of neutral ships captured for breaking the blockade of the Russian ports in the Baltic.

I do not wish to be understood as making or implying any charge whatever against Mr. Larlham, who may have had no option in the matter, or may have acted in pursuance of his instructions; but the serious consequences which may result from Her Majesty's Consuls being examined before Danish Courts as witnesses on behalf of Danish claimants, and against the Crown in Prizes Causes, will probably occur to your Lordship, and Mr. Larlham may perhaps be asked to explain the Danish Law, and the facts connected with such examination.

I have, &c.
(Signed) J. D. HARDING.

Inclosure in No. 268.

ADMIRALTY PRIZE COURT.—THE "STEEN BILLE."

Examination of William Robert Larlham, British Vice-Consul at Elsinore, and other Papers in connection therewith, September 13, 1854.

(Translation.)

WILHELM CHRISTOPHER CRONE, Judge Sheriff and Police Master, and Knud von Hadeln, Counsellor of Justice, Registrar, Town Clerk, and Knight of the Dannebroge, in the sea and mercantile town of Elsinore, makes known—

That in the year 1854, on the 13th of September, 12 o'clock at noon, the Sea Court of Elsinore was set in the Sheriff's office in presence of the Court witnesses, Frode and Kündson.

The Court was administered by the ordinary Judge, and, in the absence of the Town Clerk (on notarial business), by the Juridical, examined Chief Möller, duly constituted by the Bailiff, when there appeared before the Court Mr. Andreas Peter Andersen, Ship Agent Chief for the clearing-house of Petersen and Andersen, of Elsinore; also part and managing owner of the schooner "Steen Bille" belonging to this place (Peder Hansen Beck, Master), which vessel on the 25th May this year was made a prize by the English steam sloop "Conflict," and produced a written Requisition of yesterday's date directed to the Judge, which ran thus:—

Requisition.

Being part and managing owner of the Danish schooner "Steen Bille" commanded by Captain Peder Hansen Beck, which vessel was captured in the Baltic by the

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[*] No. 178.

[†] No. 109. (See also No. 101).

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English man-of-war steam sloop "Conflict" on the 25th May of this year, I am in need of a declaration from the British Vice-Consul here, Mr. W. R. Larlham, to be enabled to protect the said vessel before the Admiralty Prize Court of London; and, therefore, make free to request the honourable Judge to let the said Mr. W. R. Larlham, British Vice-Consul, be summoned before the Court to ask for his answer to the following questions:—

Whether Mr. Consul W. R. Larlham does acknowledge that Andreas Peter Andersen, Ship Agent of the firm of Petersen and Andersen, ship clearers here, part owner in the schooner "Steen Bille" belonging to Elsinore, in the kingdom of Denmark, on the 18th May in the present year 1854, did appear in the British Consulate, and made Mr. Larlham, the Vice-Consul the question "if the Russian ports in the Baltic were blockaded," and that he gave for answer to the said Mr. Andreas Peter Andersen that the British Consulate here had not received any official communication to that effect.

In case Mr. Consul Larlham should not accurately remember the date that this inquiry was made, I beg he may be asked if he has not taken down any remark or annotation of the question, or if he does not recollect anything having occurred which could lead to an explication as to what day Mr. Andersen appeared in the Consulate making the above inquiry.

The reply of Mr. Consul Larlham when signed and sworn to according to law I beg may be transmitted to me in due written form.

Elsinore, September 12, 1854.

Respectfully,
(Signed) Andr. P. Andersen, *Ship Agent.*

To Mr. W. Crone,
Judge and Sheriff, present.

Produced in the Sea Court of Elsinore, the 13th September, 1854.
(Signed) T. Moller, *Clerk.*

In reference to the foregoing the Deponent requested that the British Vice-Consul present, Mr. W. R. Larlham, who appeared in the Court, might have the questions made in the requisition put to him for being answered.

The British Vice-Consul in the town of Elsinore, Mr. William Robert Larlham, had been summoned to appear before the Court, and had attended. He was made acquainted with the contents of the requisition, particularly so with the questions therein set forth which he was called upon to reply to in such a manner as he considered himself enabled to testify on oath.

To the first question made in the requisition, Mr. Larlham, the Vice-Consul, gave the following reply:—

I can well recollect that Mr. Andreas Peter Andersen, Ship Agent, who is present in this Court, once in the month of May this year appeared in the British Consulate present, and inquired from me if the Russian ports in the Baltic were blockaded, and that I replied thereto to him that the Consulate had received no official communication thereof. I do not consider myself enabled to depose on oath any testimony on which day in the month of May this happened.

The second question made in the requisition was then put to the appearer, to which he replied:—

"That it was not customary in the Consulate to make any remark or annotation in reference to the like verbal questions, and that this formality had not been observed on the above occasion."

He, however, recollects that on the same day that Mr. Andersen had appeared in the Consulate, and made the question alluded to, he went down towards the harbour and there learned that the schooner "Steen Bille," herein-mentioned, had that very day been here in the roads, and, by the Sound list, it may be seen that the said vessel cleared the Sounds' duty on the 18th May this year, on her voyage to the Baltic. I do not entertain any doubt but that it has in reality been on the above-named 18th May that the conversation between Mr. Andersen and myself herein referred to has taken place.

The contents of the Protocol having been recited, Mr. Consul Larlham ratified his declaration thereto given, testifying thereupon the correctness thereof by his signature and corporal oath, as ordained by law.

(Signed) William Robert Larlham.

Mr. Andersen, Ship Agent, then requested that this Act might be closed, and asked for a copy thereof, made out in legal written form, which request was granted by the Court.

Court adjourned.

(Signed) W. CRONE.
KUNDSEN FRODE.

Thus is the Act described *in forma*, as testified under our hands and seals.

Elsinore, September 13, 1854.

(Signed) W. CRONE. (L.S.)   (Signed) HADELN. (L.S.)

Fees.

To the Judge.

	R.	m.	s.
Incamination	1	1	8
One witness	0	4	8
Affirmation	0	2	8
20 per cent. to the Fund of Justice..	0	2	14$\frac{2}{5}$
	2	5	6$\frac{2}{5}$

Say two rigsdollars five marks six $\frac{2}{5}$ skillings.

(Signed) W. CRONE.

To the Town Clerk.

	R.	m.	s.
Incamination	1	0	12
For the Act	0	5	10
20 per cent.	0	2	7$\frac{3}{5}$
Stamp and ordinary paper.. ..	0	2	12
	2	5	9$\frac{3}{5}$

Say two rigsdollars five marks nine $\frac{3}{5}$ skillings.

(Signed) HADELN.

I hereby declare the foregoing to be a true and faithful translation from the original prefixed document.

Witness my hand and seal of office, Elsinore, September 14, 1854.

(L.S.) (Signed) C. F. Iveisen,
Translator and Interpreter by Royal Authority duly admitted and sworn.

Translation fee, 4 rigsdollars.

No. 269.

The Queen's Advocate to the Earl of Clarendon.—(Received February 20.)

Doctors' Commons, February 20, 1855.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 12th February instant, stating that he was directed to transmit to me a despatch from Lord Stratford de Redcliffe, inclosing copies of his correspondence with Rear-Admiral Sir Edmund Lyons, respecting the blockade of Russian ports in the Black Sea; and to request that I would communicate to your Lordship any observations which I may have to make on these papers.

In obedience to your Lordship's commands I have taken the papers into consideration, and have the honour to report—

Intelligence of intended blockade of Black Sea.

That, as I understand the facts, the joint notice of the intended blockade of the Russian ports in the Black Sea, signed by Admirals Lyons and Bruat, and dated Port of Kamiesh, 15th January, 1855, has been officially communicated to the Ottoman Porte by Lord Stratford de Redcliffe. I gather, however, from Count Walewski's note of the 12th February, transmitted to me with Mr. Hammond's letter of the 15th February, that this communication was of a confidential character, and was made on behalf of the French, as well as of the British Government. The course adopted in this matter appears to me to have been proper under the circumstances, and the communication thus made should not, in my opinion, be published without the consent of the Turkish Government. I see no legal necessity for its publication, and the Turkish Government, in conjunction with the British and French Ambassadors, may perhaps be requested to publish it, or not, as may be considered most advisable at Constantinople. I do not, however, clearly understand when or where, or in what shape the notice of the Admirals has (if at all) been published at Constantinople or elsewhere, and the propriety of publishing it here in any shape must be considered with reference to the circumstances of its previous publication. The notice, although confidentially communicated to the Turkish Government, has, nevertheless, as I appre-

As to publication.

1853-56

hend, been published somehow and somewhere by the Admirals, and has (if I mistake not) already appeared in the "Moniteur." Of all this, however, I have no official knowledge, and I may possibly have misapprehended the facts. If I am to assume that the necessary information of the actual establishment of the blockade may be now hourly expected, I do not anticipate any very great practical advantage from now publishing the notice in question, from which it should be borne in mind that the exigencies of war or weather, and the great extent of the intended blockade, may compel the Admirals to deviate in some particulars in the actual execution of the intended blockade. Neither the notice nor any other which has hitherto appeared will be held by British Prize Courts to amount to a legal notification, or to dispense with the necessity for such notification being published as soon as possible; the delay will not vitiate the blockade, but will render it less efficacious.

Must be notified when *de facto* established.

The publication of the notice here will, I apprehend, be considered to amount to an admission that, up to the date of such publication, no intelligence of the actual establishment of the blockade had reached Her Majesty's Government, which is to be regretted; and if circumstances should delay or interfere with the actual establishment of the very extensive blockade contemplated, the publication of the notice may be attended with inconvenience and embarrassment hereafter.

I have, &c.
(Signed) J. D. HARDING.

No. 270.

The Queen's Advocate to the Earl of Clarendon.—(*Received February* 20.)

Doctors' Commons, February 20, 1855.

My Lord,

Intended blockade of Kertch and Odessa.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 13th February instant, stating that he was directed to transmit to me, for my information, and for any observations which I may have to offer to your Lordship thereupon, the accompanying letter dated February 12, from the Admiralty, inclosing an extract of a report from Sir Edmund Lyons, respecting the blockade of Kertch and Odessa.

In obedience to your Lordship's commands I have taken the papers into consideration, and have the honour to report—

No remarks.

That it does not occur to me that I can usefully offer any observations upon Sir E. Lyons' letter, which sets forth the nature, amount, and disposition of the naval force, which he means to employ in carrying out the intended blockade of the Russian ports in the Black Sea, I presume that he is satisfied that such force is sufficient for the purpose.

I have, &c.
(Signed) J. D. HARDING.

No. 271.

The Queen's Advocate to the Earl of Clarendon.—(*Received February* 24.)

Doctors' Commons, February 21, 1855.

My Lord,

Blockade of Black Sea.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 15th February instant, stating that he was directed to transmit to me the accompanying note from Count Walewski on the subject of the form in which the English and French Embassies at Constantinople communicated to the Turkish Government the declarations of the allied Admirals of the 15th January last with regard to the blockade of the Russian ports in the Black Sea, and to request that I would report to your Lordship any observations I may have to offer upon the French Ambassador's note.

In obedience to your Lordship's commands I have taken the note into consideration, and have the honour to report—

That the observations contained in my report of the 20th February,* with reference to the correspondence between Sir E. Lyons and Lord Stratford de Redcliffe, will be found in some respects applicable to Count Walewski's note of the 12th February.

The giving publicity to the communication addressed to the Turkish Government will not in England have any legal effect, the propriety of publishing it is rather a diplomatic and political than a legal question. The publication might certainly have a somewhat favourable result by increasing the notoriety of the allies' intention to institute this blockade, but looking to the dates, and bearing in mind that the blockade has by this time either failed or fallen short of the notice, or has already been in operation three weeks, and that intelligence of its existence may be hourly expected, upon which a regular and legal notification may be issued, I see no necessity for taking any further steps at present.

No use notifying prospective blockade when notice of its *de facto* establishment is hourly expected.

I have, &c.
(Signed) J. D. HARDING.

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* No. 269.

No. 272.

The Queen's Advocate to the Earl of Clarendon.—(*Received February* 22.)

Doctors' Commons, February 21, 1855.

My Lord,

Blockade of Odessa.

Better wait for information of its establishment before publishing.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 19th February instant, stating that, with reference to my report of the 12th,* he was directed to transmit to me a letter from the Board of Admiralty, from which I shall perceive that the Board have not received a copy of the declaration of intended blockade as sent ashore at Odessa, but they consider that it must be identical with the notification forwarded by Sir E. Lyons in his letter of the 16th January, of which a copy is inclosed in the annexed letter from the Board of Admiralty.

In obedience to your Lordship's commands I have taken the papers into consideration, and have the honour to report—

That under the circumstances stated, it will be for the Admiralty to decide whether, in the absence of a copy of the document in question, they consider that any publication as suggested in my report of the 12th can safely be made.

Possibly, inasmuch as positive information of the existence of the blockade may be hourly expected (upon which a legal notification may be founded), it may be thought more prudent to delay the publication in question until a copy of the document sent on shore by the flag of truce is forthcoming.

I have, &c.
(Signed) J. D. HARDING.

No. 273.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received February* 26.)

Doctors' Commons, February 24, 1855.

My Lord,

Contraband of war. Trade between Russia and Hans Towns.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 9th February instant, stating that he was directed to transmit to us the accompanying note from Count Walewski, the French Ambassador at this Court, communicating to your Lordship certain information which has reached the French Government, respecting the trade carried on by the Hanseatic towns in articles contraband of war destined for Russia, and suggesting that, as soon as the state of the weather in the Baltic in the ensuing season will permit, the French and English Governments should station cruizers to watch those towns, with the view to prevent the entry of goods contraband of war; and to request that we would take these papers into consideration, and report to your Lordship our opinion upon the measures suggested by the French Ambassador.

In obedience to your Lordship's commands we have taken the papers into consideration, and have the honour to report—

Cannot capture when entering Hanseatic ports.

That we are of opinion that the allied cruizers will not be justified in detaining or capturing Hanseatic vessels entering their own ports, even if they have on board articles, which, if afterwards carried to the enemy, would become contraband of war.

Contraband depends on destination.

It is not the nature of the article alone, but its destination which constitutes it contraband of war.

We have, &c.
(Signed) J. D. HARDING.
A. E. COCKBURN.
RICHARD BETHELL.

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* No. 265.

1853-56

No. 274.

The Queen's Advocate to the Earl of Clarendon.—(*Received March* 2.)

My Lord, 50, *Connaught Square, February* 28, 1855, 7·30 P.M.

Arms at Harburg suspected for Russia.

I AM favoured with Lord Wodehouse's letter of this day's date, transmitting to me a despatch from Her Majesty's Minister at Hanover, relative to the arrival of twenty cases of revolver pistols at Harburg, and reporting the steps taken by him with a view of preventing their being forwarded to the enemy, and Lord Wodehouse requests that I will state to your Lordship my opinion whether, in the event of Mr. Bligh's prevailing upon the Hanoverian Government to stop these arms, Her Majesty's Government would be justified in instructing Mr. Bligh to demand their continued detention.

I have accordingly considered Mr. Bligh's despatch and its inclosure, and have the honour to Report—

Cannot demand continued detention.

That inasmuch as the messenger is directed to wait for an answer, I have no opportunity of referring to books, or forming any very satisfactory opinion on the point; but (as at present advised) I am of opinion that if the suggested demand for the continued detention of these pistols were refused by the Hanoverian Government, such refusal would not amount to a breach of international law or usage. I observe that the pistols are merely passing through Hanover from Hamburgh to Tilsit, and no Hanoverian law is suggested or alluded to as bearing on the subject; their continued detention by the Hanoverian Government would amount to confiscation or sequestration, and, notwithstanding the great probability that they are destined for the enemy's use, there does not appear to me to exist any legal proof of this.

I have, &c.
(Signed) J. D. HARDING

No. 275.

The Queen's Advocate to the Earl of Clarendon.—(*Received March* 2.)

My Lord, *Doctors' Commons, March* 1, 1855.

Blockade of Black Sea.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 27th February, stating that, with reference to my letter of the 20th,* he was directed to transmit to me a further despatch from Viscount Stratford de Redcliffe, inclosed a despatch from Sir E. Lyons, stating, with reference to his previons notice, inclosed in Lord Stratford de Redcliffe's despatch No. 79 of February 1, also transmitted, that the Russian ports of the Black Sea, as before enumerated by him, are actually in a state of effective blockade, and have been so from the date of the first of the present month.

Lord Wodehouse is pleased to request that I would take these papers into consideration, and report to your Lordship my opinion whether the publication of Sir E. Lyons' despatch in the "Gazette" may now take place.

Lord Wodehouse is pleased to add that your Lordship would also be glad to receive from me a form of publication for insertion in the "Gazette," if I should consider such publication advisable.

Lord Wodehouse further states that your Lordship proposes to approve the course which Lord Stratford intends to pursue, but that your Lordship requests my opinion whether any further instructions to his Excellency are required.

In obedience to your Lordship's commands I have taken the papers into consideration, and have the honour to report—

Notification for "Gazette."

Irregular announcement by Admiral.

That assuming Sir E. Lyons' letter to Lord Stratford de Redcliffe is satisfactory to your Lordship as a formal and official statement of the actual establishment of the blockade of the ports mentioned, and a sufficient authority for the issuing of a formal notification of such blockade, I am of opinion that the usual notification and publication in the "Gazette" may now take place, and I have accordingly prepared and herewith transmit a form of notification for insertion in the "Gazette." I observe that no direct and official information from Sir E. Lyons has as yet been addressed to the Admiralty on this subject, and I also beg leave to point out that the course indicated in my confidential Memorandum on blockade (printed by the Admiralty) has not been strictly followed in this case. The actual commencement of the blockade having been announced, not as a separate and distinct fact, but only with reference to a previous notice, which notice has not been officially published in England, and as to the publication of which elsewhere I am in some doubt. Although there may have been sufficient reasons for this, yet it is impossible to foresee or to guard against the various legal difficulties and inconveniences which may ultimately arise from any material deviations from the course I have distinctly pointed out in that Memorandum.

I presume that Lord Stratford will take care that Her Majesty's Consuls throughout Turkey and the Levant receive distinct official notice that the blockade is established, and was in actual operation on and from February 1, and I do not therefore see any necessity for sending any special instructions to his Lordship. No notification having been issued that the blockade of the Danube has been raised, that blockade must, I presume, be considered as still existing.

I beg to refer to my report of February 12,* upon some communications from Admiral Lyons, and Captains Broke and Giffard, and to suggest that, nothwithstanding the present notification, it will be, in my opinion, advisable to publish in the "Gazette" Captain Broke's despatch, accompanied by some official statement of the notice therein alluded to, having been in fact conveyed under flags of truce to the other Russian ports now blockaded, at the respective dates when this actually took place at each port.

I have, &c.
(Signed) J. D. HARDING.

Inclosure in No. 275.

Notification.

Foreign Office, March 3, 1855.

Notification.

IT is hereby notified that official information has been received from Rear-Admiral Sir Edmund Lyons, G.C.B., commanding Her Majesty's naval forces in the Black Sea, dated Her Majesty's ship "Agamemnon," off Sebastopol, February 11, 1855, that from the 1st February last "the mouth of the River Dniester, the ports of Akerman, Ovidiopol, Odessa, all the ports situated between Ockakov Point and Kimbourou Point, including the ports of Nicolaev and Kherson, the Rivers Boug and Dnieper, also the ports between Kimbourou Point and Cape Tarkan, including the ports in the Gulf of Perekop, the port of Sebastopol, the ports comprised between Cape Aïa and the Straits of Kertch, including those of Yalta, Aloushta, Soudak, Kaffa or Theodosia; the port of Kertch, the Straits of Kertch, the entrance to, and all the ports in, the Sea of Azoff, including especially the ports of Berdiansk, Taganrog, and Arobat, the River Don and also the ports of Anapa and Soujak, were strictly blockaded by a competent force of the allied fleets of France and England.

"That the ports of Eupatoria, Streletzha, Kamiesh, Kazatch, and Balaklava were and are and will remain open and free from all blockade until further notice. And it is hereby further notified that all measures authorized by the law of nations, and the respective Treaties between Her Majesty the Queen of Great Britain and Ireland and His Imperial Majesty the Emperor of the French, and the different neutral powers, will be adopted and executed with respect to all vessels which may attempt to violate the said blockade."

No. 276.

The Queen's Advocate to the Earl of Clarendon.—(*Received March* 3.)

Doctors' Commons, March 3, 1855.

My Lord,

Blockade of Black Sea.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 1st of March instant, stating that he was directed to transmit to me (to be taken into consideration with the papers inclosed in his letter of the 27th of February) the accompanying despatch from Her Majesty's Ambassador at Contantinople, and a letter from the Admiralty respecting the blockade of the Russian ports.

In obedience to your Lordship's commands I have taken the papers into consideration, and have the honour to report—

That I did not receive your Lordship's letter and inclosures until after my Report of the 1st of March on this subject was sent in to your Lordship.

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* No. 269.

* No. 265.

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I do not consider it necessary to alter the draft notification which accompanied that report.

Notices given under flag of truce may be published in "Gazette."

The papers now inclosed would, of course, if they had been previously submitted to me, have modified certain portions of that Report, and it now appears to me to be advisable to publish, either in the same or in the next subsequent "Gazette" to that in which the notification may be published, Captain Broke's previous despatch relating to the communication of this notification to the port of Odessa by flag of truce. A note should be added to Captain Broke's despatch to explain that such notification was to the effect that the ports (the actual blockade of which is now published in the "Gazette") would be blockaded as from the 1st of February; any further distinct official information of the notification having been communicated to blockaded ports by flag of truce previous to the 1st of February, may also be published with the concurrence of the Admiralty and of the French Government.

Such publication will show that neutrals in the blockaded ports received ample and authentic notice of the intended blockade, and this may be of use hereafter either in the Prize Courts or in answer to any complaints from neutral Governments.

I have, &c.
(Signed) J. D. HARDING.

No. 277.

The Queen's Advocate to the Earl of Clarendon.—(*Received March* 7.)

Doctors' Commons, March 5, 1855.

My Lord,

Dutch cargo of rye at Eupatoria.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 28th of February last, stating that he was directed to transmit to me therewith a note from the Dutch Minister at this Court, requesting to be informed whether there would be any objection to Messrs. Kaars Sypertyn, Dutch merchants, sending a ship from Constantinople to export from Eupatoria a cargo of rye which had been purchased previously to the breaking out of the war, and whether, should the rye in question have been appropriated for the use of the allied army in the Crimea, the owners would be indemnified for their loss by the allied Governments; and to request that I would take Baron Bentinck's note into consideration, and report to your Lordship my opinion as to the answer which should be returned thereto.

In obedience to your Lordship's commands I have taken the note into consideration, and have the honour to report—

Netherlands vessel may trade with Eupatoria.

That if the French Government concur, Baron Bentinck may be informed that any Netherland merchant vessel is at present at perfect liberty to enter and trade at, and quit the port of Eupatoria.

As to compensation if rye has been used by allied armies, &c.

I have no means of knowing whether the export of cereals from that port is or is not permitted under present circumstances. Baron Bentinck appears to assume that if such exportation should be forbidden, or should the rye in question have been disposed of by the allied generals, that the Netherland merchants will be indemnified by the allied Governments. I must observe that it appears to me premature to admit this assumption, or to discuss the question hypothetically, and without full information and proof of the facts connected with the transaction.

I have, &c.
(Signed) J. D. HARDING.

No. 278.

The Queen's Advocate to the Earl of Clarendon.—(*Received March* 6.)

Doctors' Commons, March 6, 1855.

My Lord,

Dutch vessels detained off Sulina by British cruizers.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 13th February last, stating that with reference to my letter of the 8th January last,* and to previous correspondence respecting the claim to compensation advanced by the Netherland Government on behalf of the owners of the "Catherine" and "Sjouke Alida," in consequence of the alleged unjust detention of those vessels by the cruisers of Her Majesty's squadron in the Black Sea, he was directed to

transmit to me a note which your Lordship has addressed to the Netherland Minister at this Court in conformity with the suggestions contained in my above-mentioned letter, together with a note which has been received from Baron Bentinck in reply thereto, and to request that I would take these papers into consideration, together with the former documents, and report to your Lordship my opinion on the course which I consider it advisable for Her Majesty's Government to pursue in regard to this matter.

In obedience to your Lordship's commands I have taken the papers into consideration and have the honour to report—

Discrepancies in statements as to contraband of war.

That the papers referred to and inclosed in Baron Bentinck's note being in Dutch I am not aware I have seen them before, or whether they contain anything material which I have not seen. If the facts are strictly as stated in the passages marked in pencil in his Excellency's note, I confess that I am somewhat at a loss to understand Admiral Dundas' statements in his letter to the Admiralty, No. 626 of the 26th November, 1854, "that the cargoes were partly contraband of war," and that "the masters were fully aware of the illegal nature of their proceedings, and that a blockade would probably be soon established." Possibly, as the Admiral is now in England, some further and more satisfactory explanation or information may be obtained from him.

The question, as I have observed, is mainly "were these masters acting in honest ignorance, and in perfect good faith?" The Admiral is convinced that they were not. The allegations of Baron Bentinck tend strongly to show that they were.

Advises compensation.

Subject to these observations, I retain my impression in favour of the right of the owners of these vessels to receive some compensation from Her Majesty's Government. The amount has not yet been suggested by the Netherland Government, but this may perhaps be conveniently referred to arbitration.

I have, &c.
(Signed) J. D. HARDING.

No. 279.

The Queen's Advocate to the Earl of Clarendon.—(*Received March* 6.)

Doctors' Commons, March 6, 1855.

My Lord,

Blockades in Black Sea.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of this day's date stating that he was directed to transmit to me the accompanying form of notification proposed to be inserted in the "Gazette," and to request that I would take the same into consideration, and return it to your Lordship with any alterations which I may deem necessary.

In obedience to your Lordship's commands I have the honour to report—

That I presume that the words "notifications" in the body of Captain Broke's despatch must be a mistake.

Notification must be precise.

I have further to observe that unless a copy of the document delivered at Odessa is forthcoming, or can be referred to, I fear that the publication of this notification must be postponed. "Similar to" will not be a sufficient legal description, and if the document delivered at Odessa was verbally identical with any document now in the possession of Her Majesty's Government, the contents can, and should be given *verbatim*. I have accordingly so altered the draft notification herewith returned.

I presume that the Admiralty must have a copy of the document which was delivered at Odessa. If not, I fear the publication must be postponed.

I have, &c.
(Signed) J. D. HARDING.

No. 280.

The Queen's Advocate to the Earl of Clarendon.—(*Received March* 9.)

Doctors' Commons, March 9, 1855.

My Lord,

Blockade of Black Sea.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of yesterday's date, stating that he was directed to transmit to me a despatch from Her Majesty's Ambassador at Constantinople, inclosing a copy of a formal

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* No. 239.

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No further notification necessary.

notification of the blockade of the Russian ports in the Black Sea issued by the English and French Naval Commanders-in-chief; and to request that I would take these papers into consideration, and if I deem it necessary that any further notification of this blockade should be published in the "Gazette," to request that I would prepare the same and transmit it to your Lordship.

In obedience to your Lordship's commands I have taken the papers into consderation, and have the honour to report—

That I do not consider that any further notification of this blockade need be published in the "Gazette."

I have, &c.
(Signed) J. D. HARDING.

No. 281.

The Queen's Advocate to the Earl of Clarendon.—(*Received March* 9.)

My Lord,
Doctors' Commons, March 9, 1855.

Raising of blockade of Danube.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of yesterday's date, stating that he was directed to transmit to me the accompanying despatch and its inclosures from Her Majesty's Ambassador at Constantinople respecting the raising of the blockade of the mouths of the Danube on the 18th of February last by the Commanders-in-chief of the English and French naval forces in the Black Sea; and to request that I would take these papers into consideration, and draw up and transmit to your Lordship a notification of the raising of the said blockade for insertion in this day's "Gazette," unless I see any legal objections thereto.

I am also honoured with Lord Wodehouse's note of the same date transmitting two letters from the Admiralty inclosing copies of the notifications of the raising of the blockade of the Danube, and of the establishment of the blockade of the Russian ports in the Black Sea, by the French and English Admirals.

In obedience to your Lordship's commands I have the honour to report—

That I have taken these papers into consideration, together with certain letters from the Admiralty addressed to your Lordship relating to this subject (subsequently transmitted to me through Lord Wodehouse, under date of the 8th of March), and I have prepared and herewith transmit a form of notification of the raising of the blockade of the Danube for insertion in the "Gazette."

I have, &c.
(Signed) J. D. HARDING.

Inclosure in No. 281.

Notification.

Foreign Office, March 9, 1855.

Notification.

IT is hereby notified that the Right Honourable the Earl of Clarendon, K.G., Her Majesty's Principal Secretary of State for Foreign Affairs, has received a despatch from Rear-Admiral Sir Edmund Lyons, G.C.B., commanding Her Majesty's naval forces in the Black Sea, dated "Royal Albert," off Sebastopol, 20th February, 1855, and addressed to the Lords Commissioners of the Admiralty, announcing that, in conjunction with Vice-Admiral Bruat, commanding the French squadron in the Black Sea, he had, on and from the 18th February last, raised the blockade of the Danube, which was established on and from the 1st day of June, 1854, and which was notified in the "London Gazette" of the 13th June, 1854, and which has since been duly maintained.

It is hereby notified that cruizers of the allied fleets are and will remain stationed off the mouths of the Danube to capture any vessels laden with contraband of war destined for the use of the enemy.

No. 282.

The Queen's Advocate to the Earl of Clarendon.—(*Received March* 13.)

My Lord,
Doctors' Commons, March 10, 1855.

Blockade of Black Sea.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 8th March instant, stating that with reference to my Report of the 7th,* respecting the publication in the "Gazette" of Captain Broke's letter of the 19th January last, he was directed to transmit to me a letter from the Admiralty on the subject of the notification of blockade delivered by Captain Broke to the Russian Captain of Quarantine, and to request that I would take the same into consideration, and report to your Lordship, at my earliest convenience, whether there is anything in the inclosed letter to induce me to change my opinion with regard to the postponement of the publication in the "Gazette" of Captain Broke's abovementioned letter.

In obedience to your Lordship's commands I have the honour to report—

That there is nothing in the inclosed letter from the Admiralty to induce me to change my opinion with regard to the postponement of the publication in the "Gazette" of Captain Broke's letter.

As to notification.

I observe that the Admiralty state that "their Lordships see no reason to doubt that the two documents were in substance similar to the notification published in the supplement to the "London Gazette" of the 2nd instant."

Nevertheless the publication of Captain Broke's letter referring to these notifications, without annexing thereto any copy of the notifications actually delivered by him, or any clear and distinct statement of their actual contents, would not, in my opinion, be advisable.

Distinct information may be published,

I much regret the existence of this difficulty, and can only suggest that if the Admiralty should feel authorized to publish any distinct official information to the effect (say) "that a formal written notice in French and English, signed by   , and addressed to   , stating that the blockade of the port in each case would commence on and from the 1st of February, was sent on shore under a flag of truce by the allied cruizers, and delivered to a Russian officer at Odessa on the   , at Kertch on the   ," and so forth, such a publication will, in my opinion, be advisable.

If the Admiralty know precisely what did in fact take place, such information may be published, even without publishing the despatch *verbatim* in each case or giving a literal copy of the notification.

but not conjectures.

If they do not positively know this, no conjectures (however probable) will be sufficient to authorize the publication, and such conjectures cannot be legally relied upon, and often turn out very unexpectedly to be unsupported by the facts.

I have, &c.
(Signed) J. D. HARDING.

No. 283.

The Queen's Advocate to the Earl of Clarendon.—(*Received March* 15.)

My Lord,
Doctors' Commons, March 14, 1855.

Black Sea blockade. Consul Smith's notification of, at Lisbon.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 26th February last, stating that he was directed to transmit a despatch from Her Majesty's Minister at Lisbon, respecting the proceedings of Her Majesty's Consul at that port with regard to the blockade by the allied forces of the Russian ports in the Black Sea; and to request that I would take the same into consideration, and report to your Lordship my opinion thereupon.

In obedience to your Lordship's commands I have taken the papers into consideration, and have the honour to report,—

That Sir R. Packenham's advice to Mr. Consul Smith was, under the peculiar circumstances of the case, judicious and proper.

Intended blockade is not *de facto*.

The official announcement of an intended blockade is not equivalent to a notification of a blockade; but, as a general principle, Consuls cannot do wrong if they give publicity to authentic official documents on the subject emanating from the Government of any of the allied Powers. In this particular case the intended blockade has

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* Query 6th. See No. 279.

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fortunately been established; so that it is to be hoped that no practical mischief has ensued from the French publication of the allied Admirals notice of their intention to institute this blockade.

I have, &c.
(Signed) J. D. HARDING.

Inclosure in No. 283.

Extract from the "Times."

Paris, Friday, February 2, 6 P.M.

Announcement of prospective blockade.

UNDER the head of Constantinople the "Moniteur" says:—

"The English and French Admirals have together agreed upon, and immediately notified, the blockade of the principal Russian ports of the Black Sea, and the necessary measures were at once taken by the Commanders of the allied squadrons to render that blockade effective, even before the expiration of the delay granted to neutral vessels. The following is a textual copy of the Order:—

"'In the name of the Governments of France and of Great Britain, we, the undersigned, Commanders of the allied forces in the Black Sea, conformably with instructions received from our respective Governments, make known by the present,—

"'That after the 1st February, 1855, the mouth of the Dneister, the ports of Akermann, Ovidiojol, Odessa, all the ports situate between the points of Ochakow and Kimbourou, including those of Nikolaïew and of Cherson;

"'The mouths of the Bug and of the Dneiper;

"'The ports situate between point Kimbourou and Cape Tarkan, including the ports of the Gulf of Perekop;

"'The port of Sebastopol;

"'The ports included between Cape Aïa and the entrance of the Straits of Kertch, notably those of Yalta, Aloushta, Soudak, Kaffa, or Theodosia;

"'The port of Kertch, the Straits of Kertch, the entrance of those Straits, and all the ports of the Sea of Azoff, including especially the ports of Berdiansk, Taganrog, and Arabat;

"'The mouth of the Don, the ports of Anapa and Soudjak, are placed in a state of strict blockade by suitable forces of France and England;

"'The ports of Eupatoria, Streletzka, Kamiesch, Kazatch, and Balaklava are not included in the blockade until further notification.

"'It is also notified by this present, that all the measures authorized by the law of nations and by respective Treaties between His Majesty the Emperor of the French, Her Majesty the Queen of England, and the different neutral Powers, shall be adopted and put in vigour against any vessel which may attempt to violate such blockade.

(Signed) "'E. LYONS, *Rear-Admiral, Commander-in-chief of the British Naval Forces in the Black Sea.*
"'BRUAT, *Vice-Admiral, Commander-in-chief of the French Squadron in the Black Sea.*

"'*Port of Kamiesch, January* 15, 1855.'"

No. 284.

The Queen's Advocate to the Earl of Clarendon.—(Received March 20.)

Doctors' Commons, March 17, 1855.

My Lord,

British machine manufacturers at Warsaw.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 2nd of March instant, stating that he was directed to transmit to me a note from the Prussian Minister at this Court, representing the case of Messrs. Evans, British subjects, who are established as machine manufacturers at Warsaw, and who desire to be informed whether, under the provisions of the Queen's Proclamation of the 8th ultimo, they may continue their works in the Russian dominions and execute orders for the Russian Government, so long as they do not manufacture machinery usable for military purposes, and to request that I would report to your Lordship my opinion on this matter.

In obedience to your Lordship's commands I have taken the matter into consideration, and have the honour to report—

May execute orders for Russian Government if of an agricultural and commercial nature.

That I observe that Messrs. Evans do not appear to have themselves directly applied to your Lordship, or to any British authority on this subject. Possibly this omission may be capable of explanation from the circumstances of their being established in the enemy's country. Subject to this observation, I am of opinion that provided they confine themselves strictly to manufacturing machines used in agriculture and commerce exclusively, they may execute orders for the Russian Government without contravening the provisions of Her Majesty's Proclamation of the 8th of February.

I have, &c.
(Signed) J. D. HARDING.

No. 285.

The Queen's Advocate to the Earl of Clarendon.—(Received March 20.)

Doctors' Commons, March 19, 1855.

My Lord,

As to publication in Ionian Islands of blockade of Black Sea ports.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 12th March instant, stating that he was directed to transmit to me a letter from the Colonial Office covering a despatch addressed to Lord Panmure by the Lord High Commissioner of the Ionian Islands, reporting the steps which he has taken with regard to the publication in the "Ionian Gazette" of the notification of the blockade of Russian ports in the Black Sea, and to request that I would take the same into consideration and report to your Lordship any observations thereupon.

In obedience to your Lordship's commands I have taken this subject into consideration, and have the honour to report—

That the attention of the Lord High Commissioner should be directed to the necessity of ensuring the speedy, proper, and official publication in the Ionian Islands of the notification of the actual blockade of the Russian ports in the Black Sea published in the "London Gazette" of the 3rd March last.

I have, &c.
(Signed) J. D. HARDING.

No. 286.

The Queen's Advocate to the Earl of Clarendon.—(Received March 24.)

Doctors' Commons, March 22, 1855.

My Lord,

Remonstrance of Netherlands Minister against Prize Court decision.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 14th of March instant, stating that he was directed to transmit to me a note from the Netherlands Minister at this Court respecting the decision of the Admiralty Prize Court in the case of the Dutch vessel "Anechina Jantina," and to request that I would take the same into my consideration and report to your Lordship at my earliest convenience my opinion as to the answer which should be returned to Baron Bentinck.

In obedience to your Lordship's commands I have taken the note into consideration, and have the honour to report—

That I would most respectfully venture to point out to your Lordship the inconvenience and unreasonableness of your being drawn into a discussion as to the legal grounds of a judgment of the Court of Admiralty not pronounced upon any new or peculiar point, or upon a case *primâ impressionis*, nor until after the claimants had been permitted to bring forward the fullest "further proof" of their innocence. His Excellency can hardly be ignorant of the real grounds of the judgment, and cannot expect your Lordship to discuss questions of law or fact already decided by the English Courts in favour of the Crown.

Messrs. Bourke's counsel can at all events give Baron Bentinck a full and particular account of the grounds upon which that judgment was pronounced.

Not expedient to discuss such matters with a Foreign Minister.

I would further observe that although there may be no intention of appeal to the Judicial Committee of the Privy Council in this particular case, yet that other cases of a similar class are actually appealed, and that it is, in my opinion, highly inexpe-

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dient for your Lordship to embark in a discussion with a Foreign Minister upon the law or the facts of this particular case whilst these appeals are pending.

In this very case further proceedings as to the freight took place in Court on the 16th of March, after I had received Lord Wodehouse's letter, and whilst I was preparing this report.

I would most respectfully submit that if your Lordship is to undertake to explain and justify the decision of the Court in this particular case, it will be difficult for your Lordship hereafter to decline or avoid pursuing a similar course in many other cases, which will be highly inconvenient.

I would further point out that Baron Bentinck ingeniously mixes up complaints of the injustice of the sentence of the Court (both as to the ship and the cargo, and the costs), with an appeal to the compassion of Her Majesty's Government as to the costs. His Excellency does not appear simply to ask as a favour for the remission of the costs, or rather for their payment by the public.

Costs cannot be remitted.

I would therefore venture to suggest that an answer may be returned to Baron Bentinck to the effect "that the cargo having been decreed by the Court to be restored only conditionally upon the payment of the costs and expenses of the captors, your Lordship has no power to alter this Decree, and sees no sufficient reason why the costs (which must in any event be paid) should be paid by the Crown instead of Messrs. Bourke and Co., the successful opponents of the Crown in this particular matter.

"That your Lordship must decline for obvious reasons to enter into any discussion of the facts of the case, whether relating to the ship or the cargo or the legal points involved therein, contenting yourself with observing that the case presented no novel or extraordinary features, and involved no new legal principle; that the claimants both of the ship and cargo had the fullest hearing, were permitted to bring all the 'further proof' they could adduce, and were apprized of the grounds of the decision, and did appeal from the sentence of the Court, a sentence which (as relates to the cargo) was founded exclusively upon the claimant's own evidence, none having been adduced against them by the Crown."

It might not, perhaps, be altogether unadvisable to subjoin some intimation that the unsuccessful result of the application recently made by Her Majesty's Government to the Netherlands Government on behalf of Captain Dreland was not such as to dispose Her Majesty's Government to any very favourable view of applications for payment out of the Public Revenue of the costs of Dutch litigants in British Courts; Captain Dreland (though successful) having been ruined by the costs of six years litigation in Dutch Courts with an officer of the Netherlands Government, without obtaining any redress whatsoever.

I may, perhaps, be permitted to add, for your Lordship's further satisfaction, that Riga having been blockaded from the 17th April, this vessel broke that blockade by entering the port on the 16th May in ballast, and also by sailing therefrom on the 21st with a cargo; she was captured on this latter voyage on the 23rd May, and therefore most reasonably condemned for breach of blockade.

Cargo was restored, owners being possibly unable to countermand shipment.

With reference to the cargo, the Court took a very lenient view, and thought that although the shippers at Riga were fully aware of the blockade, yet that it might have been put on board without the Dutch owners having any sufficient opportunity of countermanding it, the ship having been chartered by them in Holland before the blockade was known there, although after the war was known, and a blockade must have been expected.

The Court therefore restored the cargo; but the ship being clearly *in delicto*, and the cargo having been actually shipped in violation of blockade, the Court made the restoration of that cargo, subject to the payment of the captor's costs, agreeably to the invariable practice in cases where there exists justifiable cause of capture. I consider that the owners of the cargo may think themselves well off under the circumstances which would, in my opinion, have legally justified the condemnation of the cargo, or, at all events, an appeal on the part of the Crown, which has not been attempted.

I can therefore see no reason why Her Majesty's Government should pay the costs which the Court has (in my opinion justly) ordered Messrs. Bourke to pay before they receive back their property. They well knew that a blockade of Riga might reasonably be expected when they chartered this ship; they used no diligence in "countermanding" when they first heard of the blockade; the ship actually broke the blockade whilst in their service; the cargo was shipped from a blockaded port by their agents, and on their account, in open defiance of the blockade, and they have, in

my opinion, no claim whatsoever for favourable consideration on the part of Her Majesty's Government. The maxim "Qui sentit commodum, sentire debet et onus" is fairly applicable to them.

I inclose a report of the Judgment which, though short, is substantially correct.

I have, &c.
(Signed) J. D. HARDING.

Inclosure in No 286.

Admiralty Prize Court, February 3, 1855.

THE "ANNECHINA JANTINA."

Judgment delivered by Dr. Lushington.

Judgment.

THIS was a Dutch vessel taken on the 23rd of May on a voyage from Amsterdam to Riga, and to return to Rotterdam with rye. She left on the 20th of April, reached Riga on the 16th of May, took on board a cargo, and left the 21st of May. The ship and freight, according to the principles I have laid down, must be condemned by reason of a breach of blockade by egress. As to the cargo—perhaps I am going to the fullest extent I am authorised in doing—as to the cargo I think I am justified in restoring that cargo on the payment of the captor's expenses.

The case is not precisely the same as those decided by Lord Stowell, but I think the principle on which he acted enables me to take the same course. Therefore I restore the cargo on payment of expenses.

(Signed) J. F. JOHNSON, *Shorthand Writer.*

No. 287.

The Queen's Advocate to the Earl of Clarendon.—(*Received March 23.*)

Doctors' Commons, March 23, 1855.

My Lord,

Days of grace allowed on re-establishment of a blockade.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 20th of March instant, stating that he was directed to transmit to me a note from the Danish Minister at this Court, inquiring whether any and what time will be allowed to neutral vessels to leave Russian ports after the re-establishment of the blockade in the Baltic; and to request that I would report to your Lordship at my earliest convenience my opinion upon the answer to be returned to General Oxholm.

I am also honoured with Lord Wodehouse's letter of the 21st March, stating that, with reference to the above, he was directed to forward me a letter of inquiry upon the same subject from the Hans Towns Agent, together with a note from the French Ambassador, explaining the views of the French Government on this matter; and to request that I would report to your Lordship my opinion thereupon. Lord Wodehouse is pleased to add that it is important that your Lordship should be furnished with my report with the least possible delay.

In obedience to your Lordship's commands I have taken the papers into consideration, and have the honour to report—

That the answer to be returned to Baron Oxholm does not depend on any legal point, but is a matter of policy for the determination of Her Majesty's Government.

Question of policy.

The allowing egress to neutrals with cargoes for a definite period after blockade is a question, not of law but of policy. This was done at Archangel last year under particular circumstances, but was not, I believe, done in any other case.

I observe, however, that his Excellency omits to state whether the Danish vessels in question propose to leave blockaded Russian ports laden or only in ballast, which is a most important omission.

No necessity for the indulgence.

Subject to this observation, I concur in the opinion expressed by Count Walewski on this subject, and I see no necessity for fixing any such term or granting any similar indulgence to neutrals in Russian ports this year, unless the interests of the Allies, or those of their subjects who may be trading with the enemy, should be thereby materially promoted. Count Walewski's note appears to me to contain a sound exposition of

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what is the law and what may properly be adopted as the practice in the case of the impending blockade, and the application from Mr. Colquhoun may, in my opinion, properly be answered in accordance therewith.

As to vessels which shipped their cargoes before blockade.

It may be desirable that timely arrangements should be made and instructions issued by the Admiralty for identifying and securing the unmolested passage of these particular vessels (alluded to by Mr. Colquhoun), which can be clearly shown to have shipped their cargoes before the blockade, and for preventing fraud or error as to them, otherwise they may be either exposed to capture, or Her Majesty's naval officers will be placed in a difficult situation with respect to them.

I have, &c.
(Signed) J. D. HARDING.

No. 288.

The Queen's Advocate to the Earl of Clarendon.—(*Received March* 26.)

Doctors' Commons, March 24, 1855.

My Lord,

Vessels with Manchester goods, sugar, &c., may enter the Danube.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 14th March instant, stating that he was directed to transmit to me a letter from Messrs. Coronia and Co., requesting to be informed whether any vessel laden with Manchester manufactured goods, sugars, or coffees, &c., will be allowed to enter the Danube and proceed freely to Galatz or Ibraila, and to request that I would take the same into consideration, and report to your Lordship my opinion what answer should be returned to Messrs. Coronia and Co.

In obedience to your Lordship's commands I have taken the letter into consideration, and have the honour to report—

Don't know about Galatz and Ibraila.

That the applicants may be informed that any vessel exclusively laden with Manchester manufactured goods, sugars, or coffees, will be allowed to enter the Danube unmolested by the allied cruizers, but your Lordship obviously cannot undertake to say whether such vessels will or will not be able to proceed freely to Galatz or Ibraila, as to which, however, the applicants will probably be able to obtain satisfactory information on the spot.

I have, &c.
(Signed) J. D. HARDING.

No. 289.

The Queen's Advocate to the Earl of Clarendon.—(*Received March* 27.)

Doctors' Commons, March 26, 1855.

My Lord,

Rye at Eupatoria belonging to Dutch merchant.

As to indemnification if appropriated by allied armies.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 20th March instant, stating that, with reference to my report of the 5th* on a note addressed to your Lordship by the Dutch Minister, requesting to be informed whether there would be any objection on the part of Her Majesty's Government to the exportation by Messrs. Kaars Sypertryn and Co. from Eupatoria of a quantity of rye stated to have been purchased by the above-mentioned merchants in the months of October and November, 1853, and also whether, should the rye in question have been appropriated for the use of the allied forces in the Crimea, the owners would be indemnified for their loss by the Allied Governments, he was directed to transmit to me a note from Count Walewski, the French Ambassador at this Court, representing that a similar application has been addressed to the French Government by the Dutch Minister at Paris, and stating the views of his Government with regard to the application of Messrs. Kaars Sypertrin and Co. Lord Wodehouse is pleased to request that I would take the French Ambassador's note into consideration, and report to your Lordship at my earliest convenience my opinion upon the views of the French Government as therein set forth.

In obedience to your Lordship's commands I have taken the note into consideration, and have the honour to report—

That it is difficult to express any decided or satisfactory opinion as to the considerations applicable to cereal productions asserted to be neutral property which may have been taken and made use of at Eupatoria by the allied forces, without full information as to the facts of each particular case.

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* No. 277.

Allies not justified in capturing all property in enemy's ports.

It would be desirable, for instance, to know whether any claim or protest was made at the time by the agent of the asserted owners, whether the property was taken afloat or ashore, and whether in a public or private depository, or in whose actual possession or custody, and how marked or identified. I adhere to the opinion expressed in my report of March 5, that it is not advisable to discuss this matter beforehand, or on abstract principles, with the Netherlands Government. It seems to me to be desirable to induce neutral Governments to bring forward clear proof of the alleged facts in each case before deciding on it. I do not consider that the Allies would be justified in considering all cereals captured in the enemy's ports in the Black Sea as enemy's property *merely* because the Russian Government had previously *forbidden the export* of cereals, and had promised to indemnify the owners. If the Russian Government had previously *taken possession*, this would materially affect the case.

I have, &c.
(Signed) J. D. HARDING.

No. 290.

The Queen's Advocate to the Earl of Clarendon.—(*Received March* 27.)

Doctors' Commons, March , 1855.

My Lord,

Blockade of Odessa.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 19th March instant, stating that, with reference to my report of the 10th, he was directed to transmit to me, for my information, the accompanying copy of a letter from the Admiralty relative to the question of the publication in the "Gazette" of the letter of the 19th January from Captain Broke, of Her Majesty's ship "Gladiator."

I have the honour to observe—

As to notice sent on shore under flag of truce.

That I am quite unable to understand from their Lordships' letter what was the document which Captain Broke sent on shore at Odessa under a flag of truce previous to the blockade of that port. If a copy or accurate description thereof is in their Lordships' possession, I should desire to see it.

The fact of the blockade having been actually established on the 1st of February does not appear to me to settle the question as to the terms of the notice previously given by the flag of truce, and it may be desirable hereafter to be able to prove both that such notice was, in fact, given, and what were the precise terms thereof.

I have, &c.
(Signed) J. D. HARDING.

No. 291.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received March* 28.)

Doctors' Commons, March 27, 1855.

My Lord,

Transit of arms through Hans Towns to Russia and Prussia.

WE were honoured with your Lordship's commands contained in Lord Wodehouse's letter of the 6th instant in which he stated he was directed by your Lordship to transmit to us a despatch from Her Majesty's Chargé d'Affaires at Hamburgh, relative to the transit of arms through the Hans Towns to Russia and Prussia, and his Lordship was to request that we would report to you our opinion in regard to the instructions that might be safe and proper to be given to Her Majesty's cruizers to prevent the introduction of contraband of war by neutral vessels into neutral States.

In obedience to your Lordship's commands we have taken the despatch into our consideration, and have the honour to report—

Cannot prevent trade between neutrals without proof that arms are intended for belligerents.

That inasmuch as there is nothing contrary to international law, where two Powers are at war, in the consignment of arms by the subjects of a neutral State to those of another neutral State, unless it could clearly be shown that such consignment was colourable, and that the arms were intended to be forwarded to one of the belligerents, to be used against the other (proof of which we apprehend would not in the present case be forthcoming), we are of opinion that no instructions can be given to Her Majesty's cruizers to prevent the introduction into a neutral territory of articles which if consigned to an enemy would be contraband of war.

Having thus answered the question put to us, we think it right to add that, in

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May remonstrate with neutral States and require them to enforce their laws, or in the absence of laws, to legislate for that purpose.

our opinion, if Her Majesty's Government has reason to know (though the means of legal proof may be wanting) that these consignments of arms are colourable, and that the arms are in fact destined for the Russian Government, and are ultimately forwarded to it by the subjects of the neutral State, Her Majesty's Government will have a right to call upon the Government of the neutral State to restrain its subjects from thus aiding our enemy by transmitting arms for its use. There can be no doubt that, according to the law of nations, it would be contrary to neutrality for a neutral State to assist either of the belligerents with arms or implements of war; and we think it follows as a legitimate and necessary consequence that that which would be a breach of international law in the nation collectively ought to be forbidden to its individual members; and consequently that this country has a right to insist on the Government of a neutral State, whose subjects are assisting our enemy with arms, to enforce the municipal law of such State, if any exists, to prevent such infraction of neutrality or if no such law exists, then to legislate for that purpose.

As to responsibility of State for acts of its subjects.

At the same time, although the right of a belligerent to call upon a neutral State to restrain its subjects from violating the obligations of neutrality appears to us to flow directly from the principle of the law of nations above referred to, we think we ought to point out that this responsibility of a neutral State for the acts of its individual subjects in furnishing arms or munitions of war to belligerent States has not hitherto, so far as we are aware, been made the subject of complaint or quarrel. And though our own Statute law prohibits the enlisting into foreign service, and the furnishing or equipping of vessels for foreign Powers, it does not prohibit the furnishing of arms, and there can be little doubt that arms have been largely supplied to foreign Governments by our own manufacturers; and it may be deserving of consideration whether it is desirable to assert a principle which on future occasions may be turned against ourselves to the detriment of our own manufacturers.

Our purpose in these remarks has simply been to point out, that if the evil of the transmission of arms to Russia should become of serious moment, and require vigorous means of repression, Her Majesty's Government may, according to the strict application of the priniciples of international law, peremptorily call on the Government of the Hans Towns or any other Government similarly circumstanced, to take measures to prevent its subjects from aiding our enemy.

We have, &c.
(Signed) J. D. HARDING.
A. E. COCKBURN.
RICHARD BETHELL.

No. 292.

The Queen's Advocate to the Earl of Clarendon.—(*Received March* 30.)

Russian vessel "Sigrid" at Elsinore made over to British subject in payment of debt.

My Lord, *Doctors' Commons, March* 28, 1855.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 16th March instant, stating that he was directed to transmit to me a Memorial from Mr. Walker of Hull, praying for permission to bring away from Elsinore a vessel called the "Sigrid," laden with salt, which has been made over to him in payment of a debt by a merchant at Helsingfors; and to request that I would take this Memorial into consideration, and report to your Lordship my opinion as to the course which should be taken with regard to its prayer.

In obedience to your Lordship's commands I have taken the Memorial into consideration, and have the honour to report—

May come to England for registration if *bonâ fide*.

That, having regard to Her Majesty's Order in Council of the 15th April, 1854, I am of opinion that this particular act of proposed trading with the enemy is not illegal, and provided your Lordship is satisfied of the truth and good faith of Mr. Walker, and that there is no secret arrangement or understanding by which the ship "Sigrid" will be hereafter restored to her Russian owner, instructions may be issued to the Admiralty and the Customs to permit the "Sigrid" to come to a British port for registration. Some previous communication should be made to the French Government on the subject.

The "Sigrid" is stated to be now lying at Elsinore laden with salt, but it is not stated from what port or at what date or under what circumstances she arrived there; and it would, in my opinion, be desirable to obtain this information from Her Majesty's Consul at that port.

I have, &c.
(Signed) J. D. HARDING.

No. 293.

The Queen's Advocate to the Earl of Clarendon.—(*Received March* 30.)

Black Sea blockade.

Notice published at Malta.

My Lord, *Doctors' Commons, March* 29, 1855.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 24th March instant, stating that he was directed to transmit to me a letter from the Colonial Department, inclosing a notice issued by the Governor of Malta on the subject of the Black Sea blockade, and to request that I would report to your Lordship any observations which I may have to make on this notice.

In obedience to your Lordship's commands I have taken the notice into consideration, and have the honour to report—

"London Gazette" notice must also be published there.

Urges prompt notice of blockades.

That it will be proper, notwithstanding this publication, to republish formally and officially at Malta the notification of the blockade of the Russian ports in the Black Sea, inserted in the "London Gazette" of March 3rd. I would venture to observe that if it be considered by Her Majesty's Government desirable that the Admiral commanding Her Majesty's naval forces in the Black Sea should correspond officially and directly with the Governor of Malta, or with the governor of any other British possession, on the subject of blockade, and should in such cases officially notify the establishment and raising thereof to such governors (as to which it is not within my province to express any opinion), it will be, at all events, desirable that such information should be transmitted as promptly as possible; and I observe that in this instance, the blockade having been established on the 1st February, not suddenly, but by previous arrangement, the Admiral's letter to the Governor of Malta announcing it is dated the 20th February, and that the existence of this blockade, on and from the 1st February, appears to have been first made known at Malta on the 2nd March. Any delay in publishing official notices on the subject of blockade is always inconvenient and often of serious consequence, as has been lately exemplified in the argument in the High Court of Admiralty, in relation to the Baltic blockades of last year, and it may therefore appear to your Lordship desirable that the attention of naval officers generally should be drawn to this point.

I have, &c.
(Signed) J. D. HARDING.

No. 294.

The Queen's Advocate to the Earl of Clarendon.—(*Received March* 30.)

Black Sea blockade.

Announcement in Ionian Islands.

My Lord, *Doctors' Commons, March* 29, 1855.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 24th March instant, stating that, with reference to my Report of the 19th,[*] he was directed to transmit to me a letter from the Colonial Department, inclosing a copy of the official announcement of the Black Sea blockade as promulgated by the Ionian Senate, and to request that I would report to your Lordship any observations which I may have to make on this subject.

In obedience to your Lordship's commands I have taken the letter into consideration, and have the honour to report—

As to date when it was generally known.

That the notification of the actual establishment of the blockade of the Russian ports in the Black Sea, published in the "London Gazette" of the 3rd March, should be generally and officially promulgated in the Ionian Islands, notwithstanding the preliminary notice of the intention to institute such blockade, which has been published in the "Ionian Gazette," now with the papers; and that it will be desirable for the British authorities in those Islands to remark, and be prepared to prove, at what date the actual establishment and existence of the blockade was generally known in the Islands; whether by official notice or without this, as a matter of commercial or general intelligence.

I have, &c.
(Signed) J. D. HARDING.

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[*] No. 285.

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No. 295.

The Queen's Advocate to the Earl of Clarendon.—(Received March 30.)

Doctors' Commons, March 29, 1855.

My Lord,

As to Russian subject in Turkey sustaining an action against a British subject in Turkey.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 22nd March instant, stating that he was directed to transmit to me a letter from Mr. Richard Brown, requesting to know whether a Russian subject residing in Turkey can, during the present crisis, sustain an action at law against a British subject domiciled in Turkey for monies claimed by the Russian; and to request that I would take Mr. Brown's letter into consideration, and inform your Lordship as to what answer should be returned thereto.

In obedience to your Lordship's commands I have taken the letter into consideration, and have the honour to report—

Wants assistance of Law Officers.

That I do not observe that the applicant states the facts of the case, or even the nature of the interest he has in the decision of the abstract question of law, upon which he requests your Lordship to give him information, nor the circumstances which entitle him to receive this information. If, however, your Lordship considers that he is entitled to such information, I must request the assistance of the Attorney and Solicitor-General.

I have, &c.
(Signed) J. D. HARDING.

No. 296.

The Queen's Advocate to the Earl of Clarendon.—(Received April 2.)

Doctors' Commons, March 31, 1855.

My Lord,

Dutch vessels detained off Sulina by British cruizers.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 20th March instant, stating that, with reference to my letter of the 6th,* and to previous correspondence respecting the claim to compensation advanced by the Netherlands Government on behalf of the owners of the "Catherine" and "Sjouke Alida," in consequence of the alleged unjust detention of those vessels by the cruizers of Her Majesty's squadron in the Black Sea, he was directed to transmit to me translations of the documents inclosed in Baron Bentinck's note of the 8th ultimo, together with a letter from the Admiralty in reply to a communication which was made to the department in conformity with the suggestion made in my above-mentioned letter, that Admiral Dundas might be called upon to furnish some further and more satisfactory explanation upon this subject; and Lord Wodehouse is pleased to request that I would take these further papers, together with the former documents (inclosed), into consideration, and report to your Lordship, at my earliest convenience, my opinion as to the course which I now consider it advisable for Her Majesty's Government to pursue in regard to this matter.

In obedience to your Lordship's commands I have taken the papers into consideration, and have the honour to report—

Cannot refuse compensation.

That inasmuch as it now appears that Admiral Dundas is unable to give any further information on the subject of the existence of any reasonable cause justifying the detention of these two vessels, I do not see how the demand of the Netherlands Minister for some compensation to their owners can be fairly refused. If this be so, the only points remaining to be settled will be the amount or scale of such compensation, and the manner in which this can be best determined and the matter can be most amicably, effectually, and finally settled.

Information necessary for assessing damages.

It will be desirable to ascertain precisely the contents and destination of the cargoes, as also how they were ultimately disposed of, as also the nature and terms of the voyage on which each vessel was engaged when detained, and the knowledge of the masters or shippers (if they had any such knowledge) that a blockade of the Danube was to be anticipated, or was imminent at the time they left Constantinople.

These points will have a bearing more or less important according to circumstances on the amount of compensation.

It should also be distinctly stated on whose individual behalf and on what particular account each item of such compensation is demanded.

It will be for your Lordship's consideration whether the Netherlands Government should be requested to commence by stating the amount and particulars of the compensation demanded (as was done by the French Government in the case of Captain Belard of the ship "Prophète" at the Mauritius), or whether the whole question should be referred to arbitration (as in Croft's case with the Portuguese Government). From the peculiar circumstances of this case and the amount of consequential and contingent damage likely to be demanded, a resort to arbitration may ultimately be found advisable, especially should a large amount of compensation be claimed.

As to arbitration.

I have, &c.
(Signed) J. D. HARDING.

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* No. 278.

No. 297.

The Queen's Advocate to the Earl of Clarendon.—(Received March 31.)

Doctors' Commons, March 31, 1855.

My Lord,

Queen's Proclamation warning against assistance to the enemy.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 24th March instant, stating that he was directed to transmit to me a despatch from Her Majesty's Consul at Oporto,* together with a printed notice in which he has given publicity to the Queen's Proclamation of the 25th February, warning British subjects against adhering to, or assisting the Queen's enemies; and to request that I would take the Consul's notice into consideration, and report to your Lordship my opinion as to whether British subjects sending port wine from Oporto to Memel for account of Russian subjects residing in Russia, render themselves thereby liable to the penalties referred to in that notice.

In obedience to your Lordship's commands I have taken the papers into consideration, and have the honour to report—

British subjects in Portugal may supply him with port wine notwithstanding.

That British subjects having a commercial domicile in Portugal, and sending port wine from thence to Memel for account of Russian subjects residing in Russia, do not render themselves liable to the penalties referred to in the notice.

I perhaps may be excused for suggesting that it does not seem to me to be necessary or expedient for British Consuls to publish, without instructions, and of their own authority, official notices relating to the Statute 25 Ed. 3, c. 2, or to the English law relating to high treason. If the giving any such notices should be advisable, the notices should be carefully drawn under competent legal advice.

I have, &c.
(Signed) J. D. HARDING.

No. 298.

The Queen's Advocate to the Earl of Clarendon.—(Received March 31.)

Doctors' Commons, March 31, 1855.

My Lord,

Circular to French Consuls in Principalities.

Partial raising of Danube blockade.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 26th March instant, stating that he was directed to transmit to me a despatch from Consul Gardner and a letter from the Admiralty respecting a circular note to the French Consuls in the Principalities, announcing the raising of the blockade of the Danube; and to request that I would take these papers into consideration, and report to your Lordship any observations which I may have to make thereupon.

In obedience to your Lordship's commands I have taken the papers into consideration, and have the honour to report—

That I propose to confine my observations to the French Circular note to the French Consuls, without alluding to any of the other matters contained in Consul Gardner's letter.

This "Circular note" speaks of orders having been given by the allied Governments to the Admirals authorizing them to except from the blockade of the Danube vessels in ballast destined for ports in the Principalities, and vessels leaving those ports with cargo. It does not state from what date such exceptions were to come into operation, and it rather infers, or states by implication, but not positively or distinctly, that in all other respects, and especially as to vessels entering with cargo even for ports in the Principalities, the blockade would be maintained. This appears to me to be

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* No. 15.

1853-56

Blockade having been entirely raised, Circular should be counteracted.

at variance with the real intention of the allies, which has been by mutual understanding carried into effect, viz., the entire and unqualified raising of the blockade on and from the 18th of February.

I observe that there is no date to the Circular, nor does it appear by whom it was issued. It seems to have arrived at Jassy on or shortly before the 23rd of February, and was probably issued and received in ignorance of the blockade having been raised on the 18th of February.

I presume that the raising of the blockade on the 18th of February was not known at Jassy on the 23rd of February, but I do not know how this may really have been. The issuing of this Circular seems to me unfortunate under the circumstances, and it is likely to cause doubt and confusion unless indeed it should have been subsequently superseded, and in effect annulled, by the receipt of information of the actual raising of the blockade on and from the 18th of February without qualification or exception.

I am the more at loss to understand the object of this Circular from having understood that the French Government was anxious for the entire and unqualified raising of the blockade of the Danube, and recommended the adoption of this measure to Her Majesty's Government, and I am not aware of any orders having been sent to the Naval Officers of the allies to raise it partially, or in the qualified manner adverted to in the Circular. Such orders would have been, in my opinion, injudicious and calculated to render the subsequent validity of any such qualified blockade very questionable. It will be for your Lordship to consider whether any and what measures can be adopted to counteract the effect of this Circular note.

I have, &c.
(Signed) J. D. HARDING.

No. 299.

The Queen's Advocate to the Earl of Clarendon.—(*Received March* 31.)

Doctors' Commons, March 31, 1855.

Baltic blockade.

My Lord,

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 5th March instant, stating that, with reference to my Report of the 16th February,* relative to proceedings in the Admiralty Court in cases of vessels captured under Danish colours by Her Majesty's cruizers, he was directed to transmit to me a note which your Lordship addressed to the Danish Minister at this Court on that subject, and a note received in reply from General Oxholm; and Lord Wodehouse was pleased to request that I would furnish your Lordship with the detailed information which General Oxholm requests in regard to the allegations made against Danish authorities in the cases in question, and which your Lordship thinks he is justified in demanding.

In obedience to your Lordship's commands I have the honour to state—

Refutation of Danish Minister's arguments as to its being unknown, &c.

That I have procured from the Queen's Proctor (and herewith transmit) copies of the documents chiefly relied upon by the High Court of Admiralty in its recent judgments in the cases of neutral ships condemned for breaking the blockade of Russian ports in the Baltic. I have also procured (and herewith transmit) a copy of a printed report of the arguments and judgments in these blockade cases, which is about to be published by Dr. Deane. I have preferred to send it in its present shape to incurring further delay by waiting for its formal publication.

The affidavits of Mr. Hertslet, Lord Bloomfield, and Colonel Lloyd Hodges (copies sent herewith), together with the newspapers extracts annexed, clearly prove the notoriety of the blockade of the coast of Courland and Gulf of Riga throughout northern Germany by the end of April.

The affidavits of Messrs. Bischoff and Sloman establish the fact that intelligence is transmitted from Hamburgh to Copenhagen in sixty hours.

The affidavit of Mr. Lousada proves that the Danish Consul at Riga was officially informed of the blockade by him in April. The Danish Consuls at Riga and Memel must be presumed to have transmitted intelligence of the blockade to their Government, and must also have informed the Danish merchants and masters of the ships then at those ports thereof.

The extracts from the Danish newspapers (herewith) are not unimportant, and I would also advert to Captain Key's affidavit (which was not made in time to be brought before the Court) as proving that the Danish Government sent a ship of war (the "Thor") in May, not to inquire if there was a blockade, but to communicate with the commander of the "Blockading Squadron." I may add that the number of ships warned off and putting into neutral ports was so great as soon to make the blockade notorious throughout the Baltic (see printed Judgment, page 124). Mr. Bird's affidavit is decisive as to one of such vessels (the Danish vessel the "Jacgeven") which was warned off on the 18th April, and thereupon put into Memel, and which is afterwards, in May, proved to have been in the Danish port of Flensburgh (see the observations of the Court at pages 133 and 164).

Notoriety of the blockade.

I would also beg to refer to the observations of the Court in its judgments at pages 124, 129, 130, 132, 133, and 138, as to the evidence of the notoriety of the blockade. I own that in the face of this evidence I am unable to see how it is possible for the Danish Government to maintain that it was justified consistently with perfect truth and international good faith, in instructing Count Reventlow to declare to your Lordship officially in his note of the 28th September, 1854, "that the competent authorities in Denmark were ignorant of the blockade until June."

Conduct of Danish Government in pretending ignorance.

The Danish Government may have entertained some doubt as to its operation or effect; they may have thought themselves justified in ignoring it, but they could not have been ignorant of a fact which had been notorious at Hamburgh for more than a month (see page 129). This appears to me to be the true question, rather than what the Court may have thought or said with reference to the conduct or declarations of any of the Danish authorities. The evidence of these persons was relied upon by the claimants as exclusively establishing an honest *bonâ fide* and total ignorance of the existence of any blockade until June, and whatever observations were made by the Court on this point must be considered, with reference to the use endeavoured to be made by the claimants of the documents issued by the Danish authorities. The Danish Government, in Count Reventlow's note of the 28th September, appears to me to have gone further than any of their officers or authorities in denying all knowledge of the blockade until June. On this part of the case the merchants' Certificate E, annexed to the affidavit of Mr. May, was most strongly animadverted upon by the Count (see page 136). This document appears to have been applied for and obtained officially by the Danish Government, and by it sent to the Danish Legation here, from which it was forwarded to the claimant, in order that he might use it as evidence against the Crown, which he accordingly did. This was also the case as to the other official documents annexed to the affidavit of Mr. May. Under these circumstances the Danish Government can scarcely repudiate all responsibility for the credit or contents of such documents. The Court also remarked (page 135) upon the absence of any distinct Danish official statement of the blockade having been known in Denmark on any definite date, at or about the time when it was proved to have been known there, which it observed to be "unfortunately omitted," most especially in the document A (annexed to E, May's affidavit), being an official declaration from the Danish Minister for Foreign Affairs. The Danish Custom house certificates (C and D annexed to the same affidavit) are also somewhat remarkable documents in connection with this subject. It is impossible that the Custom house could have been wholly ignorant of the blockade until June, and the document C only alleges the absence of official information, but does not deny that the fact was well known long before June.

Baron Oxholm appears, however, to me to have greatly misapprehended the ground of the judgment in this passage in his note; "la Cour de l'Amirauté n'hésite pourtant pas d'accuser de mauvaise foi les autorités Danoises pour avoir même antérieurement à cet aveu, exprimé des doutes au même sujet, et procède sur la base de cette mauvaise foi supposée à condamner tous les bâtiments capturés." The Court did not accuse any of the Danish authorities of bad faith. The Court did accuse the merchants signing the Certificate E of bad faith; but they are not "Danish authorities," and it certainly did not proceed on that ground to condemn all or any Danish ships. It condemned only those Danish ships whose masters were proved to have known of the blockade, to have falsely denied such knowledge, and to have endeavoured to break it, quite irrespectively of the good or bad faith of the Danish Government (see the "Franciska," page 155; the "Steen Bille," page 158; the "Union," page 160).

Fictitious sales of Russian ships to Danes.

I ought, perhaps, to remind your Lordship that there is another subject upon which the conduct of the Danish authorities in lending themselves to protect Russian interests appears to me to be open to just animadversion, to which I have, on more than one occasion, already alluded, and to which I shall probably be compelled again to allude hereafter, viz., the numerous cases of fictitious sales of Russian ships to Danish subjects. In one of these cases (the "Soglasie") all the papers have been printed by the Admiralty, and this case is a striking example of this class, but as

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* No. 266.

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many other Danish cases of the same character are still before the Court of Admiralty it would be premature to enter at present further into this subject.

I have, &c.
(Signed) J. D. HARDING.

No. 300.

The Queen's Advocate to the Earl of Clarendon.—(*Received April* 9.)

Doctors' Commons, April 9, 1855.

My Lord,

Days of grace on re-establishment of blockade of Baltic.

Liability of vessels to capture *primâ facie.*

I AM honoured with Lord Wodehouse's letter of the 5th April stating that with reference to my letter of the 23rd ultimo,* reporting upon the question of egress of neutrals from Russian ports in the Baltic now about to be again blockaded, he was instructed by your Lordship to transmit to me drafts which have been founded thereon of letters to the Danish Minister and Hans Towns Consul General, and to request me to favour your Lordship with my opinion whether these drafts are right and proper or whether some alteration should not be made with reference to the passage in the inclosed printed "Memorandum on Blockades for the Officers of the Navy," which states that "egress should be permitted to neutrals and British or allied ships only when in ballast; all ships coming out laden are liable to capture *primâ facie*; and in the absence of special instructions or of a licence, it will rest with them to establish before the Prize Court that the cargo was laden on board before the blockade was established or that there exist any other special circumstances which entitle those interested to restoration." His Lordship also incloses a letter which was addressed to the Admiralty founded upon my report and a letter from the Admiralty stating that instructions had in consequence been given to Her Majesty's naval officers.

I have accordingly taken the papers in question into consideration and have the honour to report—

That I am of opinion that with the view of preventing misunderstanding some alteration of or addition to the drafts in question will be advisable with reference to the passage alluded to in the (printed) "Memorandum on Blockades." I would venture to suggest that an addition of a general character may be sufficient to the effect that "Her Majesty's Government must of course reserve and act upon its undoubted belligerent right of detaining and sending before a competent court for adjudication any vessel which may leave a blockaded port after the commencement of a blockade; and it will be for the parties interested to establish before such court the particular circumstances on which they may rely as entitling them to restitution either of the ship or the cargo.

With reference to the letters to and from the Admiralty, I have to observe that great discretion was shown last year in this class of cases by the naval officers blockading Riga especially, and that much must necessarily be left to their discretion. On the one hand, it is obvious that the mere assertion of the neutral master will not be sufficient to exempt the ship from capture; on the other hand, naval officers (who capture at their own risk) would probably abstain from capture in cases which appeared to them free from suspicion or doubt.

If the Admiralty should be of opinion that either the instructions which they have issued (and which I have not seen) or the memorandum above alluded to may be liable to misconception, fresh instructions may of course be issued; but they must be of a very general character, as I have above indicated.

Naval officer not bound to capture in all cases.

The neutral coming out of a blockaded port is by international law *liable* to capture; but the blockading officer is not *bound* to capture vessels of whose innocence he may be satisfied. He may (and he generally *does* in practice), exercise considerable discrimination, especially at the commencement of a blockade of a port in which he knows neutrals to have entered previously, and to have been engaged in loading outwards when the blockade commenced.

I have, &c.
(Signed) J. D. HARDING.

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* No. 287.

No. 301.

The Queen's Advocate to the Earl of Clarendon.—(*Received April* 13.)

Doctors' Commons, April 11, 1855.

My Lord,

Queen's Proclamation against assisting the enemy.

How does it affect Ionians, &c.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 30th March last, stating that he was directed to transmit to me a despatch from Her Majesty's Consul at Varna respecting Her Majesty's proclamation warning British subjects against adhering to and assisting the Queen's enemies, and with reference to that passage in this despatch in which Colonel Neale requests to be informed "whether British protected subjects, as Ionians, are in any degree liable under the Proclamation to be proceeded against for the committal of any of the treasonable acts therein referred to;" and to request that I would report to your Lordship my opinion as to the answer to be returned to Colonel Neale, and whether protection should not in all cases be withdrawn from Ionians aiding and abetting the enemy.

In obedience to your Lordship's commands I have taken the papers into consideration, and have the honour to report—

Wants assistance of Law Officers.

That in the case of the Ionian ship "Lencade," which has recently been argued, and in which judgment will soon be delivered in the High Court of Admiralty, various questions affecting the political "status" of Ionians and their relation to the protecting Sovereign have been raised, and some of these will probably be decided by that judgment. It will be, therefore, highly desirable to wait for that judgment before answering Lieutenant-Colonel Neale's letter, if your Lordship should be able, without serious inconvenience, so to do. In any event I must, however, request the assistance of the Attorney and Solicitor-General in dealing with this subject.

I have, &c.
(Signed) J. D. HARDING.

No. 302.

The Queen's Advocate to the Earl of Clarendon.—(*Received April* 13.)

Doctors' Commons, April 11, 1855.

My Lord,

Rye at Eupatoria, Dutch property.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 27th March last, stating that, with reference to my report of the 26th,* he was directed to transmit to me a note from the Netherlands Minister at this Court, respecting another cargo of rye at Eupatoria, concerning which details are given, and to request that I would take Baron Bentinck's note into consideration, together with the former papers, and that I would inform your Lordship of my opinion as to the answer which should be returned to Baron Bentinck.

In obedience to your Lordship's commands, I have taken the papers into consideration, and have the honour to report—

That I observe that the rye in question is stated to have been bought at Eupatoria for exportation, and paid for by the widow Doorbosch in October, 1853, and its exportation having been, as alleged, prevented by a Russian ukase (the date of which is not given) it remained in a warehouse at Eupatoria (in whose actual possession or custody I do not understand), when that place was taken possession of by the allies in September, 1854.

It does not appear that any active steps have been taken in the matter, or any application made to any British authority up to the present time. This is somewhat singular, and has not a very favourable aspect.

Under these circumstances, Baron Bentinck applies to your Lordship to be furnished with information as to what has become of the rye in question, for permission to the widow Doorbosch to export it if it is still at Eupatoria, and that if it shall turn out to have been disposed of by the British military authorities, the cost of it may be repaid to her.

Her Majesty's Government cannot give information respecting.

I cannot recommend your Lordship to comply with this request. This is not by any means a very peculiar case, or the only case of its class, as appears from my report of March 5,† on Baron Bentinck's application on behalf of Messrs. Kaars, Syperstein and Co., and it appears to me very unreasonable to expect that Her Majesty's Government should now procure and supply detailed information as to the actual state of each separate portion of neutral property (especially cereal productions) which may have

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* No. 289.

† No. 277.

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been in Eupatoria in September, 1854, with a view of furnishing evidence to support, as against itself, claims for compensation on the part of the neutral owners thereof.

Onus of proof rests with the claimant.

I am of opinion that in cases where neutrals may claim from one belligerent compensation for loss or appropriation of their property situated in the country of the other belligerent, the neutral claimant is bound to begin by establishing, at least, a *primâ facie* case, and either to identify or to trace his property, or to give some account of its actual condition, or of the manner and circumstances of its appropriation or destruction in the first instance. The burden of proof lies upon him, and he cannot fairly shift that burden or call upon the belligerent to establish or to assist in establishing a case against himself.

I may also observe that should it turn out that the rye in question had been legally and actually taken possession of by or on behalf of the Russian Government before the capture of Eupatoria, it will by such capture lawfully become booty of war, and the original owner would have no claim against Her Majesty's Government in respect of it.

It may also have been plundered by the native population, or have been seized or disposed of by the French, or the Turks, or it may be still in existence, but not in the possession of the British forces. Whatever may have been the actual circumstances attending the original capture and subsequent occupation of Eupatoria by the allies, or the manner in which the cereal property found therein was treated or disposed of (with which I am not acquainted), I presume that the place being now occupied by a Turkish force, and the scene of active operations, it is practically impossible for Her Majesty's Government to give any permission to export the grain therefrom, or even to supply any information as to the existing regulations on that subject. Eupatoria being an open port, the widow Doorbosch can have no very insuperable difficulty in ascertaining what has become of her rye, or of exporting it if such exportation is permitted; if such exportation be forbidden, there does not appear to me to be any reason for making an exception in her favour. I would further venture to suggest that Her Majesty's Government, by giving the information requested, might not improbably assist in furnishing evidence in support of a claim against its allies, which it ought not to do.

Answer for Netherlands Minister.

I would, therefore, suggest that Baron Bentinck may be informed that Her Majesty's Government regrets that it cannot comply with his request, that it sees no very special or exceptional circumstances in favour of the applicant in this particular case, and that even if it had the means (which it has not) of so doing, yet that it could not be fairly required to furnish evidence to found or support a claim against itself or its allies, and that, if the applicant has any claim against Her Majesty's Government, the "onus" of establishing and supporting such claim lies upon her, and cannot properly be transferred to Her Majesty's Government.

It will, of course, be for your Lordship to decide what should be the tenour of the answer which Baron Bentinck is to receive, I have only indicated the general principles which appear to me to apply to this class of cases.

I have, &c.
(Signed) J. D. HARDING.

No. 303.

The Queen's Advocate to the Earl of Clarendon.—(Received April 16.)

Doctors' Commons, April 13, 1855.

My Lord,

Dutch vessels unavoidably detained at Kertch.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 9th April instant, stating that, with reference to his letter of the 5th, requesting my opinion as to the answers to be returned to the Danish Minister and Agent of the Hans Towns, with respect to the blockade in the Baltic, he was directed to transmit to me a note from Baron Bentinck, the Netherlands Minister at this Court, stating the circumstances under which the Dutch vessels "l'Helena Catharina" and "Graaf Van Limburg Stirum," which arrived at Kertch in December last, have been unavoidably detained at that port, and requesting that those vessels may be allowed to leave Kertch without any obstacle being offered to their doing so.

Lord Wodehouse also incloses a note from the French Ambassador at this Court, inclosing the draft of answer which the French Government propose to return to a similar representation addressed to the French Government by the Netherlands Minister at Paris, and in transmitting these papers your Lordship desires him to state to me that it is proposed to allow these vessels to depart in ballast only, but that your Lordship would wish to have my opinion whether Her Majesty's Government ought to concur in the terms of the draft of answer proposed by the French Government.

In obedience to your Lordship's commands, I have taken the papers into consideration, and have the honour to report—

May be allowed to leave in ballast.

That it does not appear to me desirable that Her Majesty's Government should concur in the precise terms of the draft answer proposed by the French Government; and that it will be proper to inform Baron Bentinck that the two vessels in question will, under the circumstances set forth, and in full reliance on the entire accuracy of his Excellency's statement thereof, be permitted to leave Kertch in ballast only without interruption.

Your Lordship will doubtless make a communication to the Admiralty, in order to insure the uninterrupted egress of these vessels from Kertch.

I have, &c.
(Signed) J. D. HARDING.

No. 304.

The Queen's Advocate to the Earl of Clarendon.—(Received April 17.)

Doctors' Commons, April 16, 1855.

My Lord,

Application of a Russian clergyman for passports to come to England *en route* for Cape of Good Hope.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 31st March last, stating that he was directed to transmit to me a letter from Mr. Joseph Soul, stating the circumstances under which he applies for passports to enable the Rev. Hugo Hahn, a Russian subject, to come to England with his wife; and to request that I would take Mr. Soul's letter into consideration, and report to your Lordship whether there is any legal objection to complying with his request.

In obedience to your Lordship's commands, I have taken Mr. Soul's letter into consideration, and have the honour to report—

No legal objection, if *bonâ fide*,

That, provided that your Lordship is satisfied that the Rev. M. Hahn (who appears to be a Russian subject, and at present resident in Russia) is desirous of coming to England only in order to proceed immediately to the Colony of the Cape of Good Hope, and for the sole purpose of continuing his missionary services to the natives there, there will be no legal objection to your Lordship's permitting him so to do.

M. Hahn, however, is not directly applying to your Lordship, nor does any application on his behalf appear to have been made by the authorities at the Cape or by any religious or missionary society, which is somewhat singular. Mr. Soul's statement and application, with reference to him, is very vague; he does not state that he is making this application by M. Hahn's desire, nor does he offer any references as to M. Hahn's real character and designs; his suggestion that "a free passage is open through England to every servant of the Lord Jesus" (if it has any serious or definite meaning whatever), cannot be acceded to as a general principle in the case of Russian subjects.

but draws attention to disturbed state of frontier of Cape Colony.

Your Lordship may possibly, under these circumstances, think proper to require some further references or information before acceding to Mr. Soul's request, in order at all events to secure the identification of M. Hahn, and to prevent any undue advantage being taken of your Lordship's permission. I may perhaps be excused for respectfully suggesting to your Lordship that the state of affairs on the Caffre frontier of the Cape Colony is such as to require great caution in permitting any direct communication from Russia to that Colony.

I have, &c.
(Signed) J. D. HARDING.

No. 305.

The Queen's Advocate to the Earl of Clarendon.—(Received April 17.)

Doctors' Commons, April 16, 1855.

My Lord,

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 10th April instant, stating that he was directed to transmit to me a despatch from Her Majesty's Minister at Hanover, relative to the arrival at Hamburgh

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Revolvers at Hamburgh for Russia.

of twenty-two cases of revolvers supposed to be destined for Russia, and reporting the steps taken by him on that occasion; and to request that I would inform your Lordship whether in my opinion there is any course that can be pursued in this matter other than that suggested by Mr. Bligh.

In obedience to your Lordship's commands I have the honour to report—

Apply to Hanoverian Government to stop them.

That I cannot suggest any other course than that adopted by Mr. Bligh, viz., the requiring the Hanoverian Government to stop the arms in question. It remains to be seen what will be the practical result of this demand.

I beg to refer to the report of the Law Officers on a similar question dated the 27th March last.*

I have, &c.
(Signed) J. D. HARDING.

No. 306.

The Queen's Advocate to the Earl of Clarendon.—(*Received April* 21.)

Doctors' Commons, April 21, 1855.

My Lord,

With reference to the Judgment of the High Court of Admiralty in the Baltic blockade cases (of which an authentic report has been recently published) and also with reference to the concluding passage in General Oxholm's note to your Lordship of the 13th April: "En réservant au Gouvernement du Roi de réclamer contre la non-observation des Traités qui existent entre les deux pays, et qui devraient garantir mes nationaux du malheur qui les a frappés," I beg to call your Lordship's attention to the arguments of counsel and to the Judgment of the Court as to these Treaties (with Denmark of 1670 and Sweden of 1661). The opinion of the Court on these Treaties is expressed at page 139 and following pages of that Report.† It will be perceived that the claimants' counsel raised the question of the operation and effect of these Treaties not in the first instance, nor until after the "further proof" had been ordered by the Court. See especially, Dr. Twiss, pages 9, 13, 29, 72. In accordance with information with which I was supplied from the Foreign Office, and with the able assistance of Dr. Jenner and Dr. Deane, I answered these arguments to the best of my ability, arguing that the Treaties in question were in effect to be considered as obsolete, abrogated by subsequent Acts, and not now in operation, referring particularly to the Convention of 1801 between Great Britain and Russia (subsequently acceded to by Denmark and by Sweden), observing that the Danish and Swedish Governments did not appear to have made any formal demand founded upon those Treaties either for the liberation of the particular ships in question or of any other ships during the present war, or for compensation for their having been captured in violation of those Treaties; and also remarking upon the qualified certificate given by the Danish Legation (see page 72), and also on the Danish Letters Patent of 1854 (reviving the Ordinance of 1803), and the Swedish Ordinance of the same date, as being apparently inconsistent with the existence of those Treaties, or at all events with the construction sought to be given to them by the claimants' counsel; and we added generally on behalf of the Crown such other arguments as occurred to us. Notes of these arguments will be found at pages 2, 13, 19, 32, 72, 74, 76.

Report of Danish and Swedish prize cases.

Opinion of Court.

Vessels not captured in violation of Treaties, but Treaties are still in force.

In commenting upon these arguments the Court made no direct reference to the Danish Letters Patent of 1854 (revising the Ordinance of 1803) which are most important documents, perhaps, because they were not contained in the evidence adduced in any of the causes; it however decided that none of the ships in question had been captured in violation of Treaty, and it threw considerable doubt upon the practical effect or operation of these Treaties so far as relates to any particular privileges being thereby conceded to Danish or Swedish ships with reference to blockades; but at the same time the Court expressed its decided opinion that the Treaties were not obsolete or abrogated, but were still in existence.

It is to be observed that none of the vessels in question had the Latin sea passes required by the Treaty with Denmark and by the Danish law. Whilst, therefore, the existence of these Treaties may be considered as established by the Judgment, the construction of them contended for on behalf of the claimants (who were assisted by the Danish Legation) is thereby negatived, and the Court expressed the strongest opinion that no violation of them had been committed by Her Majesty's Government in any of the cases then before it.

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* No. 291.

† "The Law of Blockade, as contained in the Report of eight cases argued and determined in the High Court of Admiralty, on the Blockade of the Coast of Courland, 1854;" by James Parker Deane, D.C.L. (Published by Butterworth.)

It is impossible to say at present whether any of these Judgments will be appealed against, or what may be the result of such appeal.

Danish charge of violation of Treaties.

I have however considered it my duty to lay these circumstances before your Lordship, inasmuch as the charge of deliberate violation of these Treaties originally and distinctly made by the claimants' counsel, appears to me to be, notwithstanding the Judgment, now formally repeated by General Oxholm, possibly with a view to future contingencies; and it will be for your Lordship to determine whether this charge should be passed over in silence, or whether any and what steps should be taken in reference to the charge, or to the Treaties.

As to taking notice of.

I am not aware what course the Swedish Legation has pursued in this matter, and I am ignorant of the course which the Danish Government may have heretofore taken upon this question. If the charge of violating these Treaties by the particular captures in question is now distinctly made by the Danish Government for the first time, it obviously now comes too late and with a very bad grace after M. de Scheel's expressly acknowledging to Mr. Buchanan "the justice of the decision of the Admiralty Court in all the cases with which he is acquainted," including, of course, those now alluded to.

I have, &c.
(Signed) J. D. HARDING.

No. 307.

The Queen's Advocate to the Earl of Clarendon.—(*Received April* 24.)

Doctors' Commons, April 21, 1855.

My Lord,

Blockade of Odessa.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 14th April instant, stating that with reference to previous correspondence as to the document sent on shore by Captain Broke previous to the blockade of Odessa, he was directed to transmit to me a further letter from the Board of Admiralty, and to request that I would state whether there would be any use now in desiring to have a copy of the document in question sent home.

In obedience to your Lordship's commands, I have the honour to state,—

To obtain copy of notice sent on shore under flag of truce, &c.

That it would be, in my opinion, desirable that a copy of the document in question should be sent home, together with a memorandum of the date and circumstances of its delivery by flag of truce at Odessa, and the names and descriptions of those persons who may be able to prove that this particular document was in fact so delivered.

I have, &c.
(Signed) J. D. HARDING.

No. 308.

The Queen's Advocate to the Earl of Clarendon.—(*Received April* 25.)

Doctors' Commons, April 24, 1855.

My Lord,

Blockade of coast of Courland.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 23rd April instant, stating that he was directed to transmit to me a letter from the Admiralty, inclosing a copy of a telegraphic despatch received from the British Vice-Consul at Königsberg, reporting the coast of Courland to be effectually blockaded by Her Majesty's advanced squadron off Libau, on the 20th April instant; and to request that I would take these papers into consideration and draw up and transmit to your Lordship a proper notification of this blockade if I was of opinion that it should be inserted in the "London Gazette," as requested by the Admiralty.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report,—

That the telegraphic notice inclosed does not appear to me to be sufficient to enable me to prepare a notification for insertion in the "Gazette."

I observe:—

No dates given.

1. That it does not state on and from what date the blockade actually commenced.

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2. It is not in the form or to the effect of the notification appended to the confidential Memorandum on Blockade printed by the Admiralty.

3. I do not feel certain that in its present form it comes directly and officially from Captain Watson to the Admiralty, or was meant by him to be transmitted in that precise form. It was, I presume, originally addressed by Captain Watson to Mr. Consul Hertslet, and was forwarded by him to Mr. Consul Brockmann, who appears to have transmitted it on his own responsibility, but this is not quite clear.

Too vague for publication in "Gazette."

4. "The coast of Courland" appears to me to be a vague description (under the circumstances) of the actual limits of the blockade. It seems improbable that the whole coast of Courland and no portion of Livonia should have been blockaded on and from one and the same day at this season. It does not appear what ports were included or how far to the northward or eastward the blockade extends. If it includes the whole coast of Courland it must include the Lyseroot Channel and some portion of the Gulf of Riga, and it appears singular that the blockade should in that case not include Riga itself, which it was last year shown could be effectually blockaded by ships cruising off Lyseroot. If only a portion of the coast of Courland (and not the whole of the coast of that Province) is, in fact, blockaded (which I suspect to be the case) then the notice is not accurate. I am quite aware of the serious consequences of delaying the publication of the notification; on the other hand the consequences of publishing an incorrect or defective notification are also very serious. I trust that a more correct and formal notification will be instantly required from Captain Watson, and will shortly arrive; and upon the whole I consider it more prudent to wait (at all events for a few days) for the chance of further and more accurate information which will doubtless be promptly required from all concerned than to run the risk of publishing so very defective a notification as this would prove.

Urges necessity of accuracy.

I have repeatedly called attention to the necessity for strict accuracy on the part of naval officers in all notices of blockade, and have explained the requisite contents of such notices, especially in the printed Memorandum, of which I presume Captain Watson, and every Captain in the Baltic, is furnished with a copy, and I trust that this will be strictly attended to or I much fear that the most serious public inconvenience will result.

I have, &c.
(Signed) J. D. HARDING.

No. 309.

The Queen's Advocate to the Earl of Clarendon.—(Received April 27.)

Doctors' Commons, April 27, 1855.

My Lord,

Blockade of coast of Courland.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 26th April instant, stating that, with reference to my letter of the 24th April instant,* he was directed to transmit to me a despatch from Her Majesty's Minister at Berlin, inclosing a letter from Captain Watson, containing a notice of the blockade of the coast of Courland, and to request me to take the same into consideration, and draw up and inclose to your Lordship a notification of this blockade, for insertion in the "Gazette" of Friday the 27th April instant, if I am of opinion that this insertion can properly now be made.

I am also honoured with Lord Wodehouse's letter of this day's date, transmitting further papers from the Admiralty, relative to the blockade of Courland.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

Notification for "Gazette."

That I have prepared and herewith transmit a draft notification for insertion in the "Gazette."

Mistakes in names.

As to inclusion of Riga, &c.

I presume that the word written "Tilsirs" and "Silsund" is, in fact, "Filsand," one of the most known positions in the Baltic, and I have amended it accordingly; any such mistakes may cause serious inconvenience. The actual blockade of Riga and Peman and of all the ports in the Gulf of Riga is not distinctly announced. I presume that these ports were, at the date in question, either in effect blockaded or closed by ice, and that there is practically no access to them at any season through the north entrance of the Gulf of Riga, between the Islands of Dago and Osel and the main land.

In the event of a closer or more complete blockade of Riga, or of ports in that gulf being subsequently established, care should be taken that in formally announcing it no doubt is thrown upon the validity or date of the blockade of the entrance of the Gulf of Riga, now declared.

It may also be worth while to inquire under what circumstances the previous official (but defective) notice of this blockade reported on by me on the 24th April instant was transmitted, with the view of preventing similar mistakes in future. Probably some communication should be made to the French Government on the subject of this notification. No French ships of war appear to be on the spot.

I have, &c.
(Signed) J. D. HARDING.

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* No. 308.

Inclosure in No. 309.

Notification.

Foreign Office, April 27, 1855.

Notification.

IT is hereby notified that Her Majesty's Government has received information from Captain Watson, R.N., commanding a squadron of Her Majesty's ships in the Baltic, dated Her Majesty's ship "Impérieuse," off Liban, 19th April, 1855, to the effect that on and from the 17th day of April, 1855, and in the name of Her Majesty and of her ally, His Majesty Napoleon III, Emperor of the French, the Russian port of Libau on the coast of Courland was placed in a state of strict blockade by a competent force of Her Majesty's ships and vessels; and that on and from the 19th April, 1855, all Russian ports, roads, havens, and creeks from latitude 55° 54′, north longitude 21° 5′ east to the Filsand lighthouse in latitude 58° 26′, north longitude 21° 50′ east (including especially the ports of Sackenbaun, Windan, and the entrance to the Gulf of Riga), were also placed in a state of strict blockade by a competent force.

And it is hereby notified that all the measures authorized by the laws of nations and the respective Treaties between Her Majesty and her allies with the different neutral Powers will be adopted and executed with respect to all vessels which may attempt to violate the said blockade.

No. 310.

The Queen's Advocate to the Earl of Clarendon.—(Received April 28.)

Doctors' Commons, April 28, 1855.

My Lord,

Blockade of Courland.

Misprint of date.

WITH reference to my report of the 27th April instant, and to the draft notification sent therewith of the blockade of the coast of Courland, I remark that the "London Gazette" of the 27th has printed the date of Captain Watson's letter as "off Liban 18*th April*," instead of "off Liban 19*th April*;" which (19th) would clearly appear to be the correct date, as I presume will turn out to be the case on reference to the original letter, as I find "19th" in my rough draft of the notification; the "18th" may have been inserted (by error) in the copy sent to your Lordship. This error, however, arising is not unimportant, and should be forthwith corrected.

I have, &c.
(Signed) J. D. HARDING.

No. 311.

The Queen's Advocate to the Earl of Clarendon.—(Received April 30.)

Doctors' Commons, April 28, 1855.

My Lord,

Vessels of allies trading with enemy's unblockaded ports.

IT has become necessary that I should apply to your Lordship as to the views of Her Majesty's Government upon the extent and effect of the Order in Council of April 15, 1854 (No. 12) as to the vessels and cargoes of Her Majesty's *Allies* in the war trading with the enemy's ports not blockaded. Before that Order the vessel of an ally in the war trading with the common enemy would have been just as liable to capture by and condemnation to a British cruizer as a British vessel would have been under the same circumstances. That order, however, appears to me to have been intended to permit and encourage trading with the enemy by *allies* as well as by

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Asks policy of Her Majesty's Government with reference to Order in Council, for guidance in prize cases.

British subjects. The words "*neutral or friendly*," frequently repeated therein, and the solitary exception of "*British vessels entering or communicating with ports or places in the occupation or possession of Her Majesty's enemies*," appear to me to be strongly in favour of this construction. However this may be, I fear that it would be difficult, if not impracticable, to contend successfully for a different judicial interpretation of the order, or to secure the condemnation of a French, Turkish, or Sardinian vessel if captured for trading with the enemy; and I do not see how it could be expedient or even proper on my part (as Counsel for the Crown) to make any such attempt, if the *bonâ fide* purpose and intention of Her Majesty's Government when it issued this order (which was doubtless founded upon reasons of public policy and adopted after mature deliberation and communication with Her Majesty's allies and probably adhered to by those allies) was clearly (as I presume it still is) in favour of permitting trade with the common enemy by the allies as well as by British subjects. It can scarcely be supposed that we meant to interdict to our allies that trade which we permitted to our subjects, or that our allies were to interrupt a trade carried on by our subjects which our own officers were to permit.

Unless, therefore, I should be favoured with instructions to the contrary, I propose not to raise the point, and if I should be compelled to make any statement in Court upon it, to admit, on behalf of the Crown, that trading with the enemy by allies as well as by subjects *is* permited by the Order in Council.

I am not aware what may be the law and practice adopted by the French or Turkish or Sardinian Governments, or what instructions (if any) may have issued from the Admiralty on this point. The desirableness of uniformity, and perhaps also of issuing instructions to naval officers, will be at once apparent to your Lordship. The question has not as yet directly arisen in the Prize Court, but it is not improbable that it may arise suddenly and soon, and I have therefore thought it my duty to trouble your Lordship with this communication, which expresses the views of the Admiralty Advocate as well as those of your Lordship's, &c.

(Signed) J. D. HARDING.

No. 312.

The Queen's Advocate to the Earl of Clarendon.—(*Received May* 2.)

Doctors' Commons, May 1, 1855.

My Lord,

Egress from Russian ports after re-establishment of blockade.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 26th April last stating that he was directed to transmit to me a note from the Danish Minister at this Court requesting an explanation of the reservation contained in the note addressed to him on the 11th April, with respect to the egress of neutral vessels from Russian ports in the Baltic after the re-establishment by the allies of the blockade of those ports.

Lord Wodehouse was also pleased to transmit to me the note to General Oxholm to which he refers, together with my report on which that note was founded,* and to request that I would report to your Lordship at my earliest convenience my opinion as to the reply to be returned to General Oxholm.

In obedience to your Lordship's commands I have the honour to report—

That I would in the first place respectfully venture to express my doubts whether General Oxholm can fairly require to be informed of the precise instructions (if any) which may have been actually issued, or of those which may be hereafter issued to Her Majesty's naval officers upon this point, and my still graver doubts whether in any event it will be right or proper for your Lordship to give him the information which he seeks. I confess that the real object of his Excellency's inquiry appears to me to be not so much to elicit information, as to obtain some admission from Her Majesty's Government which may be not improbably communicated to Danish claimants, and made the ground of future applications.

As to object of Danish Minister in asking such questions.

I have further to state that I am not aware whether any and what instructions have been issued by the Admiralty on this subject, and to point out that in the absence of any definite instructions, and in cases to which they may not extend, the officers actually engaged in blockading and the Admiral commanding in chief, must necessarily act upon their own discretion in each case as it may arise.

I have further to observe that neutral vessels which may have entered Russian ports *flagrante bello*, and with full knowledge that a blockade would be reimposed by

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* No. 287 and 300.

Vessels entering *flagrante bello* not entitled to consideration.

the allies at the earliest practicable period, do not appear to me to be entitled to any consideration; they are in a very different position from those which were surprised in the enemies' ports by the breaking out of war; they have for purposes of profit voluntarily incurred the risk of capture, and they have to the utmost of their power given aid and assistance to Russian interests, which interests will be further promoted by any further indulgence shown to him. It is also to be borne in mind that any exception or concession will be eagerly relied upon and endeavoured to be extended, and will infallibly give rise to many applications from neutrals. The concessions already made in favour of commerce by Her Majesty are so great that blockade thereby loses much of its effect upon the enemy, and any further concessions will further tend to impair its efficacy, and, so far, to increase the enemy's resources.

Denmark has no claim to indulgence.

The Danish flag has (as I have frequently pointed out) already obtained a most singular pre-eminence in covering Russian property and promoting Russian interests, and I conceive that even if indulgence should be shown to some neutrals, none should be displayed to Denmark (see for instance Colonel Lloyd Hodges' No. 76, July 5, 1854, with papers in the case of the "Hebe" or "Therese"). The circumstances of the times would, therefore, in my opinion, fully justify Her Majesty's Government in exercising its strict legal right of ordering every laden vessel without exception, and at all events every Danish vessel, taken coming out of a blockaded port in the Baltic, to be sent to England for adjudication.

I ought, however, to observe that although the law as laid down by the highest authorities hitherto is in favour of the abstract right of blockading officers to send in for adjudication all laden vessels without exception coming out of a blockaded port without risk of costs and damages, yet, that after the judgment of the Judicial Committee of the Privy Council reversing that of the High Court of Admiralty in the "Ostsee," officers will in my opinion carry out that right in some cases at considerable risk; but this is a point upon which neutral Governments are by no means without good information and advice, and one which Her Majesty's Government may rather desire to leave to the determination of the Prize Courts, than to take upon itself to determine by making any further concessions which would appear to be the less needed, if the Prize Courts should take a more favourable view than formerly of neutral claims. As a general principle blockading officers capture in each particular case on their own individual responsibility, and are liable to the claimants in costs and damages, if they make captures without sufficient justification, technically called "probable cause." Each case which may arise will be determined by the Prize Courts upon its own circumstances, and it is not to be presumed that any officers acting under such serious practical responsibility will wantonly send vessels to England for adjudication without "probable cause." I apprehend, therefore, that if General Oxholm's question is in your Lordship's opinion one proper to be answered by your Lordship, the answer must be to the effect "that Her Majesty's officers are authorized to exercise a reasonable discretion upon the spot in every case, and are not bound by their instructions to send to England every vessel coming out of a blockaded port without exception;" but such an answer, however true in fact, may hereafter expose the blockading officers and Her Majesty's Government to serious inconvenience, and the propriety of giving it will be, of course, a matter entirely for your Lordship's decision.

Naval officers capture at their own risk.

Not advisable to tell Danish Minister.

I have, &c.
(Signed) J. D. HARDING.

No. 313.

The Queen's Advocate to the Earl of Clarendon.—(*Received May* 4.)

Doctors' Commons, May 2, 1855.

My Lord,

Egress from Russian ports on re-establishment of a blockade.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 28th April last, stating that he was directed to transmit to me the accompanying note from the Netherlands Minister at this Court, requesting to be informed whether, in the event of a fresh blockade of the Russian ports in the Baltic, neutral vessels will be allowed time to leave the blockaded ports in ballast, or with the cargoes which they may have taken on board before the establishment of a blockade.

Baron Bentinck further asks whether, in case neutral vessels should be allowed to leave Russian ports in ballast or with cargoes, the commanders of the allied cruizers

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will be instructed to permit those vessels to proceed after having visited them and ascertained that their papers are in proper order, or whether each neutral vessel under these circumstances will be brought to this country to be tried by the Court of Admiralty.

And Lord Wodehouse is pleased to request that I would take Baron Bentinck's note into consideration, and report to your Lordship at my earliest convenience my opinion as to the answer which should be returned thereto.

In obedience to your Lordship's commands I have taken the note into my consideration, and have the honour to report—

No days of grace.

Capture of neutrals in ballast exceptional.

Vessels with cargoes must be sent home for adjudication.

That Baron Bentinck may be informed that, in the absence of any special instructions or arrangements (of the existence of which I am not aware), no particular time will be allowed for neutrals to leave blockaded ports, either in ballast or with cargoes laden before the blockade commenced; that it is only under exceptional circumstances that neutrals leaving blockaded ports in ballast will be captured, but that, with respect to all vessels leaving such ports with cargoes (whensoever laden), it being clearly competent to Her Majesty, by the law of nations, to send all such vessels to England for adjudication, Her Majesty's Government is not disposed to make any special concessions in favour of those neutrals who have, with a view to commercial profit, deliberately and *flagrante bello* incurred the risk of blockade and capture by trading with a belligerent, and who may fairly be left to suffer from the natural results of their conduct, subject to the equitable decisions of the British Prize Courts, before which they will have the fullest opportunity of establishing their claim to any compensation to which they may consider themselves entitled.

I would beg particularly to refer to my report of the 1st May* on a similar application from the Danish Minister, and to state that the Netherlands flag has hitherto maintained a much more creditable position than that of Denmark, at least so far as Russian interests are concerned. It is true that some of the Netherlands vessels broke the Baltic blockades last year, but the Netherlands official personages do not appear (like those of Denmark) to have denied all knowledge of those blockades, or to have allowed the Netherlands flag to be used systematically to cover and protect Russian interests.

I have, &c.
(Signed) J. D. HARDING.

No. 314.

The Queen's Advocate to the Earl of Clarendon.—(*Received May* 4.)

Doctors' Commons, May 3, 1855.

My Lord,

Instructions to Consuls to administer oaths for affidavits to be produced in Prize Courts.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 30th April last, stating that he was directed to transmit to me a letter Mr. Rothery, Proctor, requesting that, under the circumstances therein stated, immediate instructions may be issued to all Her Majesty's Consuls and Vice-Consuls abroad, more particularly to those at Copenhagen, Elsinore, and Constantinople, directing them to administer oaths with reference to affidavits prepared abroad for production in the Admiralty Prize Courts of this country; the issue of such instructions being requested in order to remove all doubts on the part of any Consuls or Vice-Consuls as to their power to administer oaths; and to request that I would take this application into consideration and report to your Lordship at my earliest convenience my opinion whether there is any objection to its being complied with, and if there is not any, in what form the instructions should be given.

In obedience to your Lordship's commands I have taken this application into consideration, and have the honour to report—

No objection, but they generally do so.

That if your Lordship considers it proper to issue such instructions, I see no objection thereto; and that I would venture to suggest that, in any such instructions, it may be sufficient to call the attention of Her Majesty's Consuls and Vice-Consuls to the 7th section of the "Admiralty Court Act, 1855" (17 and 18 Vict., cap. 78), and to direct them to act regularly in accordance therewith, as in several instances they have already done.

I may add that, in many recent prize cases, such affidavits have been made before Consuls and Vice-Consuls; one was made, for instance, in the "Soglasie,"† on the 13th November, 1854, before Consul Taylor, at Copenhagen. Nor am I aware of any objection having been hitherto made by any Consul or Vice-Consul to take such affidavits, or of any doubt or difficulty having hitherto arisen on the subject; it is possible that there may have been some special reason for the refusal which Mr. Rothery's correspondent has experienced in this case.

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* No. 312.

† See "Soglasie," Printed Papers, page 39.

I have, &c.
(Signed) J. D. HARDING.

No. 315.

The Queen's Advocate to the Earl of Clarendon.—(*Received May* 5.)

Doctors' Commons, May 3, 1855.

My Lord,

Russian vessel "Hebe" transferred to Lubeck flag.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 27th April last, stating that he was directed to transmit to me a despatch from Her Majesty's Chargé d'Affaires at Hamburgh, inclosing a copy of a letter from Captain Watson, of Her Majesty's ship "Impérieuse," reporting the circumstances under which he had intercepted and examined the vessel "Hebe" on the passage of that vessel from Lubeck to Copenhagen, and further to transmit to me the former despatches relative to the transfer of this vessel from the Russian to the Lubeck flag, referred to in Colonel Hodges' despatch, and to request that I would report to your Lordship my opinion upon the transaction respecting the "Hebe," and the course pursued by Captain Watson on this occasion.

In obedience to your Lordship's commands I have taken the papers into consideration, and have the honour to report—

Suspicious. Might have been captured.

That the date and circumstances of the sale of this vessel appears to be open to suspicion, and to be such as would, in my opinion, have justified her capture last year under the principles laid down in the Law Officers' Report of the 24th May, 1854,* on the subject of sales of Russian ships to citizens of Lubeck, more especially as Her Majesty's Consul at Lubeck appears to be convinced she was not purchased *bonâ fide*.

I observe, however, that she has been visited and examined at least twice by Her Majesty's ships:—

1st. By Captain Watson about the 17th May, 1854 (see Colonel Hodges' No. 26, 22nd April, 1855); and,

2nd. By Captain Watson, with the assistance of two other Captains, on the 15th April last.

These officers at that time had full information concerning her. They carefully examined her papers, and probably examined her master. They had a strong interest in her proving a good prize, but, nevertheless, did not consider it prudent to capture her.

Under these circumstances, although I do not myself clearly see why she was not captured (more especially when met with last year), I do not consider that this is a case which clearly calls for the issue of any special instructions; after her having been twice examined and permitted to pass by Her Majesty's vessels of war, any officer now capturing her will do so at some risk.

If Her Majesty's Government order her capture, and indemnify the captor, she may turn out a good prize.

If, however, Her Majesty's Government should think proper to order this vessel to be captured (indemnifying the captor), she may ultimately turn out to be a good prize.

It appears to me to be doubtful, from the last paragraph but one of Captain Watson's letter to the Admiralty of the 16th April, whether he has received a correct copy of the Law Officers' Report of the 24th May, 1854, or, if so, whether he has correctly apprehended its meaning.

I have, &c.
(Signed) J. D. HARDING.

No. 316.

The Queen's Advocate to the Earl of Clarendon.—(*Received May* 5.)

Doctors' Commons, May 4, 1855.

My Lord,

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 26th April last, stating that he was directed to transmit to me an extract

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* No. 113.

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Vessels owned by a Swedish Company, in which there are Russian shareholders.

of a despatch addressed by the Swedish Minister for Foreign Affairs to the Swedish and Norwegian Minister at this Court, and which has been communicated to your Lordship by Baron Hochschild, requesting to be informed whether the vessels of a Company which are about to run between Stockholm and London, would be subject to any risk in consequence of some of the shareholders being Russian subjects, and to request that I would take the inclosed despatch into consideration, and report to your Lordship, at my earliest convenience, my opinion as to the answer to be returned to Baron Hochschild.

In obedience to your Lordship's commands I have taken the despatch into consideration, and have the honour to report—

Not liable to capture.

That an answer may be returned to Baron Hochschild in accordance with the Report of the Law Officers of the 5th May, 1854,* upon a similar application from the Agent and Consul-General of the Hans Towns, to the effect that the vessels in question will not be molested in their voyages between Sweden and this country, merely because some of the shareholders in the Swedish Company to which they belong are Russians.

I have, &c.
(Signed) J. D. HARDING.

No. 317.

The Queen's Advocate to the Earl of Clarendon.—(*Received May* 7.)

Doctors' Commons, May 5, 1855.

My Lord,

Evidence given in Danish Court by British Vice-Consul against British Crown.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 28th April last, stating that with reference to my letter of the 17th February,† suggesting that Mr. Larlham, the British Vice-Consul at Elsinore, should be called upon to explain the circumstances under which he appeared as a witness in a Danish Court in the case of the "Stein Bill" he was directed to transmit to me a copy of a letter which has been received from Mr. Larlham, explaining his proceedings in this matter, and to state that it appears to your Lordship that Mr. Larlham's explanation is satisfactory, but before saying so to Mr. Larlham, your Lordship wishes to know whether I concur in your Lordship's views.

In obedience to your Lordship's commands I have taken the letter into consideration, and have the honour to report—

Mr. Larlham's explanation satisfactory, but he should first have communicated with Foreign Office.

That Mr. Larlham's explanation appears to me to be satisfactory, but that it would have been better if, before appearing in the Danish Court, he had communicated to your Lordship the application of Mr. Andersen. That communication might then have been embodied in an affidavit, to which he (Mr. Larlham) might have sworn, and which could have been made use of by the Crown. His evidence, as taken in the Danish Court, has, in fact, been used, and will probably be again used with considerable effect against the Crown and in favour of the Danish claimant, and of this result it may be desirable that he should be informed for his future guidance.

I have, &c.
(Signed) J. D. HARDING.

No. 318.

The Queen's Advocate to the Earl of Clarendon.—(*Received May* 9.)

Doctors' Commons, May 7, 1855.

My Lord,

Russian vessel "Sigrid" at Elsinore made over to British subject in payment of debt.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 26th April last, stating that with reference to my report of the 28th March,‡ respecting Mr. Walker's request to be allowed, under the circumstances stated by him, to bring to this country, and to register the Russian brig "Sigrid," he was directed to transmit to me, with the former papers, the accompanying despatch from Her Majesty's Consul at Elsinore regarding the vessel in question, and to request that I would take the same into consideration, and report to your Lordship my opinion whether this vessel should be given up to Mr. Walker, if the French Government concur, and whether it will be requisite to require from Mr. Walker any security in this case, about which your Lordship knows nothing beyond what is stated in Mr. Walker's letter of March last.

In obedience to your Lordship's commands, I have taken the papers into consideration, and have the honour to report—

No objection, if French Government concur, to coming to England to be registered.

That provided your Lordship sees fit to grant Mr. Walker the special favour for which he applies, and provided the French Government concur, I am of opinion that the "Sigrid" may be given up to Mr. Walker in order that he may bring her to England to be registered. A communication should be made to the Customs, with reference to any security to be required from Mr. Walker, for which I do not otherwise see any necessity.

But there is no proof of *bona fides*.

The *bona fides* of the transaction seems to rest at present solely on Mr. Walker's assertion, no correspondence, vouchers, or documents of any sort being exhibited, and neither the name of his Russian debtor, nor the date or amount of his debt being stated by him.

Such a transfer would be liable to investigation in a Prize Court, if in England.

I ought, perhaps, to remind your Lordship that a number of neutral ships, especially Danish ships, have been seized in British ports on suspicion of having been only colourably transferred from Russian owners (some have been condemned, other cases are still pending), and it will be for your Lordship to consider whether the special interference of Her Majesty's Government in Mr. Walker's favour, by which a transfer otherwise liable to strict investigation in a Prize Court, will be, to a certain extent, sanctioned and legalized, will have a perfectly consistent appearance, or be advisable under existing circumstances, as the "Sigrid" is lying under Russian colours at Elsinore. This is, however, not a legal question, and beyond my province.

I have, &c.
(Signed) J. D. HARDING.

No. 319.

The Queen's Advocate to the Earl of Clarendon.—(*Received May* 8.)

Doctors' Commons, May 8, 1855.

My Lord,

Blockade of Gulf of Finland.

As to fresh notification by Admiral Dundas.

I AM honoured with Mr. Hammond's letter of the 7th May instant, stating that he was directed by your Lordship to transmit to me, for my information, a copy of a telegraphic despatch from Her Majesty's Minister at Copenhagen, reporting that Admiral Dundas has issued a notification of the blockade of the Gulf of Finland, which is intended to supersede the one already issued by Captain Watson.

With reference thereto I have the honour to report—

Stop it, Her Majesty's Government having acted on former one.

That inasmuch as Mr. Buchanan gives no intimation of the Admiral's reasons for considering Captain Watson's notification of blockade invalid, or for his having cancelled it, I can only suggest that inasmuch as Her Majesty's Government have treated Captain Watson's notification as valid and acted upon that presumption, such notification should not be invalidated or altered or cancelled without a previous communication with, and instructions to that effect from Her Majesty's Government.

Possibly instructions to this effect can be sent by telegraph, especially to Copenhagen and Memel, which are the most important points for this purpose. I shall anxiously wait for full particulars from the Admiralty on this important subject, and it is certainly unfortunate that a blockade having apparently commenced in the Baltic on April 17, Her Majesty's Government should up to this date be without any direct official communication from the Admiral on the subject.

As to placing ships just inside the Sound, to warn vessels.

I trust, however, that the Admiral has (agreeably to my suggestions to him and to the Admiralty) left one or more ships cruizing just inside the Sound, which will board, warn, and endorse the papers, of all vessels proceeding eastwards, by which many doubts and difficulties will be practically avoided.

I have, &c.
(Signed) J. D. HARDING.

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* No. 102.

† No. 268.

‡ No. 292.

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No. 320.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received May* 10.)

My Lord, *Doctors' Commons, May* 8, 1855.

French Decree.

Search of all vessels leaving Havre, for deserters and persons liable to conscription, &c.

WE are honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 31st of March last, stating that he was directed to transmit to us the accompanying despatch and its inclosures, from Her Majesty's Ambassador at Paris, on the subject of an Ordonnance lately issued by the French Minister of Marine, prescribing the search of all foreign vessels leaving Havre, with the view to prevent the escape on board such vessels of deserters and persons liable to conscription, and to request that we would take these papers into consideration, and report to your Lordship our opinion as to the grounds on which this Ordonnance could be protested against.

In obedience to your Lordship's commands, we have taken the papers into consideration, and have the honour to report—

No right to protest against it.

That we are of opinion that it is fully competent to every Government to impose upon foreigners regulations of the nature of the Ordonnance in question, being one of local police, affecting all foreigners in general, and not specially directed against any one nation, and that there are no grounds upon which it can be protested against.

We have, &c.
(Signed) J. D. HARDING.
A. E. COCKBURN.
RICHARD BETHELL.

No. 321.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received May* 10.)

My Lord, *Doctors' Commons, May* 10, 1855.

Queen's Proclamation against assisting the enemy. How does it affect Ionians?

WE are honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 14th April last, stating that he was directed to transmit to us a despatch from Her Majesty's Consul at Varna, respecting Her Majesty's Proclamation warning British subjects against adhering to or assisting the Queen's enemies; and, with reference to that passage in that despatch, in which Colonel Neale requests to be informed "whether British protected subjects, as Ionians, are in any degree liable under the Proclamation to be proceeded against for the committal of any of the treasonable acts therein referred to," Lord Wodehouse is pleased to request that we would report our opinion as to the answer to be returned to Colonel Neale, and whether protection should not in all cases be withdrawn from Ionians aiding and abetting the enemy.

In obedience to your Lordship's commands, we have taken the papers into consideration, and have the honour to report—

Ionians not neutrals, but still of different status to British subjects.

Protection may be withdrawn for infraction of the Proclamation.

That, although we retain the opinion we expressed on a former occasion,* that the Ionian Republic, being under the protection and subject to the executive authority of the British Crown, is not at liberty to consider itself a neutral State, or to enter into commercial or friendly relations with Her Majesty's enemies; yet, we think that the "status" of a native of the Ionian Republic under the protection of the British Crown is very different from the "status" of a natural born English subject, and that Ionians, being under the protection of the British Crown, are not in any degree liable, under the Proclamation, to be proceeded against for the committal of any of the treasonable acts therein referred to, but that it will be proper to declare that the protection of the British Crown will be withdrawn from all Ionians in any manner aiding or abetting Her Majesty's enemies.

We have, &c.
(Signed) J. D. HARDING.
A. E. COCKBURN.
RICHARD BETHELL.

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* No. 109.

No. 322.

The Queen's Advocate to the Earl of Clarendon.—(*Received May* 14.)

My Lord, *Doctors' Commons, May* 14, 1855.

Russian vessel "Hebe" transferred to Lubeck flag.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 5th of May instant, stating that, with reference to his letter of the 27th ultimo, inclosing a despatch from Her Majesty's Chargé d'Affaires at Hamburgh, reporting the examination by Captain Watson, of Her Majesty's ship "Impérieuse," of the vessel "Hebe," on the passage of that vessel from Lubeck to Copenhagen, together with the previous papers relative to the transfer of that vessel from the Russian to the Lubeck flag, he was directed to inclose a letter from the Agent and Consul-General of the Hans Towns, protesting against this examination on the part of Her Majesty's cruizers, and requesting that the original orders, in consequence of which this vessel was detained, might be rescinded, and that the ship's papers might be examined, with a view to prevent any future detention of this vessel; and Mr. Hammond is pleased to request that I would report to your Lordship my opinion as to the course to be pursued in this case, and whether the observations in Mr. Colquhoun's letter make any change in my opinion of the case, as contained in my letter of the 3rd instant.

In obedience to your Lordship's commands, I have taken the papers into consideration, and have the honour to report—

That, with reference to the course to be pursued in this case, I can only refer to my previous report of the 3rd instant.* Mr. Colquhoun's application for a special protection to be issued in favour of this vessel cannot be granted. Mr. Colquhoun's letter, and the abstract of ship's papers transmitted by him, rather confirm than change my previous opinion of the suspicious aspect of the alleged transfer of the vessel from the Russian to the Lubeck flag.

Capture is legally justifiable, but risky.

I am of opinion that her capture would be *legally* justifiable, but I cannot say with any confidence that she will be ultimately condemned; and, after all that has occurred, any captor of this ship must incur *some* risk of costs and damages. Of the expediency of issuing special orders for her capture, Her Majesty's Government must be the best judges.

I have, &c.
(Signed) J. D. HARDING.

No. 323.

The Queen's Advocate to the Earl of Clarendon.—(*Received May* 16.)

Doctors' Commons, May 15, 1855.
My Lord,

Russian vessels transferred to Norwegian subjects exposed to annoyance on arriving in England.

Complaint of Norwegian Minister.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 9th May instant, stating that he was directed to transmit to me a letter from the Swedish and Norwegian Minister at this Court, stating that ships bought in Russia, but which have become *bonâ fide* the property of Norwegian subjects, are exposed to annoyance and inconvenience from the Custom-house authorities when they arrive in British ports; and to request that I would take Baron Hochschild's letter into consideration and report to your Lordship my opinion as to whether the certificate which such vessels are compelled to carry, and which is only delivered to Norwegian subjects, is not sufficient evidence of their nationality.

In obedience to your Lordship's commands I have taken the papers into consideration, and have the honour to report—

That the pass or certificate ("permis Royal") will not be of itself sufficient evidence of the entire good faith of the purchase from a Russian, or that there is no enemy's interest still remaining in the ship.

Cases must be investigated to prevent necessity of sending ships before Prize Court.

It may be perhaps further explained to the Swedish and Norwegian Minister that the measures of which he complains, viz., the inspection of the ship's papers, and the asking some questions of the masters, were taken for the express purpose of avoiding the necessity which might otherwise have arisen of arresting the ships in question, and instituting proceedings against them in the Prize Court, in order to obtain a complete investigation into the alleged purchases of such vessels by Norwegians from Russians. Such purchases are always open to grave suspicion, and under colour of them numerous frauds upon Her Majesty's belligerent rights have been, and are still being committed.

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* No. 315.

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I may add that I myself suggested to the Admiralty Proctor (who applied to me for advice) to adopt such a proceeding in some of these cases from an anxious desire to avoid arresting Norwegian ships, unless upon good grounds, on account of the Norwegian flag having hitherto been untainted by frauds of this kind.

Cannot exempt Norwegian ships.

No serious molestation appears to be complained of in any particular case, and I cannot advise any general exemption from investigation in favour of all Norwegian ships purchased (howsoever) from Russians,—no one paper, nor even the most complete set of papers, being in such cases absolutely conclusive of the legality of the transfer.

I have, &c.
(Signed) J. D. HARDING.

No. 324.

The Queen's Advocate to the Earl of Clarendon.—(*Received May* 17.)

Doctors' Commons, May 17, 1855.

My Lord,

Blockade of Gulf of Finland.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 16th May instant, stating that he was directed to transmit to me a letter from the Admiralty, with its inclosures, on the subject of the blockade of the Gulf of Finland and of the Russian coast from the Dagerort Lighthouse to the Filsand Lighthouse, together with a note from M. Baudin, the French Chargé d'Affaires, respecting an omission in the notice of this blockade which he wishes to be rectified, and to request that I would take these papers into my immediate consideration and draw up and transmit to your Lordship, with as little delay as possible, a proper notification of this blockade for insertion in the "Gazette," carrying into effect M. Baudin's wishes, provided I should see no legal objection thereto.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

Sends notification.

That I have accordingly prepared, and herewith transmit, a proper notification of this blockade for insertion in the "Gazette."

As to mentioning name of Emperor of French when no French ships take part.

With reference to the concluding paragraph of Admiral Dundas' despatch (No. 3 in Admiralty letter of 13th May) (in which the name of His Imperial Majesty the Emperor of the French is introduced), and to the presumed absence of French ships from the blockading squadron at the time of the institution of the blockade, I would most respectfully suggest that the insertion into the notification of the name of His Imperial Majesty the Emperor of the French by the side of that of Her Majesty (as desired by M. Baudin) can hardly be considered as "rectifying *an omission*" of the Admiral. I have, however, in accordance with your Lordship's intimation, inserted the name of His Imperial Majesty into the notification in a manner which I trust may be satisfactory to your Lordship and to M. Baudin, and to which I see no legal objection.

I have, &c.
(Signed) J. D. HARDING.

Inclosure in No. 324.

Notification.

Foreign Office, May 16, 1855.

Notification.

IT is hereby notified that the Right Honourable the Earl of Clarendon, K.G., Her Majesty's Principal Secretary of State for Foreign Affairs, has received from the Lords Commissioners of the Admiralty an official communication from Rear-Admiral the Honourable R. S. Dundas, commanding Her Majesty's ships in the Baltic, and acting in the name and on behalf of Her Majesty and her ally His Imperial Majesty the Emperor of the French, announcing the establishment on and from the 28th April last of a strict blockade of the Russian ports and places therein mentioned by an effective force, which communication is to the following effect:—

"By the Honourable Richard Saunders Dundas, C.B., Rear-Admiral of the Blue, and Commander-in-chief of Her Majesty's ships and vessels employed, and to be employed, on a particular service.

"It is hereby notified that, on the 28th day of April last, the entrance to the Gulf of Finland from Hango Head, in latitude 59° 46′ north, longitude 22° 58′ east, to

the Dagerort Lighthouse in latitude 58° 55′ north, longitude 22° 12′ east; and that all Russian ports, roads, havens, and creeks from the Dagerort to the Filsand Lighthouse, in latitude 58° 25′ north, longitude 21° 50′ east, were placed in a state of strict blockade by a competent force of Her Majesty's ships; and it is hereby further notified that all measures authorized by the laws of nations and the respective Treaties between Her Majesty and the different neutral Powers will be adopted and executed on behalf of Her Majesty and her ally His Majesty the Emperor of the French with respect to all vessels which may attempt to violate the said blockade.

"Given on board Her Majesty's ship 'Duke of Wellington,' at sea in the Femern Belt, this 3rd day of May, 1855.

(Signed) "R. S. DUNDAS."

And it is hereby further notified that all measures authorized by the laws of nations and the respective Treaties between Her Majesty and her allies and the different neutral Powers will be adopted and executed on behalf of Her Majesty and her ally His Majesty the Emperor of the French with respect to all vessels which may attempt to violate the said blockade.

No. 325.

The Queen's Advocate to the Earl of Clarendon.—(*Received May* 25.)

Doctors' Commons, May 23, 1855.

My Lord,

Baltic blockade.

Steps taken for publishing at Copenhagen.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 5th May instant, stating that he was directed to transmit to me, for my information, and for any observations I may have to make thereon, two despatches from Her Majesty's Minister at Copenhagen reporting the measures adopted by him to give publicity to the establishment of a blockade of certain Russian ports by Her Majesty's naval forces in the Baltic.

In obedience to your Lordship's commands I have taken the papers into consideration, and have the honour to report—

That the blockade instituted by Captain Watson having, since the date of Mr. Buchanan's despatches, been notified in the "Gazette," and I presume also formally communicated in the ordinary manner by Her Majesty's Government to the Court of Denmark, no remarks from me appear to be particularly called for upon the subject of those despatches. Mr. Buchanan appears to have taken the best means at his command to announce the blockade in question to the Danish Government.

I trust that no doubt on the subject of the existing blockades now prevails at Copenhagen, either on the part of Her Majesty's Minister or Consuls, the Danish authorities or the commercial public. Should Mr. Buchanan find that any such doubts exist, or that there is any reason to suspect that either the existing blockades or any which may be hereafter instituted, or in effect ignored or evaded, I trust that he will immediately communicate with Admiral Dundas and with your Lordship thereupon.

Consuls must be prepared to prove knowledge of blockade in case of future necessity.

With reference to what occurred on this subject of blockade in Denmark last year, it may be hereafter of advantage to the Crown, if Her Majesty's Minister and Her Majesty's Consuls in Denmark were requested to be prepared to prove in case of necessity by reference to Danish newspapers and otherwise, on and from what date each blockade was announced from credible sources:—1st, as a matter of commercial intelligence; 2nd, officially, at Copenhagen and other principal Danish ports; so as to meet any denials or evasions on this subject which may possibly be again attempted by Danish claimants.

I have, &c.
(Signed) J. D. HARDING.

No. 326.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received May* 25.)

Doctors' Commons, May 24, 1855.

My Lord,

WE are honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 26th April last, stating that he was directed to transmit to us a telegraphic despatch from Her Majesty's Minister at the Hague, reporting the sailing

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Muskets shipped from Flushing on board "Otto" for Para, but suspected to be for Russia.

of the Hamburgh brig "Otto" from Flushing, having on board 300 cases of Belgian muskets, said to be destined for Para, and a further despatch from Sir Ralph Abercromby stating that this shipment of arms was effected under suspicious circumstances, and suggesting, for reasons stated in that despatch, that British cruizers should be stationed off the coast of Holland, in order to secure the effectual repression of the trade in arms through that country.

As to principles which may be turned against ourselves hereafter.

Lord Wodehouse is pleased to state that although your Lordship fully concurs in the remarks contained in our report of the 27th of March,* as to establishing a principle that might be turned against ourselves, yet that, with reference to the importance of checking a trade likely to become considerable, and that will be of great benefit to the enemy, your Lordship thinks it expedient to submit the inclosed despatch to us for our advice as to the objections to which the recommendation of Sir R. Abercromby may be liable.

We are also honoured with Mr. Hammond's letter of the 9th May instant, stating that, with reference to the above, he was directed to transmit to us a further despatch from Sir Ralph Abercromby, Her Majesty's Minister at the Hague, upon the same subject.

We are also honoured with Lord Wodehouse's letter of the 16th May instant, stating that, with reference to the above, he was directed to transmit to us a despatch from Mr. Paget, Her Majesty's Chargé d'Affaires at the Hague, upon this subject; and to request that we would take this despatch into consideration, together with the papers already before us, and report to your Lordship, at our earliest convenience, our opinion upon the matters to which they relate.

In obedience to your Lordship's commands we have taken into our consideration the several reports of Sir Ralph Abercromby, both with reference to the particular case of the brig "Otto," and the more general question of the course to be adopted by Her Majesty's Government.

"Otto" should be searched at sea, and captured if acting suspiciously.

With respect to the "Otto," we think the circumstances are such as to warrant the gravest suspicion as to the real destination of the vessel, and the true character of her cargo; and we recommend that instructions be given to a British cruizer to waylay and search the vessel as soon as she is beyond the limit of the Belgian waters; and should any of the cases be found to contain firelocks, not being "armes de luxe," or fowling-pieces properly so-called, and the vessel be found proceeding towards any port whence these arms might probably reach the enemy, instead of to South America, her alleged destination, to detain the vessel, and send her in to the nearest English port for examination, and, if necessary, condemnation.

General maxim.

Neutrals with contraband of war, when suspected to be for enemy, liable to capture.

On the general question, we beg to state that neutral vessels laden with contraband of war are liable to condemnation in cases where it may be properly inferred that such contraband of war is destined for the enemy's use. A neutral may lawfully carry contraband of war from one neutral port to another, unless there are circumstances which warrant a conclusion or suspicion that such contraband is really intended for the use of the enemy. Where the circumstances justify such a conclusion, the vessel may be captured, and would be condemned by the Court of Admiralty; but when grave suspicion only is warranted, the vessel may be properly detained, and sent in for further examination. In the present case, there is reason to apprehend that a clandestine traffic in contraband of war exists from the ports in the Netherlands to other neutral ports, whence such contraband is conveyed to the enemy; and that the intervention of the neutral consignee and the neutral destination are only colourable. We are, therefore, of opinion that it will be right to station allied cruizers off the ports of the Netherlands, and also the ports in the Baltic, from which there exist facilities of communication with Russia, with instructions to intercept and search strictly all vessels leaving and entering such ports respectively, so as to ascertain the nature and true destination of their cargoes, the state of their ships' papers, the course they had pursued, and other particulars. Vessels leaving Netherland ports, and *bonâ fide* bound to ports not suspicious (as South America), though laden with contraband of war, should not be molested, but if there should appear probable cause of suspicion on any point against any vessels so laden (such, for instance, as the existence of two sets of papers, or a pretended destination to Brazil coupled with a real voyage to Memel with contraband of war, or an entry in the manifest of rifles or revolvers under some other denomination, such as "armes de luxe"), such vessels should be captured and sent in for adjudication. In such cases they would (even if restored) probably have to pay the costs of the suit, or, at least, would recover no costs and damages; and this, together with the detention, would operate as a penalty, and tend to check the traffic which is complained of. It

Cruizers should be stationed off Netherlands, &c., to examine vessels.

Suspicious circumstances.

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* No. 291.

is, of course, not improbable that in some cases they might be restored with costs and damages, in which cases the actual captors should be indemnified by Her Majesty's Government.

Indemnification of captors by Her Majesty's Government.

This system of searching neutrals might be rendered more or less rigorous as to the vessels of particular States, according to the ascertained results, and in proportion as those States may show a disposition or an indisposition to prevent their subjects from supplying the enemy with contraband of war.

We have, &c.
(Signed) J. D. HARDING.
A. E. COCKBURN.
RICHARD BETHELL.

No. 327.

The Queen's Advocate to the Earl of Clarendon.—(Received May 27.)

Doctors' Commons, May 26, 1855.

My Lord,

Vessels under Wallachian and Moldavian flag suspected to belong to Russia.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 19th May instant, stating that he was directed to transmit to me the accompanying letter and its inclosures from the Admiralty, and to request that I would take the same into immediate consideration, and report to your Lordship my opinion respecting the capture of the "St. Elena;" and also as to what instructions should be given to Rear-Admiral Grey respecting vessels under Moldavian and Wallachian colours.

In obedience to your Lordship's commands I have taken the papers into consideration, and have the honour to report—

May properly be captured on high seas. If in Turkish jurisdiction, Turkish permission must be obtained. (Ionian vessels decided to be neutrals.)

That from Admiral Grey's statement of the facts connected with the "St. Elena," there seems to me to exist probable cause for suspecting her to be really Russian property, she has properly been ordered to be sent to Malta. If she was actually captured, not upon the high seas, but within Turkish jurisdiction, I presume that this was only done after communication with the Turkish authorities, and by their permission. This is a point which should be borne in mind in all similar cases, the more so as Ionian vessels are, by the recent decision of the Admiralty Court in the "Lencade," to be considered and treated as neutrals.

Admiral Grey may be instructed that vessels under Moldavian or Wallachian colours, which there may be probable cause for suspecting to be the actual property of persons who are domiciled in the enemy's dominions (whatever may be the actual origin or alleged national character of such persons) may be lawfully captured by Her Majesty's vessels *on the high seas*, and should when so captured be always sent to Malta for examination; but such vessels, whilst *actually within* Turkish jurisdiction, should not be searched, or captured without the previous permission of the Turkish authorities. I would venture to suggest that it may be desirable to come to some general understanding with the Turkish Government with reference to these vessels.

I have, &c.
(Signed) J. D. HARDING.

No. 328.

The Queen's Advocate to the Earl of Clarendon.—(Received May 31.)

Doctors' Commons, May 31, 1855.

My Lord,

Lubeck vessels assuming Russian flag during Danish war, re-transferred at its conclusion.

Case of the "Phœnix."

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 24th May instant, stating that he was directed to transmit to me the inclosed despatch from Colonel Hodges, Her Majesty's Consul-General at Hamburgh, inclosing a copy of a list which he has received from Mr. Blackwell, the British Vice-Consul at Lubeck, of Lubeck vessels that sailed under the Russian flag during the Danish and Schleswig-Holstein war, and re-assumed the Lubeck flag on peace being re-established, and which, with reference to the case of the "Phœnix," lately seized in the port of London, Mr. Blackwell considers liable to seizure and the payment of costs; and Mr. Hammond is pleased to request that I would take this matter into consideration, and report to your Lordship my opinion thereupon.

In obedience to your Lordship's commands I have taken the matter into consideration, and have the honour to report—

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Not liable to capture for having once sailed under Russian flag.

That the vessels in question will not, in my opinion, be liable to seizure or capture *merely* by reason of their having sailed under the Russian flag during the Danish and Schleswig war. I am informed by the Admiralty Proctor that the "Phœnix" had on board papers showing her to have been under the Russian flag in 1851, and had no papers showing that she had ever been legally re-transferred, or that she was not Russian at the time of seizure.

Vigilance necessary.

These and other papers were subsequently produced by her owners; the Admiralty Advocate was satisfied that she was not Russian, and the vessel was restored under his advice, without having been proceeded against, upon the owners voluntarily consenting (out of Court) to pay the costs. Considering the numerous frauds which have been, and are still being committed in this respect, the necessity of vigilant attention to the particular circumstances of each case, and the very small number of cases in which neutrals have been molested without probable cause during the present war, I cannot advise your Lordship to issue any special instructions as to the vessels in question. Mr. Consul Blackwell's opinion, that "there is no doubt of the above-mentioned vessels being *bonâ fide* Lubeck property" (though doubtless most honestly given) ought not, in my opinion, to protect them from all investigation; and on the other hand, the fact that they once sailed under the Russian flag and papers will not, unless accompanied by the absence of proper papers, or by other suspicious circumstances, necessarily cause their seizure or capture.

It may be proper to transmit copies of Mr. Consul Blackwell's despatch to the Queen's Proctor, and to the Admiralty Proctor, for their guidance.

I have, &c.
(Signed) J. D. HARDING.

No. 329.

The Queen's Advocate to the Earl of Clarendon.—(Received June 2.)

Doctors' Commons, June 2, 1855.

My Lord,

Transit of arms for Russia through Hanover.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 30th May last, stating that with reference to my reports of the 28th February and 16th April last,* respecting the transit of arms destined for Russia through Hanover, he was directed to transmit to me a further despatch from Her Majesty's Minister at Hanover upon this subject; and Lord Wodehouse states that he is to inquire whether, in my opinion, Her Majesty's Government can send any additional instructions thereupon to Mr. Bligh.

In obedience to your Lordship's commands I have taken the papers into consideration, and have the honour to report—

Agent proceeded against discharged for want of proof.

May call upon Hanoverian Government to take steps to prevent transit of such arms.

That it now appears that Westedt (the Agent concerned in receiving and forwarding these revolvers), having been proceeded against by the Hanoverian authorities for violating the Hanoverian neutrality laws, has been discharged for want of proof. It is not stated that any other measures are contemplated to prevent these revolvers from being forwarded. I can only suggest that Mr. Bligh may, if it seems proper to your Lordship, be instructed to the following effect, viz., to urge upon the Hanoverian Government the duty and expediency of preventing these particular arms, and also all similar consignments which may be ultimately intended for Russian use, from entering, passing through, or leaving the Hanoverian dominions.

That it is not for Her Majesty's Government to point out to the Hanoverian Government the best means of effecting this object, but that it cannot be satisfactory to Her Majesty's Government to be informed that in this or that particular case proof is wanting or proceedings have failed, whilst it is notorious that the traffic continues. That Her Majesty's Government, having made unexampled concessions and changes in the maritime law and policy of Great Britain for the express purpose of protecting and favouring neutral interests, is entitled to expect that neutral Powers will show their sense of such conduct by adopting measures in a corresponding spirit, even by enacting special laws if necessary which will practically and effectually operate to prevent these concessions being grossly abused in practice by supplying Russia with articles contraband of war. That in the event of this traffic continuing, Her Majesty's Government may find itself under the disagreeable necessity of taking such steps as may prove extremely prejudicial to Hanoverian commercial interests.

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* Nos. 274 and 305.

Case of the "Otto."

I would also beg to refer to the report of the Law Officers of the 24th May last on the Hamburgh vessel "Otto."*

I have, &c.
(Signed) J. D. HARDING.

No. 330.

The Queen's Advocate to the Earl of Clarendon.—(Received June 5.)

Doctors' Commons, June 2, 1855.

My Lord,

Blockade of "Odessa." Notice sent on shore.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 28th May ultimo, stating that with reference to my letter of the 21st April,† and to previous correspondence respecting the document sent on shore by Captain Broke previous to the blockade of Odessa, he was directed to transmit to me a letter from the Admiralty inclosing a copy of the document in question, and to request that if I should be of opinion that a further notice should now be inserted in the "Gazette" respecting the blockade of the Port of Odessa, I would draw up and furnish your Lordship with a proper notification for that purpose.

In obedience to your Lordship's commands I have taken the papers into consideration, and have the honour to report—

No further "Gazette" notice necessary.

That I do not consider it necessary that any further notice connected with Captain Broke's proceedings should at present be inserted in the "Gazette" respecting the blockade of Odessa.

I have, &c.
(Signed) J. D. HARDING.

No. 331.

The Queen's Advocate to the Earl of Clarendon.—(Received June 5.)

Doctors' Commons, June 4, 1855.

My Lord,

Capture of the "Otto and Olaff" coming out of Riga.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 1st June instant, stating that he was directed to transmit to me a letter from Mr. Wehner protesting against the capture by Her Majesty's cruizers in the Baltic of the "Otto and Olaff" on the passage of that vessel from Riga to Copenhagen, and to request that I would report to your Lordship my opinion as to the reply to be returned to Mr. Wehner. In obedience to your Lordship's commands I have taken the letter into consideration, and have the honour to report—

M. Wehner's protest against.

That the Queen's Proctor has received no information relating to the case of the ship "Otto and Olaff," and that (judging merely from the contents of M. Wehner's letter to your Lordship) I cannot recommend your Lordship to accede to that gentleman's demand, or to interfere at all in the matter.

Cargo unloaded for crossing the bar.

Captured after institution of blockade.

I am not aware whether M. Wehner is a British subject, or, if not, of what State he is a subject or citizen. He appears to be acting in this matter merely as the agent of Messrs. Suse and Co., of Hamburgh, the asserted charterers of this Danish ship. He does not state that they have any interest in the ship, nor does it appear whether or not he is personally interested in either the ship or cargo to any and what amount. The ship appears to have left Riga with cargo after the 5th of May last, having, as alleged, previously discharged and reladen her cargo in order to enable her to pass the bar. Neither the date of this unlading, of this relading, nor that of her capture is given. These dates are probably withheld for reasons best known to M. Wehner. Inasmuch, however, as the Gulf of Riga was blockaded on and from the 19th April last, and the vessel was captured coming out of that port with cargo on or after the 5th of May, her capture appears to be, at all events, *primâ facie* justifiable.

Cannot accede to demand. Would prejudice case before Prize Court, on question of costs, &c.

I need scarcely point out that whilst M. Wehner adopts a ridiculously peremptory tone in his letter to your Lordship, he plainly intimates his intention to apply to the Prize Court for costs and damages against the captors. This alone would appear to me a sufficient reason for your Lordship's declining at present to interfere, for if the ship and cargo should be at once restored without conditions, this might be considered by the Court as amounting to an admission that the capture was

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* No. 326.

† No. 307.

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made without any probable cause, which might operate very prejudicially against the captors upon the question of costs and damages.

I have, &c.
(Signed) J. D. HARDING.

No. 332.

The Queen's Advocate to the Earl of Clarendon.—(*Received June* 6.)

Doctors' Commons, June 5, 1855.

My Lord,

Blockade of White Sea. Whether notice of September 1854 is still in force.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 30th May ultimo, stating that he was directed to transmit to me a despatch from Mr. Paget, Her Majesty's Chargé d'Affaires at the Hague, and to request that I would report to your Lordship my opinion upon the question raised in that despatch, whether the blockade of the White Sea, which was notified in the "London Gazette" of the 29th of September last, is to be considered as still remaining in force.

In obedience to your Lordship's commands, I have taken the despatch into consideration, and have the honour to report—

That, although the general principle of international law is in favour of the opinion expressed by Mr. Paget, I consider that this principle cannot be safely or strictly applied in practice to the particular case of Archangel under existing circumstances.

Prize Court might consider blockade raised.

The fact that the blockading force of the allies had left their station off that port long ago, and that the port was not at present blockaded, might not improbably be considered by a Prize Court as being either notorious, or, at least, open to so much doubt as to save a neutral from condemnation for merely sailing on a voyage thereto, and to require either a fresh notification, or an actual warning, in order to condemn such neutral.

As, however, Mr. Paget has correctly stated the general principle, and as Mr. Van Hall, in admitting its present application to Archangel, has acted advisedly and with full knowledge of the existing facts, it will be for your Lordship to consider whether any, or what further communication to the Netherlands Government will be necessary or advisable.

I have, &c.
(Signed) J. D. HARDING.

No. 333.

The Queen's Advocate to the Earl of Clarendon.—(*Received June* 7.)

Doctors' Commons, June 7, 1855.

My Lord,

Blockade of Gulf of Finland.

Further notification.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 5th June instant, stating that, with reference to my reports of the 27th April and 17th May last,[*] he was directed to transmit to me a letter from the Admiralty, inclosing a letter from Rear-Admiral Dundas, respecting the blockade of all the ports in the Gulf of Finland; and to request that I would take these papers into consideration, and report to your Lordship at my earliest convenience whether any further notification of blockade should be published in addition to that which was inserted in the supplement to the "London Gazette" of the 18th May, and that I would transmit to your Lordship a proper form of notification, should I deem it necessary.

In obedience to your Lordship's commands, I have taken the papers into consideration, and have the honour to report—

Introduction of name of Emperor of French.

That, with reference to Admiral Dundas's letters to the Admiralty, No. 109 of the 22nd May (an extract of which has been transmitted to me by the Admiralty), and No. 121 of the 28th May (a copy of which is transmitted with these papers), I consider it advisable that a further notification should be issued, and should be published in the usual manner in the "Gazette." I have accordingly prepared and herewith transmit a form of such further notification. In this form I have endeavoured—

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[*] Nos. 309 and 324.

1. To insert the name of His Imperial Majesty the Emperor of the French in such a manner as to meet the wishes of the French Government in this respect.

2. To avoid, as far as practicable, throwing any doubt upon the validity and operation of the original notification of the blockade of the entrance of the Gulf of Finland, which was published in the "Gazette" of May 18.

I have, &c.
(Signed) J. D. HARDING.

Inclosure in No. 333.

Notification.

Foreign Office, June 7, 1855.

Notification.

WITH reference to the blockade of the Gulf of Finland already established on the 28th April last, and duly notified in the Supplement to the "Gazette" of the 18th May last, it is hereby further notified that the Right Honourable the Earl of Clarendon, K.G., Her Majesty's Principal Secretary of State for Foreign Affairs, has received from the Lords Commissioners of the Admiralty an official communication from Rear-Admiral the Honourable R. S. Dundas, commanding Her Majesty's ships in the Baltic, and acting in the name and on behalf of Her Majesty, and of Her ally His Imperial Majesty the Emperor of the French, from on board Her Majesty's ship "Duke of Wellington," at anchor off Tolboukien Lighthouse, bearing east 16 miles, dated 28th May, announcing that on the 27th May all the ports, creeks, and inlets in the said Gulf of Finland (including especially the port of Cronstadt) were strictly blockaded by a competent force; and it is hereby notified that the blockade of all the ports, creeks, and inlets will be strictly maintained by the naval forces of Her Majesty, and of His Imperial Majesty the Emperor of the French, until further notice.

It is hereby further notified that this notification is not in any manner, or for any purpose whatever, to be considered as superceding, impairing, or altering the notification relating to the said blockade of the Gulf of Finland heretofore published in the Supplement to the "London Gazette" of the 18th May last, but that it is issued only for the further and fuller information of all persons interested therein.

No. 334.

The Queen's Advocate to the Earl of Clarendon.—(*Received June* 7.)

Doctors' Commons, June 7, 1855.

My Lord,

Proposed communication to Danish Government respecting treatment of vessels coming out of blockaded ports.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 5th June instant, stating that he was directed to transmit to me a letter which, in pursuance of what passed at the interview with the First Lord of the Admiralty a short time ago, at which Mr. Hammond and myself were present, and which was afterwards recorded in a letter from the Admiralty sent herewith, your Lordship addressed to the French Chargé d'Affaires on the subject of the communication which Her Majesty's Government proposed to make to the Danish Minister in reply to his observations on the reserve contained in the letter addressed to him on the 11th April, touching the manner in which vessels coming out of blockaded ports might be dealt with by Her Majesty's cruizers. Mr. Hammond also incloses the reply, which your Lordship has just received from the French Ambassador on this subject, stating the objections entertained by his Government to the employment of the precise terms which your Lordship proposed to employ, and suggesting a modification in your expressions; and requests that I would take the observations contained in M. Persigny's letter into consideration, together with the former papers relating to this case, which are inclosed, and report to your Lordship at my earliest convenience my opinion thereupon.

In obedience to your Lordship's commands I have taken the papers into consideration, and have the honour to report—

Rejects French amendments.

That I cannot recommend any alteration as to the point in question being made to the effect or in the sense which M. de Persigny appears to suggest in his note to your Lordship of the 1st June.

In the letter from the Secretary to the Admiralty to Mr. Hammond (12th May),

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Capture of all vessels from blockaded ports is principle of international law, not of British prize law.

and your Lordship's letter to Mr. Baudin in accordance therewith, the principle of international law which is applicable to the question under consideration is correctly stated. Her Majesty's Officers have, in my opinion, the absolute legal right by the law and usage of nations to capture and send in for adjudication every laden vessel coming out of a blockaded port after the establishment of the blockade. It is, however, clearly explained in the letter and note in question that this strict legal right will not be exercised without exception, but that vessels against which there is any reasonable suspicion will be captured, and that Her Majesty's officers will exercise a reasonable discretion in each case. Count Persigny admits that both Governments are agreed upon the effect of this explanation. His Excellency, however, as I understand his note, seems desirous that the legal right should be stated by your Lordship as one exclusively and peculiarly of English prize law, and not as an undoubted belligerent right by international law.

I cannot advise your Lordship to accede to any such qualification or limitation being introduced into any formal or official document whatever, and I therefore respectfully suggest to your Lordship the expediency of adhering to the terms of your Lordship's note to M. Baudin of May 23.

I have, &c.
(Signed) J. D. HARDING.

No. 335.

The Queen's Advocate to the Earl of Clarendon.—(*Received June* 14.)

Doctors' Commons, June 12, 1855.

My Lord,

Capture of Danish vessel "Dania."

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of 6th June instant, stating that he was directed to transmit to me a note from the Danish Minister at this Court, representing the case of the capture of the Danish vessel "Dania," of Nyborg, by Her Majesty's cruizers; and to request that I would report to your Lordship my opinion upon the answer which should be returned to General Oxholm.

In obedience to your Lordship's commands I have the honour to report—

Will decide on course when he sees papers.

That I am informed by the Queen's Proctor that the "Dania," with others captured coming out of Riga after the blockade under similar circumstances, arrived in England a few days ago; that proceedings were immediately commenced against her by directions from the Admiralty; that the witnesses are actually under examination; and that the depositions and ship's papers will be immediately laid before me. As soon as I have an opportunity of seeing these documents I shall be in a position to determine upon the course which the Crown should adopt in this particular case as well as in others of the same class. I would therefore venture to submit that General Oxholm may be informed of these circumstances, and may be assured that the utmost expedition shall be used in determining the course to be adopted as to the "Dania."

I have, &c.
(Signed) J. D. HARDING.

No. 336.

The Queen's Advocate to the Earl of Clarendon.—(*Received June* 18.)

Doctors' Commons, June 16, 1855.

My Lord,

Blockade of Gulf of Finland.

French objections to a second notification.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 14th June instant, stating that Her Majesty's Ambassador at Paris having by direction of your Lordship communicated to the French Government, for their concurrence, the further notification which I suggested in my report of the 7th instant* should be published in respect to the blockade of the Gulf of Finland, he was directed to transmit to me two despatches from Her Majesty's Ambassador, together with a Memorandum communicated to his Excellency by the French Minister for Foreign Affairs, stating the grounds on which the French Government object to the proposed notification; and Mr. Hammond is pleased to request that I would take these papers into consideration, and report to your Lordship any observations which I may have to offer thereupon.

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* No. 333.

In obedience to your Lordship's commands I have taken the papers into consideration, and have the honour to report—

That the objections to the publication of the proposed notification which are pointed out in Count Walewski's Memorandum are by no means without foundation, and they had suggested themselves to me before I prepared the additional notification.

Reasons why necessary.

I considered, however, and I still consider, that Admiral Dundas' distinct statement in his letter to the Admiralty of the 22nd May last (No. 109), "that it cannot be truly stated that all the ports and places in the Gulf of Finland eastward of Dagerort and of Hango Head were strictly blockaded on the 28th April, except in so far as the trade of those ports may be affected by a blockade of the entrance of the Gulf of Finland, which was duly established on that date," when taken in connection with the Admiral's subsequent letter of the 28th May, No. 121, in which he states that "being *now* in a position in which the port of Cronstadt can be effectually blockaded, and as Her Majesty's ships will be continually cruizing in various parts of the Gulf of Finland, I am of opinion that the period has *now arrived* at which all the ports, creeks, and inlets within the Gulf may be declared to be in a state of blockade; and I submit that the usual notice may be issued to that effect, and to be fixed for yesterday's date," renders the publication of an additional notification the most advisable course.

Legal effect on ports in a gulf of blockade of the entrance to the gulf.

Unless this step is taken, it is to be apprehended that in the event of strict legal proof being required by a Prize Court from the Admiral, both of the fact and of the date of the commencement of the blockade of the ports in the Gulf of Finland (which was actually required from and furnished by Admiral Napier last year), the Admiral must admit that all the ports in the Gulf were not actually blockaded on and from the date when the entrance to the Gulf was blockaded and notified; and it might (in the absence of any subsequent notification) be held by the Prize Court that there never had been any legal or valid notification of any blockade of those ports. The legal effect upon ports within a gulf of a blockade confined to the entrance of the gulf is at this moment the subject of appeal.

The proposed "further notification" will tend to render the blockade of all the ports in the Gulf of Finland legal and notorious, at all events from the 27th May.

With respect to the observation in the Memorandum that "if the first notification should give rise to doubts, it is the duty of the Prize Courts, and not of the Government, to solve them," I can only say that British Prize Courts consider it to be the peculiar duty of a belligerent Government to obviate all doubt as to the date and particulars of a blockade instituted by it; and I therefore submit that (although it is impossible to adopt a course wholly free from difficulty), all things considered, the publication of such additional notification will be the most advisable course for Her Majesty to adopt, under the peculiar circumstances of the case.

I have, &c.
(Signed) J. D. HARDING.

No. 337.

The Queen's Advocate to the Earl of Clarendon.—(*Received June* 22.)

Doctors' Commons, June 21, 1855.

My Lord,

Danish vessels captured.

Cargoes unloaded to cross a bar, and reloaded.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 15th June instant, stating that, with reference to my Reports of the 4th and 12th instant,* respecting Danish vessels captured by Her Majesty's cruizers on the ground that they had loaded cargo after the establishment of a blockade (although they had merely unloaded, and reloaded to enable them to cross a bar), he was directed to transmit to me a note from the Danish Minister at this Court relative to the seizure of the "Otto and Olaf," for any observations I may have to make thereupon.

In obedience to your Lordship's commands I have taken the note into consideration, and have the honour to report—

M. Wehner's "Otto and Olaff."

That in this case (if I rightly remember) M. Wehner, in his letter to your Lordship of the 29th May, demanded the restitution of his vessel as a matter of right, and also stated his intention of instituting legal proceedings against the captors for costs and damages. General Oxholm appears in his note of the 8th June to ask for her restoration as a matter of favour under the special circumstances of the case, in order to save the expense of proceeding in the Admiralty Court. M. Wehner, however,

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* Nos. 331 and 335.

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Danish Minister's request for her release.

will probably institute such proceedings in any event. I may observe that M. Wehner's interest appears to be confined to the cargo, which he claims on behalf of Susé and Co. of Hamburgh; whilst General Oxholm's request is confined to the ship.

Is a Russian transferred ship.

I have perused the ship's papers, and depositions in the case, and if the only point were the suggested breach of blockade, I am of opinion that the explanation given by General Oxholm, which is supported by the master's deposition, as to the peculiar circumstances under which her cargo was unladen and reladen, might be considered sufficient to justify the Crown in directing the ship and cargo to be at once restored, either upon payment of costs, or upon the question of costs being left to the decision of the Court; such restoration being asked for, and granted as a matter of favour, and not of right. It appears, however, by the ship's papers that the "Otto and Olaf" was built in Russia, and named the "Niord," and that she was owned by Russians until the 30th of May 1854, when she appears to have been bought whilst lying at Copenhagen by her present Danish owners, and her name was then changed to the "Otto and Olaf." It is to be observed that this purchase was made *flagrante bello*, when all the parties concerned must have been well aware of the existence of the war. Had she been captured by a French cruizer she would have been at once condemned. The present master and crew were only engaged at a later period, and are therefore unable to give any information about the purchase and change of flag.

Cargo may be restored but not ship.

Under these circumstances, and bearing in mind the numerous recent cases of colourable sales of Russian ships to Danes, and also M. Wehner's avowed intention of claiming costs and damages against the captor, I cannot advise your Lordship to comply with General Oxholm's request as to this ship. She ought in my opinion to be left to be dealt with as the Court may direct.

I shall advise the Queen's Proctor to offer forthwith to restore the cargo either on payment of costs, or on leaving that question to the Court, as may be arranged with the claimants of the cargo.

I have, &c.
(Signed) J. D. HARDING.

No. 338.

The Queen's Advocate to the Earl of Clarendon.—(Received June 26.)

Doctors' Commons, June 26, 1855.

My Lord,

Blockade of Gulf of Bothnia.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 25th June instant, stating that he was directed to transmit to me the accompanying letter from the Admiralty, inclosing a notice of the blockade of the Gulf of Bothnia, which has been issued by the allied naval commanders-in-chief in the Baltic; and to request that I would take these papers into consideration, and draw up and submit to your Lordship a proper notification of the said blockade, to be published in the "Gazette," provided I see no objection.

In obedience to your Lordship's commands I have taken the papers into consideration, and have prepared, and herewith transmit, the draft of a notification of the blockade of the Gulf of Bothnia, for insertion in the "Gazette."

I have, &c.
(Signed) J. D. HARDING.

Inclosure in No. 338.

Notification.

Foreign Office, June 29, 1855.

Notification.

IT is hereby notified that the Right Honourable the Earl of Clarendon, K.G., Her Majesty's Principal Secretary of State for Foreign Affairs, has received from the Lords Commissioners of the Admiralty an official communication from Rear Admirals Penaud and Dundas, commanding the allied naval forces in the Baltic, and acting in the name and on behalf of Her Majesty and of her ally, His Imperial Majesty the Emperor of the French, announcing that on the 15th June instant all Russian ports, roads, havens, and creeks on the coast of Finland, from Nystad, in latitude 60° 46′ north, longitude 21° 20′ east of Greenwich, to Hango Head, in latitude 59° 46′ north,

longitude 22° 55′ east of Greenwich, including especially the port of Abo, and including likewise all the islands and islets fronting the said coast, and all channels and passages leading amongst the said islands towards the said coast, that is to say, more especially the channels leading to and amongst the islands between Nystad, as aforesaid, and the Island of Landto, in latitude 60° 23′ north, longitude 20° 47′ east of Greenwich, and the several channels respectively leading between, and to the eastward of, the Islands of Landto, Enklinge, Kumblinge, Seglinge, and the Kokar Rocks, in latitude 59° 52′ north, longitude 21° east of Greenwich, and thence all channels leading to the coast of Finland between the Kokar Rocks and the Outo lighthouse, and between Outo and Hango Head, as aforesaid, were placed in a state of strict blockade by a competent force of the allied fleets; and it is hereby further notified that all measures authorized by the laws of nations and the respective Treaties between their Majesties and the different neutral Powers, will be adopted and executed with respect to all vessels which may attempt to violate the said blockade.

No. 339.

The Queen's Advocate to the Earl of Clarendon.—(Received June 29.)

My Lord,

Doctors' Commons, June 28, 1855.

Seizure of Austrian vessel "Nina" at Ipswich.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 23rd June instant, stating that he was directed to transmit to me a note from the Austrian Minister at this Court, relative to the seizure of the Austrian vessel "Nina" by the Custom-house authorities at Ipswich, also inclosing a letter from the Treasury on the same subject, and requesting that I would report upon the answer which should be returned to Count Colloredo.

In obedience to your Lordship's commands I have taken the papers into consideration, and have the honour to report—

Formerly Russian, owned and commanded as at present.

Suspicious.

That I have inquired of the Admiralty Proctor into the circumstances and proceedings connected with this vessel. He informs me that she has been seized by the authority of the Customs, and proceeded against under his advice and that of the Admiralty Advocate upon what appears to me to be sufficient grounds. She appears to have been at Gloucester in April, 1853, under Russian colours, both her owner and master being then apparently the same persons as at present. There was considerable difficulty and delay in obtaining the delivery of her papers from the master, and he has up to the 23rd June refused to be examined as a witness. It is somewhat singular that Count Colloredo, whilst stating that she was purchased at Odessa by her present owner in September, 1853, should omit to state the date or place at which she first actually assumed the Austrian flag.

Must leave to decision of Prize Court.

Under these circumstances I am of opinion that Count Colloredo should be informed, without any allusion to these facts, that your Lordship must decline to interfere with the legal proceedings now pending against the "Nina," which must be left to the decision of the Prize Court.

I have, &c.
(Signed) J. D. HARDING.

No. 340.

The Queen's Advocate to the Earl of Clarendon.—(Received June 30.)

Doctors' Commons, June 30, 1855.

My Lord,

Time allowed by Russian Government to British vessels to clear out after outbreak of war.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of yesterday's date, stating that he was directed to transmit to me a letter from Mr. Ellis, requesting to be furnished with official documents or information to produce in the Court of Common Pleas on Monday next, respecting the time allowed by the Russian Government to British vessels to load and clear out of Russian ports after the breaking out of the present war; and to request that I would take this paper into consideration, and inform your Lordship what answer it would be right and proper to return to Mr. Ellis.

In obedience to your Lordship's commands I have taken the paper into consideration, and have the honour to report—

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Mr. Ellis's inquiry.

That I am not aware that your Lordship has any sufficient means of giving Mr. Ellis either the document or the evidence which he desires. However this may be, he has not, in my opinion, established any sufficient case for requiring your Lordship to deviate in his favour from what I conceive to be the safe and ordinary practice in such matters, viz., not to communicate information or copies of official documents from the Foreign Office to any applicants privately, or except in obedience to a subpœna or other writ or order of some competent court. I am therefore of opinion that Mr. Ellis should be informed that his request cannot be complied with.

Should decline to answer.

I observe that Mr. Ellis omits to give any particulars of the nature or object of the suit in question, the use which he means to make of the information which he seeks, or the names or occupations of his clients. The application is made at a very late period of the proceedings, and he does not give any reference or even state that he is acting under the advice of counsel in making any such application.

I beg to refer to my Report upon Mr. Condell's application, dated the 13th January, 1854.*

I have, &c.
(Signed) J. D. HARDING.

No. 341.

The Queen's Advocate to the Earl of Clarendon.—(*Received July* 2.)

Doctors' Commons, June 30, 1855.

My Lord,

Danish vessel "Dania."

WITH reference to my report of the 12th June instant,† as to General Oxholm's application as to the case of the Danish vessel "Dania," I have now the honour to report—

Restored with cargo. Costs pending.

That the "Dania," together with her cargo, has been, under my advice, restored, but that, inasmuch as the claimants insist upon and are proceeding for costs and damages against the captor, this question still remains to be decided by the court.

I may, perhaps, be permitted to suggest the possibility of causing inquiry to be made of the foreign Ministers who in so many cases apply to your Lordship for the immediate release of captured vessels under special circumstances, in order to save expense to the owners, whether they are prepared, in case of their request being granted, to undertake that no claim for costs or damages shall be made in the Prize Court against the captors.

Costs should not be sued for in cases of restoration.

As to suggesting to Foreign Ministers who claim release of vessels.

It does not appear to me to be a very consistent or convenient course for a foreign Minister to apply to Her Majesty's Government to restore a vessel without further proceedings, in order to save expense to the owner, whilst the owner is at the same time instituting or carrying on proceedings for costs and damages against the captor, and is thus voluntarily either causing or increasing the very expense of which his Minister is complaining. I observe that in these cases the claimants appear to have no desire to compromise the matter, or to settle it upon any terms, or to save the expense of legal proceedings, but rather the contrary; and the interests of the individual captors are, as a general principle, I conceive, entitled to consideration and legal protection on the part of the Crown. At all events it does not seem to me that foreign Ministers have a just right to complain of the institution of legal proceedings in those cases in which foreigners are themselves voluntarily parties by praying for costs and damages after and notwithstanding restitution.

I have, &c.
(Signed) J. D. HARDING.

No. 342.

The Queen's Advocate to the Earl of Clarendon.—(*Received July* 3.)

Doctors' Commons, July 2, 1855.

My Lord,

M. Wienholt's saltpetre, exported to Portugal and re-exported to Hamburgh; captured by French cruizer.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 13th June last, stating that he was directed to transmit to me the accompanying correspondence as noted in the margin of his letter, respecting a quantity of saltpetre in which M. Wienholt is interested, and which was originally exported from this country to Portugal, and subsequently captured on its voyage from the Tagus to Hamburgh, and which has been condemned in the French Prize Court; and to request that I would take these papers into consideration, and report to your Lordship my opinion upon M. Wienholt's application for the interference of Her Majesty's Government to prevent the saltpetre from being confiscated.

Protest.

I am also honoured with Mr. Hammond's letter of the 27th June, stating that, with reference to the above, he was directed to transmit to me some further communications (as noted in the margin of his letter) from Messrs. Wienholt, protesting against the confiscation by the French Prize Court of the saltpetre belonging to their firm, which was captured by a French war steamer on board the Hanoverian vessel "Vrou Howina," and to request that I would take the papers now inclosed into consideration, together with the correspondence already in my possession, and report to your Lordship my opinion upon Messrs. Wienholt's application for the interference of Her Majesty's Government in their behalf, and also as to the answer which should be returned to their letters.

In obedience to your Lordship's commands I have taken the papers into consideration and have the honour to report—

Her Majesty's Government cannot interfere.

That I am of opinion that M. Wienholt's application for the interference of Her Majesty's Government on his own behalf and on that of his firm, should not be acceded to by your Lordship, and that an answer may be returned to his letters to that effect.

I presume that your Lordship is satisfied that Mr. Frederick Wienholt and his partners are British subjects, if not, they should perhaps be referred to the Government of their own country.

Interference with Prize Court of an ally only allowable in very exceptional cases.

As I do not consider it advisable at present, that Mr. Wienholt should be informed of the reasons of your Lordship's decision, I forbear to trouble your Lordship with remarks either upon the judgment of the French Conseil des Prises, or on the arguments of Mr. Wienholt and his advocate. Such remarks could not be usefully made without seeing all the papers and depositions in the case, as well as the arguments for the captors before the Conseil des Prises. I may, however, observe for your Lordship's guidance, that it is only in very exceptional cases that your Lordship should interpose in favour of British subjects whose goods have been condemned in a French Prize Court, especially when they have been so condemned for trading with the enemy in saltpetre. Even if the decision of the Conseil des Prises should not appear altogether to be sound or satisfactory (as to which I do not wish to be understood as expressing any opinion), yet, the general circumstances of the case, more especially all that passed at Oporto, and the conduct of Mr. Scholz (whom Mr. Wienholt admits to have been his agent there), appear to me to be so very suspicious, if not absolutely fraudulent (which they are considered to be by Mr. Consul Smith in No. 77), as to render it unadvisable that your Lordship should address any remonstrance to the French Government as to this case.

I have, &c.
(Signed) J. D. HARDING.

No. 343.

The Queen's Advocate to the Earl of Clarendon.—(*Received July* 5.)

Doctors' Commons, July 4, 1855.

My Lord,

Netherlands vessels "Catharine" and "Sjouke Alida" detained in the Black Sea by Her Majesty's cruizers.

Compensation to owners.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 22nd June last, stating that, with reference to my letter of the 31st March last,* respecting the compensation to be awarded to the owners of the Netherland vessels the "Catherine" and "Sjouke Alida," in consequence of the detention of those vessels by the cruizers of Her Majesty's squadron in the Black Sea, he was directed to transmit to me a note from the Netherlands Minister at this Court stating the amount of the compensation to which the owners of the vessels in question lay claim; and to request that I would take Baron Bentinck's note into consideration, together with the former papers therewith sent, and that I would report to your Lordship my opinion as to the amount which should be allowed to the claimants.

In obedience to your Lordship's commands I have taken the papers into consideration, and have the honour to report—

That I observe that Baron Bentinck incloses to your Lordship a letter from the parties interested in these vessels, Messrs. Kuyper, Vaudane, and Smeer, claiming

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* This Report cannot be found.

† No. 335.

* No. 296

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2,251*l.* in all (as I understand it) as a proper amount of compensation, and his Excellency recommends this demand to the favourable consideration of your Lordship in general terms, but his Excellency does not, as I understand his note, distinctly adopt that demand or vouch for its correctness or reasonableness, nor does he, I apprehend, officially demand or allude to that sum, or any other sum, as being a proper and reasonable amount of compensation, in the opinion of the Netherland Government. This appears to me a somewhat inconvenient mode of proceeding; and I would venture to suggest, that if the Netherland Government is to be considered as either making or adopting this sum, it should form and express its own opinion of the reasonableness of the particular sum demanded on account of each vessel, and should be prepared to supply particulars and vouchers in support of each item, and that it should not confine itself to recommending to the favourable consideration of Her Majesty's Government such a vague demand as that of Messrs. Kuyper and Co., in which no particulars or vouchers are given, and which is not even in the form usual amongst merchants.

Netherlands Government should demand fixed sum, supported by vouchers.

Subject to these observations, I can only say that the particulars of the demand contained in the letter of Messrs. Kuyper, Vaudane, and Smeer are so entirely wanting in details, that it is impracticable to enter upon any useful discussion thereof.

I can only remark generally that the total amount claimed seems at first sight extravagant, and that no particulars are given as to the composition and value of either of the cargoes or of their depreciation (if any) by the detention, nor in the actual loss attempted to be distinguished from the contingent, or consequential damage. Above all no single document by way of voucher is even alluded to.

If Messrs. Kuyper and Co. were making a similar demand upon underwriters, or any other mercantile firm, they would not receive anything without furnishing a very different sort of an account, together with vouchers for each item.

Cannot consider claim without proper vouchers and particulars.

Until therefore the necessary further particulars and vouchers for the sum claimed (if indeed such sum is seriously demanded, and relied on by the Netherland Government) are forthcoming, I cannot attempt to offer any opinion as to the amount which should be allowed to the claimants.

I can only suggest the necessity of some distinct understanding being arrived at, as to whether Her Majesty's Government is to deal with the Netherland Government directly and exclusively in this matter, or whether it is to deal with the claimants themselves. It will be for your Lordship to consider whether Baron Bentinck might not be requested to state distinctly whether the Netherland Government adopts Messrs. Kuyper and Co.'s demand and relies upon its correctness; and if it does so, that Her Majesty's Government may be furnished with a regular mercantile account in each of the two cases, with items, and vouchers, as usual in all cases of maritime loss or damage (distinguishing actual loss incurred from contingent, or consequential or estimated loss), in order to enable Her Majesty's Government to form some opinion as to the reasonableness of the demand made in each case and under each head.

I have, &c.

(Signed) J. D. HARDING.

No. 344.

The Queen's Advocate to the Earl of Clarendon.—(*Received July* 6.)

Doctors' Commons, July 5, 1855.

My Lord,

As to restoring Danish prize "Otto and Olaf."

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 29th June last stating that, with reference to my report of the 21st June,* upon the case of the "Otto and Olaf," he was directed to transmit to me a further note from the Danish Minister at this Court; and in requesting my opinion thereupon he was pleased to add that General Oxholm has expressed his confident hope that the vessel will be restored.

In obedience to your Lordship's commands I have the honour to report—

That I can only refer to and adhere to my previous reports upon this case of the 4th and 21st June last.

Number of Russian vessels under Danish flag.

Peculiar vigilance appears to me to be requisite with respect to Danish vessels, inasmuch as nearly half the vessels seized since the commencement of the war on suspicion of being Russian have been seized under the Danish flag, and a pretended purchase has been almost invariably insisted upon. Many of these frauds have been detected and exposed, but neither the Danish Government nor the Danish authorities or merchants appear to me to have taken any sufficient measures to prevent these abuses of the Danish flag, but rather the contrary; and I own that I cannot see any sufficient reason for acceding to General Oxholm's application or for restoring this particular vessel. It will, however, be competent for the Crown to adopt this course if your Lordship should think it advisable. In this event, I submit that the payment of the captor's costs may fairly be required as a condition precedent.

Danish Government take no step to prevent abuse of flag.

Crown has power to restore, if it pleases.

As to costs.

I have, &c.

(Signed) J. D. HARDING.

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* No. 337.

No. 345.

The Queen's Advocate to the Earl of Clarendon.—(*Received July* 11.)

Doctors' Commons, July 10, 1855.

My Lord,

Austrian vessel "Nina" seized at Ipswich on suspicion of being Russian.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 6th July instant stating that with reference to my report of the 28th ultimo,* on the case of the Austrian vessel "Nina" seized by the Custom-house authorities at Ipswich, he was directed to transmit to me two further notes on this subject which have been received from the Austrian Minister at this Court; and to request that I would inform your Lordship at my earliest convenience whether there is anything in those notes to cause an alteration in the opinion already given in my letter of the 28th ultimo.

In obedience to your Lordship's commands I have taken the notes into consideration, and have the honour to report—

Can't alter opinion on evidence produced.

That the "Nina" having been seized by the Customs, and proceeded against upon what appeared to the Admiralty Advocate to be sufficient grounds, I can not say that there is sufficient in the notes in question to cause any material alteration in the opinion which I have already given in my report of the 28th ultimo. I may observe (for your Lordship's guidance) that although Count Colloredo states, under date of the 5th of July, that the asserted owner (Gherardovitch) was then in this country, yet that no claim had been made in the Admiralty Court by him or on his behalf up to the 7th July, and that until the ship's papers have been translated, and the depositions of the master and crew taken, it is impossible to form any opinion as to the ultimate result of the case. Two documents only are enclosed or alluded to by Count Colloredo, (1.) the certificate of the owner having been born in the Austrian dominions, (2.) the memorandum (in Italian) of the sale and purchase of the vessel at Odessa in August 1853; this is not executed by Gherardovitch, who whould seem to have then been domiciled at Odessa, nor does it appear under what flag the vessel then sailed, nor when she changed her flag, or he changed his domicile. It is obvious that neither of these documents is sufficient in itself to justify your Lordship in recommending the restitution of the "Nina."

I have, &c.

(Signed) J. D. HARDING.

No. 346.

The Queen's Advocate to the Earl of Clarendon.—(*Received July* 12.)

Doctors' Commons, July 11, 1855.

My Lord,

"Gefion" built in Russia for Swedish merchant, and now at Christiania.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 3rd July instant, stating that he was directed to transmit to me the accompanying letter, together with the original documents therein inclosed, which your Lordship has received from Baron Hochschild, respecting the case of the vessel "Gefion," which having been built in the port of Libau on account of a mercantile house in Christiania, is now lying in the latter port, having proceeded thither from Libau on the blockade being raised, and to request that I would take these papers into consideration, and report to your Lordship at my earliest convenience my opinion thereupon.

In obedience to your Lordship's commands I have taken the papers into consideration, and have the honour to report—

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Was built *flagrante bello*, &c.

Cannot comply with request of Netherlands Minister.

That I cannot advise your Lordship to comply with Baron Hochschild's request. I may remark, for your Lordship's guidance, that this vessel appears to have been built in Russia, her construction being proceeded with and completed "flagrante bello," and she is alleged to have left Libau after the blockade of that port was raised last year, and after and notwithstanding an unsuccessful application had been made to Her Majesty's Government in her favour. Messrs. Sorensen and Co., the owner's agents at Libau, have been concerned in a number of very suspicious transfers of Russian ships to neutrals, which are still before the Prize Court, and Mr. Gamper, the builder of the "Gefion," at Libau, has been concerned in at least one of such transctions, as in connection with Sorensen and Co.

I have, &c.
(Signed) J. D. HARDING.

No. 347.

The Queen's Advocate to the Earl of Clarendon.—(*Received July* 13.)

Doctors' Commons, July 13, 1855.

My Lord,

Blockade of the White Sea.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 12th July instant, stating that he was directed to transmit to me the accompanying letter from the Admiralty, inclosing a notice of the blockade of Russian ports, havens, and creeks in the White Sea; and to request that I would take the same into consideration, and draw up and transmit to your Lordship, at my earliest convenience, a proper notification of the said blockade for insertion in the "Gazette," provided I see no objection thereto.

In obedience to your Lordship's commands I have taken the papers into consideration, and have the honour to report—

Notification.

That I have accordingly prepared and herewith transmit a notification for insertion in the "Gazette."

Name of Emperor of French inserted.

I have inserted therein the name of His Imperial Majesty the Emperor of the French without being distinctly instructed so to do, in accordance with what has been done in similar cases which have already occurred. If this be not approved of in this particular case, it will be only necessary to omit the words underscored in the notification.

I do not observe that in any of the documents transmitted to me Captain Hamilton Baillie expressly states that he had on the 11th June placed his force so as to close all the ports and places mentioned in the notification, and had then actually instituted a blockade thereof, but this is so clearly to be inferred from the tenor of his despatches that I presume the Admiralty have no doubt of it, and I have assumed it to be the fact.

I have, &c.
(Signed) J. D. HARDING.

Inclosure in No. 347.

Notification.

Foreign Office, July 13, 1855.

Notification.

IT is hereby notified that the Right Honourable the Earl of Clarendon, K.G., Her Majesty's Principal Secretary of State for Foreign Affairs, has received from the Lords Commissioners of the Admiralty an official communication from Captain Thomas Baillie, R.N., Senior Officer of the White Sea Squadron, acting in the name and on the behalf of Her Majesty and her ally His Imperial Majesty the Emperor of the French, announcing the establishment, on and from the 11th June, 1855, of a strict blockade of the Russian ports and places therein mentioned, and especially of the ports of Archangel and Onega, by a competent force, which communication is to the following effect:—

"It is hereby notified that on and after the 11th day of June, 1855, all the Russian ports, roads, havens, and creeks in the White Sea, from point Oslofka, in latitude 67° 11′ 30″ N, longitude 41° 22′ 12″ E; to Cape Konoustria, in latitude

67° 11′ 30″ N, longitude 43° 48′ 42″ E; including especially the ports of Archangel and Onega, and placed in a state of strict blockade by a competent force of Her Britannic Majesty's ships and vessels under my orders. And it is further notified that all the measures authorized by the law of nations and the respective Treaties between Her Britannic Majesty and the different neutral powers will be adopted and executed with respect to all vessels which may attempt to violate the said blockade.

"Dated on board Her Britannic Majesty's ship 'Mæander' off Archangel, this 11th June, 1855.

(Signed) "THOMAS BAILLIE, *Captain*,
"*Senior Officer of the White Sea Squadron.*"

And it is hereby further notified that all measures authorized by the laws of nations and the respective Treaties between Her Majesty and His Majesty the Emperor of the French and the different neutral powers will be adopted and executed on behalf of Her Majesty and of her ally with respect to all vessels which may attempt to violate the said blockade.

No. 348.

The Queen's Advocate to the Earl of Clarendon.—(*Received July* 14.)

My Lord, *Doctors' Commons, July* 13, 1855.

Danish vessel "Otto and Olaf."

Judgment of Prize Court.

WITH reference to my former reports* upon the representations of General Oxholm on the matter of the Danish vessel "Otto and Olaf," captured by one of Her Majesty's ships when coming out of Riga, I beg respectfully to invite your Lordship's attention to the Report of the Judgment of the Prize Court in that case in the "Times" of July 13th (this day).

I beg also to inclose a copy of the printed papers in the case, and to request that this copy, together with a copy of the "Times" containing the Judgment, may be transmitted to Her Majesty's Consul at Copenhagen, and that his attention may be directed to the dates of the "Latin Pass," p. 5, No. 1 (4th May), and of the Certificate, p. 6, No. 2 (9th June). To the very different names and descriptions of the owners in the different documents. "Claim," p. 27. "Latin Pass and Certificate," pp. 5, 6. "Certificate of Measurement, p. 6, No. 3. "Bill of Sale," p. 10, No. 11. "Surveyor's Certificate," p. 12, No. 14. "Answers to 10th Interrogatory," pp. 16, 20, 23.

Wants information as to frequent irregularities in ships' papers of Danish vessels.

To the fact that the Latin Pass had never been renewed, as required by the Danish Law, although the ship had been thrice at least in a Danish port after it was granted (see Log Book, p. 4, No. 21), and that Her Majesty's Consul may be requested to obtain the best information, and legal advice if necessary as to these points; more particularly to the 1st and 2nd points; and that he may be informed that these and similar irregularities often occur in Danish ships' papers of which various excuses and explanations are offered by claimants, and that it would be desirable if the Queen's Proctor could be furnished with information, for the guidance of the Crown, as to how far such irregularities are or are not considered as of legal importance in Denmark, and what precautions are taken to secure the real names and descriptions of owners being found on the face of the ship's papers; and also to ensure the correct dating of Latin Passes, and their renewal after each voyage, with a view, not merely to the case of the "Otto and Olaf," but to other Danish cases.

In order to avoid any misunderstanding I beg to repeat that I am only desirous of obtaining the necessary information from independent persons, and that I do not wish any communication on the subject to be addressed to the Danish authorities.

I have, &c.
(Signed) J. D. HARDING.

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* No. 344, &c.

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Inclosure in No. 348.

Extract from the "Times" of July 13, 1855

Admiralty Court, Thursday, July 12.

(Before Dr. Lushington.)

The "Otto and Olaf."—Claim for Restitution of Ship, and for Costs and Damages on Detention of Cargo.

"Otto and Olaf."

Breach of blockade.

THIS ship, under Danish colours, took on board a cargo of coals at Copenhagen, and sailed to the 2nd of January last, bound for Riga, where, having discharged it, she was again loaded with wheat and rye, and attempted to prosecute her voyage, but was compelled, in consequence of the ice, to put into Bolderaa. On leaving she was unable to cross the bar, in consequence of there not being sufficient depth of water; a part of the cargo was therefore put into lighters, and subsequently reshipped. On the 8th of May she was captured by Her Majesty's ships "Arthur" and "Geyser," off Riga, for a breach of blockade, in loading cargo after notification of the blockade, but on the 15th of that month was released. On the evening of the same day she was again seized by the same vessels, and sent to England as prize. The cargo was restored, but a claim was now made for costs and damages incurred by its detention, and another claim was made for restitution of the ship with costs and damages.

The Queen's Advocate, on behalf of the captors, said that the port was blockaded on the 19th April, the vessel was first captured on the 8th May, and, according to the principles laid down in the case of the "Soglasie," the Court must call for further proof. The master in answer to interrogatories, deposed that he had not attempted to leave any port under blockade; that when at Riga he saw in a Hamburg paper—he thought in April—a Proclamation that all ships would be allowed to go out which had entered Russian ports after the blockade was raised last year, and had taken on board their cargoes before the blockade was imposed this year; and that he did not receive any other instructions from any one respecting any blockade which then was or thereafter might be established. The mate also deposed that he did not receive any instructions whatever. Riga was the most difficult place to affect with a knowledge of a blockade, and he did not think that the Court could believe that the master and mate were answering honestly. This vessel, however, instead of keeping her cargo on board, took part of it out and reloaded it. It was not said that the blockade had not been broken, because the cargo had been taken on board before it was imposed, but they went beyond it, and said they never heard of the blockade at all. When parties claimed costs and damages they must come with clean hands. The general principles of law applicable to these cases were laid down by Chancellor Kent in his "Commentaries," vol. 1, p. 148; in the Arthur Edward's Ad. R. 203; and the "Vrouw Judith," 1 C. Rob., 153. It was all very well to say that vessels were only taking on board from lighters a part of the cargo which they had before put into them; but how were captors to know the nature of that pecular loading from lighters which in some cases they had actually seen to be going on, the lighters having run away when they saw the blockading vessels? It was preposterous to ask for costs and damages on the cargo. Besides, the cargo must be guided by the fate of the ship. With regard to the ship, it was extremely difficult to know who were the owners. The names of the persons now claiming her did not agree with those contained in the ship's papers. The Latin Pass was not in compliance with the conditions imposed by the Danish Government. There had been a change of ownership, and the vessel had made three trips to Copenhagen without the pass being renewed. The ship had remained Russian property down to the 5th of May, long after the war was known to exist.

Dr. Deane followed on the same side, and contended that if the vessel had been properly sent to this country it would be impossible to grant the expenses consequent on the detention of the cargo. The sale of the ship from Russians to Danes had taken place when she was at Copenhagen, under a power of attorney, but none of the correspondence between the sellers and purchasers had been produced. The name of one of the persons claiming the ship did not appear anywhere in the papers.

Dr. Addams, on behalf of the claimants, submitted that this was a case for immediate restitution, with costs and damages.

The Court wished to known if there was any case in which costs and damages had been given on the restoration of a vessel captured on coming out of a blockaded port.

Dr. Addams was not aware of any instance in which a ship had been captured on such flimsy grounds as the "Otto and Olaf." He would not argue the question of costs and damages, but would adhere to what he had said in the "Ostsee." Where a cargo had been detained and sent in for adjudication without the slightest ground for it, the owners were entitled to costs and damages. With respect to the ship, he would not complain of the law which enabled a captor to seize her, send her home for adjudication, and then avail himself of whatever appeared in the ship's papers which would inure to her comdemnation, even though he had procured the information by his own unjust act. This vessel, it had been said, was purchased of Russian owners, *flagrante bello*, but he presumed that was legal. There had been two bills of sale, one only of which was before the Court, but the other had been placed in the hands of the Queen's Proctor, which accounted for the variation in the names. What was there to raise a presumption against the integrity of the sale? The single circumstance was that the bill of sale was dated after the Latin Pass, but he believed that a number of passes were issued on a given day, and were afterwards granted to persons applying for them without any indorsement as to the actual date when they were given out. The ship had been sent in for adjudication without any ground for it.

Dr. Twiss also appeared for the claimants, and said that there was a certificate which formed part and parcel of the ship's papers, which fixed the date when the pass was given, and by which all difficulty as to the period of the sale was removed. The Danish authorities were the best judges as to whether or not their municipal law had been complied with. The certificate was dated the 9th of June, and the bill of sale the 30th of May. A vessel coming out of a blockaded port was liable to be overhauled, but if it turned out that the cargo was taken on board before the blockade was established, and she was prevented from sailing simply by reason of the ice, there was no probable cause for detaining her and sending her to this country for inquiry or adjudication. There could not be a doubt that this vessel was neutral property, and that she had not committed a breach of blockade.

The Queen's Advocate and *Dr. Deane* having been heard in reply,

Judgment.

The learned Judge said there were two questions to be disposed of—one relating to the cargo, the other to the ship. Assuming the vessel to have been duly transferred to Danish subjects, they determined to resort to an adventure. Having entered a Russian port after the former blockade had been removed, they knew that if they took a cargo on board before it was reimposed they would be entitled to come out. There was nothing illegal in their so doing, and no blame was to be attributed to them for it, provided they carried out their intention *bonâ fide*. Having taken the cargo on board before the end of January, the ship was unable to quit the port in consequence of the ice. When she attempted to leave there was not sufficient depth of water over the bar; part of the cargo was transferred to a lighter, and again put on board. There was no illegality in that, provided the Court was satisfied that it was the same identical cargo that was originally shipped on board. When, however, she came out of the Gulf of Riga, or even before, she was liable to detention by any of Her Majesty's cruizers who were maintaining the blockade established on the 19th of April, and it was the duty of the claimants to prove their title to restitution. *Primâ facie*, every vessel quitting a blockaded port was liable to comdemnation, and the claimants must make out an exception to the general rule. It never could be contended that such vessel was detained without probable cause. It was clear that the cargo could not have been restored without the ship; it was a participant in the lot and fate of the ship. If there was good ground for bringing the ship to this country, there was also good ground for bringing the cargo. The cargo has been restored, and he was very clearly of opinion that the claim for costs and damages with respect to it had no shadow of foundation; on the contrary, he was of opinion that he ought to decree the captors their expenses, more particularly as part of it had been unladen and again put on board. With regard to the ship nothing was more important than to take care that property brought in by cruizers was restored to no one except to the rightful owners. He was of opinion that it was no part of his duty to examine minutely into the municipal law of Denmark; the only purpose for which he could look into it was to see whether the property belonged *bonâ fide* to Danish subjects. The evidence of the master supported the statement of the claimants as to ownership, but the Court was also bound to look at the documentary evidence. The bill of sale differed from the evidence given by the master, and the statement of the claimants and other documents were discordant with them. On that ground the Court must order further proof, but there was an additional reason. The sale from the Russian to the Danish owners took place very hsortly after the commencement of the war. The Court, according to its ordinary rules,

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looked with great jealousy at a sale to a neutral subject at the commencement of a war. He could not take into consideration the second bill of sale being shown to the Queen's Proctor. It was irregular to attempt to introduce into the case evidence not properly before the Court, and was the strongest reason for directing further proof. The cargo must be restored on payment of the captors' expenses, and with respect to the ship there must be further proof.

No. 349.

The Queen's Advocate to the Earl of Clarendon.—(*Received July* 14.)

Doctors' Commons, July 13, 1855.

My Lord,

Austrian vessel "Nina."

Papers wanted.

IN consequence of what has transpired upon the inspection of the ship's papers of the Austrian ship "Nina," seized at Ipswich on suspicion of being Russian property, and reported on by me on the 28th June and 10th July last,* I have to request that either the original, or at all events a copy of the Italian memorandum of sale of that vessel transmitted to your Lordship by Count Colloredo, and which was, with the other papers, returned by me with my report of the 10th July, may be transmitted to the Admiralty Proctor, Doctors' Commons.

I have, &c.
(Signed) J. D. HARDING.

No. 350.

The Queen's Advocate to the Earl of Clarendon.—(*Received July* 21.)

Doctors' Commons, July 21, 1855.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 19th July instant, stating that, with reference to my report of the 11th,† on the application of the Swedish Minister at this Court in favour of the "Gefion," he was directed to transmit to me a letter which your Lordship has received from Baron Hochschild in reply to the communication which your Lordship addressed to him founded on my report above referred to.

Mr. Hammond is pleased to add that in forwarding these papers to me he is to observe that your Lordship considers that it is quite impossible, in dealing with friendly, though neutral Powers, to refuse to supply the reasons upon which the decisions of Her Majesty's Government injurious to their subjects are founded.

Case of the "Gefion," built in Russia, and sold to Swedish merchants.

As to allowing her to leave Christiania with a guarantee against capture.

That your Lordship wishes therefore to know, with reference to my report of the 11th instant, whether the construction of a ship in Russia, and her subsequent transfer to a Swedish subject (supposing the transfer to have been a *bonâ fide* one), is contrary to our law, and would subject the ship to seizure and confiscation; and further with reference to my remark that the "Gefion" is alleged to have left Libau after the blockade was raised, your Lordship would wish to know whether there is anything illegal in such a proceeding; for when the raising of a blockade is publicly announced, it would seem that ships might go where they pleased without its afterwards being made a matter of charge against them. That I further add, with reference to the "Gefion's" departure from Libau, that it was "notwithstanding an unsuccessful application had been made to Her Majesty's Government in her favour"; but that your Lordship remarks, if you remember rightly, the application was for the "Gefion" to come out *after* Libau was blockaded. That no application was made after the blockade was *raised*, and this ground of charge cannot therefore apply.

Lastly, Mr. Hammond observes that the fact of the agents and builders at Libau having been concerned in some suspicious transfers of Russian ships cannot be alleged as a sufficient reason why the "Gefion" should be condemned to rot in a Swedish port until peace is concluded, unless Her Majesty's Government have some proof to give that the transfer of the "Gefion" was fraudulent.

In conclusion, Mr. Hammond states that your Lordship would be glad to receive at my earliest possible convenience my further observations on this matter.

In obedience to your Lordship's commands I have the honour to report—

Such transfer not absolutely illegal.

But suspicious.

That the construction of a ship in Russia, and her subsequent transfer (*flagrante bello*) to a Swedish subject, supposing such transfer to have been a *bonâ fide* one, is not absolutely contrary to our law, and will not necessarily subject the ships to confiscation; such circumstances however are considered by our law very unfavourable and suspicious, and to be sufficient to justify the seizure of the ship, and to impose on her owners the duty of proving the *bona fides* of such a transaction to the satisfaction of a Prize Court; failing which she will be condemned.

Leaving port after raising of blockade not illegal, but not to be encouraged.

The leaving a blockaded port after the raising of the blockade is not illegal; but those engaged in such a proceeding cannot reasonably expect any special favour or encouragement from the blockading Power, especially where the enemy's ports have been permanently blockaded, so far as the ice will permit.

Onus of proof of *bonâ fides* is on the "Gefion."

Cannot recommend guarantee against capture.

Large numbers of fraudulent transfers, in consequence of flag covering cargo.

With reference to the circumstance of the agents and builders of the "Gefion" at Libau having been concerned in some suspicious transfers of Russian ships not being a sufficient reason why the "Gefion" should be condemned to rot in a Swedish port until peace is concluded, unless Her Majesty's Government have some proof to give that the transfer of the "Gefion" was fraudulent, I beg to observe that this does not appear to me to be the true aspect of the question. The "Gefion" may possibly not be captured, but the Swedish Government will have just cause of complaint if she should be captured, or to demand a special licence for her. The onus of proof of the *bonâ fides* is on the "Gefion," and not on Her Majesty's Government, which is not called upon to *prove the transfer fraudulent*. Baron Hochschild, in his note of the 30th July, appears to be perfectly aware of this; his Excellency admits the case is open to suspicion ("la complication de cette affaire pourant paraître suspecte"), and he requests from your Lordship "une declaration du Gouvernement Anglais qui lui permis de commencer ses courses *sans crainte d'entrâves*." That is, as I understand it, he requires a declaration or licence or formal guarantee for the "Gefion" against capture or seizure. Such a declaration, licence, or guarantee I cannot advise your Lordship to give. The "Gefion" does not appear to me to be entitled to this very special favour, of which there have been scarcely any instances during the present war. This, however, is of course a question of political expediency for your Lordship's decision rather than of strict law. The remarkable number of cases of fraudulent, and colourable transfers of Russian interests in ships to neutrals during this war has attracted the attention of the Judge of the Prize Court. The flag *now* covering the cargo, and the very large profit attending such transactions, afford strong temptations to fraud. Messrs. Sorensen and Gamper have been most prominent personages in this traffic, which has materially served to shelter and protect from capture a large portion of the Russian mercantile marine. I have hitherto conceived it (perhaps erroneously) to be my duty, to my utmost, not only to detect in Court, but to thwart, and oppose in my reports to your Lordship the development of this system, especially after the remarkable concessions which the Crown has already made in favour of neutral interests. This task is sufficiently arduous, and one which I need scarcely say I have neither interest nor pleasure in executing too rigorously. It cannot, I presume, be the desire of Her Majesty's Government to permit all vessels to pass unquestioned which are not certain to be condemned if seized, inasmuch as hostile interest would be greatly, though indirectly, benefited thereby.

Papers alone can never be depended on; in many of the most fraudulent Russian cases very unexceptionable neutral papers have been produced,

Exception in special case.

The Swedish flag has, however, hitherto maintained a very creditable exemption from fraud, and if it be thought advisable to make the particular concession suggested in this case, it would perhaps be desirable to make it upon this general ground rather than upon the special circumstances alleged with reference to the "Gefion," which may otherwise be inconveniently used as a precedent for similar applications.

I have, &c.
(Signed) J D. HARDING.

No. 351.

The Queen's Advocate to Lord Wodehouse.—(*Received July* 24.)

(Private.)

30, *St. James's Place, July* 23, 1855.

My Lord,

Austrian vessel "Nina" seized at Ipswich.

WITH reference to Count Colloredo's note of the 20th instant, demanding the restoration of the "Nina," and the payment of an indemnity to her owners, I will confine myself strictly to the circumstances of the particular case, the question of the propriety of making this concession, on grounds of general policy, resting entirely with

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* Nos. 339 and 345.

† No. 346.

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Demand for restoration on ground of correctness of papers.

Her Majesty's Government. Count Colloredo grounds his demand entirely upon the "Nina" being provided with the two papers required by the Austrian law.

1. The Imperial Pass or Patent.
2. The Scontrino, or document from the Minister of Commerce.

Papers not sufficient evidence.

I need scarcely point out that if papers alone can give to all neutral ships immunity from belligerent capture (at sea) or seizure (in harbour), there will be practically an end of belligerent rights. Such a right has not, as far as I am aware, been hitherto claimed by any nation; Danish and other ships have latin passes, issued in the Sovereign's name, but many pretended Danish vessels have been seized and condemned as Russians. Without Denmark ever having taken this ground, Count Colloredo asks for restitution as a matter (not of favour) but of *right*, and also asks for an indemnity for the owners. I cannot conscientiously advise Her Majesty's Government to give either, except as a special favour; if yielded, and compensation accorded *as a right*, I really do not see how similar demands are to be resisted, or how the belligerent rights of the Crown are to be maintained unimpaired.

Cannot recommend restoration or indemnity, except as special favour.

The passage marked relating to damage done to the "Nina" after the seizure is quite a separate matter, and will no doubt be investigated by the Customs.

I will only further observe that she has not yet been claimed by anybody, although her asserted owner (Gheracdovitch) has been here some time.

Ownership doubtful.

(2.) Although Count Colloredo alleges that the documents prove (*b*) "qu'il est de plein droit proprietaire du bâtiment," I am informed by the Admiralty Proctor that a letter has been found on board from Gheracdovitch to the master *dated 6th June*, 1855, stating "that he is not the sole owner, but has others to consult," or to this effect.

(3.) The master admits that he has corresponded since the war with a person at Odessa, as owner, who is not Gheracdovitch.

Formerly Russian.

(4.) Gheracdovitch appears to have been frequently at Odessa since the war.

(5.) The present master took command in 1851; she was then under the Russian flag.

(6.) She was built in England and has had at least two other names, the "Ocean" and the "Pio Nono."

No bill of sale, &c.

(7.) There is no "bill of sale" nor anything equivalent to it on board; no copy or duplicate of the documents in Italian forwarded by Count Colloredo was on board, and neither that nor any other document mentions the payment of any particular sum of purchase money; the master swears that he knows nothing of the price or of its actual payment.

The utmost diligence has been and will be used by the Admiralty Proctor; he hopes to be ready to go to a hearing in a fortnight; if a claim should be entered, any subsequent delay will depend on the claimant.

When Russian, was commanded by present master, who knows nothing about her sale.

The papers found on board are very voluminous, and are not yet copied or translated, and I am indebted to the Admiralty Proctor for the above information; except as to the master's deposition, which I have seen. I may remark that I cannot remember one honest case where the master (being in command at the date of sale) had no idea of the price given for the ship, or whether it was paid or still owning, and that if she turns out to be really owned by a person or persons domiciled at Odessa, neither the Emperor's Sign Manual nor the fact of the owner being a born Austrian will save her from being comdemned as "res hostium." As far as I can judge, in the present necessarily imperfect state of my information, I consider that if there is no claim, she will probably be condemned, and that in any event she will not be restored without "further proof," the result of which I cannot of course anticipate.

Will probably be condemned.

I beg to call your Lordship's attention to my recent report in the "Gefion,"* and to assure your Lordship that it is my anxious desire to assist and not to embarrass Her Majesty's Government; but that unless I receive some intimation of their general intentions and policy in this class of cases, I conceive it to be my duty to protect the interests of the Crown to the utmost of my ability. I am happy to be able to say (without the slightest idea of attributing anything to myself) that the Crown has been almost invariably successful in this critical class of cases, chiefly owing to the acuteness of the Custom-house officers and the indefatigable diligence of the Admiralty Proctor; and I can see neither any sufficient *legal* grounds for anticipating failure in this particular case, nor any reason for supposing that the Austrian Government will be able ultimately to sustain the peculiar ground which it has taken.

I remain, &c.
(Signed) J. D. HARDING.

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* No. 350.

No. 352.

The Queen's Advocate to the Earl of Clarendon.—(Received July 25.)

My Lord,
Doctors' Commons, July 25, 1855.

Blockade of Gulf of Bothnia.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 23rd July instant, stating that he was directed to transmit to me a letter from the Admiralty, covering copies of a letter and of its inclosures from Rear-Admiral Dundas, containing a notice of the blockade of Russian ports in the Gulf of Bothnia; and to request that I would take the same into consideration, and draw up and transmit to your Lordship, at my earliest convenience, a proper notification of the said blockade, to be inserted in the "Gazette" if I see no objection.

In obedience to your Lordship's commands, I have accordingly prepared, and herewith transmit, a proper form of notification for insertion in the "Gazette."

Presume it is *de facto*.

I presume that the Admiralty are perfectly satisfied that the two extensive blockades in question (the latter including the Aland Islands), were in fact established by a competent force on the 12th and on the 14th of July respectively, as stated in the notification issued by the Admirals, which is carefully drawn.

I have, &c.
(Signed) J. D. HARDING.

Inclosure in No. 352.

Notification.

Foreign Office, July 25, 1855.

Notification.

IT is hereby notified that the Right Honourable the Earl of Clarendon, K.G., Her Majesty's Principal Secretary of State for Foreign Affairs, has received from the Lords Commissioners of the Admiralty a copy of a communication from Rear-Admiral the Honourable R. S. Dundas, Commander-in-chief of Her Majesty's Naval Forces in the Baltic, inclosing a copy of a joint notification issued by him and by Rear-Admiral Penaud, Commander-in-chief of the Naval Forces of His Imperial Majesty the Emperor of the French in the Baltic, which notification is as follows:—

"It is hereby notified, in the name of Her Britannic Majesty Queen Victoria and His Imperial Majesty Napoleon III, Emperor of the French, that on the 12th day of July instant all Russian ports, roads, havens, and creeks in the Gulf of Bothnia from Tornea, in latitude 65° 46′ N., longitude 24° 7′ E., of Greenwich, to Nystadt, in latitude 60° 46′ N., longitude 21° 20′ E., of Greenwich, including especially the ports of Uleaborg, Brahested, Gamba Carleby, Ny Carleby, Wasa, Christinestadt, Biomeborg, and Ranmo, were placed in a state of strict blockade by a competent force of the Allied Fleets. And it is hereby further notified, with reference to the blockade of the coast of Finland between Nystad and Hango Head, and of the islands and islets fronting the said coast, established on the 15th ultimo, that on the 14th day of July instant, all other Russian islands fronting the coast of Finland, and all Russian islands in the Gulf of Bothnia, including especially the Aland Islands, were placed in a state of strict blockade by a competent force of the Allied Fleets; and it is hereby further notified that all measures authorized by the Laws of Nations and the respective Treaties between their Majesties and the different neutral Powers will be adopted and executed with respect to all vessels which may attempt to violate the said blockades.

"Given under our hands at anchor at Nargen, this 16th day of July, 1855.

(Signed) "R. S. DUNDAS, *Rear-Admiral and Commander-in-chief of Her Britannic Majesty's Naval Forces in the Baltic.*

"C. PENAUD, *Rear-Admiral and Commander-in-chief of the Naval Forces of His Imperial Majesty the Emperor of the French in the Baltic.*"

And it is hereby further notified that all the measures authorized by the Laws of Nations and the respective Treaties between Her Majesty and her Allies and the different neutral Powers will be adopted and executed on behalf of Her Majesty and her Ally His Majesty the Emperor of the French with respect to all vessels which may attempt to violate the said blockades or any or either of them.

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No. 353.

The Queen's Advocate to the Earl of Clarendon.—(*Received July* 30.)

My Lord, *Doctors' Commons, July* 28, 1855.

As to answer to Danish Minister respecting costs when prizes are restored.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 12th July instant, stating that, with reference to my report of the 30th ultimo, suggesting that the Danish Minister should be asked whether he is prepared to undertake that no claim for costs or damages shall be made in the Prize Court against the captors of vessels which may be released on his application, he was directed to transmit to me, for any observations I may have to offer thereupon, a note from General Oxholm, in reply to the note herewith inclosed, which was addressed to him by your Lordship upon the subject.

In obedience to your Lordship's commands I have taken the note into consideration, and have the honour to report—

Prize Court decision in favour of right to capture vessels without risk of costs and damages.

That the recent Judgment of the High Court of Admiralty in the case of the "Otto and Olaf" has so materially strengthened the position of the Crown and of the captors in this class of cases, that I doubt the necessity of continuing the present discussion with General Oxholm. That Judgment has affirmed the right of captors to send in for adjudication every laden vessel coming out of a blockaded port without risk of costs or damages, and has also affirmed the principle that the conduct of the claimants or their agents having rendered the investigation necessary, they, and not the captors, must pay the costs, as a general rule, even if the result is favourable to them. I will however proceed to offer a few observations upon General Oxholm's note for your Lordship's consideration in case the discussson is continued. I have numbered (in pencil) some of the passages in his Excellency's note for the convenience of referring to them in the following observations by way of answer to each passage.

(1.) I would venture to point out that his Excellency appears to me to be in error in treating the capture of the "Dania" as unjustifiable, or in contending that this was admitted to be so by the Crown having consented to her being restored.

Capture of the "Dania" was legal.

Illegal to come out of blockaded port with cargo.

Restoration does not prove illegality of capture.

I beg to submit that her capture was perfectly legal and justifiable; she was not engaged "dans un trafic *legal.*" This was the very question for decision. *Primâ facie,* it is *illegal* to come out of a blockaded port with cargo laden therein; it was for her to established her innocence at her own expense. She would only have been restored by the Court (after some necessary delay) upon the clearest proof of her innocence, and on paying the costs. The Crown, as an act of grace and favour under the particular circumstances of the case, promptly consented to her restoration, reserving the question of costs; but it did not thereby admit the capture to be unjustifiable, as erroneously supposed by his Excellency. Further, if it is to be contended that the Crown, by consenting to restore, has admitted the capture to have been unjustifiable, this will operate to prevent the Crown from affording any ground for such contention in future cases, by declining all interference. I may add that neutrals coming out of an enemy's port which they know to be blockaded, with cargo laden therein, act with their eyes open, and cannot reasonably complain of being subject to detention and investigation for so doing; nor can any blockade be effectually maintained if the belligerent does not strictly act upon the general principle above alluded to. Your Lordship will not fail to observe how the slightest concession is eagerly seized upon and made the ground of further demands.

Immediate sales allowable when there is danger of deterioration.

(2.) The ship and cargo can always be sold at once, if there be any danger of its deterioration; the Court is always anxious to facilitate such sales.

Captors must judge as to restoration.

(3.) The captors must be permitted to be the best judges of their own interests as to restoration; by restoring they abandon all prospect of obtaining condemnation of the prize or of securing themselves against all eventual risk of being condemned in costs and damages by obtaining an order for "further proof."

Course Her Majesty's Government would pursue in similar case.

(4.) With reference to his Excellency's question as to "what would have been the course pursued by Her Majesty's Government in case a British vessel had been captured by a Danish cruizer for breaking the blockade of Hamburgh, when that port was blockaded by Denmark?" I can only say that if the Danish Government had replied to a remonstrance from Her Majesty's Government, by offering to restore the ship at once, provided all further litigation in a Danish Prize Court were abandoned by the claimants, I should (according to the best opinion I can now form, had your Lordship done me the honour of referring to me) have advised your Lordship to communicate the offer to the British owner, and to inform him that if he declined it he must be left to his own course without the further interference of Her Majesty's Government.

Belligerent right to capture all ships coming out of blockaded ports.

(5.) Upon the last point alluded to by his Excellency, your Lordship is already in possession of my opinion. I will only add in reference thereto, that the right of sending in for adjudication *all* laden ships coming out of a blockaded port without exception must, in my opinion, be treated and maintained as a clear belligerent right under the common law of nations, and not merely as a legal principle or rule of practice peculiar to British Prize Courts, upon which inferior ground it could not be safely maintained or enforced.

Exemptions may be granted as favours.

Exemptions from its operation may be granted as favours under special circumstances, but cannot safely be conceded as rights.

I have, &c.
(Signed) J. D. HARDING.

No. 354.

The Queen's Advocate to the Earl of Clarendon.—(*Received July* 31.)

My Lord, *Doctors' Commons, July* 30, 1855.

Greek vessels captured off the Danube for breach of blockade.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 24th July instant, stating that he was directed to transmit to me the accompanying letter from M. Tricoupi, the Greek Minister at this Court, forwarding the complaints of the masters of four Greek ships whose vessels were captured by British cruizers off the mouth of the Danube for breach of blockade.

Mr. Hammond also incloses a correspondence between the Foreign Department and the Board of Admiralty respecting the capture of these vessels, and requests that I would take these papers into consideration, and report to your Lordship my opinion as to the answer which should be returned to the Greek Minister's letter.

In obedience to your Lordship's commands I have taken the papers into consideration, and have the honour to report—

That, as I understand the facts, the Admiralty, in their letter to Lord Wodehouse of the 30th of March, have determined to release the vessels in question, and I find with the papers a draft of a letter to M. Tricoupi, dated April, so informing him. I presume, therefore, that they have been already released, and, if so, M. Tricoupi may be so informed.

If not already restored, case should be investigated at Constantinople.

If this is not the case, and they are still under detention, I can only suggest that Mr. Nicholson (the gentleman from Doctors' Commons recently sent by the Admiralty to Constantinople to attend to such matters) should be instructed to give his prompt attention to the cases of these vessels, and should act according to his instructions from the Admiralty, by either releasing them at once (if that is still the intention of the Admiralty) or by exercising his own discretion upon them after inspecting their papers, examining their masters, and investigating the circumstances connected with them.

M. Tricoupi may, in this event, be informed that the attention of the British authorities at Constantinople shall be forthwith directed to these cases.

I have, &c.
(Signed) J. D. HARDING.

No. 355.

The Queen's Advocate and the Attorney-General to the Earl of Clarendon.—(*Received August* 14.)

My Lord, *Doctors' Commons, August* 14, 1855.

Firing on a flag of truce from Her Majesty's ship "Cossack," and capture of boat's crew by Russians.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 26th ultimo, stating that he was directed to transmit to us the accompanying correspondence respecting the detention as prisoners of war in Russia of the survivors of the boat's crew of Her Majesty's ship "Cossack," captured by the Russians at Hango, and to request that we would take the papers into our consideration, and report to your Lordship our opinion whether, under the circumstances of the case, the Russian Government is authorized to retain Lieutenant Geneste and the

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others as prisoners of war, or whether Her Majesty's Government would be justified in pressing for their release without being exchanged.

In obedience to your Lordship's commands we have taken the papers into consideration, and have the honour to report—

As to right to detain them as prisoners of war.

That although it appears to us that the Russian force was guilty of an intentional violation of the sanctity which, among civilized nations, attaches to a flag of truce, yet, looking to all the circumstances of the case, we fear we cannot say that Lieutenant Geneste and his boat's crew had not transgressed the limits within which they should have kept in order to be entitled to the full protection against being made prisoners of war which a flag of truce should carry with it.

The grounds on which Prince Gortchakow rests the justification of the attack of the Russians on the boat's crew are in substance these:—

1. That the boat should have waited at some distance from the shore till the flag of truce was seen and acknowledged.

2. That no flag of truce was exhibited.

3. That the boat carried firearms (which he says had been recently used, for which latter allegation, however, there does not seem to be a shadow of pretence).

4. That Lieutenant Geneste and his boat's crew, having set on shore the Finnish prisoners, had fulfilled their mission, and had no business to be proceeding further inland.

Flag of truce not bound to wait until acknowledged.

As to the first point, we cannot admit the rule contended for by Prince Gortchakow, that a vessel or boat having a flag of truce is bound, on approaching an enemy's shore, to wait until the flag has been seen and acknowledged. Such a rule implies that there must always be a military or naval force immediately at hand. This, however, may not always be the case. The force with which it is desired to parley may be at a distance from the shore, and the communication which it is the object of the flag of truce to obtain might be rendered impracticable if such a rule were admitted.

We should contend that a flag of truce should operate as a protection when and wherever the party bearing it is *bonâ fide* proceeding to find the military or naval authorities with whom he is seeking to communicate.

No right to attack unarmed party.

As to the second point, even assuming (what it is difficult to believe) that the Russians did not see the flag of truce when displayed in the bow of the boat on her advance to the shore, there can be no doubt that at the time the attack was made the flag was fully shown and brought to the attention of the Russian officers. This, together with the fact that Lieutenant Geneste and his party on shore were wholly unarmed, ought at least to have secured to them the opportunity of parley, and of stating the purpose for which they had come, instead of which they and the persons in the boat were made the objects of indiscriminate and murderous attack.

The circumstances relied on by Prince Gortchakow under the third and fourth heads, as justifying the conduct of the Russians, clearly amount to no justification at all.

If it be true that there were arms in the boat, it is no doubt a circumstance to be regretted, as being inconsistent with the practice in respect to flags of truce. But it is to be observed that this circumstance (as the arms were in the bottom of the boat) could not have been known to the Russian force at the time they arranged their ambush and made their attack, neither did they know that the "Cossack's" boat had been sent on shore only for the purpose of landing the Finnish prisoners. The fact, therefore, undoubtedly stands that the Russian force made an attack upon a boat's crew of whom all they knew was that, while a part remained in their boat, those who came on shore were the bearers of a flag of truce and unarmed. It seems, therefore, impossible to acquit the Russian force of having wilfully violated the sanctity of a flag which all civilized nations agree in respecting.

That this attack and slaughter of the boat's crew, independently of its being a violation of the practice of civilized countries of respecting a flag of truce, was an outrage upon humanity and on the spirit in which warfare is conducted among Christian nations, is, we think, abundantly clear. It was an attack upon a party of men bearing a flag of truce, advancing, obviously, for no hostile purpose, seeing that those on shore, at all events, were unarmed, while, even if the whole had been armed, the vast superiority of the Russian force could leave them nothing to fear from affording the bearers of the flag of truce an opportunity of being heard.

While, however, we have no difficulty in taking this view of the conduct of the Russians in this unfortunate affair, and while we think Her Majesty's Government have a right to protest, in the face of the civilized world, against this most barbarous and unjustifiable proceeding, we cannot but admit that Lieutenant Geneste and his boat's crew so far departed from the strictly regular course of proceeding as to disentitle the British Government to claim, as a matter of right, that the prisoners should be set at liberty.

The boat's crew overstepped object of the flag of truce, and cannot claim to be released.

The misfortune of the case is that, upon the showing of Lieutenant Geneste himself, he and his boat's crew had, so soon as they had landed the Finnish prisoners, accomplished the purpose of their mission, and for which alone, so far as we are aware, they could desire to communicate with the authorities at Hango. Indeed, it seems plain that their real purpose in proceeding further into the place was to hold intercourse with the inhabitants, in the hope of obtaining fresh provisions as a return for the considerate act of liberating and landing the Finnish prisoners—a purpose harmless enough, no doubt, but still, in strictness, not within the scope of that part of their mission which would be legitimately covered by the flag of truce.

While, therefore, we are of opinion that the exhibition of the flag of truce ought clearly to have protected Lieutenant Geneste and his crew against being fired upon and slaughtered by the Russians, and to have entitled them to be heard, we cannot say, strictly speaking, that, the object of their mission and of the flag of truce having been accomplished, it entitled them to proceed into the place, or would have deprived the Russians of the right to make them prisoners when the circumstances became known. Had a parley taken place (as it clearly should have done), we think the Russians would have been entitled to detain Lieutenant Geneste and his party as advancing inland for purposes beyond those which the flag of truce was designed to protect. If, then, the circumstances were such as would have entitled the Russians to detain Lieutenant Geneste and his party as prisoners of war, we think Her Majesty's Government are not in strictness entitled to claim their liberation.

We have, &c.

(Signed) J. D. HARDING.
A. E. COCKBURN.

No. 355*.

The Queen's Advocate to the Earl of Clarendon.—(*Received August* 16.)

My Lord,

Doctors' Commons, August 15, 1855.

Saltpetre shipped from Lisbon for Hamburgh condemned by French Prize Court.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 9th of August instant, stating that with reference to my Report of the 2nd of July,* upon the case of Messrs. Wienholt, Wehener, and Co., the parties interested in a quantity of saltpetre which was seized by a French cruizer on board the Hanoverian vessel "Frow Houvina," whilst on its way from Lisbon to Hamburgh, he was directed to transmit to me two further letters from Mr. Wienholt, together with their inclosures, and to request that I would take this case into consideration, and report to your Lordship as to the course which should be pursued with regard to the further applications now inclosed from Mr. Wienholt.

In obedience to your Lordship's commands I have taken the papers into consideration, and have the honour to report—

That I am still of opinion that Her Majesty's Government should abstain from taking any step in favour of Mr. Wienholt. He has appealed from the decision of the French Prize Court, confiscating his property, to the Council of State, and he now appears desirous, pending such appeal, to extract some favourable statement or admission from your Lordship, of which he may avail himself, or to which he may refer, before the Council of State. I do not consider him entitled to receive any such favour. He further calls your Lordship's attention to what he describes as "the villainy planned in the British Consulate at Lisbon," into which he desires "a full and rigorous investigation," for which I see no sufficient grounds. Mr. Wienholt may not have violated the letter of the English law in this transaction, but he has, in my opinion, designedly evaded its spirit and intention, and both his agent at Lisbon and the master of the ship selected by that agent have acted throughout in a very disingenuous and suspicious manner. Those who apply for the interference of Her Majesty's Government, as litigants in the Prize Courts of an ally, should at all events "come with clean hands," and the hands of Mr. Wienholt's agents are by no means clean. He could not legally ship this saltpetre for any port north of Dunkirk, he

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* No. 342.

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therefore shipped it to Lisbon, formally "landed and entered it" there, and having thus obtained a British Consular certificate, immediately reshipped it for Hamburgh.

The mere fact of the decision of the French Prize Court being at variance with English law or practice, or even erroneous in principle (even if it be so) will not, in my opinion, necessarily, and of itself, justify the interference of Her Majesty's Government; Mr. Wienholt has appealed against this decision, and may perhaps succeed in reversing it, and whatever may be the result, he must, in my opinion, be left to bear the consequences of a transaction which, even if not illegal, was purposely contrived and conducted so as to baffle and evade the existing British policy and legislation, and which was carried out in a suspicious manner by agents whose conduct is at least very questionable.

I have, &c.
(Signed) J. D. HARDING.

No. 356.

The Queen's Advocate to the Earl of Clarendon.—(Received August 21.)

My Lord, *Doctors' Commons, August* 19, 1855.

Austrian vessel "Nina" condemned as prize.

WITH reference to the case of the Austrian vessel the "Nina," and to the communications with Count Colloredo, and to my previous reports thereon,* I beg to inclose a copy of the shorthand writer's notes of the Judgment recently delivered by the High Court of Admiralty condemning this vessel as prize. A copy of all the papers and depositions can be supplied by the Admiralty Proctor.

As to representation to Austrian Government.

The circumstances of the case are such as in my opinion to justify a communication being made to Count Colloredo or to the Austrian Government, if your Lordship should think it advisable to adopt that course. The Austrian authorities must either have been imposed upon by the parties interested, or they must have permitted the Austrian flag to be improperly used for the purpose of covering Russian property, and it is to be hoped that Count Colloredo was not aware of the real character of this case.

I have, &c.
(Signed) J. D. HARDING.

Inclosure in No. 356.

Admiralty Prize Court, August 11, 1855.

THE "NINA."

Judgment delivered by Dr. Lushington.

Judgment.

IT is admitted on behalf of the claimant in this case that he cannot ask for anything more than further proof in order to clear away the difficulties which it is asserted, and indeed not denied on the part of any one, exist in this case.

Now, having read all the papers before I came into Court, and having attended to all the observations of counsel on both sides, I think it wholly unnecessary to delay the decision which I am about to come to, being perfectly satisfied that I shall never change my mind in the view of this case, though perhaps if I occupied further time before I delivered my Judgment, I might make it a little more clear, or perhaps carry it to greater length, but I deem it unnecessary under the present circumstances.

Now, in this case the claim is made on behalf of a person of the name of Gherdacovich, of Costrena, in Austria, and it was stated that originally it was the intention of Baron Rothschild to have made the claim as Consul-General for Austria, and so it appears upon the face of this claim; now really that has nothing to do with the question which I am about to decide, for whether the claim is preferred by one individual or by another, the Court abides by its general rules and principles without any regard to persons or individuals. No doubt it was exceedingly proper in this master to take the advice of the Consul-General of the State to which he claimed to be a subject, and, for aught I know, he might have applied also to the Ambassador; but even if that were the fact, it would not make on the mind of the Court even the very slightest impression, for I am neither to be influenced nor in the slightest degree governed by the opinion of any person, nor by anything except what I deem to be the law of nations as administered in this Court. But one observation I will make, that if the master did make application to the Consul-General in due time, he was unfortunate that from some cause or other he did not receive that advice which would have enabled him, I trust, to have conducted himself with greater propriety than he has done towards the officer of Customs. Instead of affording every facility for bringing in the papers and the examination of himself and his crew, he folded his arms, and, if not actively engaged in preventing the inspection of those papers, rendered no aid, and certainly prevented the examination of himself and those on board; but I do not attribute that to the advice of his Consul. I should be exceedingly sorry so to do, because undoubtedly if that was so, whether it emanated from Consular or any other authority, it would tend to indispose the Court from giving due consideration to persons filling those high offices.

Obstacles placed in the way of investigation.

Legality of *bonâ fide* sale.

Now what are the facts of this case? The ship was originally a British vessel, but (as represented) became Austrian in the year 1853; at what particular time is uncertain from these papers, but undoubtedly the vessel was represented to be an Austrian vessel in the month of July 1853, though she did not become so till the month of November in the same year. Now, at that period, I have no hesitation in saying that if a Russian owner was desirous of changing her character by sale, it was competent for him so to do, and equally competent to the Austrian subject to buy it, provided only the transaction was fair and the Russian interest was divested, and the Austrian flag properly assumed under the authority of that country, that country not being deceived by any false representation, the owner being entitled to a national Austrian character. Now these things being so, this vessel has been claimed by M. Gherdacovich as the sole owner of this property, and the Court can decree restitution to this claimant on no other ground than that he himself is the person solely entitled to it, and if that case should be made out by further proof (which appeared to me to be a little inadvertently suggested to the Court), namely, that he had the legal title in this property, but in reality he and other persons were interested in the ship (be they who they may), unquestionably I could never restore on this claim. The Court will never restore on any claim unless it is satisfied that the property is *bonâ fide* the property of the individual who claims it, and if it finds any other interest lurking out in any shape, it is quite sufficient for me to pronounce against that claim.

Divided ownership. Fatal to restoration.

Doubtful nationality of owner.

Now there are two points that arise for the consideration of the Court in this case independently of the many questions and the many doctrines which have been ably discussed at the bar. The first question that necessarily arises may be a matter for further proof, but it is necessary I should notice it. Was M. Gherdacovich of Costrena or not? What do I find in the evidence? I find the master swearing in no very credible or satisfactory manner, first, that he had been resident at Costrena sixteen or seventeen years, and then afterwards adding he was resident at Odessa, but when and where he knew not, though it appears beyond all doubt and question that this M. Gherdacovich put him in possession of the ship in 1851 at Odessa. He might have had, I think, the means of giving us a little more satisfactory information of the residence of M. Gherdacovich at Odessa. But what do I find beside? Without entering minutely into the particulars of this case, I find M. Gherdacovich in 1854 resident at Odessa, both in the month of April and also of November. Now these circumstances excite very great suspicion as to whether M. Gherdacovich is really entitled to be considered an Austrian subject, according to the sense in which the words must be understood in this Court. It is not, as there seems to be a notion peeping out, that because this gentleman might have been born of Austrian parents that he might have been resident at Costrena, and he might have gone there occasionally or frequently, if he was carrying on trade and business at Odessa; if he was employed, as the ship has been, at Odessa, he never would be entitled to come before the Court and claim restitution in an Austrian character; he must be bound by the character of that place where he was resident and carrying on his trade, and to which the transaction properly belongs. I mention this because there seems to have been, at the commencement of the transaction when Austrian colours were assumed,

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* Nos. 349, 351, &c.

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matters throughout the papers which are explained in a very unsatisfactory manner to the Court. It seems to have been thought by the parties that they were at liberty to change the national character of the vessel without the slightest regard to the reality of the transaction, on the mere representation that they wished to obtain first Austrian colours and then any others that might suit the purposes of trade. If that be so (I do not say it is in the case of Austria, as I regret to say it has in other cases) the grant of the national flag has been made without a just regard to the rights of the belligerent. Now supposing I got over that, what is the next point? I have already said I can restore to nobody by possibility but M. Gherdacovich as sole owner. Now what is the state of the papers? I am told very cautiously, and counsel abstain from stating the mode and manner in which they would effect their object, but they tell me, if I will but shut my eyes and open my ears, they will find the means of proving M. Gherdacovich to be the sole owner; notwithstanding the documents under my eyes, they will find the means whereby, in reading them, I shall be able to put on them a construction totally and wholly incompatible with that sense which they bear upon the face of them. Now I ask how this is to be done? I repeat those words which I read before in the Argument: "I know you would be pleased to proceed on your voyage to the Adriatic; I would consent to it, but you know well that I am not the sole owner, and must execute the orders of my partners." Now if it were to be proved by any evidence produced in the case that this gentleman was sole owner, it would, as the learned Queen's Advocate has said, be in direct contradiction to the construction which any man of common sense must put on the words; but does the case rest here? Not only would it be in direct defiance of that meaning, but in direct contradiction of the whole of the correspondence, because there are letters upon letters in which Signor Cossio is represented as having an interest in this vessel, in which Anatra, living at Odessa, is represented as having an interest in the vessel; and when I see that the construction I put on these words (and no man living can put another) is in direct accordance with all the other documentary evidence, can I, under these circumstances, allow further proof, the very object of which would be to falsify the whole of the papers? I am of opinion that upon this ground alone I must not allow further proof; but there are in this case a variety of other reasons which fortify and justify, and which seem to demand from the Court, that determination which I have now expressed. I will make every possible excuse for this man being a foreigner, every possible excuse for his not understanding what is meant by a suppression of papers, but it is clear that he, through an agent, was concealing papers from the seizers, and preventing them obtaining possession of the papers which, by the law of nations, this Court is entitled to require; nor is this all; more unsatisfactory evidence the Court never had occasion to read. Can I believe this person was so ignorant of the ownership of this vessel that he could not have told me if the claim is such as it is represented to be, a sale or transfer in November 1853 to the present claimant? That he could not have given the Court some rational exposition of the subject? He who had been master from 1851, he who was appointed by the owners in 1851; there was that paper adverted to (No. 101), showing that in 1850 Cossio and Co. were owners; these are the words, "and Co.;" he must have known, what was obvious to every man of common sense, that this was a transfer; I do not say a culpable transfer, but a transfer for the purpose of getting rid of the Russian national character and taking the Austrian national character. He must have known who the Russian owners were who executed the conveyance, and he must have known something of the consideration which passed, if it was an honest and just transaction. I condemn this vessel, but I say more, it is the first Austrian vessel, and I regret that in the first case of a vessel coming under that flag it is my duty to pronounce that sentence. I shall always be ready to give that flag as indulgent a consideration as the law of nations will permit, but I say at the same time I trust that Government will take care not to allow their flag to be prostituted for the purpose of protecting the property of an enemy from the just rights of a belligerent.

Fictitious transfer from Russian flag.

No. 357.

The Queen's Advocate to the Earl of Clarendon.—(Received August 21.)

My Lord,
Doctors' Commons, August 20, 1855.

Mathieson and Ritter's claim.

Timber destroyed at Uleaborg by Her Majesty's forces.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 20th July last, stating that he was directed to transmit to me a statement signed by Mr. C. F. Mathieson, of the firm of Mathieson and Ritter, respecting a claim which they advanced against Her Majesty's Government on account of deals belonging to them which were destroyed at Uleaborg in June 1854, by Rear-Admiral Plumridge, also to transmit a letter from the Admiralty inclosing a report from that officer respecting his proceedings on that occasion; and to request that I would take these papers into consideration, and report to your Lordship my opinion upon Messrs. Mathieson's claim.

In obedience to your Lordship's commands I have taken the papers into consideration, and have the honour to report—

That Messrs. Mathieson's claim does not appear to me to be entitled to the favourable consideration of Her Majesty's Government.

No proof of ownership, or steps taken to distinguish from Russian property.

It was notorious, from April 1854 at latest, that Her Majesty's naval forces were about to commence active hostilities against the Russian ports in the Baltic, and it appears to me to be almost conclusive as against Messrs. Mathieson that they do not pretend that they made any representation to Her Majesty's Government on the subject of their timber at Uleaborg before it was destroyed in June 1854.

I have further to observe that it is not even alleged that the name of Messrs. Mathieson, or of any British merchant, as being the real owner of the timber, was ever mentioned to any of the British officers employed in destroying it, or that any particular property was pointed out to them being British property, or that the timber the destruction of which Messrs. Mathieson and Co. complain was in any manner separated or distinguished from the enemy's property of the same nature by which it was surrounded. Messrs. Mathieson must have had some agent or correspondent at Uleaborg in charge of their timber, and as the destruction of this property was deliberataly carried out without opposition, and after previous inspection and formal communication with the authorities by the British officers, it appears singular that such agents should not have requested the British officers to spare this particular property, or even have attempted to inform them of its precise position and nature. I beg to refer to my report upon a similar application from Messrs. Lewin and Co., of October 14, 1854.*

I have, &c.
(Signed) J. D. HARDING.

No. 358.

The Queen's Advocate to the Earl of Clarendon.—(Received September 5.)

Doctors' Commons, September 4, 1855.
My Lord,

Austrian vessel "Anna Maria" captured in Sea of Azof.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 24th August last, stating that he was directed to transmit to me a note from the Austrian Minister at this Court requesting the release of the Austrian vessel "Anna Maria," which was captured in the Sea of Azof by the allied squadrons. Mr. Hammond was also pleased to transmit to me a correspondence with the Admiralty and Count Colloredo on this subject, and to request my opinion upon the course which Her Majesty's Government should pursue in this matter.

In obedience to your Lordship's commands I have the honour to report—

No ground for release.

That, assuming the identity of the ship and of the captain to be undisputed,† I concur with Admiral Lyons in thinking that this case is justly open to suspicion, and that there is no sufficient reason for releasing the "Anna Maria" without any further proceeding.

The petition for leave to come out of Kertch with a cargo (signed by the master

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* No 204.

† See the French petition from the merchant Captain in Sir E. Lyons' No. 280, "Baltasar Simonovich del brig Austriaco Anna Mavdal."—J. D. H.

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of the "Anna Maria," as well as by other masters) was answered negatively by the allied commanding officers off Kertch on the 5th April, and Sir E. Lyons states that he was informed by Mr. Platt, an English engineer resident at Kertch, that the contents of that answer were "publicly known," but I understand Count Colloredo to state that *no answer* was received by the master of the "Anna Maria" until Kertch "had become the theatre of operations" (24th May). Even if no answer was received by the master, this would not justify him in leaving Kertch (which was blockaded) for Mariopol, and it is observable that his Excellency does not state with what object the "Anna Maria" sailed from Kertch to Mariopol, or whether she did so laden or in ballast, or why she did not, after being identified by the Austrian Consul, openly leave Kertch in ballast homewards or for some friendly or neutral port, even after its occupation, which (as her master and the Austrian Consul must have known) would have been permitted by the allied commanders. I need scarcely point out that if she left Kertch for Mariopol with any cargo on board, she broke blockade.

She had no right to leave Kertch while blockaded, unless in ballast.

It is also to be observed that their being an Austrian Consular Agent at Mariopol, where she was captured on the 2nd June, it is singular that no communication should have been made either to the captors or to the Admiral respecting this vessel at the time of her capture, even if the Russians did (for what reason is not alleged) compel her master and crew to abandon her and to land at Mariopol.

Suspicious aspect of case.

No colours or papers.

As the case is now represented, the "Anna Maria," whose previous conduct is suspicious, and which appears to have recently left an enemy's port under blockade, where she had remained for an unusual time, is captured in another enemy's port without colours or papers, and with no person on board, and no application is made at the time by any person on her behalf, although an Austrian Consular Agent, as well as her master and crew, are at that port; Count Colloredo states her to be an Austrian vessel, but it is possible that his Excellency may be misinformed on this point, as he certainly was in the recent case of the "Nina"; at all events the explanation offered by his Excellency of her previous proceedings is very imperfect; I cannot therefore see any sufficient reason for departing from the ordinary course, or for recommending her immediate release.

I would respectfully suggest that she should be forthwith proceeded against as prize according to Her Majesty's general instructions, and her Austrian owner may thereupon claim her in the usual manner, and that Count Colloredo may be so informed.

I have, &c.
(Signed) J. D. HARDING.

No. 359.

The Queen's Advocate to the Earl of Clarendon.—(Received September 10.)

Doctors' Cammons, September 8, 1855.

My Lord,

Greek vessels "Chriseis" and "Aspis" captured while breaking blockade near Odessa.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 6th August last, stating that he was directed to transmit to me a letter from the Admiralty (and its inclosures) reporting the circumstances under which two Greek vessels, the "Chriseis" and "Aspis," were captured by Her Majesty's ship "Niger" whilst attempting to break the blockade of the Russian ports near Odessa. That he was also directed to transmit to me a letter from M. Tricoupi, the Greek Minister at this Court, stating the circumstances under which he has been informed that the vessels in question were captured, and requesting that they may be released, and their owners compensated for their detention; and to request that I would take these papers into consideration, and report to your Lordship my opinion as to the answer which should be returned to M. Tricoupi's application.

I am also honoured with Mr. Hammond's letter of the 10th of August stating that, with reference to the above, he was directed to transmit to me a further letter from M. Tricoupi, together with its inclosures, relating to the case of the "Chriseis," and to request that I would take the papers now inclosed into consideration, and report to your Lordship my opinion thereupon.

In obedience to your Lordship's commands I have taken the papers into consideration, and have the honour to report—

Cannot be released without further information.

That without seeing the ship's papers and depositions in these cases it is impossible for me to advise your Lordship to comply with M. Tricoupi's request, or even to

recommend the simple restoration of these vessels; and that he must be informed that your Lordship cannot at present accede to his application. The letters relating to the "Chriseis" (copies of which are forwarded) certainly seem favourable to her, and both she and the "Aspis" appear to have been incurring considerable risk of capture without any adequate temptation by going to Odessa. On the other hand, the place in which each was captured, and the answers and behaviour of the masters and crews, as set forth in the reports of the captors to Sir E. Lyons, appear entirely inconsistent with an honest destination to the Danube.

Suspicious circumstances.

Actuary at Constantinople must decide as to their restoration.

The attention of Mr. Nicholson (the Actuary sent to Constantinople by the Admiralty) may be usefully directed to these cases, and if he should see no probability of their being condemned upon the depositions and ship's papers (bearing in mind that no evidence will be admitted on behalf of the captors), they may be restored.

I have, &c.
(Signed) J. D. HARDING.

No. 360.

The Queen's Advocate to the Earl of Clarendon.—(Received September 14.)

Doctors' Commons, September 14, 1855.

My Lord,

May Austrian merchant at Trieste send neutral vessels to Russian ports to fetch corn bought before the war?

I AM favoured with Mr. Hammond's letter of the 8th September instant, transmitting to me a note from the Austrian Chargé d'Affaires at this Court, requesting that M. Spiridion Gopcevich, an Austrian merchant of Trieste, may be allowed to send vessels under a neutral flag to Russian ports in the Sea of Azoff, to convey from thence corn purchased by him before the war. Mr. Hammond requests that I will report to your Lordship my opinion as to the answer that should be given to this request. He adds that your Lordship wishes to have this opinion at my earliest convenience, and before he communicates with the French Government, to whom, of course, a similar request will have been made.

I have accordingly taken the note in question into my consideration, and have the honour to report—

Only by a special licence, with concurrence of France.

That all the ports in the Sea of Azoff being blockaded, the permission sought for by the Austrian Chargé d'Affaires in favour of M. Spiridion Gopcevich must, if granted at all, be by licence under the Sign-Manual, and must, of course, be granted with the consent of the French Government.

No such licence has been granted during the present war as far as I am aware, although many similar applications have been received.

Information not sufficient.

No grounds for allowing.

I have further to observe that no particulars are given as to the quantity of grain or as to the amount of tonnage in question; no reason is given why this corn (purchased in 1853) was not exported either before the war or before the blockade of the Sea of Azoff, or why this special permission was not requested at an earlier period, especially on the blockade of the ports in the Sea of Azoff being notified. I cannot, therefore, at present see any sufficient grounds for advising your Lordship to assent to this request.

The considerations of policy which are adverted to in the note, and the fact that the National Bank of Austria is deeply interested on behalf of the house of Gopcevich, are matters beyond my province, and exclusively for your Lordship's consideration.

I have, &c.
(Signed) J. D. HARDING.

No. 361.

The Queen's Advocate to the Earl of Clarendon.—(Received September 15.)

Doctors' Commons, September 13, 1855.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 30th August last, stating that, with reference to my report of the 4th July last,* and to previous correspondence, respecting the claim to compensation

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* No. 343.

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Capture of Netherlands vessels "Catherine" and "Sjouke Alida."

Compensation.

advanced by the Netherlands Government on behalf of the owners of the "Catherine" and "Sjouke Alida," in consequence of the alleged unjust detention of those vessels by the cruizers of Her Majesty's squadron in the Black Sea, he was directed to transmit to me two notes from the Netherlands Minister at this Court, containing further particulars in regard to this matter, and to request that I would take Baron Bentinck's notes, together with the former papers which were sent therewith, into consideration, and report to your Lordship my opinion as to the course which I think it advisable for Her Majesty's Government to pursue in this case.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

Translations wanted.

That with reference to the inclosures in Baron Bentink's notes of the 10th August ("Sjouke Alida") and 27th August ("Catharina") [all of which are herewith returned], I must beg to be furnished with translations of such of those documents as are in Dutch, inasmuch as they appear to contain the items and particulars of the demand in each case, which Baron Bentinck was requested to supply.

I have, &c.
(Signed) J. D. HARDING.

No. 362.

The Queen's Advocate to the Earl of Clarendon.—(*Received September* 15.)

My Lord,
Doctors' Commons, September 15, 1855.

French law.

Captured vessels cannot be bought by any but French subjects.

I AM favoured with Mr. Hammond's letter of the 12th September instant, transmitting to me, by your Lordship's direction, a despatch from Her Majesty's Consul at Cherbourg, calling the attention of Her Majesty's Government to the unfair working of the French law, which prescribes that captured vessels can only become the property of Frenchmen, and cannot be sold to foreigners.

Mr. Hammond requests that I will report to your Lordship at my earliest convenience whether any law similar to that which exists in France on this subject is in force in England.

I have accordingly the honour to report—

No such law in England.

That no law similar to that which is stated by the Consul to exist in France on this subject is in force in England.

Foreigners, and in some cases the former owners of neutral ships, have, I believe, during the present war, purchased ships when condemned and sold as prizes.

The Marshal of the Admiralty will be able to supply the best information on the subject of the purchase of prizes by foreigners in England, of which information your Lordship may perhaps desire to be in possession before communicating with the French Government on this subject.

I have, &c.
(Signed) J. D. HARDING.

No. 363.

The Queen's Advocate to the Earl of Clarendon.—(*Received September* 17.)

My Lord,
Doctors' Commons, September 17, 1855.

Shipment of arms at Boston in American vessels for Russian Government.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 10th September instant, stating that he was directed to transmit to me a despatch from Her Majesty's Minister at Washington, inclosing a copy of a letter from Mr. Derby of Boston, communicating some information he has obtained respecting the expected shipment on board American vessels at that port of arms destined for the use of the Russian Government, and to request that I would take Mr. Derby's letter into consideration, and report to your Lordship at my earliest convenience on the statements made therein, and the mode of proceeding which it would be best for Her Majesty's cruizers to pursue in regard to the alleged intended shipments.

In obedience to your Lordship's commands I have taken the papers into consideration, and have the honour to report—

Purchase of saltpetre at Calcutta.

Neutral State to whom consigned may be required to prevent its reaching Russia.

That the statements made in Mr. Derby's letter relating to the Russian contracts for gunpowder in the United States and the intended purchase of saltpetre at Calcutta

by a Russian agent, do not appear to involve any legal point or to require any observations from me. The neutral state to which such gunpowder may be exported from the United States may fairly be required to prevent its reaching Russia, and the Governor-General of India in Council will, I presume, be able to prevent the exportation of the saltpetre alluded to, either by some special measure or by the general interdiction of the export of saltpetre, except to such places or under such circumstances as shall prevent its reaching the enemy.

Arms, &c., concealed in bales of cotton.

Vessel may be visited,

With reference to the statements in Mr. Derby's letter concerning the proposed shipment from a port of the United States, and in a United States' merchant vessel, of "a cargo of rifles and gunpowder concealed in bales of cotton and cases of logwood under papers for some port in the Baltic *or some neutral port*," I have to observe that if credible information should be furnished that such a shipment has been actually made in a particular vessel, and that such vessel should be met with upon the high seas bound to any port in the Baltic, the vessel should be visited, her papers examined, and she should be carefully searched, and if a cargo of rifles and gunpowder should be found *concealed* on board, she should be sent before the High Court of Admiralty for adjudication.

but with considerable risk to captor.

Her Majesty's Government may take the risk.

Contraband of war may be carried to neutral ports.

I must add that, after the concessions made by the Orders in Council, any such search or capture will be made at considerable legal risk to the captors and to Her Majesty's Government, in case of any mistake or misinformation as to the particular vessel or her cargo or destination; the object, however, is so important that I apprehend Her Majesty's Government will readily incur the risk of paying the costs and damages on behalf of the captor, and of apologizing to the United States, if necessary. With reference to Mr. Derby's phrase "or to some neutral port," I have further to remark that contraband of war may be legally carried by neutrals to neutral ports under whatsoever circumstances, unless designed for the enemy's use; that consequently there are many neutral ports (as, for instance, South American and Mediterranean ports to which such a vessel may legally sail, even under the circumstances described, without hindrance from the allies.

Capture must be justified by suspicion.

Captors may not bring evidence.

In order to justify the capture of a neutral vessel for carrying contraband of war, it must appear from the ship's papers, from her course and destination, from the place of capture, the *admitted* circumstances, and the answers of her master and crew to the "standing interrogatories," that there exists sufficient ground for presuming that the contraband was actually destined for the use of the enemy. The captors will not be permitted to adduce any evidence, at all events in the first instance.

Sensitiveness of United States.

I need scarcely add that inasmuch as no United States' vessel has been captured during the present war, the captors should bear in mind the peculiar sensitiveness of the United States as to neutral rights, and should observe the utmost caution in their conduct and demeanour.

I have, &c.
(Signed) J. D. HARDING.

No 364.

The Queen's Advocate to the Earl of Clarendon.—(*Received October* 3.)

Doctors' Commons, October 2, 1855.
My Lord,

Insertion of owners names in passes of Danish vessels.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 12th September instant, stating that he was directed to transmit to me a note from the Danish Chargé d'Affaires at this Court, stating that the names of all the owners of Danish vessels will in future be inserted in latin passes; and to request that I would report to your Lordship any observations which I may have to make upon this communication.

In obedience to your Lordship's commands I have taken the papers into consideration, and have the honour to report—

That I request to be furnished with two copies (with translations) of the Danish Government Circular of the 31st August alluded to by Count Reventlow.

With reference to the following passages in his Excellency's note: "un des motifs que l'on a assigné pour cette saisie est que les noms de tous les armateurs auxquels ils appartenaient ne se trouvaient pas insérés dans le passeport latin;" and "toutefois le Gouvernement du Roi pour ne plus exposer nos bâtiments à *une saisie non fondée*;"—I beg to observe that his Excellency abstains from giving the names of

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any single Danish vessel actually seized on the ground alleged, and that his Excellency has either been misinformed or that he has not quite correctly apprehended the facts to which he alludes.

No Danish vessels seized for its omission.

No Danish vessel, as far as my knowledge extends, has been seized upon any such ground whatsoever; several vessels under Danish colours have been seized for breach of blockade, and on suspicion of being in fact Russian property. The Danish claimant has often in such cases alleged that he had purchased the vessel from a Russian, either after war was imminent, or "flagrante bello," and amongst other defects in the ship's papers it has appeared that the names of the claimants who have sworn that they were the sole owners did not correspond with the names of the owners inserted in the latin pass. This latter circumstance has been remarked upon by me and by the Court as furnishing a sufficient ground, *not* for condemnation, but "for requiring further proof," since it was impossible in such a state of things, *without* further proof, to determine to whom the ship, even if not Russian, really belonged. These I firmly believe to be the facts to which his Excellency alludes in the passages cited, and if so it will be obvious to your Lordship that the seizure was not "une saisie non fondée." The opinion of M. Kraft, an eminent Danish lawyer, in the "Otto and Olaf," transmitted to me for my information on the 27th August last, affords some important information as to great irregularities apparent on the face of that ship's papers. Nor can it be reasonably urged as a hardship that the Court required further proof before restoring to the claimant property which upon the face of the very instrument produced by him to prove his title thereto appeared to belong to others.

But proof required that vessels were not Russian property.

With respect to these defects in the papers being "un des motifs qu'on a assigné pour cette saisie," this is not strictly the case, the capture having been in all such cases made on other and distinct grounds, viz., breach of blockade, or Russian interest in the ship. I trust that I shall be excused for again calling your Lordship's attention to the peculiar position of Denmark with reference to the abuse of her flag by Russians.

Abuse of Danish flag.

I have not yet seen the Parliamentary Return of captured vessels which I observe by the newspapers has been recently published, but I beg to remark that about one half of all the vessels under neutral flag hitherto seized in British ports as being really Russian property have come here under Danish colours, and with false Danish papers, and have been falsely claimed as Danish ships; the total number of ships seized in British ports under neutral flags has been about 31, of which 14 were under Danish colours, and of these 14 pretended Danes, no less than 11 have been already found to be Russians in disguise and condemned as such; this in my humble opinion places Denmark in a very exceptional position in this respect towards Great Britain as a belligerent, and renders it almost certain that in a much larger number of cases many pretended Danes have escaped detection, and that Russian ships are still in numerous instances fraudulently protected under the Danish flag. Under these circumstances it will be for your Lordship's consideration whether it is not Her Majesty's Government, rather than that of Denmark, which is in entitled to complain, and even to adopt more active measures to check these frauds, and whether some intimation to this effect should not be conveyed to Count Reventlow in answer to his intimation that Danish vessels have been seized upon insufficient grounds.

I have, &c.
(Signed) J. D. HARDING.

No. 365.

The Queen's Advocate to the Earl of Clarendon.—(Received October 13.)

My Lord,
Doctors' Commons, October 13, 1855.

Vessel chartered at Rotterdam to convey sulphur to Hamburgh.

I AM favoured with Mr. Hammond's letters of the 8th October instant transmitting to me by your Lordship's desire a despatch from Her Majesty's Chargé d'Affaires at the Hague stating the circumstances under which a vessel has been chartered at Rotterdam to convey a cargo of sulphur from that port to Hamburgh, and requesting that I will favour your Lordship at my earliest convenience with my opinion as to the power of Her Majesty's Government to stop this vessel.

I have accordingly taken this despatch into my consideration, and have the honour to report—

Cannot be stopped.

That it does not appear to me that, under the circumstances stated in these papers, Her Majesty's Government have any power to stop the vessel in question, which

I observe is stated to be bound from one neutral port to another, there being nothing to show that her cargo of sulphur is in fact destined for the enemy's use.

I have, &c.
(Signed) J. D. HARDING.

No. 366.

The Queen's Advocate to the Earl of Clarendon.—(Received October 15.)

My Lord,
Doctors' Commons, October 13, 1855.

Sulphur at Rotterdam for Hamburgh, packed in sugar boxes.

I AM favoured with Mr. Hammond's letter of the 10th October instant, in which he states that, with reference to his letter of the 8th October instant, he is directed by your Lordship to transmit to me a further despatch from Mr. Paget, Her Majesty's Chargé d'Affaires at the Hague, relative to the vessel at Rotterdam loading sulphur for Hambugh, and he is to request that I will take this despatch into my consideration, together with the despatch which is already before me.

I have accordingly taken this despatch into my consideration, and have the honour to report—

If falsely described, it alters complexion of case.

That the circumstances of the sulphur being *packed* in Havannah sugar-boxes will not of itself suffice to justify the stoppage of the ship; if it should appear to be falsely shipped or described or entered in the ship's papers as *sugar* (from the Havannah or elsewhere), or that its real destination or description should be otherwise concealed or falsely stated, this might alter the complexion of the case.

I have, &c.
(Signed) J. D. HARDING.

No. 367.

The Queen's Advocate to the Earl of Clarendon.—(Received October 26.)

My Lord,
Doctors' Commons, October 25, 1855.

Netherlands vessels "Catherine" and "Sjouke Alida" detained in Black Sea by Her Majesty's cruizers.

Compensation.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 30th August last, stating that, with reference to my Report of the 4th July last,* and to previous correspondence respecting the claim to compensation advanced by the Netherlands Government on behalf of the owners of the "Catherine" and "Sjouke Alida," in consequence of the alleged unjust detention of those vessels by the cruisers of Her Majesty's squadron in the Black Sea, he was directed to transmit to me two notes from the Netherlands Minister at this Court, containing further particulars in regard to this matter, and to request that I would take Baron Bentinck's notes, together with the former papers, which are sent therewith, into consideration, and report to your Lordship my opinion as to the course which I think it advisable for Her Majesty's Government to pursue in this case. I am also honoured with Mr. Hammond's letter of the 9th October instant, returning me translations of the Dutch papers in Baron Bentinck's notes of the 27th and 30th August last, relating to the "Sjouke Alida" and "Catherine," as requested in my letter of the 13th September last.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

Claim for freight for return journey inadmissible.

Could not have returned through blockade with cargo.

That with reference to the first item in the statement of damages in each of these cases, viz., "freight according to charter-party, entered into at Constantinople for a return cargo from Galatz to Cork or Falmouth, &c.," I beg to observe that such item appears to me to be wholly inadmissible, and that although the Netherlands Government have "approved this demand and rely on its exactitude," I cannot understand the principle upon which they have done so. If there were no other objection to this item, the unreasonable nature of the demand in this respect must be apparent from the fact that these ships were captured May 31st, off the Sulina mouth of the Danube, *inward* bound, and that the Danube was blockaded on the 1st June; even if allowed to enter unmolested, they could not, therefore, have arrived at Galatz, and there laden a cargo (as per charter-party) before the 1st June, and it would have been a breach of blockade on their part to have come out of the Danube with any cargo laden after that date; in other words, the loss of this charter-party (*from* Galatz) was in no

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* No. 343.

1853-56

Loss of freight not occasioned by detention.

respect occasioned by their detention or capture, but was necessarily incidental to the institution of the blockade of the Danube on the 1st June, and would have certainly befallen them by reason thereof if they had entered the Danube without any impediment. Such blockade, moreover, was a contingency for which (considering the dates and circumstances) they could not have been altogether unprepared, and in respect of which they cannot pretend to have any claim for compensation.

Claim for demurrage excessive.

With reference to the third item, viz., "loss of time for forty-six days," for which demurrage at 5*l*. a-day is claimed, I have to observe that this period or number of days appears to me to be excessive. I consider that to allow demurrage for the number of days actually occupied in returning to Constantinople after their liberation and there discharging cargo and preparing for another voyage (say twenty days), will be a very liberal remuneration in this respect. They might obviously have obtained freight at and from Constantinople, and Her Majesty's Government cannot be bound to pay them demurrage up to the time of their arrival at Kertch, whither they went from Constantinople. Her Majesty's Government will, in my opinion, act most liberally towards the owners by paying the freight from Constantinople to Galatz (which they would have earned but for the detention), and by further allowing them demurrage for the time actually occupied in returning to Constantinople, and there preparing for another voyage. They do not appear to have any right to demurrage in respect of the time occupied by their voyage from Constantinople to Kertch.

The second and fourth items do not appear to me to be open to any observations.

Suggests arbitration or reference to experienced person.

Considering that the only question between the two Governments is now one of the amount of compensation, and bearing in mind the unsatisfactory results which may attend the further discussion of these items between the two Governments (now that the Netherlands Government has adopted in all its particulars the unreasonable claim of the owners), I would venture to suggest that your Lordship, whilst objecting to these two items on principle, might consider it advisable to offer to leave the amount to be paid to be determined by arbitration, or if this should not appear advisable to your Lordship, I would then suggest that all the items should be submitted to some person of local commercial experience at Constantinople familiar with the rate of charges and general state of affairs existing there at the time, and its effect upon neutral commerce.

I have, &c.
(Signed) J. D. HARDING.

No. 368.

The Queen's Advocate to the Earl of Clarendon.—(Received October 27.)

Doctors' Commons, October 25, 1855.

My Lord,

Austrian vessel "Nina." Appeal against decision of Prize Court.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 16th October instant stating that, with reference to my report of the 19th of August last,[*] he was directed to transmit to me a note from the Austrian Chargé d'Affaires at this Court stating that an appeal will be made against the decision of the High Court of Admiralty in the case of the "Nina," but requesting further information for his Government respecting the grounds of the seizure as well as an explanation of the Judgment; and to request that I would report to your Lordship my opinion upon the answers which should be returned to Count Karolyi.

In obedience to your Lordship's commands I have the honour to report—

Case is "sub judice," and must not be discussed with Austrian Minister.

That the answer which in my opinion should be returned to Count Karolyi should be to the effect that this case being still "sub judice" and under appeal, it would be obviously inconvenient, useless, and unreasonable, pending the appeal which has been asserted by the claimants, for your Lordship either to discuss the grounds of the Judgment appealed from, or to state the facts which led to suspicions being originally entertained as to the national character of the "Nina," and which caused the seizure and the institution of proceedings against that vessel.

I beg to add some further remarks upon Count Karolyi's note, leaving to your Lordship's consideration the propriety of adverting to any or all of them in the reply which may be forwarded to such note.

That note appears to admit in effect that the Imperial Government cannot impugn the Judgment upon any broad or clear grounds, for it wholly omits to do so; it merely reiterates the utterly untenable argument for the liberation of the ship originally adduced by Count Colloredo, viz., that she had a complete set of Austrian ship's papers. It appears to me that if the Imperial Government was resolved to renew this discussion and to request further explanations from Her Majesty's Government pending the appeal, and after having had an opportunity of considering the Argument and Judgment, it should at all events have attempted to deal with some of the grounds upon which that Judgment purports to be founded.

Plea that her papers were Austrian.

Opinion of claimant's counsel.

The Claimant's case was argued by two of the ablest Counsel in the Kingdom (Dr. Addams and Dr. Twiss), who are perfectly able to offer any explanations of it; these learned gentlemen, moreover, commenced by admitting that they could not ask for restitution, and only sought to be permitted to adduce further proof; thus, in effect, admitting that, notwithstanding the previous peremptory assertions and demands of the Imperial Legation, the case was one of justifiable seizure, and open to grave suspicion, and I would therefore submit that Count Karolyi may be referred to them for the "grounds of suspicion" which induced them to adopt this course. It would be useless to repeat and enforce the reasons which the Court gave for refusing this request; they are to be found in the Judgment, and their validity is the very point now under appeal.

Justifiable seizure.

The request contained in the note for the communication of the grounds of suspicion which led to the seizure of the "Nina" appear to me most extraordinary and unreasonable, especially at this late period, and after the Argument and Judgment. Whatever may have first given rise to such suspicions, it is *now* obvious that these suspicions were well-founded.

Grounds of suspicion.

I can only repeat what I have stated in my previous reports, that the "Nina" was not seized or originally proceeded against on my advice, but by orders from the Admiralty, pursuant to the advice of the Admiralty Advocate and Proctor, and that I am wholly unaware of the original grounds of suspicion against her. Whatever those grounds may have been, I can only say that the pressing and peremptory tone originally adopted by the Austrian Legation, and its assertion that the Imperial pass ought of itself to be satisfactory, coupled with the refusal of the master to submit to examination or to give up the ship's papers, convinced me at an early stage of the proceedings that the case would not bear investigation. Whilst, therefore, the original grounds of suspicion which led to the seizure must be sought from the Customs or the Admiralty, some of the additional grounds of suspicion which soon became apparent will be found detailed in a (private) letter written by me to Lord Wodehouse (who conversed with me on the case by your Lordship's desire) shortly before the hearing took place.[*]

If this discussion of the case by the Austrian Government is to be further proceeded with, I would suggest that the depositions and all the papers should be forthwith printed by the Admiralty Proctor, as, without frequent reference thereto, it will be impossible to offer any intelligible observations thereon.

Case turns on facts as to nationality.

I may observe that the case does not appear to me to offer any very new or striking feature, or to involve any novel or peculiar questions of international law; it chiefly turns upon facts and dates connected with the alleged purchase of the ship from Russians by the claimant, upon his being (as he swears) or not being the sole owner, and as to his true domicile being Russian or Austrian.

Upon the whole, however, I would venture respectfully but decidedly to advise your Lordship to decline the present discussion as inopportune and unreasonable pending the appeal, the result of which may entirely change the aspect of the question.

I have, &c.
(Signed) J. D. HARDING.

No. 369.

The Queen's Advocate to the Earl of Clarendon.—(Received November 8.)

Doctors' Commons, November 8, 1855.

My Lord,

Transfer of Russian vessel to an American: as to British Consular certificate of.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 6th November instant, stating that he was directed to transmit to me two despatches and their inclosures received from Her Majesty's Minister at Washington as to the propriety of Her Majesty's Consul at Boston granting a certificate (upon satisfactory proof of the fact being laid before him) that a certain Russian vessel now in the harbour of Boston had become *bonâ fide* American property; and, further,

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[*] No. 356.

[*] No. 351.

1853-56

May she be resold by American to British subject, and obtain British register?

whether the vessel, if purchased by an American citizen, could be resold to a British subject and then obtain a British register, and to request that I would take these papers into consideration and report to your Lordship my opinion thereupon.

Lord Wodehouse was also pleased to inclose two previous despatches from Mr. Crampton, as bearing upon this subject, one of which is now referred to by him, as well as my report upon them dated the 8th November last.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

Consuls must not certify to transfers.

That Her Majesty's Consuls should on no account give any such certificates as alluded to, or any certificates at all as to transfer in foreign ports of Russian vessels to neutrals or British subjects.

As to papers necessary for an American ship.

I have already on previous occasions called attention to the impropriety of such documents being issued by Her Majesty's Consuls, and to the serious inconvenience which may result therefrom. It will be for your Lordship to consider whether the United States should be now again requested to give a direct answer to this simple question, already answered by almost all neutral nations, although not answered by the United States (as shown in my previous report 8th November, 1854), viz:—

"What ship's papers is every United States' merchant-vessel required by United States' law to have on board?"*

An answer to this question would appear to be the more requisite if United States' merchants purchase Russian ships *flagrante bello*, bearing in mind the numerous frauds already detected in this class of cases under other neutral flags, and adverting to the fact that a very large portion of the Russian commercial marine is probably at this moment disguised under various neutral flags.

I have, &c.
(Signed) J. D. HARDING.

No. 370.

The Queen's Advocate to the Earl of Clarendon.—(Received November 21.)

My Lord, *Doctors' Commons, November* 21, 1855.

Raising of blockade of White Sea.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 20th November instant, stating that he was directed to transmit to me a letter from the Admiralty inclosing a letter from Captain Baillie, of Her Majesty's ship "Mæander," late Senior Officer of the British Squadron in the White Sea, respecting the raising of the blockade of the Russian ports in that sea, and to request that I would take these papers into consideration and draw up a proper Notification of the raising of such blockade for insertion in the "Gazette," if I am of opinion that a "Gazette" Notification of the same should be made public.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I have prepared and herewith transmit a proper Notification of the raising of the blockade in question for publication in the "Gazette," a step which I consider proper to be taken by Her Majesty's Government.

Communicate notice to French Government before inserting in "Gazette."

I would however suggest the propriety of this Notification being communicated to the French Government before it is actually inserted in the "Gazette."

I have, &c.
(Signed) J. D. HARDING.

Inclosure in No. 370.

Notification.

Foreign Office, November 21, 1855.

Notification.

IT is hereby notified that the Right Honourable the Earl of Clarendon, K.G., Her Majesty's Principal Secretary of State for Foreign Affairs, has received from the Lords Commissioners of the Admiralty an official communication addressed to them by Captain Baillie, R.N., late Senior Officer of Her Majesty's White Sea Squadron, announcing the raising by the allied squadrons, on and from the 9th October last, of the blockade of the Russian ports and places in the White Sea, the establishment of which blockade was notified in the "London Gazette" of the 17th July last.

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* No. 212.

No. 371.

The Queen's Advocate to the Earl of Clarendon.—(Received November 26.)

My Lord, *Doctors' Commons, November* 23, 1855.

Netherlands ships "Catherine" and "Sjouke Alida" detained in Black Sea by British cruizers.

As to assessing compensation to owners.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 15th November instant, stating that, with reference to my letter of the 25th ultimo,* respecting the claim to compensation advanced by the Netherlands Government on behalf of the owners of the "Catherine" and "Sjouke Alida," in consequence of the detention of those vessels by the cruizers of Her Majesty's squadron in the Black Sea, he was directed to transmit to me, together with the former papers, a letter from the Admiralty stating that the Lords Commissioners of the Admiralty are of opinion that, as the illegality of the capture is of necessity admitted, and as no evidence in justification thereof is forthcoming, compensation should be made in the same manner as if the vessels in question had been restored after proceedings in a Court of Prize, with an award of costs and damages against the captors; and is pleased to request that, in again taking this case into consideration, I would report to your Lordship my opinion upon what principle such compensation would be assessed by the Court under such circumstances, and what sum should be tendered as amends to the Netherlands Government for the use of the owners of the vessels; and furthermore, whether, in the event of that Government refusing, in the interest of the owners, to accept the amount offered, a proposal should be made to submit the question of the principle on which compensation is to be assessed to the Judge of the High Court of Admiralty, and the assessment of the amount upon such principle to the Registrar of that Court.

In obedience to your Lordship's commands I have taken the papers into consideration, and have the honour to report—

That I beg to refer to my previous report of the 25th October for an explanation of the principle on which I conceive that compensation would be assessed by the Court of Admiralty under the circumstances suggested.

I must add that, in such cases, it is not easy to lay down any definite principle. Counsel are very rarely consulted or employed therein, and such cases very rarely come before the Court. The Registrar and merchants, in settling the amount of compensation, are guided by usage, by their own experience, and by the custom of merchants.

Question of account and mercantile usage.

Suggests sum to be offered.

The amount to be tendered to the Netherlands Government for the use of the owners of each vessel is a matter of account, and of mercantile usage, upon which I would again respectfully submit the propriety of consulting a person of mercantile experience. Subject to this suggestion, and, as far as I can understand the accounts submitted by the owners, and can apply to them the principles laid down in my report of the 25th October, 235*l.* sterling will be a sufficient tender in the case of the "Catherine," and 225*l.* sterling in that of the "Sjouke Alida;" at all events, whatsoever sum will cover the freight which would have been earned on the voyage interrupted, and the damage to the vessel, *plus* twenty days' demurrage at 5*l.* per day, will be a sufficient tender in each case.

In the event of the refusal of the Netherlands Government to accept these amounts, the proposal suggested appears to me to be extremely liberal on the part of Her Majesty's Government.

Rule for payment of costs of reference.

If such a proposition is made, and if the original, or *present* demand (now adopted by the Netherlands Government) should be submitted to the Court, or to the Registrar and merchants, and if the Court, or the Registrar and merchants, do not pronounce in favour of the demand to the extent of two-thirds of the whole amount claimed, the costs of the reference should be defrayed by the claimants, agreeably to the ordinary practice in such cases.

I have, &c.
(Signed) J. D. HARDING.

No. 372.

The Law Officers of the Crown to the Earl of Clarendon.—(Received December 19.)

My Lord, *Doctors' Commons, December* 18, 1855.

WE are honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 14th December instant, stating that munitions of war, and particularly

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* No. 367.

1853-56

Arms and sulphur sent to Russia through neutral ports.

sulphur (the article of which Russia now stands most in need), are transported to Russia in neutral vessels through neutral ports in such quantities, and with such complete impunity, that he was directed to request that we would once more consider the subject with reference to the accompanying despatches from Her Majesty's Chargé d'Affaires at Hamburgh and the practice of the French Government in such matters; and to report whether we can advise Her Majesty's Government as to any measures which can be taken to put a stop to a trade with the enemy so injurious to the interests of Great Britain and the Allies.

In obedience to your Lordship's commands we have the honour to report—

Measures to be adopted to stop it.

That we beg to refer to our Reports of the 27th March and 24th May last,* in which we have distinctly pointed out the measures which would, in our opinion, be strictly legal, and would be well calculated to stop, or at least to interrupt, the traffic in question. We would also refer to an opinion given on the 6th December instant by the Queen's Advocate, the Admiralty Advocate, and the Counsel to the Admiralty, on a case upon this subject submitted to them from the Admiralty.

Search the vessels, &c.

The first measure to be adopted is to search every vessel bound to the ports in question; the searching officer must be guided by the circumstances of each case in the exercise of his discretion as to capturing and sending in for adjudication. Some risk of costs and damages must, of course, be incurred; in the case of British vessels more strictness may be shown than with neutrals.

If French Law is more strict than British, let French ships perform the service.

With reference to the "practice of the French Government in such matters," we can only say that if that practice is in effect more adverse to neutral rights than our own in this particular respect, the duty of interrupting the traffic should be performed by French men-of-war. From the Judgment in the case of the "Vroun Houvria," 26th May, 1855 (as given in the printed Report inclosed), we infer that the French law and practice is more favourable to belligerent rights than that of England. This, however, can easily be ascertained from the Imperial Government or Law Officers.

We have, &c.
(Signed) J. D. HARDING.
A. E. COCKBURN.
RICHARD BETHELL.

No. 373.

The Queen's Advocate to the Earl of Clarendon.—(*Received December* 22.)

My Lord,
Doctors' Commons, December 22, 1855.

Baltic blockade raised.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 19th of December instant, stating that he was directed to transmit to me a letter from the Admiralty reporting that the blockade of the Russian coast in the Baltic was entirely raised on the 10th instant, and to request that I would take the same into consideration, and if I see no objection to draw up and transmit a notification of the raising of the said blockade for insertion in the "London Gazette."

In obedience to your Lordship's commands I have the honour to report—

That I infer from the letter of the Admiralty that all the Russian ports in the Baltic the blockades of which have been notified at various dates during the present year have remained blockaded until the 10th December instant, and that on that day such blockades were simultaneously raised.

On this assumption, I see no objections to the issuing of a notification in the "Gazette," which I have accordingly prepared and herewith transmit.

No mention of French Government.

I have not ventured to insert any statement to the effect that Admiral Baines in raising this blockade was acting on behalf of the French Government, not knowing how this may be in point of fact.

I have, &c.
(Signed) J. D. HARDING.

Inclosure in No. 373.

Notification.

Foreign Office, December 28, 1855.

Notification.

IT is hereby notified that the Right Honourable the Earl of Clarendon, K.G., Her Majesty's Principal Secretary of State for Foreign Affairs, has received from the Lords Commissioners of the Admiralty an official communication stating that it appears by a report from Rear-Admiral Baines, dated "Her Majesty's steam-vessel 'Retribution,' Copenhagen, 12th December, 1855," that the blockade of all ports, roads, havens, and creeks belonging to the enemy in the Baltic was entirely raised on the 10th instant.

No. 374.

The Queen's Advocate to the Earl of Clarendon.—(*Received January* 11.)

My Lord,
Doctors' Commons, January 10, 1856.

Mr. Wienholt's saltpetre seized on board Hanoverian vessel on voyage from Lisbon to Hamburgh.

Condemnation confirmed by French Conseil d'Etat.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 4th January instant, stating that he was directed to transmit to me the accompanying letter from Mr. Wienholt, stating that the French Conseil d'Etat has confirmed the confiscation of the saltpetre belonging to him, which was seized by a French war steamer on board the Hanoverian vessel "Vrow Howina" whilst that vessel was on her passage from Lisbon to Hamburgh in the course of last year, and to request that I would take this case again into consideration, and report to your Lordship, at my earliest convenience, my opinion whether Her Majesty's Government should ask the French Government for the reasons which have induced the Conseil d'Etat to reject Mr. Wienholt's appeal, and whether your Lordship should adhere to the former answer given to Mr. Wienholt.

Mr. Hammond is pleased to add the former papers belonging to this case.

In obedience to your Lordship's commands I have taken the papers into consideration, and have the honour to report—

"Jugement motivé."

Her Majesty's Government cannot interfere.

That I have not seen any report of the Judgment of the Conseil d'Etat in this case, but Mr. Wienholt has evidently seen it, for he cites a passage from it *verbatim*. From this it would appear that the Judgment is what is called in France a "Jugement motivé," and that it contains the reasons which induced the Conseil d'Etat to reject Mr. Wienholt's appeal. I cannot, therefore, advise an application to the French Government for these reasons.

Under all the circumstances of the case, I am of opinion that your Lordship should adhere to the answer given to Mr. Wienholt, and should refuse to apply to the French Government in his favour.*

I have, &c.
(Signed) J. D. HARDING.

No. 374*.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received February* 18.)

My Lord,
Doctors' Commons, February 18, 1856.

Arsenals to be maintained in the Black Sea. Does "Black Sea" include adjoining waters?

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 14th February instant, stating that we should perceive from the passages marked in the inclosed paper that it is proposed that the respective Governments of Russia and Turkey should not establish or maintain in the Black Sea any "arsenaux militaires maritimes," and should not keep afloat in the Black Sea any greater number of vessels of war than may be required for the service of their coasts; and Mr. Hammond was pleased to request that we, at our earliest convenience, would report to your Lordship whether, under the ordinary legal acceptation of the word "Sea," the Sea of Azoff and the lower parts of the Bug and Dnieper, from and including the arsenals of Nicolaieff and Kherson, and also the Straits of the Bosphorus, by which the waters of the Black Sea reach the Archipelago, and the arsenal of Constantinople, situated in a bay of the Bosphorus, immediately at its junction with the Sea of Marmora, are all or any of them properly to be considered as portions of the "Black Sea," and, as such, subject to the limitations above specified in regard to arsenals and vessels of war.

In obedience to your Lordship's commands we have the honour to report—

Black and Azoff Seas distinct; also Bosphorus.

That the question is rather one of geography than of international law. We would, however, remark that the Black Sea and the Sea of Azoff have from the earliest times been known and distinguished by different appellations.

The ancient geographers always distinguished the *Palus Mœotis* from the *Pontus*

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* Nos. 291 and 326.

* See also No. 355*.

1853-56

Euxinus, and ancient classic writers speak of the narrow Strait which connects them as *Ostia Ponti.*

Geographically, if two seas are connected by a strait, they are regarded as distinct from each other, and the Sea of Azoff is as distinct from the Black Sea as the Mediterranean from the Atlantic.

We are, therefore, of opinion that the Sea of Azoff cannot be considered as included under the term "Black Sea."

As to the Rivers Bug and Dnieper.

The next question relates to the Rivers "Bug and Dnieper, from and including the arsenals of Nicholaieff and Kherson."

Upon looking at the best charts (which seem to be the French), it will be seen that the Rivers Bug and Dnieper discharge themselves into an estuary the mouth or entrance of which from the Black Sea is very narrow, with the fort of Otchakov on the north shore and the fortress of Kinburn on a tongue or spit of land on the south.

By international law this estuary is part of the territory of Russia, which is the Sovereign of the country on either side.

Not part of sea into which they flow.

Geographically, an estuary formed by the influx of rivers cannot be treated as part of the sea into which it flows.

We are of opinion, therefore, that the Black Sea terminates at the mouth of the estuary, and that neither Nicholaieff nor Kherson can be treated as "arsenaux militaires maritimes" on the Black Sea.

Limits of Black Sea and Bosphorus.

The Straits of the Bosphorus are, in our opinion, perfectly distinct from the Black Sea, and Constantinople cannot be pretended to be included in the "arsenaux militaires maritimes" or the Black Sea, or subject to any of the limitations with regard to arsenals or vessels of war.

We have, &c.
(Signed) J. D. HARDING.
A. E. COCKBURN.
RICHARD BETHELL.

No. 375.

The Law Officers of the Crown to the Earl of Clarendon.—(Received February 19.)

Doctors' Commons, February 19, 1856.

My Lord,

As to armistice extending to operation of blockades, &c.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 14th February instant, stating that he was directed to state to us that a question will arise at an early period of the conferences about to be opened at Paris, as to the extent to be given to the armistice to be concluded between the belligerents.

That Her Majesty's Government and that of the Emperor of the French are disposed to confine that armistice generally to the land operations of the belligerents, leaving the Maritime Powers at liberty to maintain, extend, or establish blockades by sea, and to prevent the intercourse of neutrals with Russian ports or the navigation of Russian vessels. That the two Governments are also disposed to give Russia some species of assurance that during the period of the armistice her coasts shall be exempt from actual attack; and the point on which your Lordship would be glad to have our opinion at our earliest convenience is whether there can be legally made any exception or limitation of belligerent rights in the naval hostilities that are still to be kept up, that is to say, whether the Governments of England and France can give to Russia more than a verbal and unofficial assurance that during the armistice by land the naval forces of the allies shall not attack the ports, towns, or territories of Russia.

In obedience to your Lordship's commands we have the honour to report—

Allies may guarantee Russia against attacks by sea without granting a general armistice by sea.

That we are of opinion that there is no legal objection to the Governments of England and France formally stipulating with Russia that during the armistice by land the naval forces shall not attack her ports, towns, and territories.

At the same time we think it right to point out that care should be taken to make it fully understood that this engagement does not extend to a general armistice by sea, for during such an armistice each Power would have a right to do what it might do in peace.

No fresh blockades allowable in case of general armistice,

None of the Russian ports in the Baltic and White Sea being now blockaded, the imposition of any fresh blockade would be inconsistent with an armistice by sea, and the agreeing to any such armistice would, in our opinion, give great advantage to the enemy, whose merchant vessels would be at liberty to trade, and whose ships of war might move, while no corresponding advantage or security would be gained by the allies. A general armistice by sea would also be calculated to involve them with neutral Governments whose vessels might attempt to carry contraband of war to Russia, or to convey Russian troops or munitions of war coastwise.

which might occasion complications.

We have, &c.
(Signed) J. D. HARDING.
A. E. COCKBURN.
RICHARD BETHELL.

No. 376.

The Queen's Advocate to the Earl of Clarendon.—(Received February 23.)

Doctors' Commons, February 22, 1856.

My Lord,

Purchase of vessels by neutrals of belligerents.

Request of Swedish Minister for principles of British law.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 15th February instant, stating that he was directed to transmit to me a letter from the Swedish and Norwegian Minister at this Court, requesting by direction of his Government to be furnished with exact information as to the principles of English law applicable to vessels purchased by the subjects of a neutral Power from the subjects of a belligerent; and to request that I would furnish your Lordship with a report upon this subject, so that your Lordship may be able to return an answer to Baron Hochschild's letter.

In obedience to your Lordship's commands I have the honour to report—

That inasmuch as the Swedish Minister puts no specific questions, and refers to no particular case of difficulty or hardship in which any vessel under the Swedish flag has been involved in consequence of the principles applied by British Prize Courts to ships purchased by neutrals from the enemy, it does not appear to me to be easy, or even to be expedient, for your Lordship to "lay down such principles categorically," unless in answer to some categorical questions, more especially when it is notorious that Her Majesty's Government has no power or control whatsoever over the proceedings or decisions of Prize Courts, and that such proceedings are always public, and regularly reported in a very intelligible form, so that all persons interested therein may easily ascertain what are the principles therein applied to such transactions—transactions which, I may remark, have been unusually frequent during the present war, probably owing to the flag at present being permitted to cover the cargo, but in which ships have (as far as I am aware) been seized only in three instances under the Swedish flag:—

Swedish vessels before Prize Court.

1. The "Wester Norland," in which further proof was granted without opposition by the Crown, and upon such proof she was restored without opposition by the Crown.

2. The "Richard," not yet heard.

3. The "Christian Loven," which was before the Court of Admiralty on the 30th January last, and which may possibly have led to the present inquiry. In this case restitution was not even asked for by the Swedish claimant, who did not complain of the seizure, but only applied for permission to give further proof of the validity of the purchase, to which the Crown instantly consented; this case is still *sub judice*. It will thus be seen that only one Swedish case (of this class) has been decided, and that such decision was "restitution by consent."

Sales *flagrante bello*, are open to suspicion.

Prize Courts take common sense view, &c.

Subject to these remarks, I proceed to observe that, according to the principles applied by British Prize Courts, purchase of enemy's ships by neutrals *flagrante aut imminente bello*, although not (as in France) absolutely illegal and void, yet, from their nature are justly open to suspicion, and that, in permitting claimants to establish the validity of such purchases, the British Prize Courts act with vigilance, and adopt such rules as reason and common sense suggest to guard against fraud, collusion, and concealment of enemy's interest, and to ascertain that all such interest is absolutely and completely divested from the original owner, and has been *bonâ fide* and wholly transferred to the neutral claimant without any secret contract, trust, or reservation.

What evidence is admissible.

The burden of proof is (in a certain sense) cast upon the claimant, but the only evidence admitted by the Court is that furnished by the ship's papers and the claimant's evidence on depositions of master and crew, in the first instance, and by the

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further proof; neither the Crown nor the captor or seizor is as a general rule permitted to adduce any contradictory evidence whatsoever.

Advantages to claimants.

The great advantage which the claimant derives from this peculiar course of procedure is obvious; no ship is condemned but by reason of their alleged owners' evidence (though uncontradicted) being false or defective, or of his having shown *mala fides*, and when further proof is allowed, the Crown is frequently obliged to disclose its whole case in the first instance, and the claimant, after having obtained "further proof," proceeds (forewarned and, therefore, forearmed) to answer the case of the Crown at his discretion by affidavits and documents which in practice cannot be contradicted. Anything tending to continue the enemy's interest in the vessel is held to vitiate such contracts altogether.

What circumstances vitiate a sale.

If, after and notwithstanding the alleged sale, the vessel be employed habitually in the enemy's trade or under the direction of an enemy, the sale will be held colourable and collusive; again, the spoliation or the improper concealment or suppression of papers, gross prevarication by the master and crew upon their examination; the attempt to set up a case which is contradicted by the evidence or by the ship's papers; or any conduct showing a want of good faith in the parties interested, will be followed by the same result, for Courts administering law of nations require good faith. It is not, however, absolutely necessary that the whole course and nature of the transaction should be at once apparent on the face of the papers or by the evidence of the master and crew. The claimant will generally be permitted to adduce further proof of the requisite facts, but he may also forfeit such right by misconduct of the description above alluded to.

"Further proof" allowed.

Commercial domicile fixes nationality.

It may not be superfluous to add that, as a general principle, persons are considered as belonging to the country of their actual or of their commercial domicile, independently of the country either of their birth or of their allegiance or adoption. Her Majesty's Government has, in my opinion, acted with remarkable leniency towards neutrals in this class of cases; indeed, short of conniving at Russian vessels resorting to its ports under the transparent disguise of any neutral flag, I do not see how less could have been done than has been actually done in this matter. There can be no doubt but that a large number of Russian vessels is at this moment sheltered under various neutral flags in fraud of Her Majesty's belligerent right, and greatly to the advantage of the enemy.

Generosity of Her Majesty's Government, and consequent fraud.

I believe that not above one or two (if any) vessels have been captured by Her Majesty's ships on this ground during the whole war. In all the other cases of the kind, about forty in number, the vessels have been seized by the officers of the Customs whilst lying in British ports into which they had come as if either courting inquiry or in defiance of Her Majesty's sovereign rights as a belligerent.

Thus it will be seen that both the principles and the practice adopted by the British Prize Courts and by Her Majesty's Government, with reference to this class of cases, have been liberal and most lenient towards neutral flags. In a very large proportion of such cases fraud and false swearing have been detected and exposed.

I do not at present see how a more categorical answer can well be given to the very general and sweeping inquiry of his Excellency the Swedish Minister.

Works of reference.

It would be easy to refer to the numerous reported cases upon this subject; but these must be either well known or easily accessible to the Swedish Legation. The clearest illustrations of the general principles which are applied by Prize Courts to these cases will be found in "Storey's Notes on the Principles and Practice of Prize Courts," by Dr. Pratt, 1854, p. 25 and p. 63. The "Vigilantia," 1 C. Robinson, p. 1; the "Bernoro," 1 C. Robinson, p. 103; the "Secks Geshwistern," 4 C. Robinson, p. 101 (cases in former wars). The "Johann Christoph," 1 Spinks' Prize Cases, p. 60; the "Ernst Merck," 1 Spinks, p. 98; the "Soglasie," ibid., p. 104; the "Nina," printed Judgment inclosed (cases in the present war).

Judgment in case of the "Nina" annexed.

If I were fully aware, either of the real object of the Swedish Minister's application, or of the particular principle or class of cases upon which he desires information "in a categorical manner," I might be able to give your Lordship fuller and more definite information upon the subject.

I have, &c.
(Signed) J. D. HARDING.

Inclosure in No. 376.

Judgment delivered by Dr. Lushington, August 11, 1855.

Judgment.

IT is admitted on behalf of the claimant that he cannot ask for anything more than further proof, in order to clear away the difficulties which it is asserted, and, indeed, not denied on the part of any one, exist in this case.

Having read all the papers before I came into Court, and having attended to all the observations of Counsel on both sides, I think it wholly unnecessary to delay my decision, being perfectly satisfied that I should never alter my view of this case, though perhaps, if I occupied further time before I delivered my Judgment, I might make it a little more clear, or, perhaps, carry it to greater length, but I deem it unnecessary to do so under the present circumstances.

The claim is made on behalf of a person of the name of Gherdacovich, of Costrena, in Austria, and it was stated that originally it was the intention of Baron Rothschild to have made the claim as Consul-General for Austria, and so it appears upon the face of this claim. Now really that has nothing to do with the question which I am about to decide, for whether the claim is preferred by one individual or by another, the Court abides by its general rules and principles, without any regard to persons or individuals. No doubt it was exceedingly proper in this vessel's master to take the advice of the Consul-General of the State to which he claimed to be a subject, and, for aught I know, he might have applied also to the Ambassador; but even if that were the fact, it would not make on the mind of the Court even the very slightest impression, for I am neither to be influenced nor in the slightest degree governed by the opinion of any person nor by anything except what I deem to be the law of nations as administered in this Court.

Obstacles placed in the way of investigation.

If the master did make application to the Consul-General in due time, it was unfortunate that, from some cause or other, he did not receive that advice which would have enabled him, I trust, to have conducted himself with greater propriety than he has done towards the officer of the Customs. Instead of affording every facility for bringing in the papers and the examination of himself and his crew, he folded his arms, and, if not actively engaged in preventing the inspection of those papers, rendered no aid, and certainly prevented the examination of himself and of those on board; but I do not attribute that to the advice of his Consul; I should be exceedingly sorry so to do, because undoubtedly, if that was so, whether it emanated from Consular or any other authority, it would tend to indispose the Court from giving due consideration to persons filling those high offices.

Now what are the facts of this case? The ship was originally a British, then a Russian vessel, but, as represented, became Austrian in the year 1853, at what particular time is uncertain from these papers, in which, although the vessel was represented to be an Austrian vessel in the month of July 1853, yet she did not become so till the month of November in the same year.

Legality of *bonâ fide* sale.

Now at that period I have no hesitation in saying that if a Russian owner was desirous of changing her character by sale, it was competent for him so to do, and equally competent to the Austrian subject to buy it, provided only the transaction was fair and the Russian interest was divested, and the Austrian flag properly assumed under the authority of that country, that country not being deceived by any false representation, and the owner being entitled to a national Austrian character.

Divided ownership fatal to restoration.

Such being the facts in the case, the vessel has been claimed by Mr. Gherdacovich as the sole owner of the property, and the Court can decree restitution to this claimant on no other ground than that he himself is the person solely entitled to it. Even if the case should be made out by further proof, which appeared to me to be a little inadvertently suggested to the Court, namely, that he had the legal title in this property, but in reality other persons in conjunction with him were interested in the ship, be they who they may, unquestionably I could never restore on this claim. The Court will never restore on any claim unless it is satisfied that the property is *bonâ fide* the property of the individual who claims it, and if it finds any other interest lurking out in any shape, it is quite sufficient for me to pronounce against that claim.

There are two points, then, which arise for the consideration of the Court in this case, independently of the many questions and the many doctrines which have been ably discussed at the bar.

The first question is one that might be a matter for further proof, viz.:—Was Mr. Gherdacovich of Costrena or not? What do I find in the evidence? I find the master swearing in no very credible or satisfactory manner—First, that he had been

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Doubtful nationality of owner.

resident at Costrena sixteen or seventeen years, and then afterwards adding he was resident at Odessa, but when and where he knew not, though it appears beyond all doubt and question that this Mr. Gherdacovich put him in possession of the ship in 1851, at Odessa. He might have had, I think, the means of giving us a little more satisfactory information of the residence of Mr. Gherdacovich at Odessa. But what do I find besides? Without entering minutely into the particulars of this case, I find Mr. Gherdacovich in 1854 resident at Odessa both in the month of April and also of November. Now these circumstances excite very great suspicion as to whether Mr. Gherdacovich is really entitled to be considered an Austrian subject, according to the sense in which the words must be understood in this Court. It does not follow, as seems to be imagined, that because this gentleman might have been born of Austrian parents, that he might have been resident at Costrena, and might have gone there occasionally or frequently (if he was carrying on trade and business at Odessa, if he was employed as the ship has been at Odessa), he would be entitled to come before the Court and claim restitution in an Austrian character. He must be bound by the character of that place where he was resident and carrying on his trade, and to which the transaction properly belongs. I mention this because at the commencement of the transaction, when Austrian colours were assumed, matters appear throughout the papers which are explained in a very unsatisfactory manner to the Court. It seems to have been thought by the parties that they were at liberty to change the national character of the vessel without the slightest regard to the reality of the transaction, on the mere representation that they wished to obtain, first, Austrian colours, and then any other that might suit the purposes of trade. If that be so—I do not say it is in the case of Austria, as I regret to say it has in other cases—the grant of the national flag has been made without a just regard to the rights of the belligerent.

Now, supposing I got over that, what is the next point? I have already said I can restore to nobody, by possibility, but Mr. Gherdacovich, as sole owner. Now what is the state of the papers? I am told very cautiously, did Counsel abstain from stating the mode and manner in which they would effect their object? but they tell me (if I will but shut my eyes and open my ears) they will find the means of proving Mr. Gherdacovich to be the sole owner. Notwithstanding the documents under my eyes, they will find the means whereby in reading them I shall be enabled to put on them a construction totally and wholly incompatible with that sense which they bear upon the face of them.

Now, I ask, how is this to be done? I again refer to those words, which I read before in the course of the argument, "I know you would be pleased to proceed on your voyage to the Adriatic; I would consent to it, but you know well that I am not the sole owner, and must execute the orders of my partners."

Fictitious transfer from Russian flag.

Now, if it were to be proved by any evidence produced in the case that this gentleman was sole owner, it would, as the learned Queen's Advocate has said, be in direct contradiction to the construction which any man of common sense must put on the words to which I have referred. But does the case rest here? Not only would it be in direct defiance of that meaning, but in direct contradiction of the whole of the correspondence, because there are letters upon letters in which Signor Cossio is represented as having an interest in this vessel, in which Anatra, living at Odessa, is represented as having an interest in the vessel; and when I see that the construction I put on these words—and no man living can put another—is in direct accordance with all the other documentary evidence, can I, under these circumstances, allow further proof, the very object of which would be to falsify the whole of the papers? I am of opinion that upon this ground alone I must not allow further proof; but there are in this case a variety of other reasons which fortify my opinion, and which seem to demand from the Court that determination which I have now expressed. I will make every possible excuse for this man being a foreigner, every possible excuse for his not understanding what is meant by a suppression of papers, but it is clear that he, through an agent, was concealing papers from the seizors, and preventing them obtaining possession of the papers which by the law of nations this Court is entitled to require. Nor is this all, more unsatisfactory evidence the Court never had occasion to read. Can I believe this person was so ignorant of the ownership of this vessel that he could not have told me if the claim was such as it is represented to be—a sale or transfer in November 1853 to the present claimant—that he could not have given the Court some rational exposition of the subject. He who had been master from 1851, he who was appointed by the owners in 1851, there was that paper adverted to (No. 101), showing that in 1850 Cossio and Co. were owners, these are the words, "and Co.;" he must have known, what was obvious to every man of common sense, that

this was a transfer—I do not say a culpable transfer, but a transfer for the purpose of getting rid of the Russian national character and taking the Austrian national character. He must have known who the Russian owners were who executed the conveyance, and he must have known something of the consideration which passed if it was an honest and just transaction.

I condemn this vessel, and I regret that in the first case of a vessel coming before this Court under the Austrian flag it is my duty to pronounce that sentence. I shall always be ready to give that flag as indulgent a consideration as the law of nations will permit; but, at the same time, I trust that the Austrian Government will take care not to allow its flag to be prostituted for the purpose of protecting the property of an enemy from the just rights of a belligerent.

I certify this to be substantially a correct report of the observation of Dr. Lushington on decreeing the condemnation of the ship.

(Signed) W. ROBINSON.

Doctors' Commons, January 17, 1856.

Judgment confirmed by Privy Council.

Affirmed on Appeal by the Judicial Committee of the Privy Council, February 11, 1856.

(Signed) J. D. HARDING.

No. 377.

The Queen's Advocate to the Earl of Clarendon.—(Received February 29.)

My Lord, *Doctors' Commons, February* 29, 1856.

British vessel "Bedlington" sunk by Russian batteries on the Danube.

Messrs. Powell's claim, and loss of business at Galatz.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 9th January ultimo, stating that, with reference to my Reports of the 1st June and 13th July, 1854,* he was directed to transmit to me a letter from Messrs. Powell and Co., calling the attention of your Lordship to the loss they have sustained by the destruction of their ship "Bedlington," and by their being obliged to relinquish their commercial business at Galatz; and to request that I would take this paper into consideration with reference to the previous correspondence, and report to your Lordship my opinion as to the mode of proceeding with respect to this matter in case of peace being concluded; and that I would inform your Lordship whether I wish to receive the further information offered by the applicants.

In obedience to your Lordship's commands, I have taken this paper into consideration, and have the honour to report—

Parties must make claim for presentation to Russian Government in case of peace.

That I am of opinion that, in case of peace being concluded, the circumstances connected with the destruction of the "Bedlington" may properly be brought under the notice of the Russian Government, with a view to obtaining compensation for the amount of the actual value of the vessel and cargo at the time she was sunk. For this purpose, the parties interested should, in my opinion, be requested to furnish your Lordship with a full and accurate statement of the facts, including everything which may enable your Lordship to establish their claim for compensation against the Russian Government, and also with an account of the value at the time of the loss divided into separate general items, with vouchers or something equivalent thereto, (as thus—"Ship , tons , built at in 18 , valued at £ [builders' or surveyors' certificate]. Cargo, tons of , at £ per ton [invoices or papers]. Master's and men's clothes and effects: master's, £ ; men's, each, £ "), so as to enable your Lordship to determine what amount of compensation may fairly be demanded.

I beg to call attention to the newspaper extract (with these papers), containing a statement from Mr. William Phillips, master of the barque "Anne," of Shields, which appears to be very material, and which should be supplied by the owners of the "Bedlington" in an authentic shape.

With reference to the further claim, now first put forward by Messrs. Powell and Sons at the conclusion of their letter of the 30th January, 1856, I have to observe that this is a new and distinct case, not connected with that of the "Bedlington," and that I therefore abstain from any remarks thereon.

It appears that Messrs. F. and M. Anderson, the original applicants, were interested in the ship, and Messrs. Henry Powell and Sons in the cargo; there may possibly be other parties interested, and it might be convenient if one person or firm could be

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* Nos. 124 and 152.

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authorized to act as agent for all parties interested, so as to avoid the necessity of carrying on several separate correspondences on the same subject.

I have, &c.
(Signed) J. D. HARDING.

No. 378.

The Queen's Advocate to the Earl of Clarendon.—(Received March 10.)

Doctors' Commons, March 10, 1856.

My Lord,

Sale of belligerent ships to neutrals.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 1st March instant, stating that, with reference to my Report of the 22nd February ultimo,* upon the subject of the request of the Swedish and Norwegian Minister at this Court (dated February 14, 1856) to be furnished with precise information as to the principles of English law applicable to vessels purchased by the subjects of a neutral Power from the subjects of a belligerent, he was directed to transmit to me the draft of an answer, founded upon my above-mentioned Report, which your Lordship proposes to address to Baron Hochschild; and to request that I would take the draft of answer into consideration and report to your Lordship my opinion as to whether it is right and proper.

In obedience to your Lordship's commands I have taken the draft of answer into consideration, and have the honour to report—

That I am of opinion that the draft answer is right and proper.

Remarks on reply to Swedish Minister.

I beg, however, to submit to your Lordship's consideration the propriety of stating to his Excellency the Swedish Minister that only three ships under Swedish colours have, as far as I am aware, been seized during the present war on suspicion of being really Russian property.

1. The "Wester Norland," in which the claimant asked not for restitution but for permission to offer further proof, thus admitting the justice of the seizure; the Crown consented thereto, and the ship was subsequently restored, also by consent of the Crown.

2. The "Christian Loven," in which the claimant did not ask for restitution, but only for permission to give further proof, to which the Crown consented. After such consent had been given, the whole of the case upon which the Crown means to rely hereafter was (without my knowledge) disclosed to the claimant *pendente lite* (I presume through the Swedish Minister). This state of things appears to me to demonstrate the leniency with which Her Majesty's Government has acted in this matter, and also the entire absence of any real grievance whatsoever in relation thereto so far as regards Sweden.

3. The "Richard," which case is appointed to be heard on the 14th instant. I am not aware that any communication has been made thereon by the Swedish Government, or that it is a case of any peculiar hardship.

I have, &c.
(Signed) J. D. HARDING.

No. 379.

The Queen's Advocate to the Earl of Clarendon.—(Received April 18.)

Doctors' Commons, April 17, 1856.

My Lord,

Case of the "Bedlington" sunk in the Danube.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 29th March ultimo, stating that, with reference to my report of the 29th Febuary last,† he was directed to transmit to me, together with the former papers, the accompanying letters from Messrs. Powell and Sons, inclosing documents in support of the claims of the owners of the "Bedlington" and of her cargo, on account of the sinking of that vessel in March 1854 by Russian batteries on the Danube, and to request that I would take the same into consideration and report to your Lordship my opinion whether the case is now in such a shape as will justify Her Majesty's Government in bringing it under the consideration of the Russian Government when peace shall be re-established, and whether the amount of compensation claimed by the parties interested is such as can properly be put forward.

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* No. 376.

† No. 377.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

Claim may be brought before Russian Government.

That I am of opinion that the case is now in such a shape as will justify Her Majesty's Government in bringing it under the consideration of the Russian Government when peace shall be re-established.

Compensation. As to settlement by arbitration.

With respect to the amount of compensation claimed by the parties interested, I would venture to suggest that such amount need not be stated to the Russian Government in the first instance. The amount actually claimed is not precisely such as in my opinion can be put forward by Her Majesty's Government, but such amount might in my opinion be conveniently settled by the arbitration of merchants or Consular Officers of some neutral or indifferent Power, in the event of the Russian Government admitting the justice of the claim in point of principle.

Items of claim.

Remarks.

Subject to these remarks, I beg to point out that the fourth item in Messrs. Powell's memorandum of 12th March, 1856, and the items in Messrs. Anderson's memorandum of 17th March, 1856, from the fourth to the ninth (both inclusive), do not appear to me to be such as can properly be insisted upon. The amount to be claimed from Russia should in my opinion be limited (1) to the value of the ship, (2) the insurance on her, (3) value of the cargo on board when sunk, (4) value of the net freight on the homeward voyage from Galatz, (5) personal effects of master and crew, (6) interest on the amount of value of ship and cargo and freight from the time when the voyage would probably have terminated up to the period of settlement.

I do not observe that any attention has been paid by the parties interested to the suggestion made in my previous report as to the statement of Mr. William Phillips, master of the barque "Ann" of Shields.

I have, &c.
(Signed) J. D. HARDING.

No. 380.

The Queen's Advocate to the Earl of Clarendon.—(Received April 18.)

Doctors' Commons, April 17, 1856.

My Lord,

Messrs. Powell's claim for loss on breaking up establishment at Galatz.

Case of "Bedlington."

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 15th March ultimo, stating that, with reference to the last sentence but one in my report of the 29th February last,* respecting the case of the "Bedlington," he was directed to transmit to me a letter from Messrs. Henry Powell and Sons, inclosing a statement with documents respecting their claim on account of loss sustained by their being compelled to break up their establishment and leave their factory at Galatz, in consequence of the occupation of the Principalities by the Russians, and to request that I would take the same into consideration, and report to your Lordship my opinion thereupon, and whether Messrs. Powell's claim is one which Her Majesty's Government can properly bring before the Russian Government after the war is ended, with a view of obtaining compensation for the claimants.

I am also honoured with Mr. Hammond's note of the 22nd March ultimo, forwarding a further document which has been received from Messrs. Powell and Sons, respecting the loss sustained by them in consequence of being compelled to break up their establishment at Galatz.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

Inadmissible.

That the claim of Messrs. Powell does not appear to me to be one which Her Majesty's Government can properly bring before the Russian Government after the war is ended, with a view of obtaining compensation for them. Considered as a whole, it is, in my opinion, inadmissible, It is, of course, possible that they may be entitled to something, but many of the items in their "Memorandum of Loss" appear to me to be unreasonable, more especially the third, fourth, and last items, which are wholly destitute of vouchers, and amount (together) to half of the total claim. I may add that, if British merchants deliberately claim unreasonable compensation in such cases, it does not appear to me to be incumbent on Her Majesty's Government to sift and discuss each separate item. Her Majesty's Government may simply reply that "the claim is one which cannot properly be adopted or maintained internationally."

Her Majesty's Government need not support monstrous claims.

I observe, however, that Mr. Vice-Consul Cunningham is alluded to by Messrs. Powell as having advised and recommended their abandonment of their establishment at Galatz, and it may therefore appear to your Lordship advisable to apply to that

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* No. 377.

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Consul might report on case.

gentleman for any remarks which he may have to offer upon the subject of Messrs. Powell's claim, more especially requesting his attention to their "Memorandum of Loss," and to the apparent absence of any formal or direct intervention on the part of the Russian authorities in Messrs. Powell's affairs, as by requisition, sequestration, forfeiture, destruction, or otherwise, and also to the fact that Messrs. Powell do not appear to have made any complaint or protest, or application for compensation or redress, either to Her Majesty's Vice-Consul, or to the Russian commanding officer, or to the local authorities at the time when they actually suffered their alleged losses.

I may add that I am not aware either of the date or circumstances of Messrs. Powell's first application to Her Majesty's Government in this matter, or of the date or circumstances of their leaving Galatz; nor do I understand whether they left any person in charge of their property and interests there, or whether the "buildings, fixtures, machinery, and plant" (the full value of which they claim), were wholly abandoned and left "derelict" on their departure.

I have, &c.
(Signed) J. D. HARDING.

No. 381.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received April* 22.)

My Lord,
Doctors' Commons, April 22, 1856.

Danish ships "Steen Bille" and "Magle" captured for breach of blockade.

WE are honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 15th March ultimo, stating that he was directed to transmit to us a corresponnence which has passed between the Foreign Office and the Danish Minister, General Oxholm, relative to the Danish ships "Steen Bille" and "Magle," which were captured for breach of blockade and condemned as prizes by the Admiralty Court. Lord Wodehouse also transmits a letter from the Admiralty inclosing a Report from the Queen's Proctor in the cases of these two vessels.

Restitution claimed.

That General Oxholm applies for the restitution of the "Steen Bille" and "Magle" upon the ground that the cases of these vessels are analogous to those of the "Franciska" and "Union," which were released on appeal from the Privy Council. That the Queen's Proctor rests his opinion that the cases are not analogous upon the fact that the "Steen Bille" and "Magle" sailed for their destinations after the 15th May, the date at which he considers that the Privy Council decided that the blockade was legally established, whereas the "Franciska" and "Union" sailed before that day; but from the report of the Judgment of the Privy Council in the case of the "Franciska," it appears that the decision given in favour of that vessel was based rather upon the want of legal notice of the blockade than upon the date at which the blockade was legally established, special reference being made to a letter from Her Majesty's Minister at Copenhagen, dated 3rd June, 1854, as proving the invalidity of the notice, and it may be concluded, therefore, that the ground upon which General Oxholm rests the analogy which he seeks to establish is rather the impossibility of the "Steen Bille" and "Magle," which sailed on the 18th and 28th of May, having received a valid notice of the blockade for the breach of which they were captured and condemned.

As to want of legal notice of blockade.

Lord Wodehouse was also pleased to add that your Lordship would be disposed to recommend to the Treasury that compensation should be made for the condemnation of the "Steen Bille" and "Magle," without compelling the owners to incur the heavy expense of an appeal to the Privy Council, provided the analogy between their cases and those already decided should, on examination, appear to be sufficiently established, and provided no serious inconvenience would arise from the restitution of other vessels being likely to be claimed upon similar grounds. With this view, Lord Wodehouse was pleased to request that we would take these papers into consideration and report to your Lordship our opinion whether the cases of the "Steen Bille" and "Magle" are analogous to those of the "Franciska" and "Union," or, if not, in what the distinction between these cases consists, in order that your Lordship may be able to point out that distinction to General Oxholm.

In obedience to your Lordship's commands we have taken this subject into consideration, and have the honour to report—

That the judgment of the Privy Council in the case of the "Franciska" has established the following conclusions with respect to the blockade of the Baltic:—

1. That it results from the Orders in Council of the 29th of March and 15th April, 1854, that there could be no legal blockade of any Russian port in the Baltic prior to the 15th May, 1854.

Judgment. As to validity of notice of blockade.

2. As no legal blockade was in existence prior to the 15th May, it follows there could be no notice of an existing blockade to affect a neutral ship on the 14th May, when the "Franciska" sailed from Elsinore.

If not *de facto*, not binding on neutrals.

3. That the notification of blockade published by the British Admiral and British authorities in April 1854 was a declaration of a general blockade extending to all the Russian ports in the Baltic and Gulfs of Finland and Bothnia, whereas in fact several ports were not blockaded until the 20th May, and others not until the 26th June, and that the notice of blockade therefore being more extensive than the fact, was not binding on neutrals, who, on the settled principles of law are not bound to attend to any notice of a blockade which is more extensive than the blockade itself.

Appeals might have succeeded at the time.

This last conclusion is the most important part of the Judgment, because it involves the restitution of all neutral ships which, on the ground of their attempted violation of the blockade, were captured prior to the 26th June, 1854. If therefore appeals had been presented in due time in the cases of the ships the "Steen Bille" and the "Magle," we think that the Privy Council would have ordered restitution; but the orders would have been founded solely on this objection to the validity of the notice of the blockade.

Condemnation now final.

No appeals, however, having been duly presented, the condemnation has become absolute and final, and the present application of the Danish Minister for compensation to the owners of those two vessels can hardly be entertained unless it be supported by consideration of equity and moral justice.

No grounds for favourable consideration.

But independently of the technical objection to the sufficiency of the notice of blockade, which is afforded by the Judgment of the Privy Council, it does not appear that there are any circumstances in the case of the "Steen Bille" and the "Magle" which should entitle the owners to favourable consideration.

Owners knew of blockade.

Both vessels cleared for the Baltic after the expiration of the time fixed by the Order in Council, and we are informed (though it does not appear in the papers before us) that it was clearly proved that the owners of the vessels had full knowledge of the existence of the blockade of the Gulf of Riga, and deliberately attempted to evade it.

We may also observe that in the "Steen Bille," although the ship's papers were made out as for Stockholm (to which port the master and those of the crew who were examined swore that she was destined), yet that a letter from the owner to the master containing the words "God with you and luck to Riga" was found on board, which the master refused to deliver, and attempted to destroy.

If restored, other claims will arise.

We think, therefore, that these cases (especially the "Steen Bille") are not entitled in *foro conscientiæ* to any indulgence; and it is obvious that if the present claim be allowed, very serious inconvenience will arise from similar claims in the case of all the vessels captured for breach of blockade prior to the 26th June, 1854.

We have, &c.
(Signed) J. D. HARDING.
A. E. COCKBURN.
RICHARD BETHELL.

No. 382.

The Queen's Advocate to the Earl of Clarendon.—(*Received May* 31.)

My Lord,
Doctors' Commons, May 31, 1856.

"Bedlington" case.

May be submitted to Russian Government.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 17th May instant, stating that, with reference to my report of the 17th ultimo,* he was directed to transmit to me a letter which your Lordship caused to be addressed to Messrs. Powell respecting the case of the "Bedlington," together with a further letter from Messrs. Powell; and to request that I would communicate to your Lordship any observations which I may have to make on this subject.

In obedience to your Lordship's commands I have the honour to report—

That I have no further observations to make on these additional papers.

The case may now be brought to the notice of the Russian Government in whatever manner your Lordship may consider most advisable.

I have, &c.
(Signed) J. D. HARDING.

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* No. 380.

1853-56

No. 383.

The Queen's Advocate to the Earl of Clarendon.—(*Received June* 12.)

Doctors' Commons, June 11, 1856.

My Lord,

Destruction of British vessel "Howard" at Sinope in 1853.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 17th May ultimo, stating that, with reference to my report of the 3rd April, 1854,* he was directed to transmit to me a further letter from the parties interested in the case of the "Howard," and to request that I would state to your Lordship whether I am of opinion that the facts of the case are such as to justify Her Majesty's Government in calling upon the Government of Russia for compensation for the owners of the "Howard."

In obedience to your Lordship's commands I have the honour to report—

Cannot support formally.

That the facts of the case are not in my opinion such as to justify Her Majesty's Government in calling upon the Government of Russia for compensation for the owners of the "Howard."

Owners were aware of danger.

Not deliberately destroyed by Russians.

The owners were aware of the war between Turkey and Russia, and the "Howard" was lying in a midst of a fleet of Turkish ships of war at Sinope within two or three days' sail of Sebastopol, in which port a superior Russian force was known to be ready for sea. I cannot discover what particular precautions she took in anticipation of an attack, to the consequence of which she was obviously exposed. This attack was suddenly made, and she was (after being struck by several Russian shot and shell) burnt by a Turkish frigate on fire drifting foul of her. It is not alleged that she was deliberately or designedly fired at by the Russians; her colours were hoisted, but there was neither time nor means to remove her or to take any other step whatever. Her master and crew lost everything, and suffered much, and ran the most imminent risk of their lives.

The case is a very hard one, and if the Government of Russia should be inclined to consider it liberally it would greatly redound to their credit, but no formal demand can be made upon it; but if your Lordship should think fit to offer the applicants to instruct Lord Wodehouse to recommend the case as one which has attracted much notice in England, and of which Her Majesty's Government thinks favourable, to the consideration of the Russian Government, I see no objection thereto.

From the tone of the applications, however, I fear that such a course will not content them; and if they reject any offer to this effect, I do not see how your Lordship can take any step in the matter.

I have, &c.
(Signed) J. D. HARDING.

No. 384.

The Queen's Advocate to the Earl of Clarendon.—(*Received July* 4.)

Doctors' Commons, July 3, 1856.

My Lord,

"Howard" destroyed at Sinope in 1853.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 25th June ultimo, stating that, with reference to my report of the 11th June ultimo,† on the case of the "Howard," he was directed to transmit to me a letter from Colonel Treestun, inclosing a letter, together with a declaration from the owners of the "Howard," of the particulars respecting the destruction of that vessel by the Russians at Sinope in 1853; and to request that I would take these papers into consideration and report to your Lordship whether there is anything therein stated to induce me to alter the opinion expressed in my report of the 11th June ultimo.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

Cannot formally claim compensation.

That I adhere to the opinion that I have already expressed in this case, to the effect that Her Majesty's Government cannot properly make any formal demand upon that of Russia for compensation for the owners of the "Howard." Anything short of this, and consistent with the national dignity, may in my opinion be done in favour of the claimants.

May support claimants.

The statement headed "Declaration made by the owners, &c." contains a succinct statement of the principal facts on which a representation to the Government of Russia may be based. I need scarcely suggest that it should be so framed as to avoid compromising Her Majesty's Government, and to admit of a negative answer without offence. No question of abstract right is involved, but it is a case strongly deserving of sympathy.

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* No. 56.

† No. 383.

Sinope unfortified; favourable to claim.

The most favourable circumstances appear to me to be the fact that Sinope was not a fortified arsenal; that no Turkish ships of war were there when the "Howard" arrived; that she made diligent preparations to get away after the Turkish fleet arrived; and that the extreme suddenness and rigour of the Russian attack rendered her escape impossible. She had been in Austrian (and not in Turkish) employment of a perfectly innocent kind previously; she was actually in ballast, and her destruction was apparently the result of the excitement and confusion of the attack, and must naturally be a subject of regret to the Government of Russia.

Her Majesty's Government, in abstaining from making any formal demand in a case which is ruinous to the individual sufferers, and which has attracted much public notice in England, will in my opinion give the best proof of its desire not to raise a painful discussion, and of its reliance on the liberality and good feeling of the Russian Government. Few acts of that Government would have a more graceful or conciliatory effect, especially upon the feelings of the maritime and commercial classes of this country, than the reimbursing the owners and crew of the "Howard" for their losses.

I have, &c.
(Signed) J. D. HARDING.

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Printed for the use of the Foreign Office. December 1862.

CONFIDENTIAL.

REPORTS

FROM

THE LAW OFFICERS

OF

THE CROWN.

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CONFIDENTIAL.

Reports from the Law Officers of the Crown: 1861.

No. 1.

The Queen's Advocate to Lord J. Russell.—(Received January 4.)

My Lord, *Doctors' Commons, January* 2, 186[illegible].

Mexico.

Robbery of bondholders' funds at British Legation. Liability of Her Majesty's Government.

I AM honoured with your Lordship's commands, signified in Mr. Hammond's letter of the 21st December ultimo, stating that he was directed to transmit to me the accompanying representations from the Chairman and Deputy Chairman of the Mexican bondholders, relative to the recent robbery by the authorities at Mexico of the funds belonging to the British holders of those bonds, which were deposited, under lock and key, in the house of Her Majesty's Legation in that city.

Mr. Hammond was also pleased to transmit to me a copy of the answer which, by your Lordship's direction, he returned to those gentlemen.

Mr. Hammond was further pleased to inclose despatches from Mr. Mathew, explanatory of the circumstances under which the funds of the bondholders were deposited in the house of Her Majesty's Legation; and also showing why advantage was not taken by the bondholders' agent of the departure of a "conducta" to the coast to remit the bondholders' property to them.

Mr. Hammond was also further pleased to inclose the Draft of the instructions under which Mr. Mathew has lately broken off relations with General Miramon's Government, and has retired to Jalapa, together with Mr. Mathew's reply.

And Mr. Hammond was pleased to request that I would take this case into consideration, and report to your Lordship such observations as I may have to offer thereupon, not only as regards the course to be pursued in Mexico, but also as regards the claim attempted to be set up on behalf of the bondholders against Her Majesty's Government, as being liable, under certain contingencies, to make good their loss.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That "the course to be pursued in Mexico" is so entirely a question of policy, that, not being in possession of any intimation of the opinions or views of Her Majesty's Government on this question, I cannot presume to offer any advice.

I can only observe, that Her Majesty's Government appears to have persisted in recognizing General Miramon as the only legal President, or Chief of the Republic, until Mr. Mathew, pursuant to your Lordship's instructions, broke off diplomatic relations with that General in October last, and retired to Jalapa. Señor Juarez has long been, and still is, engaged in a civil war against General Miramon, and is in possession of part of the territory of the Republic, including Vera Cruz; but he does not seem to be recognized by Her Majesty's Government as having any legitimate or rightful political authority in Mexico.

Her Majesty's Government now desires to keep aloof from both parties, and it apparently considers that there is not in the Republic of Mexico any

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Government or Chief who can fairly be considered as entitled to recognition, as such, by foreign nations.

I cannot, under such circumstances, see how Her Majesty's Government, unless prepared to use force, can take any practical steps to obtain redress for the injury in question.

General Miramon has added this last outrage to others, which had previously caused a diplomatic rupture with him; and Señor Juarez (who is not much more scrupulous) cannot, even if recognized, be made answerable for General Miramon's acts of violence.

On Mr. Mathew's withdrawing to Jalapa, and breaking off all intercourse with General Miramon, he seems to have left Don Rafael Beraza in Mexico. This person had been a courier in the service of the Legation. I am not aware whether the Legation was occupied by him, or in what capacity he acted, or whether it was left wholly unoccupied; whether it is the absolute property of Her Majesty's Government, or is only a house or suite of apartments hired for a time; whether Her Majesty's arms were still displayed, with the words "British Legation;" or, in fact, what arrangements of this character were actually existing when the seizure in question took place.

With respect to the deposit of the funds in question at the Legation, it would seem as if in April last Mr. Mathew had sanctioned the placing in the Legation, by Mr. Whitehead (the agent of the British bondholders), of the funds then in that gentleman's custody for the greater security of those funds. If anything passed in writing on this subject between Mr. Whitehead and Mr. Mathew, the papers are not forthcoming: nor can I discover what precautions Mr. Whitehead suggested, or Mr. Mathew took, for the safety of these funds when he broke off diplomatic relations, and withdrew from Mexico in October.

I do not understand why the funds were not then placed in one of the Foreign Legations, or in the British Consulate; nor can I discover what was, in fact, done for their safe keeping on Mr. Mathew's retirement, although I presume that they were not left in an empty house or separate building, and in no person's actual possession or custody. I should not have clearly understood from Mr. Whitehead's letter to Mr. Robertson of the 17th November, that the money was actually taken out of the interior of the British Legation, which does not seem to have been entered by the soldiers or workmen employed. I should have inferred from this letter that the money was in a detached room or building, and not in the Legation. These particulars must be fully supplied, and a sketch or plan must be added if requisite.

The gross wrong committed by the forcible seizure of the money in question is apparent; but the precise extent and character of this seizure, in an international point of view, must in some degree depend on the explanation which may be furnished of the facts above adverted to, upon which Mr. Mathew and Mr. Glennie must be perfectly well informed.

The expediency of placing any money which still may remain unappropriated by General Miramon, in the safest place of custody which Mr. Whitehead can suggest (probably in one of the remaining Foreign Legations), and possibly also of placing all British subjects and property in Mexico under the temporary protection of one of those Legations, will naturally have suggested themselves to your Lordship. At present British subjects and property are wholly unprotected, and each party in turn, emboldened by impunity, wrongs them at its arbitrary discretion.

With respect to any claim on the part of the bondholders upon Her Majesty's Government to make good their loss, I can only say that I can see no ground upon which any such claim can be founded.

Mr. Whitehead apparently selected Her Majesty's Legation as the safest place of deposit. Mr. Mathew did not advise or suggest the placing the funds there; he merely assented to Mr. Whitehead's application, in order to secure the bondholders' property as far as practicable. Mr. Whitehead had, I presume, due notice of Mr. Mathew's approaching departure. Mr. Mathew left the funds locked up and under seal; and it does not appear that Mr. Whitehead objected to this arrangement, or suggested any further precaution on the withdrawal of Mr. Mathew: the inability of Her Majesty's Government to obtain redress from General Miramon cannot make it liable for the consequences of his violence.

Adverting, however, to the conclusion of Mr. McGarel's letter of the 14th December, I would suggest that it will be expedient to be very cautious in the wording of any official correspondence with him or with Mr. Robertson.

I have, &c.
(Signed) J. D. HARDING.

No. 2.

The Queen's Advocate to Lord J. Russell.—(Received January 4.)

Doctors' Commons, January 3, 1861.

My Lord,

Costa Rica.

Seizure of lumber at Punta Arenas.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 20th of December ultimo, stating that he was directed to transmit to me a despatch from Her Majesty's Consul in Costa Rica, reporting the particulars of a claim preferred against the Government of that State, on account of a quantity of lumber, belonging partly to a house in Glasgow, and partly to General Cañas, which was seized by the party of General Mora during the late insurrectionary movement at Punta Arenas, and was taken possession of by the Government troops at the time the insurrection was put down.

In order to my better understanding of this case, Mr. Hammond was pleased to observe that General Mora, who had for nine years held the office of President of Costa Rica, was removed from that office in August of last year, by means of a successful revolution headed by Dr. Montealegre, who on the flight of Mora was regularly installed as President. General Mora fled to the United States, but he did not abandon the hope of regaining his position in Costa Rica; and the movement at Punta Arenas in September last, which was concerted between Mora and his friends in the Republic, was made with a view to the restoration of himself and his party to power. The attempt was unsuccessful, and Generals Mora and Cañas (the latter of whom is stated to have been interested in the property which forms the subject of this reference) have since been shot.

The question for consideration is, as to how far Her Majesty's Government would be borne out in supporting this and any other claims of a similar character, in which British subjects or interests are concerned, arising out of the disturbances at Punta Arenas; and Mr. Hammond was accordingly pleased to request that I would report to your Lordship my opinion upon this point.

In obedience to your Lordship's commands, I have the honour to report, that the facts of the case are left in such obscurity by the Consul that I can offer no very confident opinion. It does not appear whether the "Glasgow house" (not named) has made any claim; whether this house was in partnership with General Cañas (who was shot as a rebel after an unsuccessful insurrection); or how he and the "house" were both interested in the same "lumber."

Assuming, however, that certain "lumber" still exists in specie, and can be identified as the sole property of British subjects, taken from them by rebels, and re-captured from those rebels by the forces of the Government, I should advise a claim being made by the Consul for its restitution; but the Consul should report fully on the case, and should state the value, and explain whether the owners have claimed and identified their property, separately from any interest of General Cañas therein.

With respect to other cases of the same character, it is impossible, upon so vague a statement, to lay down a general rule upon which the Consul can safely act; the circumstances of each claim, more especially when British subjects are not the sole owners of the property, must be fully explained and considered before any claim can be supported.

I have, &c.
(Signed) J. D. HARDING.

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No. 3.

The Law Officers of the Crown to Lord J. Russell.—(*Received January* 11.)

Doctors' Commons, January 9, 1861.

PORTUGAL.

Messrs. Yuille and Shortridge's claim.

My Lord,

WE are honoured with your Lordship's commands, signified in Lord Wodehouse's letter of the 4th December ultimo, stating that with reference to our report of the 23rd April last, he was directed to transmit to us the draft of an instruction which your Lordship has addressed to Sir Arthur Magenis, Her Majesty's Minister in Portugal, regarding the proposed arbitration in the case of Messrs. Yuille and Shortridge's claim upon the Portuguese Government, together with a despatch from Sir A. Magenis transmitting the draft of a Memorandum proposed to be adopted by Her Majesty's Government and the Government of Portugal, embodying the terms in which the case is to be referred to arbitration.

Lord Wodehouse was also pleased to state that the terms of this Memorandum are the same, *mutatis mutandis*, as those of a similar Memorandum agreed to by the two Governments when the case of Mr. Croft was referred by them to the arbitration of the Senate of Hamburgh: but before taking any further steps in this matter, your Lordship would be glad to learn our opinion whether there is any objection to Her Majesty's Government concurring in it.

In compliance with your Lordship's instructions, we have taken this subject into consideration and have the honour to report—

That we see no objection to Her Majesty's Government concurring in the identic Memorandum, provided the terms of the submission to arbitration are approved of by Messrs. Yuille and Shortridge, to whom we recommend, for the sake of preventing future dispute, the draft should be communicated.

We have, &c.

(Signed) J. D. HARDING.
RICHARD BETHELL.
WM. ATHERTON.

No. 4.

The Law Officers of the Crown to Lord J. Russell.—(*Received January* 14.)

Doctors' Commons, January 11, 1861.

BRAZIL.

Refusal of Consul Cowper to respect decision of Court of Chancery. Mrs. Griffith's claim.

My Lord,

WE were honoured with your Lordship's commands signified in Mr. Hammond's letter of the 31st of December last, in which he stated that he was directed by you to transmit to us a correspondence which had taken place between Mr. Sismez, a solicitor, Mr. Cowper, Her Majesty's Consul at Pernambuco, and the Foreign Office, in regard to the refusal of Mr. Cowper to obey an order of the Court of Chancery, desiring him to pay a certain yearly sum to a Mrs. Emma Griffiths; and Mr. Hammond was pleased to request that we would take the papers into consideration and report to your Lordship whether you are called upon to take any, and if so what, steps in the matter, with a view to compel Her Majesty's Consul to obey the order of the Court.

In compliance with the request contained in Mr. Hammond's letter, we have taken the papers submitted to us into consideration, and have the honour to report—

That the Decree of the Court of Chancery, by which Mr. Cowper is ordered to pay to the plaintiff Mrs. Griffiths an annuity of 100*l.* and the sum of 450*l.* as the arrears of that annuity is in every respect formal and regular. Mr. Cowper appeared by Counsel, and defended the suit, and the Court appears to have had no doubt as to the Decree that ought to be made. Mr. Cowper does not intimate any intention of appealing from the Decree, but he avows his determination never to pay Mrs. Griffiths one farthing, and he requests your Lordship to leave the case to the ordinary operation of the law. Mr. Cowper knows that, as against him (resident in Pernambuco), the law is inoperative, and that the Court is baffled by his residence out of the jurisdiction.

If the salary received by Mr. Cowper from the Crown were income arising from real or personal property in this country, such income might be "attached," and made available to answer the Decree.

It is an indecent thing that any servant of the Crown should, by means of his official residence abroad, exempt himself from the jurisdiction of the Crown's Courts of Justice. For the purposes of justice he ought to be considered as resident in this country.

We advise, therefore, that Mr. Cowper be informed that unless he makes a satisfactory arrangement with the plaintiff within three months after the receipt of this notice, your Lordship must take such steps as may be necessary to prevent the justice of the Crown from being defeated by one of its servants.

We have, &c.

(Signed) J. D. HARDING.
RICHARD BETHELL.
WM. ATHERTON.

No. 5.

The Queen's Advocate to Lord J. Russell.—(*Received January* 16.)

Doctors' Commons, January 14, 1861.*

VENEZUELA.

Claim of the Daly family.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 4th January instant, stating that he was directed to transmit to me a despatch from Mr. Orme, reporting his further communications with the Venezuelan Government regarding Mr. Daly's claim, and also a letter which has been received from Mr. Daly on this subject by the last mail.

Mr. Hammond was also pleased to inclose the previous correspondence in this case, as enumerated in the inclosed list, and to request that I would take the whole of these papers into consideration, and report to your Lordship my opinion whether any or what further steps in this matter are called for, on the part of Her Majesty's Government, in the present state of things.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report, that it appears to me that some further and more decisive steps are called for on the part of Her Majesty's Government in the present state of things. What those steps should be, it is for Her Majesty's Government to determine; but they should be such as will compel the immediate payment in cash, with interest at 9 per cent., of the sum admitted to be due from Venezuela to the heirs of Mr. Daly, and so long and unjustifiably withheld from them.

Mr. Orme was instructed in No. 18, of March 3, 1860, to insist on prompt payment in cash of 57,113 dollars 78 cents, with interest at 9 per cent. Of this demand of Her Majesty's Government the Venezuelan Government appears to take no notice whatever; up to this time it has not only not paid that sum or any portion of it, except a trifling advance for the immediate wants of the Daly family, but it now states its determination "to submit to the Tribunals" a question of law and fact as to 14,015 dollars 38 cents, advanced to Mr. Daly in 1848 for payment of the fleet.

It gravely proposes to pay the sum demanded in ten quarterly payments, beginning in March 1861, to which arrangement Mr. B. Daly, who is said to represent the family, is alleged by Mr. Orme to consent. I cannot, however, see how such consent is consistent with his letter of December 6, 1860. If he does consent, of course Her Majesty's Government can have no adequate motive to insist on better terms; but inasmuch as it appears from his letter of December 6, that the Daly children will be unable litigate the question as to the 14,015 dollars 18 cents with the Venezuelan Government upon fair terms, or indeed at all, the practical result will be that, if matters remain as they are, the Venezuelan Government will ultimately succeed in carrying out with success the policy in which it has so long persisted.

If the Venezuelan Government is about to begin a litigation as to the sum of 14,015 dollars 18 cents (as it has announced), it should at least be made to feel some inconvenience as to the payment of the whole claim as admitted by it. If it will forego this contemplated litigation, and if the Daly children acquiesce, then, and then only, the payment by instalments, as suggested, may be accepted by Her Majesty's Government; but a merely "promised" payment by instalments of the sum demanded by Her Majesty's Government promptly and in cash, accompanied by a threat of litigation as to a portion of it, is, in my opinion,

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* See further Report, page 58.

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a flagrant evasion of the obligations of Venezuela, and such a settlement as Her Majesty's Government cannot accept as satisfactory.

I must observe that the able opinion of Dr. Caceres, dated October 23, 1860, No. 6 in Mr. Orme's No. 101 (which appears to me to dispose altogether of the case of the Venezuelan Government, so far as it relates to the 14,015 dollars 18 cents), is apparently an answer to a note from the Finance Minister to the Foreign Minister of the 27th of September, 1860, which note I cannot find with the papers.

Upon the whole I can see nothing in the additional papers to alter the aspect of the case; the Venezuelan Government is, as a matter of course, determined to resort to every species of procrastination and evasion, and to ignore or to trifle with the formal demand of Her Majesty to the utmost. Mr. Orme appears to consider the financial difficulties of that Government as a sufficient answer or excuse on its part, but if Her Majesty's Government chooses to insist upon and to compel prompt payment in cash I presume that it can do so, and I think that it ought to do so.

I have, &c.
(Signed) J. D. HARDING.

No. 6.

The Queen's Advocate to Lord J. Russell.—(Received January 16.)

Chili.

Mr. Whitehead's claim for injuries inflicted by Chilian troops.

My Lord, *Doctors' Commons, January* 15, 1861.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 11th January instant, stating that, with reference to my reports of the 30th August, 1859, and the 5th and 26th April, 1860, on the subject of Mr. Whitehead's claim for compensation for injuries inflicted on him by Chilian troops, he was directed to transmit to me a despatch from Her Majesty's Minister at Santiago, inclosing a further note from the Chilian Government regarding this claim, and to request that I would take this despatch into consideration, together with the former papers, and report to your Lordship my opinion as to the instructions which should be sent to Mr. Thomson with reference to this case.

In obedience to your Lordship's commands, I have taken these papers into consideration, and have the honour to report,—

That the additional papers now transmitted tend to confirm and strengthen the opinion which I have already expressed upon this case in my previous reports.

The Chilian Government, far from punishing or even disavowing and regretting the conduct of its soldiers, entirely justifies and approves of their conduct; it affects to treat Mr. Whitehead as a "criminal," and seriously maintains that the soldiers in deliberately shooting him as he was running away in broad daylight, in a crowded street, where no conflict existed, and in subsequently following him into his club, and there robbing him and endeavouring to murder him, were only doing their strict duty.

I am of opinion that in this state of things, the prompt payment of an ample compensation by the Chilian Government to Mr. Whitehead, should be peremptorily insisted on. There has already been a considerable delay, and the Chilian Government has persisted from first to last in refusing to make any concession whatever, even in words.

The precise nature of the instructions to be sent to Mr. Thomson is a question for your Lordship; they should be such as to convince the Chilian Government that British subjects are not at the mercy of its undisciplined and savage troops, and as will most promptly and effectually tend to secure the payment of adequate compensation to Mr. Whitehead.

The ground taken by the Chilian Government appears to me to deprive it of any claim to lenity or consideration; had it punished the soldiers, and apologized for their misconduct, the aspect of the case might have been very different from what it is; but the Government has actually identified itself with the savage and wanton cruelty of its troops in all its details, and I trust that for the sake of the safety of all Her Majesty's subjects resident in Chile, it will be made seriously to feel the consequences of so doing.

I have, &c.
(Signed) J. D. HARDING.

No. 7.

The Law Officers of the Crown to Lord J. Russell.—(Received January 16.)

Turkey.

Complaint of Mr. Stoker, on behalf of Count Brzezanski, against Mr. Legal Vice-Consul Wroth.

My Lord, *Doctors' Commons, January* 15, 1861.

WE are honoured with your Lordship's commands, signified in Mr. Hammond's letter of the 22nd December ultimo, stating that with reference to our Report of the 5th November, he was directed to transmit to us, for any observations which we may wish to make thereupon, a despatch from Mr. Hornby, inclosing Mr. Legal Vice-Consul Wroth's explanation in regard to the complaint of Mr. Stoker, acting on behalf of a person calling himself the Count Brzezanski.

In compliance with your Lordship's instructions, we have the honour to report,—

That Vice-Consul Wroth's explanation only leaves the matter where it was. It is apparent that he had no doubt whatever of M. Brzezanski's identity; whether this gentleman rightly called himself "Count" or not, was not a question with which the Vice-Consul was concerned. He had no ground for suspecting any fraud, and he should not have made any difficulty.

Whether the circular (which is not with the papers) does or not "in terms meet the present case," all Consular officers should act in accordance with its general spirit and intention, and should beware of interposing any obstacle or delay when persons desire to make affidavits which are to be made use of before any British tribunal, or for any legal purpose in the Queen's dominions.

We have, &c.
(Signed) J. D. HARDING.
RICHARD BETHELL.
WM. ATHERTON.

No. 8.

The Law Officers of the Crown to Lord J. Russell.—(Received January 17.)

Prussia and United States.

Surrender of an American deserter to a Prussian ship of war as a deserter from the Prussian service.

My Lord, *Doctors' Commons, January* 16, 1861.

WE are honoured with your Lordship's commands, signified in Mr. Hammond's letter of the 7th January instant, stating that he was directed to forward the accompanying letter from the Colonial Office, inclosing a correspondence which has passed between Her Majesty's Colonial authorities at Hong Kong, and the Prussian and American Consuls in that island, upon the subject of a seaman who had deserted from an American vessel, and had given himself up to the captain of a Prussian ship of war as a deserter from the Prussian service.

Mr. Hammond was also pleased to state that, in forwarding the above letter for our consideration and opinion, he was directed to inform us, with reference to the refusal of the Commander of the Prussian vessel to deliver the man up to the Colonial authorities, that the Convention between Great Britain and Prussia, for the mutual extradition of seamen deserters, applies only to the deserters from the merchant-service of the two countries.

In compliance with your Lordship's instructions we have taken these papers into consideration, and have the honour to report:—

That, assuming the "Elbe" to be a Prussian Government vessel, the deserter in question is not, nor has he been since he deserted, on British territory, and he was not within the power of British Municipal authority while on board the "Elbe."

The proper course for the United States to adopt is, to apply to the Prussian Government. There is no power of intervention on the part of this country.

We have, &c.
(Signed) J. D. HARDING.
RICHARD BETHELL.
WM. ATHERTON.

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No. 9.

The Queen's Advocate to Lord J. Russell.—(*Received January* 18.)

Spain.

Claim of the "Azorian" for unjustifiable performance of quarantine.

My Lord, *Doctors' Commons, January* 17, 1861.

I AM honoured with your Lordship's commands, signified in Mr. Hammond's letter of the 4th of January instant, stating that, with reference to my reports of the 16th of April, 18th of June, 8th of August, and 31st of October, 1860, he was directed to transmit to me a despatch from Her Majesty's Minister at Madrid, setting forth the grounds on which the Spanish Government have declined to entertain the claim for compensation which has been advanced on behalf of the "Azorian;" and Mr. Hammond was pleased to request that I would take this paper into consideration, together with the previous correspondence, and report to your Lordship my opinion as to the course now to be taken by Her Majesty's Government in this matter.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report,—

That I can only suggest that, before finally determining on the course to be taken by Her Majesty's Government in this matter, a last effort should be made to extract some substantial explanation or answer from the Spanish Government.

I cannot precisely ascertain what arguments have been directly addressed by Her Majesty's Government to that of Spain in this case, other than those contained in Sir A. Buchanan's note to the Duke of Tetuan, December 6, 1860 (Inclosure No. 1 in No. 434), which, I presume, must be viewed as containing the "British case." Nor am I aware what is to be considered as the Spanish answer, unless the note of the Duke of Tetuan of December 13th is to be so considered in substance. If this is, in effect, the only answer of the Spanish Government to the remonstrances and demands of Her Majesty's Government, such answer amounts only to this, namely, "the conduct of the Board of Health at Santa Cruz having been technically legal, according to the law then in force, compensation is refused." This is merely a repetition of the answer already given by Señor Collantes to Mr. Edwardes, July 2, 1860, according to a somewhat uncourteous Spanish practice, and it is, in effect, no answer at all.

The prominent facts and arguments which Her Majesty's Government is in a position to adduce will be found noticed in my previous reports, and in Mr. Murray's No. 36 and inclosures, 16th of September, 1859, especially in his despatch to the Board of Health at Santa Cruz of September 7, 1859. These facts and arguments may, therefore, perhaps be recapitulated, or embodied in an ultimatum, for which Sir A. Buchanan has by his recent correspondence adroitly kept the case still open. I need not recapitulate these facts and arguments.

The fact of the "Azorian" (alone) being treated in this unjust manner, without any *boná fide* reason, and whilst free communication was taking place between London and all parts of Spain, by land and sea, is so unreasonable, and *primá facie* indefensible, that the mere assertion of the technical legal power of the Board of Health to do as it did will not satisfy the British Government.

The Spanish law may have rendered possible the most unreasonable and oppressive conduct on the part of the authorities, but if this conduct was wholly unjustifiable on the merits, contrary to reason and national equity, and not resorted to in other cases of precisely the same class constantly recurring, its Spanish legality will not avail, *per se*, internationally *in foro gentium*.

First of all, and apart from the technicalities, how can Spain pretend, as a civilized Power, to justify the sending a vessel arriving from London at Teneriffe with a clean bill of health, and without having had any case or symptom of disease on board during the voyage, to Vigo to perform quarantine?

Spain does not pretend that this was necessary to prevent infection, or that it was done in every (or any) other case. In quarantine laws "cessante ratione, cessat lex." If it was confessedly ridiculous thus to treat the "Azorian" on any *boná fide* sanitary ground, the mere letter of the law (which is not admitted to be clear) is no sufficient answer.

Secondly. How can Spain take advantage of her own wrong if the case turns (as it would seem) in any degree on any defect of the bill of health drawn and issued by the Spanish Consul? (See the Board of Health to Consul Murray, September 7, 1859.) Article 40 of the then Spanish Sanatory Law (inclosure in Consul Murray's No. 36) declares, in effect, that if cholera had ceased for ten days no quarantine could be enforced. If the Consul did not certify this, it was his fault.

Thirdly. If the strict legality of the treatment of the vessel according to the Spanish health regulations turns only on this (which seems to me to be the case), that the Spanish Government had neglected to provide ports of quarantine of observation (as distinguished from ordinary lazarettos), then the Spanish Government is responsible for the consequences which are contended by it to have resulted from this flagrant omission just as much as it would be if it omitted to provide Custom-houses for the technical entry of goods and then detained foreign vessels for want of them, or sent such vessels to extravagantly distant ports.

Moreover, it would seem that, notwithstanding the omission of the Government, a system "quarantine of observation" on the spot was practically resorted to in all, or almost all, other cases at that time, and that the treatment of the "Azorian" was exceptional, and not such as was applied indiscriminately, and upon system (under colour of law), to all vessels in her position, which disposes of any *boná fide* sanitary justification by Spain.

Seeing that other acts of arbitrary and unjustifiable oppression in the matter of quarantine have been committed by Spain, and above all bearing in mind that the Spanish Government does not give any assurance against their recurrence, but, on the contrary, that the recent alteration of her sanitary laws has rendered them even more intolerable than before (see conclusion of Señor Argulle's legal opinion), it is obvious that if she persists in committing and defending such acts the whole British trade with Spain is, in effect, at the mercy of each Board of Health, and without any real security or protection whatsoever. The facts of this case speak for themselves, and afford a glaring instance of the intolerable position assumed by Spain in this matter; and the course to be taken by Her Majesty's Government will, I trust, be guided by these considerations.

I have, &c.
(Signed) J. D. HARDING.

No. 10.

The Queen's Advocate to Lord J. Russell.—(*Received January* 21.)

Sardinia and Sicily.

Blockade of Gaeta by Sardinia on withdrawal of French squadron.

My Lord, *Doctors' Commons, January* 21, 1861.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 16th January instant, stating that he was directed to transmit to me the accompanying despatch from Earl Cowley, respecting a communication which has been made to his Excellency by the French Government, with reference to the possible blockade of Gaeta by Sardinia, after the withdrawal of the French squadron, and expressing a desire to be made acquainted with the opinion of Her Majesty's Government on certain points of international law which are raised in an article published in the newspaper "L'Ami de la Religion," a copy of which was inclosed.

And Mr. Hammond was pleased to request that I would take this subject into consideration, and report to your Lordship, at my earliest convenience, my opinion on the points in question, as well as on any others which may occur to me with reference to this subject.

In obedience to your Lordship's commands, I have taken this subject into consideration, and have the honour to report—

That the first point which occurs to me is the extraordinary form and character of M. Thouvenel's communication to Earl Cowley.

M. Thouvenel, without in any manner indicating the views of the French Government, or the nature of its legal or international doubts or objections as to the contingency of the blockade of Gaeta by Sardinia, invites Earl Cowley's attention to an article on the subject in a French religious newspaper ("L'Ami de la Religion"), written by an advocate (M. Delaville), holding no public office, and not, as far as I am aware, of any European celebrity as a writer on international law; and in effect, as I understand Lord Cowley, M. Thouvenel, without further preface, requests to be made acquainted with the opinion of Her Majesty's Government upon this article.

If this was not M. Thouvenel's meaning, then I confess I know not on

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what document, or on what question of international law it is that M. Thouvenel really desires to know the opinion of Her Majesty's Government.

I have as yet, during nine years' tenure of my office, seen no instance of this very peculiar mode of raising or opening any serious question of international law, or of giving to a great Power any confidential intimation of opinion on a grave international question. I can only most respectfully advise your Lordship not to suffer Her Majesty's Government to be drawn into any international discussion upon the principles of blockade by this reference to M. Delaville's newspaper article.

Subject to these remarks, I proceed to consider the substance of this article; observing, at the same time, that M. Thouvenel expressed no opinion as to whether any or what portion of it was legally sound, or was or was not consonant with the views of the French Government. M. Delaville, as may be expected in a newspaper article, does not distinctly state, and support by authority, any positive or definite propositions or principles: he rather

> "Hints a fault, and hesitates dislike;"

he suggests several doubts and difficulties which may interfere with the validity or the recognition of the anticipated blockade; but M. Delaville's arguments or suggestions (such as they are) when closely analysed appear to resolve themselves into the following:—

1. "A *de facto* effective blockade will be impracticable." He glances at the position of Messina and the Abruzzi, which do not enter into the question at present. This is a simple question of fact. If the blockade is not effective, *cadit questio.* I would observe on this, that the effective blockade of Gaeta is, in my opinion, very easy, and may be rigorously maintained by a small steam force, more especially as the King of Naples has no naval force at his command.

2. M. Delaville suggests that, even if actually imposed and maintained effectively *de facto,* it will not be recognized by other nations, more especially by the United States of America. He alludes to a note of Mr. Marcy to the European Powers, of which he does not give the date,* and to which I have no means of referring; but I have yet to learn that the United States have ever denied the existing right of blockade, which, in the case of Mexico, and in other cases, they have notoriously and recently enforced. There is probably some misconception on M. Delaville's part on this subject. However this may be, I can see no sufficient reason internationally why, assuming the blockade to be effective, any Power should refuse to recognize it. When a state of hostility notoriously exists either between two *de facto* Governments, or even between one portion and another portion of the subjects or citizens of the same Government, all other nations may, and generally do, remain *bonâ fide* neutral between the contending Parties; they treat each Government or party as a *de facto* Government, and recognize the blockades imposed by either. Numerous instances of this usage have occurred in modern times, more especially in South America. There can be no doubt but that the King of Sardinia is a Sovereign, not only *de facto,* but *de jure.* The extent of his territory, or his title to any part of it, is not directly in question; if he should blockade Gaeta, I cannot see why other nations should refuse to recognise the validity of such blockade. Neither the formal announcement of the blockade, nor the formal recognition thereof by the official publication of such announcement by other nations, is legally essential to the validity of the blockade itself. If it exists *de facto*, vessels may and will be captured for knowingly endeavouring to violate it: they will be lawfully captured *primâ facie*, and it will be for the Governments to which these vessels belong to show why they ought to be restored. The use of public notification is only to affect all persons with knowledge of the fact of the blockade.

M. Delaville next suggests that, inasmuch as there has been no formal declaration of war by the King of Sardinia against the King of Naples, the war is not "légitime et publique," and that the blockade will consequently be null and void *ab initio.* This position, although maintained by some writers, cannot be admitted: on the contrary, it is clear that war may legally exist without any official declaration of war. (See Bynkershock's lucid 2nd chapter, Quæst. J. P., entitled "Ut bellum sit legitimum, indictionem belli non videri necessariam.") Vattel says, "Le droit des gens n'impose point l'obligation de déclarer la guerre," &c. (Liv. iii, cap. 4, sec. 60.) And there are numerous modern instances of war without a declaration; such as the war ot 1688, when Louis XIV of France besieged and captured fortresses before his declaration of war; the war of the Spanish Succession, carried on for many weeks before any declaration of war. The war between Great Britain and France in 1754 was not preceded by a declaration, nor was that between those Powers in 1792; nor that between Great Britain and the United States of 1812. Even Ortolan, who is in favour of the necessity of a declaration of war, admits that, in point of fact, "la déclaration préalable de l'état de guerre est souvent omise par les nations belligérantes." (Diplomatie de la Mer; livre iii, vol. 2, p. 16.) The mere absence or delay of a declaration is therefore not necessarily fatal to the legality or the notoriety of a State war, which actually exists.

It may also be observed that in many sudden cases of emergency, such as mutinies, revolts, civil war, and disturbances, quarrels between two factions in one State, or between two States of one Confederation, attempts by a political chief or party to acquire by force the control or exercise of the sovereign power, and so forth, actual war, and even blockade consequent thereon, will often exist without any formal document equivalent to a declaration of war. A military or political Chief resists the Government; a conflict takes place; the fleet declares for him, and blockades the port; or the Government naval force blockades the port which he holds, without any declaration of war, or other document equivalent thereto. There is obviously nothing in the mere absence of such a document to invalidate an effective blockade, if once established and strictly maintained. This position, therefore, of M. Delaville cannot, in my opinion, be maintained.

There remain some points which, though not alluded to by M. Delaville, are pertinent to the subject under consideration, namely, the legal validity of a *de facto* blockade of Gaeta by the Sardinian fleet:—

(*a.*) Gaeta is an exclusively military port, and actually besieged. If ever blockade can be justifiably resorted to, it is in order to reduce a besieged fortress; indeed the whole practice and doctrine of maritime blockade, if not the very idea of it, originated in such cases (see Grotius "De Jure," b. et p., lib. 3, cap. i, sec. 3, "ut si oppidum obsessum tenebam;" and the practice which then commenced has been subsequently extended to purely commercial ports and to ranges of coast, to the serious detriment of neutral interests. But this is not so at Gaeta; any neutral carrying supplies into Gaeta is indirectly but actually and materially aiding the garrison in its resistance: a state of circumstances which neutral Governments, whose ordinary and *bonâ fide* trade will not be interrupted by this particular blockade, will not fail to consider favourably to Sardinia.

(*b.*) There will be no very great reason to apprehend that this blockade will necessarily give rise to any grave international questions. Gaeta is, as it were, "isolated," in a maritime and commercial sense; mistakes, or undue interference, by the blockading force are not very likely to arise, more especially if this force acts discreetly, by warning and watching any suspicious vessel, and by not capturing, or sending in for adjudication, in any doubtful case.

(*c.*) Capture for breach of blockade is only a preliminary and provisional measure; the Prize Court of the captor may, and often does, decree restitution with costs and damages. In England this occurred in 1856, both as to the Baltic and Black Sea blockades in numerous instances; the Government of the captured vessel (thus) has access to a Tribunal before which its legal objections can be stated.

(*d.*) Although, in my opinion, blockade is strictly a right founded upon war, and only competent to a belligerent, yet it has often been (in fact) resorted to and enforced even by France herself, not only without a declaration of war, but without any war, *de facto*, existing, as a preliminary step, and (as it were) by way of "pressure" only. I am not aware that this country has condemned foreign vessels as prizes for violation of such blockades, but France has done this.

I will not multiply instances, or discuss the strict international legality of such blockades; but I will merely invite attention to two modern French works of the highest authority on the question, Pistoye et Duverdy, "Traité des Prises Maritimes" (1855), vol. i, p. 376 *et seq.* (and cases cited), and Hautefeuille, "Droits et Devoirs des Nations Neutres en temps de Guerre Maritime" (1849),

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* [It was communicated in 1859, and has been seen by the Law Officers and reported on; it was dated, I think, in June.—E. H.]

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vol. iii, p. 10. "La guerre peut exister," say MM. Pistoye et Duverdy, "sans qu'il y ait eu une déclaration formelle. Souvent les déclarations de guerre ne surviennent qu'après des actes d'hostilités réciproques, qui, à eux seuls, constituaient l'état de guerre; et alors les déclarations . . . sont surabondantes." They even contend that blockade constitutes war: "on n'a pas déclaré la guerre, mais on la fait réellement."

These writers do not completely agree with Hautefeuille on the subject, but they discuss very acutely the cases which arose before the French Prize Courts, out of captures, for the breach of the French blockade of Buenos Ayres in 1846 and following years. These discussions throw a singular light on the view which the French Prize Courts, guided by the French Government, have taken of blockade without any declaration or act of war.

No war, *de facto*, existed between France and the Argentine Republic, and there was no declaration of war; but the "Fame" and the "Eliza Cornish," British vessels, were captured by the French, and condemned as prize for breaking this blockade. These cases are reported in "Pistoye et Duverdy," vol. i, pp. 387 and 389. All the efforts of Her Majesty's Government failed to obtain any redress from France in the case of the "Fame," which was brought under the Emperor's notice, legally and in the last resort, in 1854 (see Opinion of the Law Officers on case from Solicitor of the Treasury, March 23, 1857; Reports to Foreign Office, June 17, 1857, and October 15, 1857).

If this condemnation was legalized and justified internationally by France in 1854, how can the validity of a blockade of Gaeta be seriously disputed by this same Power in 1861, on the ground of the absence of a declaration of war? Surely the non-existence of any war must be a more formidable objection to the validity of a blockade than the non-existence of a declaration of war.

Upon the whole, therefore, more especially as no British interests are involved in the matter, I venture respectfully to advise your Lordship to take no notice of M. Delaville's doubts, but, if pressed by France for an explicit intimation of the views of Her Majesty's Government, to answer generally to the effect "that if Gaeta should be blockaded 'by a force sufficient,' according to the Declaration of Paris, 1856, 'really to prevent access' thereto, Her Majesty's Government would certainly not be disposed to seek to raise, or to encourage the raising of any international question as to the validity of such blockade; and that Her Majesty's Government did not (as at present advised) see any strong ground for anticipating that any great maritime Power would, in effect, raise any such question; that if, contrary to expectation, any serious international question should arise, it would be discussed, in the first instance, in the Prize Courts of the captor, and subsequently, if necessary, *inter gentes*, according to modern international law and usage. That the contingency of a blockade was so naturally connected with the protracted siege of a maritime fortress that no very obvious difficulty presented itself to Her Majesty's Government in the adoption of such a measure by the King of Sardinia under existing circumstances; that Her Majesty's Government must decline to discuss beforehand abstract hypothetical questions of international law, excepting under very special and urgent circumstances."

It will be for your Lordship to consider whether some intimation of the nature of this singular communication, made by M. Thouvenel to Lord Cowley, should not be given to Sardinia.

I have, &c.
(Signed) J. D. HARDING.

No. 11.

The Law Officers of the Crown to Lord J. Russell.—(*Received January* 24.)

My Lord, *Doctors' Commons, January* 23, 1861.

Belgium.

Naturalized British subjects. Passports, marriages, and children born abroad.

WE are honoured with your Lordship's commands, signified in Mr. Hammond's letter of the 31st December last, stating that with reference to Her Majesty's Advocate-General's Report dated the 19th December last, he was directed to transmit to us the draft of a despatch which your Lordship proposes to address to Lord Howard de Walden respecting the questions which he has raised regarding the passports of naturalized British subjects as to their marriages, and as to the status of their children born abroad. And Mr. Hammond

was pleased to request that we would take this paper into consideration, with Lord Howard de Walden's despatches also inclosed, and report to your Lordship whether we concur in the proposed instructions.

In obedience to your Lordship's commands we have taken the above-mentioned papers into consideration, and have the honour to report—

That we have considered the draft despatch in question, and subject to the slight verbal alterations which we have made therein, we are of opinion that it is correct, and we concur in the proposed instructions.

We have, &c.
(Signed) J. D. HARDING.
RICHARD BETHELL.
WM. ATHERTON.

Inclosure in No. 11.

Proposed Draft to Lord Howard de Walden.

My Lord, *Foreign Office, January* , 1861.

YOUR Lordship takes occasion, from circumstances which have lately occurred at Brussels connected with M. Ignatius Téleki, a naturalized British subject, to ask in your despatch No. 152 of the 3rd of December, for information on points which, though arising immediately in the case of that gentleman, involve general principles, and may, therefore, be more conveniently dealt with as doing so.

The first question is, whether a person who was naturalized as a British subject previously to the 24th of August, 1850, is entitled to a permanent passport; and the answer to it is, that, as the rule in regard to the limitation of time in passports granted to naturalized British subjects applies only to those naturalized subsequently to the above-mentioned date, there can be no question as to the right of a person naturalized [*subsequently*] to that date to receive, like any natural-born British subject, a passport not limited in regard to time.

Alteration suggested by the Law Officers:— "previously"

The second question is, whether a woman, either by birth a British subject, or a naturalized British subject, or an alien, is entitled on being married abroad to a naturalized subject to receive a passport in her new character of a married woman. The answer is, that, if the woman is a natural-born British subject, she does not lose that character by marrying a naturalized British subject, and that, consequently, she is entitled to a fresh passport as a British subject in her married name; but if the woman is a naturalized British subject, or an alien, then, as the woman cannot in her married state travel under her maiden name, and as, whatever may have been her nationality before marriage, she acquires upon marriage the nationality of her husband, she is entitled to be placed in regard to a passport on the same footing as her husband; and, consequently, in such a case Her Majesty's Ministers or Consuls would be authorised to act exceptionally, and to grant to the woman an original passport, subject to the same conditions as the passport held by her husband, that is to say, to a passport not limited in point of time, if her husband's passport is not limited, or limited so as to correspond with the limit of time at which her husband's passport will expire, if her husband's passport is limited. But in no case must the wife's name be inserted in the passport held by the husband previously to the marriage, for no Minister or Consul is authorised under any circumstances to insert an additional name in a passport, whatever number of names such passport when originally granted was stated to incude.

In a despatch of the same date as that to which I have already replied, namely, in your No. 151 of the 3rd of December, and in your letter to Mr. Hammond of the 24th, your Lordship asks three further questions:

1st. As regards the character of the children of a British naturalized subject born abroad; the answer is that such children share the character of their father, and are to be considered as naturalized British subjects, so long at least as they are under age and living with their father. But this is, of course, subject to the local law, which may rightly deal with children born in the country, whatever may be the circumstances of their father, as natural-born subjects of the country in which they were born.

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"Alteration suggested by the Law Officers:—
"the answer will be that they are so entitled."

2ndly. Whether naturalized subjects are entitled to be married at Her Majesty's Legations or Consulates: [*I know no reason why, in this respect, naturalized British subjects should not be admitted to the same privileges as natural-born subjects of Her Majesty.*]

3rdly. Whether naturalized subjects are to be presented at Court by Her Majesty's Diplomatic servants: and to this I reply that I see no ground on which a general rule excluding them from such presentations should be laid down; and I consider that Her Majesty's Representatives may properly use in regard to the presentation of naturalized British subjects the same discretion as they are in the habit of using in regard to natural-born.

I am, &c.

No. 12.

The Queen's Advocate to Lord J. Russell.—(*Received January* 24.)

Doctors' Commons, January 23, 1861.

TURKEY.

Arms conveyed to the Danube in Sardinian vessels.

My Lord,

I AM honoured with your Lordship's commands, signified in Mr. Hammond's letter of the 12th January instant, stating that with reference to my Report of the 21st December ultimo, on the subject of the arms conveyed to the Danube in Sardinian vessels, he was directed to transmit to me a copy of a note addressed by Aali Pasha to General Durando, the Sardinian Minister at Constantinople, stating the grounds on which the Turkish Government justifies its conduct with regard to this matter; and to request that I would take Aali Pasha's note into consideration, and inform your Lordship, at my earliest convenience, whether there appears to me to be anything objectionable in the principles maintained in this note.

Mr. Hammond was also pleased to inclose a copy of the Treaty of the 31st July, 1854, between Sardinia and Turkey, referred to by Aali Pasha.

I am also honoured with Mr. Hammond's letter of the 15th January instant, transmitting all the correspondence which has passed between the Porte and the Sardinian Minister at Constantinople, in the possession of the Foreign Office, respecting the Sardinian vessels which have conveyed arms to the Danube, as requested in my letter of the 14th January instant.

In obedience to your Lordship's commands I have taken this subject into consideration, and have the honour to report,—

That neither General Durando nor Aali Pasha gives any sufficient "constat" of the facts relating to each or any of the vessels in question. In the absence, therefore, of any statement of these facts, or of the Turkish law or regulations as to the importation of arms, or of any indication of the object or purpose for which your Lordship desires my opinion upon Aali Pasha's note of the 16th December, 1860, exclusively, it is not easy for me to deal with that note in a satisfactory manner, more especially as the despatch of Sir H. Bulwer No. 818 of the 5th December (alluded to in my Report on this subject of the 21st December last) is not now before me.

According, however, to the best opinion which I can form in the present very imperfect state of my information as to the real merits or points in dispute, I am of opinion that your Lordship's question must be answered in the affirmative; and that whatever may be the general character of the principles maintained in the note of December 15th, their application to the case in question is, at all events, open to grave objection; I will proceed to explain my meaning more fully.

This note is in answer to one from General Durando of the 10th December, which latter note is, in my opinion, generally sound, and closely reasoned, and the arguments in which are not fully or satisfactorily met or disposed of by Aali Pasha.

In forming this opinion I assume—

1st. That the facts stated by General Durando, and not controverted by Aali Pasha, are true.

2nd. That no very important facts exist in support of the Turkish case, which are not stated by Aali Pasha.

3rd. That there are no Turkish municipal, fiscal, or local laws or regulations which bear materially on the question, none such being cited or referred to by Aali Pasha.

4th. That the Turkish Government is ignorant of the particulars of the intended revolt, apparently against Austria, vaguely alluded to by Aali Pasha, and of the names of the persons concerned therein, who caused the arms to be imported.

On these assumptions I am unable to see how the Turkish Government can maintain its right to chase and capture these vessels, or any of them, on the high seas, and after they had left or passed Constantinople, and were beyond the territorial jurisdiction of Turkey; more especially after and notwithstanding that General Durando (when applied to) had refused to join in or sanction their search or detention. True, they were not in fact captured on the high seas; but this was ordered, and nothing but an accident prevented its being done. Aali Pasha seems to me to contend for this right, though in vague terms, which right General Durando denies, and, in my opinion, rightly denies to exist.

(*a.*) As to the seizure of three of the vessels at Soulina, *in transitu*, which was effected by Turkish authority, although this may have been legal, I confess that I do not understand upon what precise ground it is now justified by Aali Pasha.

If there is any Turkish law or regulation authorizing the seizure of vessels at Soulina for having arms and ammunition on board, or for making there, or in any other Turkish port, a false or deficient declaration as to their cargo, or even for painting out the ship's name originally placed on the stern, it is singular that none such is quoted or alluded to by the Pasha. The vessels were apparently, and I presume really, bound to Turkish ports on the Danube (in the Principalities), and it is strange that these ports are not named; if there were any strong grounds to suspect that the arms would be clandestinely landed, Custom-house officers should have been put on board to see that "bulk was not broken," and that nothing was illegally landed on Turkish territory before the vessel arrived at her port of destination, delivered her regular papers at the Custom-house (or "entered inwards" as we should say), and complied with the local laws and regulations; but these measures were very different from that adopted, namely, summary seizure *in transitu*, of ship, crew, and cargo, and this, as far far as I can see, without any express law or regulation imposing or authorizing such seizure, or any proof that such vessel so seized had broken such law or regulation.

(*b.*) The seizure of a foreign vessel bound to a Turkish port on the Danube, by the Turkish authorities at Soulina, more especially without reference to the Consul of the nation whose flag and papers she carries, is a proceeding at variance with Turkish usage, and, probably, with her Capitulations or Treaties with Sardinia. At all events it is a measure which all maritime Powers must look at with natural disapprobation and jealousy, and which does not seem to me to be justified by the circumstances of this case.

(*c.*) I do not observe that it is suggested by Aali Pasha that any improper use was about to be made of these arms in Turkey; it is intimated that they were to be used against Austria; but no particulars whatever are given, and it is notorious that no insurrection exists against Austria nor Turkish rule. It is not even stated that Austria had interfered, or given information of their arrival, or formally requested their seizure by the Turkish Government; and therefore the mere apprehension that they might possibly be intended to be used (hereafter) against Austria, would not, of itself, justify their seizure by Turkey.

(*d.*) The Turkish Government has not, by inspection of the ship's papers, statements of the master, by intercepted letters, or by any other evidence, established that the ships were in the act of carrying out any breach of Turkish law or any hostile design even against Austria.

(*e.*) The fact that Turkey has consented to release the vessels, with their cargoes, intact, and without further proceedings, on condition of their abandoning this particular voyage, leaving the question of compensation or damages open, but refusing to pay any such compensation, looks very much as if the Turkish Government had either no legal justification whatsoever to adduce, or had (in effect) no case to establish the validity of the seizure. If the seizure was lawful, or in pursuance of any Turkish law or regulation, this would naturally have been put in force by fine, forfeiture, or otherwise, or, at least, proceedings would have been commenced *eo intuitu*, which might have been suspended or abandoned on

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the Sardinian Government consenting to settle the matter by the vessel being permitted to return. But this is not so; they are (first) seized, and (then) restored *sub conditione,* without any legal proceedings being instituted, or any proof of their master's or owner's guilt being adduced, even confidentially, so as to satisfy Sardinia.

(*f.*) With respect to the Treaty of 1854 between Sardinia and Turkey, and more especially to Article VI, I cannot say that the arguments of Aali Pasha are well-founded. I am of opinion that the answer to his question at page 10, "Peut-on appliquer à l'esprit de cet Acte le principe de ce que la loi ne défend pas, elle le permet?" cannot be considered, as he contends, to be evidently in the negative. The sixth Article contains a very special and peculiar stipulation, forbidding all trade whatever in the enumerated articles of "cannons, gunpowder, balls, and projectiles for fire-arms." No general words follow; and it proceeds to stipulate for the further regulations therein mentioned as to the sale of "cannons," the importation of which is permitted in a qualified manner. The construction of this Article cannot, in my opinion, be extended at the pleasure of the Turkish Government, and without the consent or acquiescence of Sardinia, to other articles such as (say), muskets, swords, and accoutrements; nor can it justify other proceedings, as to cannon, than those contained therein. I have already pointed out, in my previous report, that the Turkish authorities might (as to cannon) have proceeded under that Article; but this was not done, nor can the words or spirit of the Article *per se* justify their seizing *in transitu* the ship, or the rest of the cargo, as a matter of course. The fire-arms (which, I presume, are the real subject in contest), were a lawful article of commerce under the circumstances. The rule "Expressio unius est exclusio alterius" applies, in my opinion, to trade in enumerated articles in a Commercial Treaty, at all events when no controlling or general words are introduced therein.

Articles IX and XIV of this Treaty might, I should have thought, have had a material bearing on this case, but neither Aali Pasha nor General Durando allude to them. If (for instance) under Article XIV, any Sardinian subject had been proved to have been concerned in "strange or illicit speculations" (as in the clandestine importation of cannon, gunpowder, and ball, contrary to Article VI, or of large quantities of military fire-arms for other than *bonâ fide* commercial objects, and in a suspicious manner), the "repression" of the speculation might have been required of Sardinia under this Article, but this was not done; so, under Article XIV, if there were defects or frauds in the matter of the names of the ships or of their owners, the Turks might have invoked this Article, but there is no allusion to it.

(*g.*) In short, although the Turkish Government might easily have prevented any dangerous or improper landing of arms and ammunition, or even have sequestered them when landed, if it had prudently confined itself to the terms of the Treaty, or even limited its action to dealing with its own subjects exclusively, it might have attained the same object by various other means, as by enforcing reasonable Custom-house or port regulations, requiring the deposit of all such objects in a safe place under official custody and under bond, and so forth, or even by their absolute confiscation; and the punishment of all Turkish subjects concerned in their importation when once they had been landed on her territory. Turkey appears to me in this case to have proceeded, although from honest and praiseworthy motives, indiscreetly and irregularly; exhibiting that strange mixture of supineness and energy, of leniency and summary rigour, of want of foresight, of regularity and method, united with a determination to carry out her immediate object at all hazards, which is often seen in Oriental policy, and which justly exposes this policy to animadversion from more civilized Governments.

Your Lordship will not fail to observe that the opinions I have expressed in my Report of the 21st December, 1860, agree in many points with the positions advanced by General Durando in his note of December 10, of the contents of which I was wholly ignorant when I wrote that Report; and I cannot, under such circumstances, say that this opinion is altered by Aali Pasha's answer to the General of the 15th December.

Lastly. I must observe that the various and peculiar geographical and political considerations connected with the Turkish jurisdiction over the Dardanelles and the mouth of the Danube, to which I need not more particularly advert, and the peculiarities attending the exercise of Turkish jurisdiction over the persons and property of Christian nations, will sufficiently justify, and

even demand, the exercise of a jealous vigilance on the part of all maritime Powers, in every case in which, under whatsoever circumstances, the Turkish Government attempts to carry out and to justify the seizure, in either of those localities, of the merchant-ships of any European Power against the consent, and notwithstanding the formal objections, of the resident Minister of that Power.

I greatly regret the length of this Report, which I trust will be excused, owing to the peculiarity of the circumstances.

I have, &c.
(Signed) J. D. HARDING.

No. 13.

The Queen's Advocate to Lord J. Russell.—(Received January 25.)

My Lord, *Doctors' Commons, January* 25, 1861.

France.

Mr. Vincent's application to forward a Commission issued by the Court of Divorce to Her Majesty's Consul at Nice through the Foreign Office.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 24th January, stating that he was directed to transmit to me a letter from Mr. Vincent, requesting that a Commission issued by the Court of Divorce to Her Majesty's Consul at Nice may be forwarded by the Foreign Office, and to request that I would report to your Lordship my opinion whether Mr. Vincent's application should be complied with.

In obedience to your Lordship's command I have the honour to report—

That I beg to call attention to the fact that this question has already given rise to considerable discussion with France. I would refer particularly to the Reports of the Law Officers of the 15th August, 1852, the 28th April, 1855, 22nd February and the 21st June, 1856.

It would seem from Mr. Hammond's letter of the 2nd May, 1856, recited with last Report (1856), that the suggestion of the Law Officers to the effect that the international arrangements on this subject should be made reciprocal in all cases, was not adopted; and I presume therefore that notwithstanding the Statute 19 and 20 Vict., cap 113, there is not at present in France any means of procuring the examination, by French authority, of a witness, in a suit pending in an English Court. I am not, however, aware how this is in point of fact. If I am in error, I must request further information.

The French Government has shown a disposition to interfere with the working of British Commissions for taking evidence, even when conducted by private persons; and it may therefore object to British Consuls acting in such matters: but if it will neither permit the adoption of such a course, nor make any reciprocal arrangement on the basis of the above Statute (19 and 20 Vict., cap. 113) its conduct is unreasonable, and British interests in this matter are placed in a very awkward predicament in France.

As this case now stands, and assuming that there is not in France any system of procedure corresponding with that provided by the above Statute *in consimili casu* in England, and bearing in mind that Her Majesty's Court for Divorce and Matrimonial Causes has, howsoever, inserted the name and description of the Consul in the Commission issued under its Seal, I should advise your Lordship to comply with Mr. Vincent's request, which I observe is limited to "forwarding by the first post" the Commission to the Consul.

Mr. Vincent should be informed that this has been done, and should be desired to take care that some competent person at Nice shall produce before the Consul the witness named in the Commission, and shall direct the Consul as to the formal mode of executing and returning the Commission, and shall pay on the spot all necessary expenses, including the Consul's reasonable fees and charges.

The Consul should be furnished with a copy of your Lordship's letter to Mr. Vincent; he should be instructed to accept the Commission, to act formally and cautiously in the matter under the advice of the person designated by Mr. Vincent, bearing in mind that he (the Consul) is to act as the officer of the Court *pro hâc vice*, and in that character to facilitate and to expedite, as far as in him lies, the despatch of the business in hand; and to avoid, as far as possible raising any obstacle or difficulty in the execution and return of the Commission, observing the directions contained therein, particularly as to assuming a Notary

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Public as his "actuary" (or amanuensis), the subscribing by himself and the witness of the examination; and the transmission thereof, together with the Commission, closely sealed up, and addressed to the Registry of Her Majesty's Court for Divorce and Matrimonial Causes in Doctors' Commons, in the city of London. He should also be (confidentially) instructed to proceed as if this were a matter of course, and of a purely Consular character; not to do anything to invite or excite the interference of the French authorities; but if any such interference should take place, to defer thereto, and to write at once for further instructions.

I have, &c.
(Signed) J. D. HARDING.

No. 14.

The Queen's Advocate to Lord J. Russell.—(*Received January* 29.)

SICILY.

Claims of Messrs. Rohmer for compensation for property destroyed at Catania.

My Lord,
Doctors' Commons, January 28, 1861.*

I AM honoured with your Lordship's commands, signified in Mr. Hammond's letter of the 18th January instant, stating that with reference to former correspondence, he was directed to transmit to me a letter, dated January 14, 1861, together with its inclosures, from Messrs. Rohmer, of Manchester, requesting that steps may be taken to obtain compensation for them on account of certain property of theirs which was destroyed at Catania during the recent troubles in Sicily; and to request that I would take Messrs. Rohmer's letter into consideration, and report to your Lordship my opinion as to the answer which should be returned to it.

The despatch from the Foreign Office, alluded to in Messrs. Rohmer's letter, was inclosed for reference.

In obedience to your Lordship's commands, I have taken these papers into consideration, and have the honour to report—

That an answer may be returned to Messrs. Rohmer to the effect "that there is no statement in their letter upon which Her Majesty's Government can offer them any advice, or can act or interfere on their behalf with any foreign Government."

I observe (1st) that Messrs. Rohmer give no explanation of the delay which has occurred on their part in making any application to your Lordship.

(2.) That the only statement of the facts connected with the loss in question (namely, that contained in the letter of Mr. Just to Her Majesty's Vice-Consul, dated Catania, June 1, 1860), is as short and vague as possible. From this letter it would seem that the loss was caused by an accidental fire which arose during some military conflict.

(3.) There is no report from the Vice-Consul.

(4.) The right of Messrs. Rohmer Brothers, on the ground of their British nationality, to the support of Her Majesty's Government is somewhat vaguely stated Their senior partner is said to be a naturalized British subject; but no date or particulars of his birth or naturalization, and no particulars as to his co-partners, are forthcoming.

(5.) The nature and degree of their interest in the goods in question is very obscure. Mr. Henry Just, in his above-cited letter to the Vice-Consul, speaks of the goods as his goods, and desires that he may be indemnified; he makes no allusion to Rohmer Brothers, or to his acting as Agent for any absent British firm, either as his principal or partner: Messrs. Rohmer Brothers speak of "their partners Messrs. Henry Just and Co., of Catania."

(6.) Messrs. Rohmer and Co., although cognizant of the Foreign Office despatch to the Consuls of 23rd June, 1860, make no reasonable attempts to bring their particular case within its terms or spirit. They adopt a tone which is rather in the nature of a general demand for support to a claim against anybody they can succeed in making answerable, than a *bonâ fide* and business-like statement of the facts connected with their loss, and of the grounds of their claim; and they do not, under all the circumstances, appear to me to deserve any assistance from Her Majesty's Government in making out (at least) a *primâ facie* case, which they ought to do for themselves.

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* See further Report, page 49.

I do not mean to suggest that these defects should be pointed out to the applicants (who should merely receive a general intimation that they have not made out any *primâ facie* case), but I mention them for your Lordship's guidance.

I have, &c.
(Signed) J. D. HARDING.

No. 15.

The Law Officers of the Crown to Lord J. Russell.—(*Received January* 31.)

PRUSSIA.

Trial of British residents at Bonn for libel in the case of Captain Macdonald.

My Lord,
Doctors' Commons, January 30, 1861.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 8th January instant, stating that he was directed to inclose a despatch (No. 94) which your Lordship has received from Her Majesty's Chargé d'Affaires at Berlin, reporting the verdict which has been given at Bonn, at the trial of the English residents who had been accused of a libel in regard to the proceedings against Captain Macdonald.

Mr. Hammond was also pleased to state that, as the legal proceedings in Prussia upon this subject, and upon the case of Captain Macdonald, have now terminated, he was directed to refer us to the whole correspondence which has taken place in the matter; and in requesting us to take these papers into consideration, he was to inform us that your Lordship does not wish to dispute the judgment of the regular Courts of law in Prussia, but that your Lordship desires to know whether there is any part of the conduct of the Executive Government of Prussia of which Her Majesty's Government can properly complain as illegal, and at variance with the spirit of international law, or unfriendly towards Great Britain.

In compliance with your Lordship's instructions we have taken this matter into consideration, and have the honour to report—

That the conduct of the Executive Government of Prussia is to be considered with reference to three separate matters:—

1. The arrest, detention, and punishment of Captain Macdonald.

2. The language used by Staats-Procurator Möller, in conducting the prosecution against Captain Macdonald; and

3. The prosecution of British subjects at Bonn for an alleged libel on Staats-Procurator Möller, provoked by his use of that language.

Taking them in order—

1. We are of opinion that, assuming the acts charged against Captain Macdonald to have taken place, his arrest, trial, and subsequent punishment were matters within the jurisdiction of the Prussian tribunals; and we do not discover any ground on which its illegality, so far as Prussian law is concerned, can be maintained. The detention of Captain Macdonald from the 13th September until the 15th, without the issue of a warrant of committal, would have given rise to some doubt in our minds of the strict legality of the course pursued. But in the face of the opinion on this point expressed by the Counsel Kyll (when consulted on the part of Her Majesty's Government), and of the reasons stated for such opinion, we cannot take upon ourselves to pronounce such detention contrary to the Municipal law of the country.

2. The Staats-Procurator Möller having been already reprimanded for the abusive language employed by him in the conduct of the prosceution against Captain Macdonald, we think no further complaint on that head can be made on the part of Her Majesty's Government against that of Prussia.

3. The prosecution by the authority of the Prussian Government of certain British subjects at Bonn for libel, although a most harsh and vindictive proceeding, appears to have been in conformity with the law of the country. The defendants had an open trial according to the Prussian law; and the judgment and sentences appear to have been within the competence of the tribunal.

There has been no violation of international law, assuming that the provisions of the Municipal law (to which foreigners, being within the country, are liable) have been observed.

These observations relate to the legal aspects of the case.

In a moral point of view, having regard to the relations between the two countries, the conduct of the Prussian Government appears to us to have been

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in a high degree unfriendly. Prussian law was enforced with extreme and unnecessary harshness, and in a manner not required for the purposes of justice. To throw a person of the rank and station of Captain Macdonald into prison, and refuse his liberation on bail, was an act which in England we should ascribe to a malignant spirit, violating the limits of a temperate administration of justice.

The rude refusal of the Prussian official, when informed of the rank held by Captain Macdonald in the body guard of his Sovereign, was not consistent with ordinary international courtesy, and is fit to be observed on, because it has not been disavowed by the Prussian Government. We feel confident that no Prussian officer or gentleman of the rank of Captain Macdonald would have been treated in a similar manner in England, under the same circumstances.

We will, lastly, advert to the spirit which dictated a prosecution for libel on an official whose conduct had been censured by his own Government, and the institution of that prosecution whilst Captain Macdonald's case was still pending. The Prussian Government has not thought fit to temper its justification of these extreme acts of legality by any expression of regret; and we cannot but regard its conduct as in a high degree unfriendly, and regardless of international goodwill.

We have, &c.
(Signed) J. D. HARDING.
RICHARD BETHELL.
WM. ATHERTON.

No. 16.

The Queen's Advocate to Lord J. Russell.—(*Received February* 3.)

Doctors' Commons, February 2, 1861.

My Lord,

SARDINIA AND SICILY.

Sardinian blockade of Gaeta.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 1st February instant, stating that he was directed to transmit to me a despatch from Her Majesty's Consul at Naples (No. 11), inclosing a copy of a notice inserted in the official journal of that city, announcing that an effective blockade of the port of Gaeta had been established by a Sardinian squadron; and to request that I would take this despatch and its inclosures into consideration, and if I should be of opinion that the notice of blockade is sufficient, I would prepare, at my earliest convenience, a draft of a notification to be inserted in the "London Gazette."

Mr. Hammond was also pleased to add, that Her Majesty's Government consider the King of Sardinia and the King of the Two Sicilies to be at war with each other.

In obedience to your Lordship's commands, I have taken these papers into consideration, and have the honour to report—

That the Consul only transmits a written copy of Admiral Persano's notice, which is stated to have been inserted in the "official journal" (whatever that may be) published at Naples on the 23rd January ultimo. He does not even transmit a copy of this newspaper; nor does he state that any official intelligence of the fact of the blockade had arrived at Naples; nor does he appear to have asked the authorities any question on the subject.

It is obvious that the mere transmission of this copy by the Consul is not sufficient to enable Her Majesty's Government officially to publish the fact of the blockade in the "London Gazette."

In order to enable Her Majesty's Government safely and regularly to take this course, the Sardinian Minister in London ought formally to announce to your Lordship the fact of the establishment of the blockade, by a competent force, from a particular date, accompanying this announcement by any material document (such as Admiral Persano's notice) at his discretion, in the usual and regular diplomatic style; or there must, at all events, be some formal and official *constat*, by communication from some official person in a position to declare it, of the fact of the existence of the blockade.

As, in all probability, the blockade was really established on the 20th January ultimo, some confidential intimation may possibly be given to the Sardinian Legation to the effect that it should announce the fact to your Lordship in such a formal and exact manner as may enable Her Majesty's Government to publish a regular notification in the "London Gazette."

I feel it my duty reluctantly to point out the very vague and unbusiness-like character of the Consul's communication: even the correspondent of any mercantile firm would, under similar circumstances, either have sent a copy of the newspaper, or stated (of his own knowledge) that intelligence of the blockade being actually established had arrived at Naples, on a particular date, by some particular channel, from Gaeta, and that on applying to authorities they had confirmed the truth of such intelligence.

I have, &c.
(Signed) J. D. HARDING.

No. 17.

The Queen's Advocate to Lord J. Russell.—(*Received February* 4.)

Doctors' Commons, February 1, 1861.*

My Lord,

PERSIA.

Mr. Acland's claim for costs *in re.* Mirza Dawood *v.* Aga Mahomed Sadick.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 22nd January ultimo, stating that with reference to my reports of the 25th June and the 7th August last, respecting the claim of Mr. Acland, for costs arising out of the suit of Mirza Dawood *v.* Aga Mahomed Sadick, he was directed to transmit to me, together with the previous papers, a despatch from Her Majesty's Minister at Teheran respecting the present circumstances of this case; and to request that I would take this matter into consideration, and report to your Lordship my opinion as to the course which Her Majesty's Government should pursue.

In obedience to your Lordship's commands, I have taken this matter into consideration, and have the honour to report—

That inasmuch as in this case Her Majesty's Government is (in effect) at present only acting as the medium of communication between Mr. Acland on the one part, and Mirza Dawood and the Persian Government on the other, I would suggest that your Lordship may properly furnish Mr. Acland with a copy of Mr. Alison's No. 68, and await the result of this communication.

Although Mr. Alison's letter is not very explicit on the point, I assume that Mirza Dawood does not dispute his primary liability to Mr. Acland in respect of the costs in question: he (in effect) seems to admit his liability as to at least two-thirds of the amount; and he suggests that the Persian Government should, under the peculiar circumstances of the case, which has been arranged between the Government and himself, pay the remaining third.

This suggestion, which does not seem unreasonable, has not apparently been conveyed to the Persian Government, by him or by Mr. Alison.

In this state of things, however, it is for Mr. Acland in the first place to submit to your Lordship's consideration the course which he would desire Mr. Alison now to adopt on his behalf, and your Lordship can then consider the propriety of doing either what Mr. Acland may desire, or of taking any other course.

I have, &c.
(Signed) J. D. HARDING.

No. 18.

The Queen's Advocate to Lord J. Russell.—(*Received February* 5.)

Doctors' Commons, February 5, 1861.

My Lord,

SICILY.

Sardinian blockade of Gaeta.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of this day's date, stating that he was directed to transmit to me a note from the Sardinian Minister at this Court, announcing that an effective blockade of Gaeta was established by the Sardinian naval forces on the 20th January last; and to request that I would take this note into consideration, and if I should be satisfied with the sufficiency of the notice, that I would prepare the usual Notification for insertion in the "London Gazette."

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* See further Report, page 46.

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In obedience to your Lordship's commands, I have taken this note into consideration, and have the honour to report—

That although his Excellency the Marquis d'Azeglio has not transmitted any copy of a despatch from Admiral Persano, or any other document in confirmation of his statement which would have been desirable, and does not state at what date either his Government or he himself received information of the establishment of the blockade in question, yet that his note of the 4th instant, may, in my opinion, under the circumstances, be inserted in the "London Gazette."

I have accordingly prepared, and herewith transmit, a draft form of Notification for insertion therein.

I have, &c.
(Signed) J. D. HARDING.

Inclosure in No. 18.

Draft of Notification.

Foreign Office, February , 1861.

IT is hereby notified that the Right Honourable the Lord John Russell, Her Majesty's Principal Secretary of State for Foreign Affairs, has received from his Excellency the Marquis d'Azeglio, the Sardinian Minister in London, the following official communication:—

[Here append the original text, and an exact translation of the note of the Sardinian Minister *in extenso*.—J. D. H.]

No. 19.

The Law Officers of the Crown to Lord J. Russell.—(*Received February* 13.)

PORTUGAL.

Claim of Portuguese Consul in British Guiana to take charge of effects of Portuguese subjects dying intestate.

My Lord, *Doctors' Commons, February* 11, 1861.

WE are honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 20th of November last, stating that with reference to the Queen's Advocate's Reports of the 18th of September and 17th of October last, on the subject of the claim made by the Portuguese Consul in British Guiana to take charge of the effects of Portuguese subjects dying intestate without heirs on the spot, he was directed to transmit to us a letter from the Colonial Office, in which the Secretary of State for the Colonies requests your Lordship's opinion, whether according to the IInd Article of the Treaty between this country and Portugal of July 3rd, 1842, property belonging to Portuguese subjects dying intestate in British Guiana without heirs, can be claimed by the Crown of Portugal, or whether it remains with the Crown of England. And to request that we would report to your Lordship our opinion as to the answer which should be returned upon this point to the Colonial Office.

The former papers were inclosed for convenience of reference.

In compliance with your Lordship's instructions we have taken this subject into consideration, and have the honour to report that the right of the Crown of England or of the Crown of Portugal to the personal property of Portuguese subjects dying intestate in British Guiana, and without heirs, continues to depend (according to the general rule) on the place of the intestate's legal domicile at the time of his death. Thus, if a Portuguese subject dies intestate and without heirs domiciled in the British dominions, the Queen will be entitled to his personal property; but if, although dying in the British dominions, he were legally domiciled in Portugal at the time of his death, the King of Portugal would be entitled thereto, if so entitled by the law of Portugal. The terms of Article II of the Treaty of July 3, 1842, do not appear to us directly to affect this particular question.

Having thus answered the particular question on which the Secretary of State for the Colonies requests your Lordship's opinion, we must observe that the words of the Treaty are in favour of the claims put forward on behalf of the Portuguese Consul. The inconvenience, however, of carrying out the letter of the Treaty would be extreme, as the Queen's Advocate has already pointed out. The Treaty applies in its full scope to every part of the British dominions; it may be expected that if the Treaty be allowed its full scope in favour of Portugal, other nations, especially those having what are known as "most favoured nation clauses" in their Treaties with this country, will demand to be placed in this respect on the same footing; and these various requirements could not be yielded without very extensive alterations in the law and administration of intestacy, not only in England, but throughout the Queen's dominions, the practical operation and result of which will, in our opinion, give rise to very serious difficulties.

Under these circumstances it is most desirable that, if possible, the question which has been now first raised by Portugal (after a tacit acquiescence or silence of nearly twenty years) should be restricted to British Guiana.

With the view of effecting this object we would recommend an offer being made to alter the local Ordinance by rendering it incumbent on the Administrator-General, without delay, and from time to time, to make returns to the Portuguese Consul of the names, residences, and designations of all Portuguese subjects dying intestate in the Colony, and of all such other material particulars as to their effects, and their known or supposed heirs, as it may be in his power to do; and also by directing the proper Colonial Court, on application to the Portuguese Consul, to authorise him to take charge of the effects of deceased Portuguese in the particular cases provided for by the terms of Article II of the Treaty in question.

We have, &c.
(Signed) J. D. HARDING.
RICHARD BETHELL.
WM. ATHERTON.

No. 20.

The Queen's Advocate to Lord J. Russell.—(*Received February* 14.)

SPAIN.

Claim of Mr. A. Robinson. Detention of "Mio Zio" at Port Mahon.

My Lord, *Doctors' Commons, February* 14, 1861.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 12th February instant, stating that he was directed to transmit to me a letter from Mr. A. Robinson, dated February 4th, stating the circumstances under which the Spanish authorities at Port Mahon have decreed that a cargo of maize, which he had shipped at Constantinople for England on board the ship "Mio Zio," and which ship put into Port Mahon, was unfit to be sent on to the United Kingdom, and that the master of the vessel was entitled to the full freight and demurrage which would have been due to him had he carried the cargo to its destination.

Mr. Hammond was also pleased to inclose a letter from the Board of Trade dated February 9th, expressing their opinion upon the subject, and to request that I would report to your Lordship my opinion whether Her Majesty's Government can properly interfere in this matter.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report,—

That Her Majesty's Government cannot interfere in this matter.

Mr. Robinson's statement of the circumstances is meagre; and he must be in possession of important facts which he does not state. The ship was a Roman ship; the proceedings at Port Mahon were (for all that appears to the contrary) perfectly legal proceedings, and some Decree (of a Court of Law apparently) has been made, against which Mr. Robinson has appealed, I presume to some superior Spanish Court having jurisdiction, although he does not expressly state this.

He seeks the interference of Her Majesty's Government, *pendente lite*, on the ground of the non-competence of the Spanish authorities; but he has either admitted the jurisdiction of the Court *a quo*, or, at all events, he has admitted and founded the jurisdiction of the Court *ad quem*, by himself voluntarily having recourse to it. "The Spanish authorities" have not interfered; and the jurisdiction of the Spanish Courts cannot at present be questioned by Her Majesty's Government.

All this need not be stated to Mr. Robinson; but it is sufficient to show the impossibility of complying with his request. He may be informed that Her

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Majesty's Government must decline for the present to interfere in a matter on which legal proceedings, at his instance and on his behalf, are pending.

The Consul at Port Mahon should report fully on the case, which may ultimately have an important bearing on British commercial interests.

I have, &c.
(Signed) J. D. HARDING.

No. 21.

The Queen's Advocate to Lord J. Russell.—(Received February 16.)

My Lord, *Doctors' Commons, February* 15, 1861.*

CHILE.

Question of forwarding legal documents through Foreign Office from a foreign Government. Mr. Thomson.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 11th February instant, stating that he was directed to transmit to me a despatch and its inclosures from Her Majesty's Chargé d'Affaires in Chile (No. 83), asking for instructions with regard to the question of forwarding through the Foreign Office legal documents which he receives from the Chilian Government, and to request that I would take Mr. Thomson's despatch into consideration, and report to your Lordship my opinion as to the answer which should be returned to him.

In obedience to your Lordship's commands I have taken this matter into consideration, and have the honour to report,—

That inasmuch as Mr. Thomson either does not know or does not explain what is the nature of the "document" in question, or what is the Chilian law to which he alludes (but of which he sends no copy or abstract), it is not possible to deal with this question in a satisfactory manner.

His omission to give any explanation either of the nature of the "document," or of the peculiar reasons which induced him to refuse to forward it as desired, or of the Chilian law on the subject, under which it is suggested that he ought to have forwarded it, is most unaccountable, and leaves Her Majesty's Government practically in the same situation as if it had received no despatch at all from Mr. Thomson; for it has received from him nothing upon which it can found any definite instructions to him.

Mr. Thomson describes "the document" as addressed by the "Judge of Commerce at Valparaiso" to the "Judge of Commerce at Birmingham:" he must be perfectly aware of the fact that there is no such personage as the "Judge of Commerce" at Birmingham; but he seems not to have suggested this to the Chilian authorities, and he does not explain who is really intended by them; whether (for instance) the Judge of the County Court, the Commissioner of Bankruptcy, the Mayor, the Recorder, or who else.

The note of Señor Varas of the 28th of November speaks of "los Jueces" (the Judges) of Birmingham," and says nothing about the "Judge of Commerce." This note also speaks of the document as "el adjunto despacho rogatorio;" probably meaning a rogatory Commission from some Chilian Tribunal to some Birmingham magistrates or judicial officers, perhaps to empower them to take evidence in a suit pending in Chile; but at all events showing that Mr. Thomson could have had no difficulty in knowing and explaining what was its real nature and object.

Whilst, therefore, I have seldom seen a more defective despatch than Mr. Thomson's I can easily conceive that he might have explained to the Chilian Government "that, although he would transmit such Commission to Birmingham, he regretted that he could not undertake, on the part of Her Majesty's Government, to cause it to be duly executed and returned—Her Majesty's Government not having, by English law, any jurisdiction or power of this kind, although the object might be attained by means of the English Courts;" and if he had been aware of the Statute 19 & 20 Vict., cap. 113 (see especially sec. 2), he might easily have put the matter in a proper train by bringing this Statute to the knowledge of the Chilian Government.

Possibly and hypothetically therefore, the instructions to be transmitted to him for his guidance may be framed on this basis: but he has left the whole matter in such obscurity that this aspect of the case must be only conjectural.

I would venture to observe that as an extended international comity and reciprocity in the transmission and execution of legal documents between Courts of Law is highly desirable for the furtherance of the interests of justice (at least in a British point of view), and more especially so in the case of so distant a country as Chile, in which there exist large and increasing British interests, a hint to this effect might not be thrown away upon Mr. Thomson. The safe transmission of such documents, and the affording every ordinary and formal assistance in regard to them, appears to me to be one of the many important duties of Legations; and foreign Governments will never afford any facilities in such cases if they are thus peremptorily discouraged by British Legations *in limine*.

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* See further Report, page 44.

In such cases every facility should be afforded, and the legal impediments and obstacles by which Her Majesty's Government is disabled from doing all that may be requested should be courteously and distinctly explained to foreign Governments, to whom these obstacles are not apparent or easily intelligible; and they should be referred to the Statute, of which copies should be sent to Her Majesty's Legations, and possibly a circular, for their guidance in a matter of such great legal and international importance.

It should be distinctly understood that it is the British Courts, and not Her Majesty's Government or Her Majesty's Legations, which are exclusively empowered to act under the Statute. But Her Majesty's Legations should point this out, and should not object to transmit papers when formally requested so to do.

I have, &c.
(Signed) J. D. HARDING.

No. 22.

The Queen's Advocate to Lord J. Russell.—(Received February 16.)

My Lord, *Doctors' Commons, February* 16, 1861.

SICILY.

Mr. Blake's complaint against authorities at Palermo, in the case of a cargo of corn on board the "Hannibal."

I AM honoured with your Lordship's commands, signified in Mr. Hammond's letter of the 15th instant, stating that he was directed to transmit to me a letter from Mr. Blake, dated 15th of February, 1861, complaining of the conduct pursued by the authorities at Palermo with regard to a cargo of Indian corn shipped for a port in the United Kingdom, by Messrs. Cole and Prossor of Waterford.

Mr. Hammond was also pleased to inclose a letter from the Board of Trade, expressing their opinion upon the subject; and to request that I would report to your Lordship my opinion whether Her Majesty's Government can properly interfere in this matter.

In obedience to your Lordship's commands, I have the honour to report—

That there is no ground whatsoever for the interference of Her Majesty's Government in this matter.

The "Hannibal" is an Ionian vessel; and there would appear to be some proceedings pending before some Court at Palermo, at the instance of the master (although this is not expressly stated); the parties interested (as is too often the case) are withholding important particulars, of which they are obviously in possession.

However this may be, they expressly state that their correspondents at Palermo, Messrs. Ingham and Whitaker, are in possession of the bill of lading, and have full power to act for the owners of the cargo; and there is, therefore, no reason for the special intervention of the Consul. He should be instructed to report fully on the circumstances of the case, and on its general bearing on British interests.

I have, &c.
(Signed) J. D. HARDING.

No. 23.

The Law Officers of the Crown to Lord J. Russell.—(Received February 19.)

My Lord, *Doctors' Commons, February* 18, 1861.

UNITED STATES.

Slave Trade carried on under flag of seceded States.

WE are honoured with your Lordship's commands, signified in Lord Wodehouse's letter of the 11th February instant, stating that he was directed to

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transmit to us the accompanying letter from the Admiralty, dated 9th February, 1861, representing that it is important that the commanders of Her Majesty's cruisers engaged in the suppression of the Slave Trade should be furnished with immediate instructions for their guidance in the event of their falling in with vessels engaged, or suspected of being engaged, in the Slave Trade, and which may be sailing really or ostensibly under the flag of one or more of the States that have recently seceded from the American Confederation.

Lord Wodehouse was also pleased to state that the points on which the Lords Commissioners of the Admiralty wish to be informed are :—

1. Whether Her Majesty's cruizers are to treat vessels hoisting the flags of such seceding States as vessels belonging to established Governments with which Great Britain has no Treaty for the suppression of the Slave Trade ; or,

2. Whether the Treaty made with the United States on the subject of Slave Trade, namely, the Treaty of August 9, 1842 (Hertslet's Treaties, vol. vi, p. 853), is binding upon the seceding States ; and,

3. Whether such vessels are to be treated as vessels not entitled to the protection of any flag, and consequently liable to capture and condemnation ?

And Lord Wodehouse was pleased to request that we would take this letter into consideration, and report to your Lordship, at our early convenience, our opinion upon the points put in the Admiralty letter ; and further, with any observations which we may have to offer as to the instructions which it would be proper to give to the commanders of Her Majesty's cruizers in reference to this matter.

In compliance with your Lordship's instructions we have taken the subject into consideration, and have the honour to report,—

That the national character of the vessels in question must, in our opinion, be determined not by the flag which they may hoist, but by the "ship's papers," which they may exhibit. A discrepancy between the national character of the flag and that of the papers may, indeed, give rise to suspicion, and, in some special cases, may justify search or detention, and even capture; but, if the vessels in question produce a regular set of "United States' ship's papers," the mere fact of their not hoisting the flag of the United States, or of their hoisting a secession (or "Palmetto") flag, or any other flag, will not, of itself, justify Her Majesty's naval officers in treating them otherwise than as "vessels of the United States," or in treating them as vessels not entitled to the protection of any flag, and will not justify their capture, even with slaves on board.

The fact, however, of any vessel hoisting an unrecognized flag (as a "Palmetto flag") will justify boarding, and reasonable search and scrutiny of all her papers; and if such vessels should (under whatever flag) produce not United States' papers, but only papers purporting to be issued by the Government of one or more of the seceding States, then, inasmuch as these States are not recognized by Her Majesty's Government as sovereign and independent States *inter gentes*, Her Majesty's naval officers will, in strict maritime law, be justified *primâ facie* in treating the vessels in question as "not entitled to the protection of any flag." They must, however, bear in mind the necessity of acting with peculiar caution and circumspection in all such cases.

With respect to the nature of the general instructions which may properly be given to the Commanders of Her Majesty's cruizers, we must observe that this is obviously a question of Imperial policy, and as such beyond our province; the peculiar nature and actual condition of the (now) dis-United States, the disposition and feeling, and the future (or contemplated) policy both of Her Majesty's Government and of the Federal Government, in relation to the seceding States, *quoad* this particular matter, and various other considerations, must be kept in view.

If Her Majesty's Government have it in contemplation to observe a rigorous system of neutrality and non-intervention, as between the Federal Government and the seceding States, and to recognize the seceding State Governments, or the seceding Federal Government (when formed) as a *de facto* sovereign and independent Government, then it may not be expedient to treat their flag, at once, as unknown and unrecognized, or to capture or condemn vessels carrying on the Slave Trade when they produce secession papers.

If, on the other hand, Her Majesty's Government is determined not in any event to permit the vessels of the seceding States to carry on the Slave Trade as "vessels of the United States," after and notwithstanding their secession, and under their separate Government-flag and papers, it will be expedient that it should at once take up and maintain this position.

Her Majesty's Government is, in our opinion, entitled, by international law, to refuse altogether to recognize the flag and papers of the seceding States, but it must, of course, be prepared for the possible results of this line of action.

We invite attention to the Constitution of the United States, especially Article I, section 8, paragraph 3, section 10; Article II, section 2; and Article VI, section 2, in any international discussion of this matter.

We have, &c.
(Signed) J. D. HARDING.
RICHARD BETHELL.
WM. ATHERTON.

No. 24.

The Queen's Advocate to Lord J. Russell.—(Received February 21.)

Doctors' Commons, February 20, 1861.

My Lord,

SICILY.

Mr. Blake's claim. Case of the "Hannibal."

I AM honoured with your Lordship's commands, signified in Mr. Hammond's letter of the 19th February instant, stating that with reference to my Report of the 16th February instant,* on the case of the ship "Hannibal" at Palermo, he was directed to transmit to me, together with the former papers, a further letter which your Lordship has received from Mr. Blake dated the 19th February ; and to request that I would report, at my earliest convenience, whether the statements contained in these papers induce me to alter the opinion which I have already expressed on this case.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report,—

That I have no hesitation in answering your Lordship's question in the negative.

The "Hannibal" is not a British vessel, and the Consul has (I presume) no jurisdiction over her; legal proceedings are pending before some tribunal, which the applicants do not explain or describe ; their (British) agents, fully empowered to act for them, and in possession of the bill of lading (giving the legal title to the cargo), are on the spot; and their "demand" that the British Consul should in his official capacity interfere, or their supposition that he could interfere with any effect upon some unexplained ground, is simply ridiculous. They must be perfectly well aware that he cannot compel the captain against his will to complete, or even to proceed on, the voyage ; that if their own agents cannot do anything effectual, neither can the Consul ; whilst if their agents can carry out their instructions, the Consul's interference is needless. It does not appear that these agents have ever applied to the Consul.

I have, &c.
(Signed) J. D. HARDING.

No. 25.

The Queen's Advocate to Lord J. Russell.—(Received February 21.)

Doctors' Commons, February 21, 1861.

My Lord,

SARDINIA AND SICILY.

Blockade of Gaeta raised.

I AM honoured with your Lordship's commands, signified in Mr. Hammond's letter of the 20th February instant, stating that he was directed to transmit to me a note from the Sardinian Minister at this Court, dated the 19th February, announcing that the blockade of the port of Gaeta by a Sardinian squadron has been raised; and to request that I would prepare the usual notification for insertion in the "London Gazette."

In obedience to your Lordship's commands I have accordingly prepared, and herewith transmit for insertion in the "London Gazette," a form of notification.

I observe that the Marquis d'Azeglio's note does not expressly state on

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* Page 25.

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what day the blockade was raised, although it may be inferred from the note that it was raised on the 13th February instant.

I have, &c.
(Signed) J. D. HARDING.

Inclosure in No. 25.

Draft Notification.

Foreign Office, February , 1861.

WITH reference to the notification dated the 6th day of February instant, and inserted in the "London Gazette" of the 8th February instant, on the subject of the blockade of the fortress of Gaeta, it is hereby further notified that the Right Honourable Lord John Russell, Her Majesty's Principal Secretary of State for Foreign Affairs, has received from the Marquis d'Azeglio, the Sardinian Minister in London, the following official communication:—

[Here append the original text, and an exact translation of the note of the Marquis d'Azeglio of the 19th February *in extenso*.—J. D. H.]

No. 26.

The Queen's Advocate to Lord J. Russell.—(Received February 23.)

FRANCE.

Claim of Mr. Casaubon to exemption from conscription, on the ground of being born in the Mauritius, although of a French father.

Doctors' Commons, February 21, 1861.*

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 19th February instant, stating that he was directed to transmit to me a despatch from Her Majesty's Ambassador at Paris (No. 246), inclosing a copy of a letter addressed to his Excellency by Mr. Casaubon, who states that he was born in the Mauritius, of a French father, and who claims the protection of the British Embassy as a British subject, in order to procure his exemption from having to draw for the approaching conscription of the 1st proximo; and to request that I would take this case into consideration, and report to your Lordship my opinion as to the instructions which should be sent to Earl Cowley thereupon.

In obedience to your Lordship's commands, I have taken this case into consideration, and have the honour to report—

That assuming Mr. Casaubon to have been born in a British Colony in 1837, and to have always resided therein, until he came, for the first time in his life, to Paris, when of full age by the law of England, to study medicine there, with the intention of returning to the Mauritius on the completion of his education, and assuming him to have done nothing to forfeit his claim to British protection, I am, as at present advised, of opinion that he is entitled to a certificate of British nationality, and (thereupon) to exemption from the conscription, notwithstanding that he may be the son of a Frenchman.

He states that the British Consul refused him (on this latter ground) a certificate of his British nationality, which certificate the French authorities very reasonably require him to produce. No copy of the certificate required is given; and there is no precise statement of what passed between the Consul and Mr. Casaubon. In short no explanation is forthcoming on this point, of which Earl Cowley takes no notice.

It does not appear whether Mr. Casaubon has ever received a British passport, or been formally recognized as a British subject, as, for instance, by Consular registration, or otherwise: the Consul is of course not bound to accept Mr. Casaubon's unsupported assertion of the facts; he may require reasonable proof of their truth, but on this being produced, it seems to me that he should grant the certificate, and leave the question either of the paternity, or any other, to be raised by the French Government, if at all.

Earl Cowley may perhaps be instructed in this sense; and the Consul should report on the case, and should also explain to Mr. Casaubon what is requisite on his part in order to enable him to receive the requisite Consular certificate, as otherwise the matter may be further complicated, and Mr. Casaubon's claim jeopardized on some merely formal defect or impediment.

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* See further Report, page 53.

I must, however, observe that the case, as it stands, is imperfect. The Consul has refused the certificate for some unexplained reason, and this point requires clearing up.

If there are any instructions or precedents applicable to this class of cases, or any apprehension of a serious legal discussion or dispute with the French Government on the point, further and full information must be supplied; especially, if possible, as to the point on which the French Government may probably rely; as for instance (possibly) the father being domiciled in France, and the son being a minor by the French law.

All I can say at present, is, that if Mr. Casaubon's statement of facts is supported by reasonable proof, I see no reason why the Consul should not grant him a certificate of his being a British subject, and the Consul must fully and distinctly explain the grounds of his refusal.

I have, &c.
(Signed) J. D. HARDING.

No. 27.

The Queen's Advocate to Lord J. Russell.—(Received February 23.)

TURKEY.

Codicil of Miss Caroline Cooper's will respecting property at Jerusalem.

Doctors' Commons, February 22, 1861.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 15th February instant, stating that he was directed to transmit to me a despatch from Her Majesty's Consul at Jerusalem (No. 5), applying for instructions as to the course he should pursue with regard to certain steps which the legal managers in London of the estate of the late Miss Caroline Cooper desire him to take with respect to a codicil to that lady's will which was found in Jerusalem, and which refers to her property at that place; and to request that I would report to your Lordship my opinion as to the instructions which should be sent to Mr. Finn on this subject.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That Consul Finn's statements are not sufficiently explanatory of the circumstances, or of the legal position of the deceased's succession, to enable me to deal satisfactorily with the case. He sends no copy of the application which he has received from those whom he calls "the legal managers in London of the estate of the late Miss Cooper." He gives no dates (not even that of the death of the testatrix) or facts; nor does he make any reference to any former occurrences or correspondence in this matter. He does not even give the names or addresses of the legal "managers," and he does not explain whether they are the executors of a will of deceased, of which an English probate has been already obtained, or in what character or by what legal right they are acting. He does not state material facts which must be within his knowledge; as (for instance) the purport or contents of the codicil in question (the original being in his custody), the amount or condition of the deceased's property (if any) in his Consulate, the real reason of his hesitation or delay in sending home this codicil. He does not suggest for the adoption or sanction of your Lordship any different course, or any alternative; and although he states (doubtless with perfect truth), that the Consulate at Jerusalem has "not been in the habit of proving and registering wills," he does not state in what right or capacity he has taken and kept posssession of this codicil, or what he proposes to do with it.

If Her Majesty's Government has the means of discovering who are, in effect, "the legal managers" of the deceased's estate, the matter should be placed at once in the hands of the Queen's Proctor, who should communicate with them, and ascertain how the facts actually stand with reference to the deceased's personal estate and effects; he should thereupon place the facts before me for my advice.

If this cannot be done, the suggestion which occurs to me as most likely to lead to any useful or practical result, is, that the Consul should be instructed forthwith to transmit to the Foreign Office by a safe channel:

1. The original codicil.

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2. The affidavit required by the applicants, which may be made before Her Majesty's Consul at Jaffa, as suggested by him.

3. All the papers and correspondence of whatever description, including the letter of the "legal managers."

The papers may, when they arrive, be placed in the hands of the Queen's Proctor, who may thereupon be instructed to consult and settle with me as to what should be done. It would seem as if the Consul had no instructions whatsoever as to how he is to proceed in cases of British subjects dying in his Consulate, and his becoming possessed of their papers and effects. Upon this subject I must request further information.

I consider it my duty to point out that the Consul's letter is not such an ordinary business-like letter as the agent (say) of a London merchant would be expected to write to his principal in a similar case; and that not only Her Majesty's Service cannot be properly carried on, but that the interests of Justice may suffer serious detriment, unless Consuls (more especially in legal cases, and from distant stations) write their despatches with ordinary fulness, accuracy, and ability; stating all the most material and pertinent facts of the particular case, with proper specification of names, addresses, and dates. But more especially when they refuse to perform, or hesitate in performing, ordinary and formal acts of a legal character, at the request of those who are apparently the proper parties, they should set forth fully the grounds and reasons of such their refusal or hesitation; such as (for instance) what risk or injury may, in their apprehension, thereby accrue to the property or interests of all concerned, to the rights or interests of Her Majesty, or to their official or personal interests.

By needlessly delaying such acts, they often, doubtless with the best intentions, cause a very serious practical mischief.

I have, &c.
(Signed) J. D. HARDING.

No. 28.

The Law Officers of the Crown to Lord J. Russell.—(*Received February* 23.)

Spain.

Capture of British ship "Louisa" by Spanish guarda-costa.

My Lord, *Doctors' Commons, February* 23, 1861.

WE are honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 11th February instant, stating that he was directed to transmit to us the accompanying papers* relative to the recent capture, by a Spanish guarda-costa, of a British vessel named the "Louisa," bound from Gibraltar to Tetuan, and the subsequent confiscation of the vessel and her cargo by the Spanish authorities at Algeçiras; and to request that we would take this matter into consideration, and report to your Lordship our opinion thereupon, and as to whether Her Majesty's Government would be justified in having recourse to reprisals against the Spanish Government.

We are also honoured with Mr. Hammond's letters of the 12th, 16th (this letter transmitting the sentence of the Court of Algeciras in the case of the "Louisa"), and 18th February instant, transmitting further information upon this subject.

We are also honoured with Lord Wodehouse's letter of the 14th February instant, transmitting a letter and inclosures from the War Office, containing further information with regard to the case of the "Louisa."

In compliance with your Lordship's instructions we have taken this case into consideration, and have the honour to report—

That it appears from the additional papers supplied to us, and particularly from the sentence of the Court at Algeciras, that the British vessel "Louisa" has been captured and condemned by the Spanish authorities, on the ground of having been found within Spanish waters without proper papers, and under circumstances which warranted a conclusion that a violation of the Revenue Laws of Spain was intended by the persons having charge of her. If these alleged facts were substantiated by evidence, it would follow that the Spanish Court had jurisdiction, and that the condemnation was justifiable.

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* Sir A. Buchanan, Nos. 35 and 55; War Office, February 1 and 9, 1861.

The proceedings of the Spanish Court appear, from the copy of the sentence, to have been formal and regular; and if the conclusions of fact which are there stated are correctly deduced from the evidence, there can be no doubt of the case being within the jurisdiction of the Tribunal. From that sentence the owners and captain of the "Louisa" have appealed to the Appeal Court in Spain; and pending that appeal, there is no ground for intervention by the British Government. The decision of the Appeal Tribunal must be awaited.

It is true that there is, in our opinion, strong reason to believe that the vessel was not in Spanish waters at the time of the capture; and, of course, upon this fact the whole question depends: for if not in Spanish waters the Spanish Court has no jurisdiction, and any inquiry into the acts or intentions of the persons in charge of the vessel would become immaterial. We recommend, therefore, that the question of the actual position of the vessel at the time of the capture should be made the subject of the most accurate investigation by the British authorities at Gibraltar; and if any additional grounds or evidence can be discovered (besides the evidence given in the cause) satisfactorily proving that the vessel was not in Spanish waters at the time of the capture, a strong representation on the subject may be made to the Spanish Government. But, at present, as we see no ground for impeaching the regularity of the judicial proceedings, we cannot recommend that any strong measures should be resorted to.

We have, &c.
(Signed) J. D. HARDING.
RICHARD BETHELL.
WM. ATHERTON.

No. 29.

The Law Officers of the Crown to Lord J. Russell.—(*Received February* 26.)

United States.

Suspension of authority of United States' Customs officers at Charleston.

Doctors' Commons, February 23, 1861.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 30th of January ultimo, in which he stated that he was directed by your Lordship to transmit to us the accompanying despatches and inclosures from Her Majesty's Minister at Washington,* relative to the suspension of the authority of the United States' Customs officers at Charleston, in South Carolina.

Mr. Hammond was also pleased to state that your Lordship had approved the conduct of Her Majesty's Minister and of Mr. Consul Bunch, as reported in those despatches; and that your Lordship had caused copies of Consul Bunch's despatch to Lord Lyons of January 7th ultimo, and of the certificate which he proposed to issue to British and foreign vessels clearing at the port of Charleston for British ports, to be communicated to the British and Colonial Custom-house authorities for their information.

Mr. Hammond was pleased to request that we would take these certificates into our consideration, and that we would favour your Lordship with our opinion as to the propriety of Her Majesty's Consul issuing these documents; and he was also pleased to request that we would peruse the note from Judge Black of January 10, and the printed papers which he delivered to Lord Lyons, and favour your Lordship with such observations as we might have to offer upon them; and also as to how far the cases of the "Georgiana" and "Lizzie Thompson" appear to us to apply to the circumstances at Charleston, with regard to which Her Majesty's Minister had requested information as to the intentions of the Government of Washington.

In obedience to your Lordship's commands, we have taken these papers into our consideration, and have the honour to report, that we are of opinion that, under the peculiar circumstances of the case, the British Consul may properly issue the certificates in question.

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* Lord Lyons, No. 304, December 4, 1860; To Lord Lyons, No. 266, December 21, 1860; To Admiralty, December 21, 1860; Lord Lyons, No. 310, December 8, 1860; To Lord Lyons, No. 273, December 28, 1860; Lord Lyons, No. 333, December 3, 1860; Lord Lyons, No. 9, January 10, 1861; Lord Lyons, No. 10, January 14, 1861.

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We do not perceive that the cases alluded to of the "Georgiana" and "Lizzie Thompson," have any immediate bearing on the propriety of the Consul's issuing these certificates.

It is obviously requisite that a distinct understanding should be arrived at with the Federal Government of the United States as to the course which that Government will adopt with respect to British vessels clearing from ports in States of the Confederation where there are either no Custom-house officers whatsoever, or where there are not any Federal Custom-house officers.

We do not consider that the suggestion of the Custom-house, that the masters of vessels may insert "America" [*sic*] under the head "Port or Place from whence they arrive," in the Report, under sec. 50 of 16 & 17 Vict., cap. 107, would satisfy the intention of the Act or meet the requirements of the case. "The United States of North America," should be the form of the entry; "America" is a simple geographical expression, like "Europe," "Asia," or "Africa."

We have, &c.
(Signed) J. D. HARDING.
RICHARD BETHELL.
WM. ATHERTON.

No. 30.

The Law Officers of the Crown to Lord J. Russell.—(*Received February* 26.)

My Lord, *Doctors' Commons, February* 25, 1861.

SPAIN AND VENEZUELA.

Responsibility for losses occasioned to Spanish subjects by acts of Venezuelan insurgents.

WE are honoured with your Lordship's commands, signified in Lord Wodehouse's letter of the 6th November last, stating that with reference to the Report of Her Majesty's Advocate-General, dated the 4th of September last, he was directed to transmit to us a despatch from Mr. Orme (No. 91) respecting a discussion which has arisen between the Governments of Spain and of Venezuela, owing to a demand made by the Spanish Chargé d'Affaires in Venezuela, that the Venezuelan Government should undertake the responsibility for losses occasioned to Spanish subjects in Venezuela by the acts of persons being insurgents against the authorities in that country.

Lord Wodehouse was also pleased to transmit to us the papers bearing on this subject, and a draft of a despatch which your Lordship has addressed to Her Majesty's Ambassador at Paris, in reply to an inquiry made by the French Government as to the views of Her Majesty's Government on this subject; and to request that we would take these papers into consideration, and report to your Lordship our opinion as to the extent to which the Venezuelan Government can be held responsible for injuries inflicted on property, or persons, of British subjects, or other foreign subjects, in Venezuela, in the circumstances referred to in this correspondence.

In compliance with your Lordship's instructions, we have taken these papers into consideration, and have the honour to report—

That the responsibility (if any) of the Venezuelan Government for injuries inflicted on the property or persons of British subjects, or other foreign subjects, in Venezuela, is not affected by the Decree of the 6th March, 1854, declaring the Republic exempt from the obligation to make good to foreigners the damages and losses which their property may suffer, in consequence of political commotions, &c. Such obligation, if it exist, is based on international rights, which it is not competent to any State to abrogate by its own legislation.

As a matter, however, of international right, we do not think that the Venezuelan Government can be held responsible generally for injuries inflicted on the property or persons of British subjects, or other foreigners, resident in the country, by insurgents engaged in open and armed hostility to the Government; and which injuries the Government had not the power to prevent. A foreigner cannot claim to be placed in a better situation than the natural-born subjects of the country. If the country be invaded by an enemy, and the foreigner's property is injured by the invading army, he has no title to claim compensation. Injury caused by insurgents or rebels is subject to the same rule. If, indeed, the

Government, having the power to do so, neglects or wilfully abstains from putting down the insurgents, it may be regarded as an accomplice in the act complained of, and there would be a right in the foreigner to demand compensation.

In the case before us, we find no sufficient ground for alleging that the injuries complained of would not have occurred but for gross neglect on the part of the Venezuelan Government; and we do not think, therefore, that the facts, as far as we can ascertain them, would justify a demand of compensation.

With regard to the additional papers, they relate entirely to the claim of Messrs. Hartman for compensation for the loss of some houses forcibly taken by certain officials; and if the case be as stated by Mr. Hartman, the Government of Venezuela has agreed to pay, and Messrs. Hartman have consented to accept, 1,000 dollars in satisfaction of their claim, but which the Government says it is at present unable, through poverty, to discharge. Messrs. Hartman do not believe in this inability, because other claims of a similar nature have been paid.

We can say no more than that if Her Majesty's Consul is satisfied that the plea of the Government is a false one, he should be instructed to make a strong representation on the part of Her Majesty's Government as to the propriety of immediate payment being made.

We have, &c.
(Signed) J. D. HARDING.
RICHARD BETHELL.
WM. ATHERTON.

No. 31.

The Law Officers of the Crown to Lord J. Russell.—(*Received February* 26.)

Doctors' Commons, February 25, 1861.

My Lord,

TURKEY.

Consular jurisdiction over Ionians in Ottoman dominions.

WE are honoured with your Lordship's commands, signified in Mr. Hammond's letter of the 21st January ultimo, stating that he was directed to acquaint us that your Lordship communicated to the Secretary of State for the Colonial Department copies of our Report of the 31st of October last, on the reference made to us respecting the exercise by Her Majesty's Consuls of jurisdiction over citizens of the Ionian States in the Ottoman dominions.

Mr. Hammond was also pleased to state that the observations which it has occurred to the Duke of Newcastle to offer on those Reports, are set forth in the inclosed letter from the Colonial Office, dated December 31, 1860, and that his Grace desires that our especial attention should be directed to two specific questions therein. The former papers were also inclosed for reference.

Mr. Hammond was also pleased to add, that your Lordship has no personal bias in regard to the manner in which jurisdiction should be exercised by Her Majesty's Consuls in the Levant over citizens of the Ionian States, as Secretary of State for Foreign Affairs; that your Lordship is indifferent on the subject, and perfectly prepared to adopt any course which, in our opinion, can legally and properly be adopted; and is only desirous that the obligations incumbent on the British Crown in virtue of concessions made or to be made by the Porte, should be strictly fulfilled with the utmost consideration that circumstances may admit of, for the fair and reasonable rights and pretensions of the citizens of the Ionian States.

Mr. Hammond was also pleased to add, that it appears by a despatch received from the Lord High Commissioner, that an early decision of the question, as far as Her Majesty's Government is concerned, is a matter of great urgency, and that your Lordship directed him to request that the subject might have our earliest consideration.

In compliance with your Lordship's instructions, we have taken this subject into consideration, and have the honour to report—

That we have severally expressed on previous occasions our opinions on this subject so fully that, although unable entirely to concur with the reasoning contained in Sir F. Rogers' letter of December 31, 1860, and although we see nothing to induce us to alter those opinions, we propose at present to confine ourselves to answering the two questions put to us in that letter.

The first of those questions, whether Her Majesty, if authorized by Treaty with the Turkish Government, and by Act of the Ionian Parliament, would be legally competent to invest the British Consular Court, or any officer or branch of that Court, with the power of determining, according to Ionian law (modified, of course, by the custom of the Levant), civil and criminal cases in which the Ionians are respectively defendants and accused, must be answered in the affirmative; save that the criminal law to be administered must not be modified by "the custom of the Levant," if, indeed, such custom has any application to criminal cases.

In answer to the second question, what authority beyond the existing Treaties it would be requisite to obtain from the Turkish Government for this purpose, we can only say that any legal and irrevocable public document emanating from the Sultan, whether called firman, capitulation, or by whatever name, empowering Her Majesty, in general terms, to apply and administer to any British-protected subjects, by her Consular officers, whatever law, civil or criminal, she may think proper, will suffice for the purpose in question.

We have, &c.
(Signed) J. D. HARDING.
RICHARD BETHELL.
WM. ATHERTON.

No. 32.

The Queen's Advocate to Lord J. Russell.—(*Received February* 27.)

FRANCE.

Refusal of Lord Cowley to permit Mr. C. Zwinger to be married in Embassy chapel.

My Lord, *Doctors' Commons, February* 27, 1861.

I AM honoured with your Lordship's commands, signified in Mr. Hammond's letter of the 6th February instant, stating that he was directed to transmit to me a letter from Mr. Charles Zwinger, complaining of the refusal of Lord Cowley to allow him to be married in the chapel of the British Embassy at Paris; together with a despatch from Lord Cowley (No. ~~173~~) explaining what had passed on the subject, and the motives of the course which he adopted in this instance.

Mr. Hammond was also pleased to state, that Lord Cowley refers, in explanation, to a correspondence which passed in 1858, and of which the instructions to his Excellency were framed on my Report of the 9th September of that year; and to request that I would take the matter into consideration, and report my opinion as to the instructions, if any, which should be sent to Lord Cowley, and the answer which should be returned to Mr. Zwinger.

Mr. Hammond was also pleased to add, with reference to a passage in Lord Cowley's despatch, that his Excellency, when he wrote it, was not apprized of the view taken in the instructions to Lord Howard de Walden on the subject of naturalized British subjects, which was settled a short time ago with the Law Officers, but that it is your Lordship's intention to communicate a copy of that instruction generally to all Her Majesty's Ministers abroad, for their information and guidance.

In obedience to your Lordship's commands I have taken this matter into consideration, and have the honour to report—

That, as at present advised, I am of opinion that Earl Cowley should be instructed to allow the marriage in question to be solemnized at the British Embassy, if this is still desired by Mr. Zwinger; taking care that the bride is previously informed that Mr. Zwinger may be considered legally as a Swiss citizen, as well as a naturalized British subject; and that the legal validity of the marriage may be open to doubt in Switzerland, France, and elsewhere out of England; and recommending her to be previously married in the French Civil form.

If, after this warning, she still desires to be married at the Embassy, I see no sufficient reason why this should not be done.

Mr. Zwinger may be informed to this effect.

I observe that Earl Cowley's despatch of August 14, 1858, and my Report of the 9th September, 1858, were confined to cases where one of the parties was a French subject, which is not the case here. Both parties are British subjects, and there is no suggestion that their future domicil is to be out of England; the risk to be guarded against (which is pointed out in the above papers) is therefore not so immediate and obvious, nor is the conflict of law so direct, as where one of the parties (especially the husband) is a French subject, and the contemplated domicil is probably French.

On the other hand, Mr. Zwinger, whether as a British subject or as a Swiss citizen, may (as not being a Frenchman) meet with some difficulty or delay in contracting a French Civil marriage.

I have, &c.
(Signed) J. D. HARDING.

No. 33.

The Law Officers of the Crown to Lord J. Russell.—(*Received February* 28.)

TURKEY.

Detention at Constantinople of goods consigned to Mr. Pappa by Messrs. Giannacopulo and Co. Complaint against Consular Court.

My Lord, *Doctors' Commons, February* 26, 1861.

WE are honoured with your Lordship's commands, signified in Mr. Hammond's letter of the 8th February instant, in which he stated that he was directed by your Lordship to transmit to us the accompanying letters from Mr. Daniel Pappa and from Messrs. Giannacopulo and Cochilani, complaining of the proceedings of the Consular Court at Constantinople with regard to the detention by the Custom-house at that port of certain goods consigned to Mr. Pappa by Messrs. Giannacopulo and Cochilani.

Mr. Hammond was also pleased to transmit a despatch from Mr. Hornby, reporting the circumstances connected with the detention of those goods, and stating the course which he had pursued in the matter; and to request that we would take these papers into our consideration, and report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report,—

That there is no ground for the detention by the officers of the Custom-house at Constantinople of the goods in question; and that the grounds for such detention, which have been set up, are wholly insufficient. There seems to be no pretence for the allegation that the goods are the property of Mr. Cartali, and, that being so, the circumstance that they once belonged to him, and bear his mark, is, of course, immaterial.

A representation to this effect should, we would suggest, be made to the Turkish Government, who should also be distinctly informed by Sir H. Bulwer that no impediment to the delivery up of the goods to the claimant exists on the part of the Consular Court, or owing to any proceedings therein.

We have, &c.
(Signed) J. D. HARDING.
RICHARD BETHELL.
WM. ATHERTON.

No. 34.

The Queen's Advocate to Lord J. Russell.— *Received February* 28.)

UNITED STATES.

Claim of Administrator-General of New York to take possession of effects of British seamen dying on board a British ship on the high seas.

My Lord, *Doctors' Commons, February* 27, 1861.*

I AM honoured with your Lordship's commands, signified in Mr. Hammond's letter of the 12th February instant, stating that he was directed to transmit to me a letter from the Board of Trade dated the 5th February, inclosing a copy of a despatch from Her Majesty's Consul at New York, relative to a claim put forward by the Administrator-General of the property of deceased persons in that State to take possession of the effects of British seamen dying on board a British ship on the high seas, when those effects come within his jurisdiction; and to request that I would report to your Lordship my opinion thereupon.

In obedience to your Lordship's commands I have taken this matter into consideration, and have the honour to report,—

That I observe (in the first place) that the Consul states that he has not hitherto been interfered with "in carrying out the instructions of the

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* See further Report, page 49.

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Merchant Shipping Act ;" I presume that the Consul means the instructions issued by the Board of Trade with reference to this Act ; and I need scarcely observe that neither the Act nor the instructions can affect the operation of the local law of New York. " Extra territorium jus dicenti impunè non paretur."

Secondly. There is no copy, with the papers, of the particular law of the State of New York under which the public Administrator now claims to act as suggested ; nor is it stated whether this is a recent law, or whether it has long been the law of New York, or how or why it has happened that the Consul has, notwithstanding this law, not been hitherto interfered with.

Thirdly. Nothing is stated as to the law or practice in similar cases in the other maritime States of the (former) " United States ;" such, for instance, as Massachusetts, the Carolinas, Pennsylvania. Louisiana. Without full information on this subject, it is not possible to deal with the question in a satisfactory manner, even as regards New York.

Fourthly. The Board of Trade states that the law of the State of New York applicable to this class is, though perhaps not contrary to International Law, at any rate " contrary to the common practice of maritime nations." It is certainly not contrary to International Law, but as I am unfortunately not well informed on the practice of maritime nations on the point, I should much desire accurate information as to what is the law, and also the common practice of the principal maritime nations in this respect, say Russia, France, Spain, and Holland.

Fifthly. I more particularly desire to know what is the law and practice in such cases of the Principal British possessions, such, for instance, as Scotland, British India, the Australian, North American, and West Indian Colonies. I am aware that in India, in some of the Australian Colonies, and in British Guiana, for instance, the system of " Official Administration " exists, which works well ; but I know not what is done as to the effects of foreign seamen. The principal question is, " Are foreign Consuls in any, and which, foreign countries or British possessions. legally authorized or practically allowed (in the absence of express Treaty stipulations) to administer officially, and without reference to the ordinary tribunals, to the effects of foreign seamen dying on board foreign merchant ships at sea, or in harbour, either in all cases without exception, or in the absence of any person legally entitled to administer, or how otherwise ?"

Sixthly. In England, as a matter of strict law, the United States Consul would probably be refused administration, even limited to paying the debts, and collecting and transmitting the effects of a citizen of the United States dying in this country ; and even in the absence of any heirs. (See Aspinwall against the Queen's Proctor, 2 Curteis' Ecclesiastical Reports, page 241.) I am not aware of any exception in the case of foreign seamen dying at sea, in foreign merchant-vessels arriving in British ports.

Lastly. The general question involved is a large one, and of some practical importance. The Consul gives but a short statement of the law and the facts. If he has any chance, by any legal proceeding, of keeping matters in the channel in which they have hitherto remained, he may be instructed to attempt such proceeding under the best professional advice ; if not, the general question must be considered, and the necessary information collected with a view to the full consideration of the propriety of international stipulation, accompanied by an alteration of the English and Colonial law and practice on the subject ; which will not be unattended with difficulty. Reciprocity will probably be required by foreign nations, and the English Courts and jurisprudence have hitherto refused altogether to recognize foreign Consuls as having any *locus standi in curia* in their official capacity, in this or any other class of cases. Her Majesty's Government has, nevertheless, by special Treaty stipulation, secured in many countries peculiar privileges in this respect to British Consuls.

An alteration of our national system of jurisprudence on this subject, whilst it might have some advantages, would be attended with no small practical difficulty. (*a*.) The securing anything like uniformity in fresh legislation on this subject throughout the British possessions would be by no means an easy task. (*b*.) Even if this uniformity were secured, the recognition of Consuls as " Official Administrators " to the effects of those under their protection dying, or leaving effects within British jurisdiction, would necessarily involve the entire subjection and accountability of such Consuls to the ordinary tribunals, at the suit of any private person " having an interest" (say, for instance, a creditor) ; and the determination and effect with which certain English tribunals would enforce their jurisdiction might lead to inconvenient international discussions.

The Court of Chancery, for instance, would probably, without hesitation, commit to prison for " contempt " any foreign Consul who assumed to act in violation of its orders, whether from any supposed exemption, by instructions from his own Government, from a feeling of official dignity or duty, or otherwise howsoever ; and the consequences of such judicial proceedings might be, at least, inconvenient internationally.

The general question is, therefore, one for the consideration of Her Majesty's Government. As to the particular question either with (the so-called) " United States' Federal Government," or with the " State of New York," the matter is at present scarcely ripe for decision, from want of full information ; of course it may be found practicable to make a peculiar stipulation and alteration of the English law limited to the case of foreign seamen, and in return for reciprocal privileges ; but in many cases (as I have pointed out) Her Majesty's Government has acquired by Treaty (and I presume practically exercises) the right in question, as to seamen, in common with other British subjects.

I would beg to refer, in connection with this subject, to the Report of the Law Officers of the 11th January, 1861, on the subject of the Portuguese Consul's claim to a privilege of this kind in British Guiana.

I have, &c.
(Signed) J. D. HARDING.

No. 35.

The Queen's Advocate to Lord J. Russell.—(Received February 28.)

Doctors' Commons, February 28, 1861.

My Lord,

I AM honoured with your Lordship's commands, signified in Mr. Hammond's letter of the 22nd February instant, stating that he was directed to transmit to me the draft of a letter which your Lordship proposes should be addressed to the Admiralty, with reference to the impression which Captain Aldham. the Senior Officer in the Gulf of Mexico, seems to have derived from a perusal of my Report of the 20th May, 1857 (New Granada), that " the institution of a blockade for the purpose of obtaining claims [*sic*] is illegal, without a declaration of war."

GENERAL.

Institution of a blockade for the purpose of obtaining satisfaction for claims without declaration of war.

Mr. Hammond was also pleased to inclose a copy of that Report, as well as Captain Aldham's letter to the Admiralty, and to request that I would take the inclosed draft into consideration, and report to your Lordship whether, in my opinion, it is right and proper.

In obedience to your Lordship's commands, I have taken this subject into consideration, and have the honour to report—

That subject to a slight alteration which I have made in the draft letter to the Admiralty, I am of opinion that it is right and proper.

I beg to observe that the words " without a declaration of war," are Captain Aldham's, and not mine ; and that the existence of war (which is in my opinion necessary to the international validity of a blockade) may legally and actually be apparent without any formal declaration of war, as I have fully explained in my recent Report of January 21st, upon the international view indirectly suggested by the French Government as that which might be taken of the Sardinian blockade of Gaeta.

I would, in connection with this subject, also beg to refer to the Report of Sir J. Dodson, dated August 25, 1846, on the destruction of certain vessels in the port of Ensenada, during the (so-called) blockade of Buenos Ayres by the British and French squadrons. See also Hautefeuille, " Droits et Devoirs des Nations Neutres," vol. iii, p. 182 : " Le blocus * * est donc un acte de guerre, il ne peut exister sans la guerre " (cited and adopted in " Wheaton's Elements, sixth edition, by Lawrence, p. 587, note) ; and p. 183, " Depuis les anciens Traités jusqu'à nos jours, il n'en existe pas un seul qui ne se soit servi des expressions ' belligérant,' ' ennemi,' ' neutre,' et dont l'ensemble des dispositions n'indique clairement que le blocus est un acte de guerre, et ne peut exister que pendant la guerre."

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The important difference, as regards the international validity of a blockade, between the existence of war and the existence of a declaration of war (which has escaped the attention of Captain Aldham) will be, I trust, apparent to your Lordship.

It may, perhaps, be advisable to communicate this Report to the Admiralty, for the assistance of naval officers in the discharge of their difficult and responsible duties in this respect.

I have, &c.
(Signed) J. D. HARDING.

Inclosure in No. 35.

Proposed Draft to the Secretary to the Admiralty.

Sir, *Foreign Office, March* , 1861.

LORD JOHN RUSSELL'S attention has been attracted by a statement in Captain Aldham's despatch of the 7th of December last, of which a copy was transmitted to this Office in your letter of the 23rd of January, from which it would seem that Captain Aldham considers Her Majesty's Advocate-General to have stated that, in his opinion, "the institution of a blockade for the purpose of obtaining claims is illegal, without a declaration of war."

The Report of Her Majesty's Advocate-General to which Captain Aldham refers is supposed to be that of May 20, 1857, on the instruction given to Sir Houston Stewart to enforce, by means of blockade, the payment of British claims on the Government of New Granada, of which Report a copy was transmitted to the Admiralty on the 28th of May, 1857.

Lord John Russell directs me to request that you will acquaint the Lords Commissioners of the Admiralty that he does not understand the opinion of the Queen's Advocate to go to the extent of pronouncing that a previous declaration of war is essential to the validity of a blockade:* the enforcement of it requires or implies the actual existence of a state of war between the Government establishing a blockade and the Government against whose ports it is established.

Alterations suggested by the Queen's Advocate:

† After "remarks" insert "in that case"

‡ After "namely" insert "proceedings in the nature of"

§ For "to reprisals was" read "thereto was in that case"

‖ For "could" read "need necessarily"

In the case which was then before the Queen's Advocate, no such state of war existed; and the object of the Queen's Advocate's remarks† was to show that there was another method of obtaining redress for claims when differences between countries had not been pushed to the length of war, namely,‡ reprisals; and that recourse [*to reprisals was* §] the preferable measure, inasmuch as no question [*could* ‖] arise with third Powers out of the exercise of them.

I am, &c.

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* Addition suggested by the Queen's Advocate:—

"There is no statement to this effect in the above Report. The Queen's Advocate states, in effect, that, as against neutrals, and having regard to the English legal doctrine and practice as to captures and prize-proceedings, the right of blockade is, in strictness, a 'belligerent right,' founded upon 'the *existence* of war' (to which a declaration of war is not, by international law, a necessary preliminary, or 'condition precedent'). He intended to express his opinion, and he seems to have expressed it with sufficient clearness, that blockade, being a 'belligerent right,'"

No. 36.

The Law Officers of the Crown to Lord J. Russell.—(Received March 6.)

PERSIA.

Income tax levied by Indian Government on Persian subjects.
Increase of Customs duties in India on Persian merchandize.

My Lord, *Doctors' Commons, March 6, 1861.*

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 25th day of February last, in which he states that he was directed by your Lordship to transmit to us the accompanying letters from the Persian Ambassador at this Court, the one complaining that the Government of India had signified to all Persian subjects, including merchants, that they must out of their profits pay annually a tax of 4 per cent. to the British Government; the other, that the Government of India was enforcing on some of the Persian merchandizes higher Custom duties than were formerly levied upon them.

Mr. Hammond was also pleased to inclose a letter from the India Office, explaining the circumstances under which the taxes referred to by the Persian Ambassador were being levied, and requested that we would take these papers into our consideration, and report to your Lordship whether, in our opinion, there is anything in the Treaty between this country and Persia to exempt Persian subjects in India from the payment of the taxes in question?

In obedience to your Lordship's commands we have taken the above letters into our consideration, and have the honour to report,—

That there is nothing whatever in the Treaty between this country and Persia which exempts Persian subjects from the payment of the income tax, or in any manner restricts the right of the Indian Government to impose any tax on Persian subjects, which is also imposed on all other foreigners. With respect to the Customs duties levied on Persian goods imported into India, we observe the statement contained in the letter of Sir Charles Wood of the 22nd ultimo, that they are the same duties which are levied on the goods of other foreigners, and also on the goods of British subjects when imported into India.

Persian subjects, therefore, cannot have any title to complain.

We have, &c.
(Signed) J. D. HARDING.
RICHARD BETHELL.
WM. ATHERTON.

No. 37.

The Law Officers of the Crown to Lord J. Russell.—(Received March 7.)

TURKEY.

Petition from Signor Margariti for interference of British Government in case of Margariti *v.* Vlassopulo, heard before Her Majesty's Consul at Galatz.

My Lord, *Doctors' Commons, March 5, 1861.*

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 8th February ultimo, stating that he was directed to transmit to us a letter from the Colonial Office, inclosing the draft of an answer which his Grace the Duke of Newcastle proposes to return to a despatch from the Lord High Commissioner of the Ionian Islands, inclosing a petition from Signor Margariti, asking for the interference of Her Majesty's Government in the case of "Margariti v. Vlassopulo," adjudicated by the late Mr. Consul Cunningham, Her Majesty's Consul at Galatz.

Mr. Hammond was also pleased to inclose a copy of a Confidential Memorandum on the jurisdiction of Her Majesty's Consuls over Ionian subjects in Turkey, referred to by Sir H. Storks, which contains a précis of this case, and to request that we would take these papers into consideration, and report to your Lordship our opinion as to the answer which the Duke of Newcastle proposes to return to Sir H. Storks.

In compliance with your Lordship's instructions we have taken these papers into consideration, and have the honour to report,—

Consular jurisdiction over Ionians in the Levant.

That we regret to find that there is still so much misapprehension and error upon the subject of the jurisdiction which Her Majesty's Consuls have the power to exercise over Ionians in the Levant.

We have frequently stated our opinion that Her Majesty has no power, either under the Foreign Jurisdiction Act, or by capitulation with the Porte, to administer in the Levant any other than English law, modified by the custom of the Levant. Her Majesty has no power by her Judges or Consuls to administer Ionian law, either civil or criminal.

To enable Her Majesty's Consuls to administer Ionian law, three things will be required:—

1st. An Act of the Ionian Legislature giving such authority to Her Majesty.

2ndly. A Capitulation with the Porte, expressly assenting to the Crown administering Ionian law within the Ottoman dominions.

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3rdly. An Order in Council conferring jurisdiction and authority on the Consuls, and prescribing rules of procedure.

With respect to the trial and sentence of Vlassopulo we find no reason for imputing any serious error to Mr. Consul Cunningham.

It is true that the term "fraudulent bankruptcy" is not the correct technical appellation of any crime in English criminal jurisprudence, but there are many acts and defaults by a bankrupt which are "misdemeanours" by English law, and some of which are generally found in every case of "fraudulent bankruptcy." But it is very difficult to ascertain from the petition of Mr. Margariti what is intended by this term. He represents that having commissioned Vlassopulo to to purchase for him a quantity of wheat, and having (as we infer) remitted him 6,000 dollars for the purpose, Vlassopulo purchased the wheat, but afterwards, by devising a "fraudulent bankruptcy," he (Vlassopulo) not only sacrificed petitioner (Margariti) of his considerable capital of above 6,000 dollars, but also of the cargo of wheat itself, &c.

It is difficult to derive from this loose statement any precise information, but, at all events, we are of opinion that the case was not a criminal case "of a serious nature" within the meaning of the Consular instructions of 1845, so as to require the transmission of the accused to Corfu for trial.

We are also clearly of opinion that Vlassopulo cannot now be sent to Ionia, as requested by Margariti, for the purpose of being again tried and punished by Ionian law.

We approve of the letter proposed to be written by the Duke of Newcastle to Sir H. Storks.

We have, &c.
(Signed) J. D. HARDING.
RICHARD BETHELL.
WM. ATHERTON.

Inclosure in No. 37.

Proposed Draft to Sir H. Storks.

Sir, *Downing Street*, , 1861.

I HAVE received your despatch of the 3rd of January last, inclosing a Memorial, in which Signor Margariti requests that Signor Vlassopulo, accused at Galatz of fraudulent bankruptcy, "may be sent to Corfu to be tried and punished for that offence, as Ionian laws prescribe;" and I have to acquaint you that Her Majesty's Government are advised that they would not be justified in complying with the prayer contained in Signor Margariti's petition.

I have, &c.

No. 38.

The Law Officers of the Crown to Lord J. Russell.—(Received March 7.)

TURKEY.

Proposal from Moldavian Government to that of the Ionian Islands, respecting right of natives to hold land.

My Lord, *Doctors' Commons, March 5*, 1861.

WE are honoured with your Lordship's commands, signified in Mr. Hammond's letter of the 8th of February ultimo, stating that he was directed to transmit to us the accompanying papers on the subject of a proposal recently made by the Government of Moldavia to that of the Ionian Islands, for establishing a reciprocity of rights between the natives of either country in the holding of land, and to request that we would take these papers into consideration; and that, with reference to the Treaty placing the Ionian Islands under the protection of this country, and to the constitution of the Ionian Islands, we would report to your Lordship our opinion with respect to the proceedings of the Ionian Government in this matter, and whether Her Majesty's Government would do right to concur in those proceedings.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report,—

That we are of opinion that, subject to the remark hereinafter made, the proceedings of the Ionian Government, in the matter of the establishment of a reciprocity of rights of succession between the natives of the Ionian Islands and Moldavia are regular, and within the Constitutional authority of that Government, and that Her Majesty's Government will do right to concur in those proceedings.

By the 18th and 19th Articles of the Ionian Code every foreigner is to enjoy in the Ionian States the same civil rights as the nation he belongs to accords to Ionian subjects, and the foreigner is to be at once put in possession and enjoyment of these rights from the day on which the nation to which he belongs shall have proclaimed, by an official declaration, that it will grant a reciprocity to Ionian subjects.

The functions of the Ionian Government, therefore, in the matter are merely ministerial. All communications from foreign Governments must, of course, be made to the Lord High Commissioner, and may be by him communicated to the Ionian Parliament. If the act of the foreign Government is found, on examination, to be effectual for admitting the natives of Ionia to the full rights of succession, the foreign subject becomes immediately, by force of the Ionian Code, entitled to reciprocal benefits in the Ionian Islands.

In fact, there does not appear to us to be any necessity for the Lord High Commissioner to wait for action by the Ionian Parliament. As soon as the communication of some act by a foreign Government admitting the Ionian to the right of inheritance is received, and found to be effectual by the Lord High Commissioner, such communications may be published, and *ipso facto* the Ionian law comes into operation.

With regard, however, to the Principalities or States of Moldavia and Wallachia, care must be taken than any act of those States is the act of competent authorities. We are not aware of the existence of any Government in the Principalities competent to hold official communication with any foreign Government, except that of the Sultan.

We have, &c.
(Signed) J. D. HARDING.
RICHARD BETHELL.
WM. ATHERTON.

No. 39.

The Law Officers of the Crown to Lord J. Russell.—(Received March 7.)

UNITED STATES.

Presence at Bermuda of an American vessel suspected of being a slaver.

Course to be pursued in the event of vessels (apparently equipped for the Slave Trade) being compelled by stress of weather to put into British colonial ports.

My Lord, *Doctors' Commons, March* 5, 1861.

WE were honoured with your Lordship's commands, signified in Lord Wodehouse's letter of the 11th February ultimo, in which he stated that he was directed by your Lordship to transmit to us the accompanying letter from the Colonial Office, inclosing a copy of a despatch from the Governor of Bermuda, reporting the presence in the waters of that colony of an American vessel suspected of being fitted out for the Slave Trade, which had been stranded on some rocks to the north of the island while on a voyage from the United States to the West Coast of Africa; and requesting to be furnished with instructions as to the proper line of conduct to be pursued by the colonial and naval authorities in the event of American vessels (apparently equipped for the Slave Trade) being compelled, by stress of weather or other casualty, to put into the harbours of Bermuda.

Lord Wodehouse also stated that it had been recently ascertained that American slave-vessels have been in the habit of resorting to British waters in the neighbourhood of Her Majesty's West Indian islands, and, in one instance, of making use of Anguilla Island (one of the small uninhabited isles, a dependency of the Bahamas), as a depôt from whence to transship slaves to Cuba. Several vessels had also been recently found "derelict" in British waters, having been abandoned by their crews, after having either landed their slaves in Cuba, or transshipped them to small coasting-vessels, for greater convenience of landing them in that island; that two other vessels had also within the last few months

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been stranded in British waters: in one case the slaves were carried into Nassau, the chief port of the Bahamas, where they had been liberated; and in the other case the master of the vessel seized the boat belonging to an English lighthouse, and also some small fishing vessels, and by their aid landed his slaves on an uninhabited British cay, where they remained whilst the master proceeded to Cuba and procured assistance, which enabled him to remove the slaves to that island.

Lord Wodehouse was pleased to say that the papers relating to those circumstances were also annexed, and that he was to request that we would take the papers transmitted to us into our consideration and favour your Lordship with our opinion as to the instructions which it may be proper to send to the Governor of Bermuda, and also to the Governors of other British Colonies in the West Indies, for their guidance in respect to these matters.

In obedience to your Lordship's commands we have taken the papers submitted to us into our consideration, and have the honour to report,—

That with respect to foreign vessels, apparently equipped for the Slave Trade, being compelled by stress of weather or other casualty to put into any British harbour, the Colonial authorities will be justified in putting in force against such vessels, or the persons on board, the British laws, whether Imperial or Colonial, actually existing and in force in the Colony, upon such legal evidence of the British law having been actually broken by them within the British territorial limits, as the Colonial Law Officers may consider sufficient to justify the commencement of proceedings in each case; but not under any other circumstances.

Foreign vessels, and those on board them, must be considered as innocent until sufficient legal *primâ facie* proof of their guilt is forthcoming.

The Colonial authorities must, in this sense, understand that they proceed against such vessels, or those on board, as it were "at their peril;" and although it will be their duty so to proceed whenever the Law Officers advise them that there is legal justification for so doing, yet they must not in such cases act merely on their own suspicions or opinions, but only under competent legal advice: the Slave Trade not being legally piracy *jure gentium*, nor of itself an offence against the Law of Nations.

With reference to the cases in which slaves have been transshipped within British territory, either in British waters or on uninhabited British islands or cays, or landed for the purpose of transshipment, or (as in one case) where the boats belonging to a lighthouse on a British island or British fishing-vessel, have been seized by a slaver, they can only be met by the providing a sufficient force and exercising sufficient vigilance to prevent the British territory being thus invaded and made the theatre of crimes against British law. All slaves found within the British territorial jurisdiction should be liberated; and the vessels, and free persons used for keeping them in slavery, if found in British territory acting as slave-owners or "slavers," should be detained in custody, and instantly delivered up to the nearest British authority, to be dealt with according to law under the advice of the Crown Lawyers.

With respect to slave-vessels found wrecked or "derelict," or brought within British jurisdiction by salvors or otherwise, we see no reason for suggesting any special instructions; they must be dealt with by the local law as other "wrecks and derelicts."

We have, &c.
(Signed) J. D. HARDING.
RICHARD BETHELL.
WM. ATHERTON.

No. 40.

The Queen's Advocate to Lord J. Russell.—(Received March 7.)

Doctors' Commons, March 6, 1861.

JAPAN.

Rules of practice to be observed in judicial proceedings before Her Majesty's Consul.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 12th February ultimo, stating that he was directed to transmit to me a copy of a despatch from Her Majesty's Minister at Yeddo, inclosing copies of the rules of practice to be observed in judicial proceedings before Her

Majesty's Consuls in Japan, published under the Order in Council of March 1859.

Mr. Hammond was also pleased to state that Mr. Alcock explains, that those issued under the more recent Order of January 1860, are identical. Copies of the Port Regulations hitherto sanctioned for the ports of Hakodadi and Kanagawa, were inclosed; and Mr. Hammond further stated that these copies of Rules and Regulations were forwarded to me for my own use, but that your Lordship would be glad to receive my observations, should I have any to offer, in regard to them.

In obedience to your Lordship's commands, I have taken this matter into consideration, and have the honour to report—

That inasmuch as Consul Alcock states that the "Rules of Practice" were adopted from those already existing in China, which had been previously sanctioned by the legal advisers of the Colonial Government of Hong Kong, and had been there found, upon experience, to work well; and as he says nothing as to any difficulties or defects whatever in their practical operation in Japan, I abstain from any suggestions thereon, for which, moreover, I have no materials.

Possibly, however, it might be desirable to furnish the Consul with a copy of the Consular Rules for Turkey (30th November, 1860), and of Mr. Hornby's "Circular letter" to the Consuls thereupon, for his guidance hereafter; inasmuch as if there should be a large increase in Japan of British population and trade, additional Rules will probably be required, especially with reference to a despatch of Consul Alcock's No. 38, June 1, 1860, reported on by the Law Officers, October 16, 1860.

Mr. Alcock's attention should, in my opinion, be called to the "Port Regulations," especially to those for Kanagawa, which seem vague and imperfect. Those for Hakodadi are much superior, both in substance and in form; and some approach to a general uniformity should be attempted, where practicable, in these Regulations, in Japan.

I have, &c.
(Signed) J. D. HARDING.

No. 41.

The Law Officers of the Crown to Lord J. Russell.—(Received March 7.)

Doctors' Commons, March 6, 1861.

NETHERLANDS.

On right of British subjects in Surinam to sell estates with slaves attached. Mr. T. M. Parry.

My Lord,

WE were honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 27th day of February last, in which he stated that he was directed by your Lordship to state that with reference to his letter of the 9th of October, and to our report of the 7th of November last, on the subject of the legality of the proceedings contemplated by certain British subjects in the Island of Surinam, in selling three estates in that island with slaves attached, he was directed by your Lordship to transmit to us (together with the former papers), a further despatch from Her Majesty's Consul at Surinam, reporting that the executors of the late Mr. Thomas Macdonald Parry had sold an estate in that island, with slaves attached, some of whom were children born since the acquisition of the parents, and who could not, therefore, be said to have come into the possession of the late Mr. Macdonald Parry by inheritance.

Lord Wodehouse was also pleased to state that Mr. Monro had warned the executors of the illegality of this sale; and requested us to take this despatch into our consideration, and advise your Lordship as to any steps which it might be proper that Her Majesty's Government should now take in this matter.

In obedience to your Lordship's commands we have perused the papers transmitted to us, and have the honour to report—

That in accordance with the suggestion contained in our report of November 7, 1860, we recommend that the Consul's despatch of January 2, 1861, and the former papers, should be communicated to the Solicitor of the Treasury; and that he should be instructed to take immediate steps for the institution of criminal proceedings against the executors of Mr. Macdonald Parry, and the other

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parties implicated, if within the jurisdiction of our Courts, provided sufficient legal proof can be obtained to ensure a reasonable prospect of their conviction.

We have, &c.
(Signed) J. D. HARDING.
RICHARD BETHELL.
WM. ATHERTON.

No. 42.

The Law Officers of the Crown to Lord J. Russell.—(*Received March* 8.)

Doctors' Commons, March 7, 1861.

My Lord,

PERSIA.

Request for certain specific privileges to be granted to Persian subjects in India.

WE were honoured with your Lordship's commands signified in Mr. Hammond's letter of the 28th of February last, stating that he was directed to transmit to us a note from the Persian Ambassador at this Court, requesting that certain specific privileges might be granted to Persian subjects in India.

Mr. Hammond also inclosed a letter from the India Office, stating the opinion of Secretary Sir Charles Wood upon this claim, and was pleased to request that we would take these papers into our consideration, and report to your Lordship whether there is anything in the Treaty between this country and Persia to entitle Persian subjects in India to enjoy the privileges claimed for them by the Persian Ambassador.

In obedience to your Lordship's commands we have carefully considered the above question, and have the honour to report that it appears from the letter from the India Office that no foreigners enjoy in India the privileges now claimed by Persia. There is nothing in the Treaty to ensure absolute and complete reciprocity on this head. Articles IX and XII are in the nature of separate "most favoured nation clauses." In other words Persian Consuls are in India only to be treated as Consuls of "most favoured nations" are treated there; and not precisely as British Consuls are treated in Persia.

The answer to your Lordship's question must, therefore, be in the negative.

We have, &c.
(Signed) J. D. HARDING.
RICHARD BETHELL.
WM. ATHERTON.

No. 43.

The Law Officers of the Crown to Lord J. Russell.—(*Received March* 8.)

Doctors' Commons, March 8, 1861.

My Lord,

CHILE.

Question of forwarding legal documents through Foreign Office from foreign Government.

WE are honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 21st of February ultimo, in which he stated that, with reference to the opinion of one of us (Her Majesty's Advocate-General), dated the 15th of February ultimo,* respecting the transmission of certain legal documents by Her Majesty's Chargé d'Affaires in Chile, he was directed by your Lordship to point out to us that Clause 2 of the Statute 19 and 20 Vict., cap. 113, and to which clause your Lordship's attention was called in the above-mentioned opinion, provides that a certificate under the hands of the Ambassador, Minister, or other Diplomatic Agent of any foreign Power, received as such by Her Majesty, or, in case there be no such Diplomatic Agent, those of the Consul-General or Consul of any such foreign Power at London, received and admitted as such by Her Majesty, shall be evidence of the matters so certified; but that nothing is said as to documents being admissible as evidence when transmitted through one of Her Majesty's Legations or Consuls, and that it would appear, therefore, at least in so far as this Statute is concerned, that Her Majesty's Legations and Consuls when requested to transmit home legal documents which relate to any civil or commercial matter pending before a foreign Tribunal, should explain to the foreign Government making such request that such documents should be transmitted through an Agent of their own in this country. And that before, therefore, issuing any instructions on this subject your Lordship would be glad to be favoured with further explanation as to the precise manner in which Her Majesty's Legations and Consuls should be directed to proceed in reference to the Statute above quoted.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report that there is nothing in the Act of the 19th and 20th Vict., cap. 113, to authorise any Ambassador, Chargé d'Affaires, or Consul of Her Majesty in any foreign country to transmit home, at the request of any foreign Government or authority, any legal document relating to a civil or commercial matter pending before a foreign Tribunal.

No such practice must be commenced. Such transmission would not give to the document transmitted any authenticity or character as evidence which it did not possess independently of such transmission, and the act of the Ambassador or Consul would only tend to mislead a foreign Government.

It was the sole intention and object of the Act (which was prepared by the present Attorney-General) to assist litigants before foreign Tribunals in obtaining evidence by the examination of witnesses in this country, and the second section was inserted for the purpose of officially informing the Courts and Judges here of the existence and nature of the foreign suit, and the jurisdiction of the foreign Tribunal to entertain it, as a guide and authority to them in their examination of witnesses in this country. The second section does not relate at all to British officials, but only to the Ambassadors, Ministers, Agents, or Consuls of foreign Powers. There is no necessity under the Act for your Lordship to send any instructions to Her Majesty's Legations or Consuls abroad; except that, being supplied with copies of the Statute, they should be directed to explain the mode of procedure under it, on occasion of any application being made to them on the subjects to which it relates.

One object in bringing forward and passing the Act was to obtain, if possible, on the part of foreign States, similar reciprocal provisions for taking abroad evidence in English suits; and this circumstance should not be forgotten by British Representatives in their communications with foreign Ministers or other authorities.

We have, &c.
(Signed) J. D. HARDING.
RICHARD BETHELL.
WM. ATHERTON.

No. 44.

The Queen's Advocate to Lord J. Russell.—(*Received March* 8.)

Doctors' Commons, March 8, 1861.

My Lord,

SARDINIA.

Sardinian blockade of Messina.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 7th of March instant, stating that he was directed to transmit to me a note from the Sardinian Minister at this Court, announcing the blockade on the 5th of March instant of the citadel of Messina, by a Sardinian squadron; and to request that, if I should consider this notification to be sufficient, I would draw up and transmit to your Lordship a form of notice for insertion in the "London Gazette" of to-day.

In obedience to your Lordship's commands I have taken this matter into consideration, and have the honour to report, that I have accordingly prepared, and herewith transmit, a form of notification for insertion in the "Gazette."

In preparing this notification, I have of course assumed that the Sardinian Minister knows, and means to state, that Admiral Persano did, in fact, blockade the citadel of Messina on the 5th instant, and not merely that this was ordered to be done, or was to have been done, on that day, unless some unforeseen circumstance intervened.

I mention this, because the Sardinian Minister does not state when or how he received information of the actual establishment of this blockade; and not being myself aware of the actual state of telegraphic communication between Messina and London, I am struck with the circumstance of a fact which happened at Messina on the 5th instant being known in London on the 7th instant.

I have, &c.
(Signed) J. D. HARDING.

N°.

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* Page 24.

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Inclosure in No. 44.

Notification.

Foreign Office, March 8, 1861.

IT is hereby notified that the Right Honourable Lord John Russell, Her Majesty's Principal Secretary of State for Foreign Affairs, has received from his Excellency the Marquis d'Azeglio, the Sardinian Minister in London, an official communication dated the 7th of March instant, stating that the Sardinian Admiral Persano had, on and from the 5th of March instant, established the blockade of the citadel of Messina and of the neighbouring forts, with a number of ships of war sufficient to render this blockade effective.

The Sardinian Minister further states that he is officially informed by the Sardinian Government that the commercial port of the city of Messina is not comprised in this blockade, and that such port, consequently, remains free from blockade and open to trade.

No. 45.

The Queen's Advocate to Lord J. Russell.—(*Received March* 9.)

Doctors' Commons, March 8, 1861.

PERSIA.

Mr. Acland's claim for costs in *re* Mirza Dawood *v.* Aga Mahomed Sadick.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 22nd of February ultimo, stating that having, in accordance with the suggestion contained in my Report of the 1st of February ultimo,* furnished Mr. Acland with a copy of Mr. Alison's despatch, and of its inclosure, respecting the case of Mirza Dawood *v.* Mahomed Sadick, he was directed to transmit to me the accompanying letter from Mr. Acland in reply, stating the course which he considers should now be taken in regard to this case; and to request that I would take that letter, together with the former papers, into consideration, and report to your Lordship my opinion as to the further instructions that should be given to Mr. Alison.

In obedience to your Lordship's commands, I have taken this letter into consideration, and have the honour to report—

That Mr. Alison may be instructed in the sense of the "first point" (which I have pencilled) in Mr. Acland's letter of February 30, of which letter a copy should be sent to him. He should simply use his influence and good offices to obtain payment, and should avoid formally compromising Her Majesty's Government in the matter.

As to the "second point" in Mr. Acland's letter, no formal instructions seem requisite. If the Persian Government, or any party in Persia, desires to continue the legal proceedings already instituted at Bombay, or to institute any further or fresh proceedings, it is obvious that they must correspond with Bombay direct, and furnish funds or security for the costs.

I have, &c.

(Signed) J. D. HARDING.

No. 46.

The Law Officers of the Crown to Lord J. Russell.—(*Received March* 9.)

Doctors' Commons, March 7, 1861.

TURKEY.

Complaint of Mrs. Parry against Mr. Hornby *in re* Crawford *v.* Parry.

My Lord,

WE were honoured with your Lordship's commands signified in Mr. Hammond's letter of the 23rd of February last, stating that he was directed to transmit to us a letter which your Lordship had received from Mrs. Parry, complaining of the conduct of Mr. Hornby, the Judge in the Supreme Consular Court at Constantinople, in the case of her husband, who had been arrested, at the suit of Mr. James Crawford, for the non-payment of a sum of money which Mr. Crawford had expended in repairing certain buildings on a farm belonging to Mr. Parry, of which he had taken a lease; and which sum had been decided to be due to Mr. Crawford by a sentence of the Supreme Consular Court.

Mr. Hammond also transmitted a despatch from Mr. Hornby explaining the course pursued by him with regard to this matter; and was pleased to request that we would favour your Lordship with our opinion on the case.

In obedience to your Lordship's commands we have carefully considered the above-mentioned papers, and have the honour to report—

That we think it right that a copy of Mrs. Parry's letter be immediately transmitted to Mr. Hornby, and that he be requested to give specific answers to the statements therein.

We also recommend that Mr. Legal Vice-Consul Wroth be desired to transmit a copy of his notes taken on the trial of Crawford *v.* Parry, and to report to your Lordship his opinion on the case.

There certainly appears to us to be matter in this case which demands the most serious inquiry.

Mr. Hornby appears to have prepared the lease and contract made between Mr. Parry and Mr. Crawford, and to have acted as their professional adviser. Did he do this gratuitously, and from motives of kindness to strangers (one of whom he represents as a notorious bad character), or did he receive a remuneration? It is most essential that this should be inquired into, as it is quite incompatible with Mr. Hornby's judicial station and duties that he should practise as a private lawyer. Even if he acted gratuitously it was indiscreet in him to mix himself up, as an adviser, with the private transactions of persons which might afterwards come before him judicially.

We have read with regret many expressions in Mr. Hornby's despatch with reference to Mr. and Mrs. Parry, which, in our opinion, are not such as ought to appear in a grave judicial statement of the case; and, on the whole, we think it apparent that Mr. Hornby has so acted in this transaction as to be utterly unfit to fulfil the duty of a Judge as to any question arising out of it.

We have, &c.

(Signed) J. D. HARDING.
RICHARD BETHELL.
WM. ATHERTON.

No 47.

The Queen's Advocate to Lord J. Russell.—(*Received March* 12.)

Doctors' Commons, March 9, 1861.*

TURKEY.

Claim of Messrs. Schemeil for losses incurred during disturbances in Syria.

My Lord,

I AM honoured with your Lordship's commands, signified in Mr. Hammond's to transmit to letter of the 27th February ultimo, stating that he was directed to me a correspondence between Messrs. Schemeil and the Foreign Office, with reference to their request for the support of Her Majesty's Consul-General at the Beyrout, to their claim on the Ottoman Government to be indemnified for the losses sustained by them in consequence of the recent disturbances in Syria; and report to your to request that I would take these papers into consideration, and Lordship my opinion as to what answer should be returned to Messrs. Schemeil's application.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That Messrs. Schemeil do not seem to me to have made out any case for the intervention of Her Majesty's Government. I cannot discover any specific loss or damage for which they distinctly seek compensation, excepting that caused by a robbery of cash and jewellery, amounting in value to 2,000*l.*, from their warehouse at Beyrout, on the 23rd January last. This was apparently the act of ordinary robbers, for which the Turkish Government cannot be held responsible.

Their losses by alleged "depreciation of value of goods, and difficulty of getting in outstanding accounts," said to amount to "about 5,000*l.* or 6,000*l.*, are most vaguely alluded to, and cannot be noticed.

Under these circumstances, it is unnecessary to consider the somewhat intricate question of the national character of the several partners, or of the firm.

They may be informed that your Lordship sees no reason for addressing

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* Page 21.

* See further Report, page 54.

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any communication to the Turkish Government on the subjects on which they write.

I have, &c.
(Signed) J. D. HARDING.

No. 48.

The Queen's Advocate to Lord J. Russell.—(*Received March* 13.)

UNITED STATES.

Complaint of Mr. Harley, master of the "Culloden," for ill-treatment and confinement at Mobile.

My Lord, *Doctors' Commons, March* 11, 1861.

I AM honoured with your Lordship's commands, signified in Mr. Hammond's letter of the 27th February ultimo, stating that he was directed to transmit to me a Memorial (received through Mr. Horsfall) from Mr. Harley, master of the British ship "Culloden," complaining of his having been illegally seized by a mob, and detained in prison at Mobile, and claiming compensation on that account.

Mr. Hammond was also pleased to state that this case has also been reported by Lord Lyons, whose despatches were inclosed; and to request that I would take the case into consideration, and report to your Lordship my opinion as to the answer which it would be proper to return to Captain Harley.

In obedience to your Lordship's commands, I have taken this case into consideration, and have the honour to report—

That Mr. Harley's Memorial evidently contains a very imperfect and uncandid account of the singular occurrences in question. He admits, however, in paragraph 8, that Anna Macdonald, a passenger in the British vessel, the "Culloden," of which he was master, was, whilst at sea on a voyage from Liverpool to Mobile, unjustifiably assaulted at his instigation, namely, by having water thrown over her by the third mate, by his orders.

It appears, moreover, that on the arrival of the ship at Mobile, complaints, supported by an affidavit, were made by others of the passengers, that Harley had beaten her with a cowhide, and otherwise outrageously ill-treated her: thereupon the newspapers noticed the matter; great public excitement ensued; a public meeting was held, and Mr. Harley was taken out of his hotel by some private persons. It does not appear that he suffered any personal injury; his life was, however, considered to be in danger. The military were called out by the authorities, in order, in effect, to afford him protection, as I understand the circumstances; and with the same view he was placed in prison, howsoever by the warrant of the Acting Consul, and was detained there for twenty-one days, for a portion of that time apparently with his own consent. It was found impossible, owing to the passengers being scattered, to produce any evidence against him; but Anna Macdonald seems to have commenced a civil action against him, in which he found bail; and finally, by the active exertions and contrivance of the Consul, he left the prison unnoticed, and sailed, almost clandestinely, in the "Culloden" for Liverpool, where he has now arrived.

If it should be still in the power of the Emigration Commissioners, or of any Department of Her Majesty's Government, to investigate the case with effect, and either to clear his character, if innocent, or to expose and if possible to punish him, if guilty, this should be done.

The Consul, as is too often the case, omits to forward the depositions which were taken at Mobile, or to give their substance; to give any narrative of the facts as alleged on each side; to state his impression of the real merits of the case; or to give any reason for the extraordinary excitement against Mr. Harley, to which the alleged ill-treatment of Anna Macdonald gave rise at Mobile. He says nothing of this person's character, station, or apparent credibility, or of that of the other passengers; and he is wholly silent as to Mr. Harley's defence or reply to the charges made against him, whatever they may have been.

All these circumstances, and more particularly the Consul's imprisonment and detention of Mr. Harley "by warrant," and the result, if any, of Anna Macdonald's action against Mr. Harley, require further explanation, which should be promptly supplied. Some copies of the "Tribune" newspaper should be forwarded. At present the case is left, as cases are too often left by Consular correspondences, in such a state of obscurity that Her Majesty's Government are without the means, which might so easily have been supplied, of arriving at any definite conclusion.

I observe, however, that Lord Lyons has entirely approved of the Consul's conduct. I observe, moreover, that the Mayor and the local authorities actively exerted themselves to assist and support the Consul, and in effect seem to have saved Mr. Harley from personal danger. Possibly when further information has been received, it may be proper to convey to them the formal acknowledgments of Her Majesty's Government for their conduct in this respect.

With reference to the answer to Mr. Harley's letter, I can only say that my present impression is adverse to him; but the case requires thorough investigation. I can therefore only suggest that he may be informed "that your Lordship has reason to believe that his Memorial contains only an imperfect and partial account of the singular transactions to which he relates; that your Lordship is not at present disposed to comply with his prayer; but that further inquiries will be made on the subject."

I have, &c.
(Signed) J. D. HARDING.

No. 49.

The Queen's Advocate to Lord J. Russell.—(*Received March* 14.)

SICILY.

Messrs. Rohmer's claim for losses sustained during insurrection in Sicily.

My Lord, *Doctors' Commons, March* 12, 1861.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 28th February ultimo, stating that, with reference to my Report of the 28th January last,* he was directed to transmit to me a further letter from Messrs. Rohmer Brothers, respecting their claim for losses sustained during the late insurrection in Sicily, and renewing their application for the assistance of Her Majesty's Government to obtain compensation, and to request that I would take this letter into consideration, and report to your Lordship whether the statements contained therein are such as to induce me to alter my former opinion upon this case.

Mr. Rohmer's former letter was inclosed for reference.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report,—

That I see nothing in the letter of Messrs. Rohmer Brothers of the 22nd February, to alter my former opinion on the case.

This letter contains no additional statements or explanations; and there is nothing whatever from the Consul, who must be well aware of the circumstances which caused the destruction of the property in question.

I have, &c.
(Signed) J. D. HARDING.

No. 50.

The Queen's Advocate to Lord J. Russell.—(*Received March* 15.)

GENERAL.

On the question whether a foreign State has a right to interfere with the property of a British subject who has died at sea, in the event of the ship in which he died entering a foreign port.

My Lord, *Doctors' Commons, March* 13, 1861.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 2nd March instant, stating, that with reference to my Report of the 27th February ultimo,† he was directed to request that I would state to your Lordship my opinion whether the fact that a British ship, on board of which a British seaman may have died at sea, and therefore within the jurisdiction of Great Britain, and afterwards enters the port of a foreign State with the property of the deceased on board, gives to the authorities of such foreign State a right to interfere with such property with a view to its administration or disposal; and whether such right would be claimed and could be maintained in this country.

In obedience to your Lordship's commands I have the honour to report,—

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* Page 18.

† Page 35.

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That both these questions must, in the terms in which they are put, be answered in the negative.

These answers may, however, mislead your Lordship, if unaccompanied by explanations.

1st. The "authorities" of foreign countries (if by that phrase is meant the executive authorities) have not, in the case supposed, any right to interfere; but the laws and tribunals of such foreign countries have the exclusive right of determining who is entitled to administer, within their territorial limits, personal property belonging to deceased foreigners which may be locally within such limits, without reference to the place of the deceased's death, or to the law of his "domicil;" which determines the right of succession, but not the right of administration.

This principle is constantly applied in England, as to the administration of the personal property in this country belonging to foreigners dying abroad; and foreign Consuls are not here permitted to act as administrators to their deceased fellow-countrymen, merely by virtue of their office, nor to intermeddle therewith, unless they act regularly by taking out administration, just as any private individual (having an interest) may do. The legal aspect of the question, therefore, must be ascertained before it can be taken up internationally. If, for instance, the law of New York only entitles the Administration to administer to the effects of persons "dying in the State of New York," it has no application to this case. If the Consul was by the law of New York bound to take out administration before he intermeddled with the effects, he has not done so.

Under these circumstances, I consider it necessary to have the text of the particular law of New York adverted to, and a full explanation from the Consul of the ground on which he considers that his acting as administrator in the case of seamen is not in contravention thereof, accompanied by a legal opinion, if necessary, together with the other information suggested in my former Report, as far as it can easily be procured, in order to the due consideration of the case.

I have, &c.
(Signed) J. D. HARDING.

No. 51.

The Queen's Advocate to Lord J. Russell.—(*Received March* 19.)

Doctors' Commons, March 16, 1861.

SARDINIA.

Mr. W. Taylor's grievances against the authorities of the Island of Monte Cristo.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 28th of February ultimo, stating that, with reference to my report of the 27th of October last, he was directed to transmit to me a despatch from Her Majesty's Minister at Turin (No. 76), inclosing copies of his correspondence with the Sardinian Government upon the subject of Mr. Watson Taylor's grievances against the authorities of the Island of Monte Cristo; and to request that I would take these papers into consideration, and furnish your Lordship with any observations I might have to offer thereupon.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That inasmuch as none of the information pointed out as requisite in my previous Report of the 27th of October last is forthcoming, and as the suggestions therein contained appear not to have been followed up, and as I am consequently still without any information whatever as to Mr. and Mrs. Watson's Taylor's previous history, or as to the probable motives of the local authorities in prosecuting them, or of the Governor of Tuscany in authorizing their prosecution, and as no information is forthcoming as to the nature or amount of Mr. Watson Taylor's losses, or of the acts or responsibility of the Sardinian Government or local authorities in respect of those losses, I can only say that the case, as far as I have any information upon it, remains just where it was at the date of my last Report.

I observe that the sentence passed on Mr. and Mrs. Watson Taylor at Porto Ferrajo, on the 5th of September, 1860, was apparently only remitted on the 6th of January, 1861 (see note signed "Cassinis," January 6, 1861, inclosure in Sir J. Hudson's No. 9).

I can find nothing whatever from Mr. Watson Taylor as to the nature or amount or grounds of the pecuniary compensation which he expects or claims. I know not whether he has returned to Monte Cristo, or if not, why not; or what steps he took to protect his property in his absence; or how that property was injured.

In short, either the case itself, or the papers in the case, appear to me to be (perhaps by accident) in a state of partial confusion or imperfection. In Sir J. Hudson's No. 330 it is stated that in August 1860 he made a personal but unofficial representation of the matter to Count Cavour. He seems, however, as far as I can discover, to have made no official written communication whatever on the subject to the Sardinian Government until that dated February 2, 1861 (inclosure No. 1 in No. 76), which he states to be in accordance with your Lordship's No. 19, January 30, 1861. He does not seem to have followed up any of the suggestions in my Report of October 27, 1860, which was sent to him for his use.

I observe that in No. 9, of January 7, 1861, he alludes to a despatch from your Lordship No. 270 of November 23, 1860. I cannot find this despatch (No. 270) with the papers. I see, however, by the letter of Mr. S. Watson Taylor (the brother), dated January 19, 1861, that on November 15, 1860, this gentleman and the complainant had a personal interview with your Lordship, and showed a written Memorial to your Lordship (which document is not now forthcoming). It is probable that this interview and Memorial may have led to the issuing of the (missing) despatch No. 270 (instructions to Sir J. Hudson). However this may be in point of fact I know not; but the practical result would seem to be that the peculiar circumstances of the case have not as yet been distinctly brought to the notice of the Sardinian Government; nor can this be effectually done without further detailed information, at least to some extent, such as is indicated in my Report of October 27, 1860.

The official demand for pecuniary compensation would seem, from all that appears in these papers, to have been made somewhat prematurely, or upon no sufficient data.

It is obvious that a general demand for an apology, and some indemnity by reason of the harsh and unjustifiable criminal proceedings and sentence, is a very different thing from a demand for "compensation for Mr. Taylor's pecuniary losses," arising apparently from "the pillage and destruction of his property" during his absence; upon which latter head I am at present wholly ignorant of the facts and dates.

Upon the whole, therefore, I can only refer to my former Report, and suggest that the whole of Mr. and Mrs. Watson Taylor's case should now be considered as *res integra*, and a statement of it carefully prepared for formal submission to the Sardinian Government. This can only be effectually done after further communication with Mr. Taylor, Sir J. Hudson, and Vice-Consul Fossi.

The Sardinian Government seems disposed to ignore all the special circumstances, and to treat the case as if it had now been mentioned for the first time. Considering the facts and dates, and bearing in mind that Sir J. Hudson and Mr. Fenton had, in August 1860, personal communication on this case with Count Cavour and Baron Ricasoli (then Governor-General of Tuscany), who had authorized the prosecution, Count Cavour's note of the 10th February, 1861, appears to me very unsatisfactory. There is nothing in it which savours of any general apology, or expression of regret for what has happened. His Excellency assumes Mr. and Mrs. Watson Taylor's guilt, and the entire reasonableness and justice of the proceedings and sentence. He confines himself to the question of compensation; as to which he justly remarks, that there is "nothing from Mr. Taylor himself," and that no sufficient data appear.

The case has at present two separate branches: first, as to the criminal prosecution and sentence; and secondly, as to the damage done to the property.

The amount and nature of the demand to be made, and of the compensation required in each branch, should be considered and settled.

It may, perhaps, be desirable that Sir J. Hudson should be instructed to state officially to Count Cavour, with reference to his Excellency's note of the 10th February ultimo, that further communications would be forthcoming, in due time, on the part of Her Majesty's Government.

I have, &c.
(Signed) J. D. HARDING.

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No. 52.

The Queen's Advocate to Lord J. Russell.—(Received March 19.)

TURKEY.

Grant of special protection to Mr. Rodocanachi, a naturalized British subject, proceeding to Constantinople.

My Lord, *Doctors' Commons, March* 18, 1861.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 11th March instant, stating that he was directed to transmit to me a letter from Mr. Reed, requesting that Mr. Rodocanachi, a naturalized British subject, who is about to proceed to Constantinople, may receive special protection on his arrival at that capital, and to request that I would report to your Lordship my opinion as to the answer which should be returned to Mr. Reed's application.

In obedience to your Lordship's commands, I have taken this matter into consideration, and have the honour to report,—

That the object of Mr. Reed's application is not quite distinctly apparent: he should be asked to explain it more fully, and to furnish a copy of Mr. Rodocanachi's certificate of naturalization, and a statement of his nationality of origin, and of the particular jurisdiction or authority against which he seeks protection at Constantinople, authenticated by that gentleman's own signature.

If this certificate should not give him the rights of a British subject out of the British dominions, and if the real object of this application should only be to procure for him British protection from Turkish jurisdiction, in the general and ordinary sense, whilst at Constantinople for a limited period, to collect his assets for the benefit of his creditors, this should be explained, and your Lordship will consider the application.

If any other or more special "protection" is wanted, this must also be explained. Your Lordship cannot, for instance, enter into any question of "protection" to him as a bankrupt or insolvent against his creditors generally, or against the jurisdiction of the Supreme Consular Court, or otherwise.

Your Lordship must also require some reasonable proof that the creditors consent to, or join in, this application; and Mr. Rodocanachi should make his statement, and should ask for what he wants under his own signature, and not merely by a somewhat vague application from his solicitor, unaccompanied by any documents or vouchers, to which, under the circumstances, your Lordship cannot accede.

An answer to this effect may, subject to your Lordship's approval, be returned to Mr. Reed.

I have, &c.
(Signed) J. D. HARDING.

No. 53.

The Queen's Advocate to Lord J. Russell.—(Received March 19.)

UNITED STATES.

Liability of British subjects to perform military service in the United States.

My Lord, *Doctors' Commons, March* 18, 1861.

I AM honoured with your Lordship's commands, signified in Mr. Hammond's letter of the 25th February ultimo, stating that he was directed to transmit to me a despatch and its inclosures from Her Majesty's Minister at Washington relative to the question of the liability of British subjects to perform military service in the United States; and to request that I would take these papers into consideration, and report to your Lordship, at my early convenience, my opinion thereupon.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That as to the general question involved in this case, namely, the liability of foreigners to serve in the militia of any country in which they may be resident, I have already, in conjunction with the Attorney and Solicitor-General, expressed my opinion on the 31st July, 1860, in a Report on a case which occurred at Charleston, in South Carolina.

We stated in that Report, "that there is no rule or principle of international law which prohibits the Government of any country from requiring aliens, resident within its territories, to serve in the militia or police of the country, or to contribute to the support of such establishments."

Sir J. Dodson reported in the same general sense on May 9, 1836 (Belgium), and October 29, 1847 (Tuscany).

In England, the question "whether an alien would be compelled to serve in the militia" has never, as far as I am aware, been authoritatively decided.

The question of the liability of Her Majesty's subjects, in the present condition of the (heretofore) United States, is one of serious importance, and Lord Lyons' attention should be carefully directed to it. In those States wherein personal service may not be enforced against aliens, but in which they are only compellable to find a substitute or to pay a sum of money, there does not appear to me to be any urgent necessity for the intervention of Her Majesty's Government; but if personal service is or shall be actually enforced—more especially if the militia should be permanently embodied, and employed, not merely to maintain order and protect property, but in actual hostilities—the position of British subjects would appear to deserve very favourable consideration, and to call for every exertion being made in their favour on the part of Her Majesty's Government.

It may, perhaps, be advisable to instruct Lord Lyons to ascertain, and state precisely, what is the law and the practice on this head (especially as to compulsory personal service, without any alternative) in the different States; to explain whether any, and what, legal means of establishing or securing exemption are open to British subjects in any and which of the States; and also to ascertain what is the feeling of the principal European Powers, who, by reason of the number of their subjects in the United States, are likely to feel interested in this subject, such as France, Prussia, and Spain.

In the last resort, the existing secession of the Southern States may possibly give rise to a favourable occasion for settling the matter by express stipulation, either with them separately, or with the Federal Government at Washington. A militia ballot is not imminent, or likely to be ever general, in England; and the number of citizens of the United States resident in Her Majesty's dominions (excepting, possibly, in Canada) is so insignificant that any reciprocal stipulations might be, on the whole, advantageous to British interests in this matter.

I have, &c.
(Signed) J. D. HARDING.

No. 54.

The Law Officers of the Crown to Lord J. Russell.—(Received March 19.)

FRANCE.

Claim of Mr. Casaubon to exemption from conscription on the ground of having been born in the Mauritius, although of a French father.

My Lord, *Doctors' Commons, March* 19, 1861.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 12th March instant, stating that with reference to the report of Her Majesty's Advocate-General of the 21st February ultimo,* he was directed to transmit to us the accompanying correspondence with Her Majesty's Ambassador at Paris, respecting an application which has been made to Earl Cowley by Mr. Casaubon, who states that he was born in the Mauritius, of a French father, and who has claimed the protection of the British Embassy as a British subject, in order to procure his exemption from having to draw for the conscription of the 1st instant, and to request that we would take these papers into consideration, and report to your Lordship, at our earliest convenience, our opinion as to the instructions which should be given to Lord Cowley on the subject.

In compliance with your Lordship's instructions we have taken these papers into consideration, and have the honour to report—

That there is no indication in these papers of the grounds upon which the French authorities consider Mr. Casaubon as being a Frenchman, and, as such, liable to the conscription.

Under these circumstances we recommend that Earl Cowley should request to be informed of the grounds upon which this gentleman has, notwithstanding his certificate of British nationality, and the fact of his having been born in the Queen's dominions, and resided there until he was of age, been subjected to the conscription.

In dealing with foreign Governments upon subjects of this nature, much inconvenience must arise if the principles of English law, as to natural-born British subjects, are attempted to be carried to their full extent.

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In the present case, if the father of Mr. Casaubon had been an Englishman, and the Mauritius had been a French Colony at the time of Mr. Casaubon's birth, we should have claimed Mr. Casaubon as an English subject. A principle of reciprocity ought to prevail.

In the present case it is also observable that Mr. Casaubon appears, after he attained twenty-one, to have returned with his father to France, and to have been since resident and domiciled there. He has elected to take France as his country, and cannot be reasonably considered as personally entitled to British protection. Still as a certificate of British nationality has been given and disregarded, it seems fit that some inquiry should be made.

We have, &c.
(Signed) J. D. HARDING.
RICHARD BETHELL.
WM. ATHERTON.

No. 55.

The Law Officers of the Crown to Lord J. Russell.—(Received March 22.)

TURKEY.

Jurisdiction over property of British subjects resident in Ottoman dominions, and dying leaving property.

My Lord, *Doctors' Commons, March* 20, 1861.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 13th March instant, stating that he was directed to transmit to us a despatch (No. 16) from the Judge of the Supreme Consular Court at Constantinople, requesting to be furnished with instructions as to the jurisdiction of that Court, and other Consular Courts in the Ottoman dominions, over the property of British subjects resident within those dominions and dying, leaving property; and to request that we would report to your Lordship our opinion as to the instructions which should be given to Mr. Hornby in regard to this matter.

In compliance with your Lordship's instructions we have taken this subject into consideration, and have the honour to report—

That it appears from Mr. Hornby's despatch that British subjects are not entitled, by Turkish law, to become owners (directly and openly) of land in Turkey. Consequently, Her Majesty has not obtained in Turkey, nor do her Courts possess, any jurisdiction to determine any question as to the ownership of land, or the descent or right of succession to it.

In other words, we have no jurisdiction over real property in Turkey, nor any authority to deal with the ownership of landed estates.

But a practice is stated to have prevailed, and to be recognized by Turkish law, by which a British subject wishing to possess land in Turkey has it conveyed to an Ottoman subject, and takes from the latter a mortgage of the land for a sum exceeding its value, under cover of which mortgage the British subject has the possession and enjoyment.

If so, it is plain that the only ownership of land which a British subject can have in Turkey, is of the nature of personal property; and that Her Majesty's Courts in Turkey have no jurisdiction to deal with it in any other character.

We are, therefore, of opinion that landed property in Turkey belonging to a British subject must, on his decease intestate, be regarded and treated by Her Majesty's Courts in Turkey as personalty, and administered as such, according to the rules which in such Courts regulate the succession to personal estate.

We have, &c.
(Signed) J. D. HARDING.
RICHARD BETHELL.
WM. ATHERTON.

No. 56.

The Queen's Advocate to Lord J. Russell.—(Received March 23.)

TURKEY.

Claim of Messrs. Schemeil for losses incurred during disturbances in Syria.

My Lord, *Doctors' Commons, March* 22, 1861.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 18th March instant, stating that, with reference to my report of the

9th March instant,* upon the claim of Messrs. Schemeil for compensation from the Ottoman Government on account of losses alleged to have been sustained by them in Syria, he was directed to transmit to me further letters from that firm on the same subject, and to request that I would take these letters, together with the former papers, into consideration, and report to your Lordship my opinion as to the answer which should be returned to them.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report,—

That I see no reason to alter the opinion which I expressed on this case in my report of the 9th March instant.

As at present advised, therefore, I can only repeat that if Mr. Schemeil has sustained at the hands of the Turkish authorities any definite wrong or injury, or has any sufficient ground entitling him to the intervention of Her Majesty's Government, or of any British Consulate, he has altogether failed to make this apparent, and it is, therefore, unnecessary to enter into the question of the nationality of the firm.

If your Lordship desires my opinion upon any one or more definite questions, I must request to be favoured with those questions, inasmuch as I am unable to understand from Mr. Schemeil's letters, or from his printed speech at Liverpool "On the Trade and Financial Position of Turkey," the nature or amount of his claims, if any, against the Turkish Government for pecuniary compensation.

I have, &c.
(Signed) J. D. HARDING.

No. 57.

The Queen's Advocate to Lord J. Russell.—(Received March 25.)

VENEZUELA.

Detention at Caracas of the "Justina Blundell," an American vessel, for six days quarantine. Claim of Messrs. Hall and Co.

My Lord, *Doctors' Commons, March* 22, 1861.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 6th of March instant, stating that, with reference to my Report of the 5th of June last, respecting the case of the "Justina Blundell," he was directed to transmit to me a letter from Mr. Nevett, complaining of the decision which has been come to in this matter, and in which Mr. Nevett now contests the legality of the detention of the "Justina Blundell;" and to request that I would take this paper into consideration, together with the previous correspondence, and report to your Lordship whether there is anything in Mr. Nevett's letter which modifies the opinion I have already expressed in this case.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I see nothing in Mr. Nevett's letter which so materially modifies the opinion which I have already expressed in this case, as to induce me to advise Her Majesty's Government to interfere.

I am not satisfied that the detention of the "Justina Blundell," a United States' merchant-vessel, for six days in quarantine, owing to an alleged defect in her bill of health, was absolutely illegal, or such as would have justified an international demand for compensation to Messrs. Hall and Co., British subjects, interested in her cargo.

However this may be, the detention occurred at Caraccas in June 1853; and a formal representation and demand was made by Mr. Bingham to the Venezuelan Government thereon on the 13th of January, 1854, which was negatively answered by that Government in July 1854.

Mr. Bingham did not reply to this answer, and nothing apparently passed between the two Governments on the subject since this date until July 1859, when Mr. Orme again addressed a communication to the Venezuelan Government, which was answered by Señor Rendon on the 24th of July, 1859.

Mr. Nevett's purchase (in 1856) of Messrs. Halls' claim, if it was then a claim capable of sale and purchase (which I cannot say that it was), is not a very favourable feature in the case, or calculated to induce Her Majesty's Government to re-open the case, after so long a silence.

On the whole, as the matter now stands, I cannot advise Her Majesty's Government to interfere any further.

I have, &c.
(Signed) J. D. HARDING.

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No. 58.

The Queen's Advocate to Lord J. Russell.—(*Received March* 25.)

FRANCE.

Refusal of Governor of British Guiana to give up four French sailors, deserters from the war-steamer "Casabianca."

My Lord, *Doctors' Commons, March* 22, 1861.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 18th of March instant, stating that he was directed to transmit to me the accompanying letter and its inclosures from the Colonial Office, dated the 14th of March instant, respecting the circumstances under which the Governor of British Guiana had declined to give up four French sailors, who had deserted from the French war-steamer "Casabianca;" and to request that I would take these papers into consideration, and report to your Lordship my opinion as to the answer which should be returned to the letter from the Colonial Office.

In obedience to your Lordship's commands I have taken these papers into consideration and have the honour to report—

That the course pursued by the Governor on the occasion in question appears to me have been perfectly correct.

I am not aware, and it does not appear from the papers, that any different course would have been followed by the French authorities in the event of the desertion in a French port of seamen from a British man-of-war.

I have, &c.
(Signed) J. D. HARDING.

No. 59.

The Law Officers of the Crown to Lord J. Russell.—(*Received March* 25.)

FRANCE.

Fine imposed at Calcutta on Captain of a French merchant-vessel for imprisoning a seaman guilty of a breach of discipline.

My Lord, *Doctors' Commons, March* 23, 1861.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 16th February ultimo, stating that he was directed to transmit to us a letter from the India Office, dated the 11th of February ultimo, with its inclosures, relative to a case which has occurred in the Calcutta Police Court, in which the Captain of a French merchant-vessel in that port was fined by the Magistrate for imprisoning, on board, at the direction of the French Consul, a seaman who had been guilty of a breach of discipline; and to request that we would take these papers into consideration and report to your Lordship our opinion as to the answer to be returned to Sir Charles Wood.

In compliance with your Lordship's instructions we have taken these papers into consideration, and have the honour to report,—

That we entirely concur with the opinion of the Advocate-General, Mr. Ritchie, upon this case.

In our opinion, the Police Magistrate at Calcutta had jurisdiction to hear and determine the complaint preferred before him by the seaman Capin against Captain Bécot, the Commander of the French merchant-vessel "Nautile," on board which Capin was serving; which vessel lay in a British port at the time of the cause of complaint arising. This is in accordance with the well-understood rule of the English law with reference to occurrences on board of foreign vessels being within British territorial jurisdiction. Such vessels are not (as M. Lombard suggests) "ex-territorial," but for all purposes of jurisdiction over acts committed on board, within the territory, territorial.

At the same time, it is of course, open to the person accused under such circumstances, to allege and prove a defence; and the captain of a foreign merchant-vessel would be entitled to an acquittal if he were to satisfy the Magistrate that in any restraint imposed on one of his crew, he had done no more than was reasonable in order to the preservation of discipline, or for the safety of the ship, and the like.

In this case, the only justification set up appears to have been the sanction of the French Consul; and this, for the reasons above set forth, was not only unavailing, but irrelevant to a defence.

We have, &c.
(Signed) J. D. HARDING.
RICHARD BETHELL.
WM. ATHERTON.

No. 60.

The Queen's Advocate to Lord J. Russell.—(*Received March* 25.)

AUSTRIA.

Expulsion from Verona of Giuseppe Fürst, an Ionian.,

My Lord, *Doctors' Commons, March* 23, 1861.

I AM honoured with your Lordship's commands, signified in Mr. Hammond's letter of the 18th March instant, stating that upon the receipt of my letter of the 26th November last, giving a report upon the case of Giuseppe Fürst, an Ionian subject who had been expelled from Verona by the Austrian authorities, your Lordship addressed the inclosed instruction to Her Majesty's Chargé d'Affaires.

That Mr. Fane was directed to take measures for giving Mr. Fürst an opportunity of making his own observations upon his case; and that he was also directed to ascertain (confidentially) from Her Majesty's Consul-General at Venice, the real character and credibility to be attached to Fürst himself.

Mr. Hammond was also pleased to state that he was directed by your Lordship to inclose the various despatches which have been received from Her Majesty's Representative at Vienna, together with the reports which have been received from Her Majesty's Consul-General at Venice, containing all the information which it has been possible to obtain upon the above subject; and to request that I would take these papers into consideration, together with the former despatch, and report to your Lordship "what further steps should be taken in the matter."

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That, adverting to the testimonials to his general character and demeanour furnished by Mr. Fürst, which are numerously and respectably signed by inhabitants of Verona, and to the contents of Consul Perry's despatch of the 6th of March, 1861, I am of opinion that it may be safely assumed that there is nothing to affect Mr. Fürst's character or credibility, or to prevent Her Majesty's Government from taking up his case.

I have so fully entered into the case in my previous report of November 26, 1860, that I can only say the "further steps to be taken in the matter" are proper for your Lordship's consideration, as a matter of policy.

The case seems to me one of unjustifiable and flagrant wrong, deliberately inflicted by the Austrian police, without any reasonable cause, upon an Ionian under British protection, for which Her Majesty's Government is entitled to require both an apology and adequate pecuniary compensation.

The Austrian Government will, in all probability, refuse all reparation, inasmuch as they have done this successfully in at least three previous cases (mentioned in the Librarian's Memorandum). I would also add the case of Mr. Sichell (see Law Officers' Report of May 30, 1853). I am not aware of the result of this last case. It would almost appear that Her Majesty's Government has never, as yet, succeeded in obtaining any redress from Austria in any case of this class, and that the Austrian Government habitually expels, at its arbitrary pleasure, and with impunity, any British subject whom its police dislikes.

Under these circumstances the principal question for consideration would seem to me to be the course which Her Majesty's Government is prepared to pursue in the event of Austria refusing all reparation, as unless Her Majesty's Government is prepared to do something effectual, it may be a question (having regard to previous cases) what should be the tone and character of the demand (if any) in this case. This is obviously a matter beyond my province.

I can only say that the case appears to me of such a character as to make the insecurity of British subjects in the Austrian dominions apparent, and to give Her Majesty's Government perfectly good ground for enforcing reparation.

If it had occurred, for instance, in a South American Republic, prompt and ample reparation would have doubtless been enforced by Her Majesty's Government.

I observe that the British Consulate at Venice, which was instructed by Mr. Fane in December 1860, to report on this case, seems only to have reported on it on the 6th March, 1861, and then to have added no very material information

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to that of which Her Majesty's Government was previously in possession, and that I see no sufficient reason for this delay, which may be injurious to the case.

I have, &c.
(Signed) J. D. HARDING.

No. 61.

The Queen's Advocate to Lord J. Russell.—(*Received March* 28.)

VENEZUELA.

Claim of the Daly family.

My Lord, *Doctors' Commons, March* 27, 1861.

I AM honoured with your Lordship's commands, signified in Lord Wodehouse's letter of the 19th March instant, stating that he was directed to state to me that on the receipt of my report of the 28th February, 1860,* respecting the claim of the representatives of the late Mr. Daly, your Lordship addressed to Mr. Orme, Her Majesty's Chargé d'Affaires in Venezuela, a despatch, of which the draft was inclosed; that before this despatch could have reached Mr. Orme he had taken the steps in this matter which are reported in the despatch from him herewith inclosed.

Lord Wodehouse was also pleased to state that Mr. Orme has caused a report to be drawn up by his legal adviser, regarding the question which has arisen as to the sum in dispute between the Venezuelan Government and the heirs of Mr. Daly; and that the Venezuelan Minister of Finance has expressed his willingness to accept, as a definite arrangement, the estimate prepared by M. Caceres.

Lord Wodehouse was also pleased to request that I would take Mr. Orme's despatch into consideration, and report to your Lordship my opinion whether Mr. Orme should be instructed to sanction the proposed arrangement.

The previous correspondence connected with the case was inclosed for convenience of reference.

In obedience to your Lordship's commands, I have taken this matter into consideration, and have the honour to report—

That the end or upshot of the protracted attempts at evasion and delay in this case by the Venezuelan Government would seem to be that the only matter in difference between the two Governments (if such it can be called) is the terms of payment by Venezuela of what is admitted to have long been due, and by the retention of which the Daly family has been exposed to ruin. The Venezuelan Government now admits that this is a good debt; then why should it not be paid in cash? That Government, however, still seeks further delay.

I do not precisely understand the difference between the amount claimed and the sum now offered, but I can see no reason why Venezuela should not pay at once, and in cash, as I have already stated in my Report of the 28th of February, 1860. If, however, Her Majesty's Government is not prepared to exact this mode of payment for some reason unknown to me, and if the Daly family is satisfied with what is now proposed, I presume that the terms offered by Señor Delgado in his note of February 1, 1861, must be accepted, but I cannot, I own, see why this should be so.

Interest at 9 per cent. must at all events be exacted up to the day of payment of each instalment. I would beg to refer to my Report of January 14, 1861, on this claim.

I have, &c.
(Signed) J. D. HARDING.

No. 62.

The Law Officers of the Crown to Lord J. Russell.—(*Received April* 5.)

EGYPT.

Appointment of a British Consular Chaplain at Suez.

My Lord, *Doctors' Commons, April* 3, 1861.

WE were honoured with your Lordship's commands, signified in Mr. Hammond's letter of the 9th March ultimo, in which he stated that he was directed by your Lordship to refer to us the Act of the 6th Geo. IV, cap. 87, "relative to

British Consuls at foreign ports, and more particularly the 10th, 11th, 12th, 13th, 14th, and 15th sections of that Act, and also to refer to us the inclosed despatch from Her Majesty's Agent and Consul-General in Egypt (No. 7, February 14, 1861), forwarding an application, on behalf of the British residents at Suez, for the appointment at that port of a British chaplain under the Act.

Mr. Hammond was pleased to observe that the Consular officer at Suez merely held the rank of Vice-Consul; that his appointment was made by the sanction and under the authority of the Secretary of State for Foreign Affairs; and that provision was made for his salary from the moneys voted by Parliament for Consular Services; but that, according to the usual practice of the Foreign Office, the Vice-Consul was under the immediate superintendence of a superior Consular officer, who "in this instance is Her Majesty's Agent and Consul-General in Egypt, residing at Alexandria or at Cairo, and with whom, and not with the Secretary of State, the Vice-Consul corresponds:" and that the points upon which our opinion is desired are—

1st. Whether, under the Act of Parliament referred to, assistance can be given from the public funds towards the maintenance of a British chapel or chaplain at a port where the resident Consular officer only holds the rank of Vice-Consul; and this irrespective of the consideration that a superior Consular officer, with the rank either of Consul or Consul-General, is maintained in the country or district within which the Vice-Consulate is situated, and has superintendence and control over such Vice-Consul?

2ndly. Whether, if this cannot be done irrespective of the consideration stated, the fact that a superior Consular Officer with the rank of Consul or Consul-General is maintained in the country or district in which the Vice-Consul is situated, and has control and superintendence over the Vice-Consulate, though not residing at the port where the Vice-Consulate is locally established, will bring such Vice-Consulate within the scope of the Act in the matter in question, and warrant an appropriation of public money being made, if the Secretary of State thinks fit, in aid of the contributions of British residents at such port towards the maintenance of a chapel or chaplain?

In obedience to your Lordship's commands we have taken the questions submitted to us into consideration, and have the honour to report—

That the answer to the questions in your Lordship's letter depends on the true construction of the 10th section of the 6th Geo. IV, cap. 87, inasmuch as the application of the British subjects at Suez is limited to the *maintenance* of a chaplain at that place.

There is nothing in the 10th section, which requires that the "Consul-General or Consul," who is to act by "advancing and paying any sum of money," &c., under it, should be resident at the port or place at which the chaplain is employed and maintained. Further, Suez is within the province and subject to the jurisdiction of the Consul-General of Egypt, inasmuch as the Vice-Consul at Suez is under the superintendence and subject to the control of such Consul-General. We are therefore of opinion that the Consul-General in Egypt fully answers the words "Consul-General" in the 10th section, and that the *second* question must be answered in the affirmative.

If the Vice-Consul at Suez were not subject to or included in the province of any Consul-General, we should incline to think that he would be a Consul within the meaning of the 10th section; for in such a case the term "Vice-Consul" would be a misnomer, and he would, in reality, fulfil the functions and stand in the rank of "Consul."

We should, in such a case, answer the *first* question also in the affirmative; but it is unnecessary to consider the hypothetical case put by the first question, when the real case, put in the second question, creates no difficulty.

We have, &c.
(Signed) J. D. HARDING.
RICHARD BETHELL.
WM. ATHERTON.

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* See also Report of January 14, 1861, page 5.

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No. 63.

The Law Officers of the Crown to Lord J. Russell.—(Received April 8.)

FRANCE.

Validity of an affidavit taken before Her Majesty's Secretary of Embassy at Paris.

Doctors' Commons, April 4, 1861.

My Lord,

WE were honoured with your Lordship's commands, signified in Mr. Hammond's letter of the 20th March ultimo, in which he stated that he was directed by your Lordship to transmit to us a despatch, and its inclosure, from Her Majesty's Ambassador at Paris, in which a question is raised "whether a certain affidavit, taken before Her Majesty's Secretary of Embassy at Paris, under the Act 18 and 19 Vict., cap. 42, is valid;" the Registrar of Deeds at Dublin having returned the document so attested, on the ground that the Act in question authorizes Ambassadors and Secretaries of Legation to perform only such notarial acts as notaries public in the United Kingdom are empowered to do, and that the affidavit referred to was not of that class.

Mr. Hammond was pleased to request that we would take the matter into our consideration, and favour your Lordship with our opinion as to the instructions which should be addressed to Earl Cowley upon the question at issue.

In obedience to your Lordship's commands, we have taken the papers submitted to us into consideration, and have the honour to report—

That the Act 18 and 19 Vict., cap. 42, has been misread in Ireland in a manner that is hardly credible.

The Irish Registrar's construction is: "The Act gives the Secretary of Embassy, &c., such powers only as are vested in a notary public; but a notary cannot take an affidavit of the perfection of a deed and memorial for the purpose of registry, therefore the Secretary of Embassy cannot do that which a notary could not do."

The first paragraph is wholly incorrect. By the first section, every Secretary of Embassy, &c., exercising his functions in any foreign country, is empowered to administer in such foreign country any oath, or take any affidavit or affirmation from any person whomsoever; *and also* to do and perform in such foreign country all and every notarial acts which a notary public could or might be required, and is by law empowered, to do within the United Kingdom.

If the section be read with common attention, it is plain to the reader that the power to do notarial acts is a distinct authority, *superadded* to the express authority to administer oaths and take affidavits or affirmations, which is the authority first given, and is of the most general and effective character.

The preamble shows clearly the intention of the Legislature, and the enacting part carries the intention most completely into effect.

There is no justification for the refusal of the Irish Registrar, or for his construction of the Act of Parliament, and the inconvenience that has resulted therefrom.

We have, &c.
(Signed) J. D. HARDING.
RICHARD BETHELL.
WM. ATHERTON.

No. 64.

The Queen's Advocate to Lord J. Russell.—(Received April 8.)

TURKEY.

Mr. Rodocanachi's claim to special protection.

Doctors' Commons, April 8, 1861.

My Lord,

I AM honoured with your Lordship's commands, signified in Mr. Hammond's letter of the 3rd April instant, stating that, with reference to my Report of the 18th March last,* he was directed to transmit to me a letter, dated April 2, 1861, from Messrs. Wilson, Dodgshon, and Papayanni, who have been appointed inspectors of the estate of Mr. Rodocanachi, stating the grounds on which protection is sought for that gentleman at Constantinople, and the nature of the protection required, and transmitting a certificate of Rodocanachi's naturalization as a British subject, and a copy of the power of attorney signed by him in their favour.

And Mr. Hammond was pleased to request that I would take the letter from Messrs. Wilson, Dodgshon, and Papayanni, together with the former papers, into consideration, and report to your Lordship my opinion as to the course which ought to be pursued in regard to this matter.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That it now appears that this application does not come from Mr. Rodocanachi himself (as stated by Mr. Reed in his letter of March 5), and that the "special protection" requested is wanted, not for *him*, but by his creditors, for their interest, and on behalf of his "affairs" (or "estate").

His certificate of naturalization (19th March, 1855) states that he is a "*native of Scio*," and contains an express exception of "any right and capacities of a natural-born British subject, out of or beyond the dominions of the British Crown and the limits thereof."

He is at Constantinople, and apparently in no danger of molestation.

No case has as yet arisen calling for or justifying any interference by Her Majesty's Government.

It remains to be seen upon what grounds (if any) the Austrian Legation in Turkey will interfere in the case; but there is no ground or reason for the application now made by the creditors for "special protection" to his "affairs," which it is out of your Lordship's power to grant.

Under these circumstances, I can only suggest that Messrs. Wilson, Dodgshon, and Papayanni may be informed that your Lordship cannot accede to their application.

I have, &c.
(Signed) J. D. HARDING.

No. 65.

The Queen's Advocate to Lord J. Russell.—(Received April 11.)

TURKEY.

Turkish blockade of coast of Albania.

Doctors' Commons, April 10, 1861.

My Lord,

I AM honoured with your Lordship's commands, signified in Mr. Hammond's letter of the 6th April instant, stating that he was directed to transmit to me a copy of a note, dated 6th April, which has been addressed to your Lordship by the Turkish Ambassador at Her Majesty's Court, announcing that from the $\frac{1\text{st}}{13\text{th}}$ of this month a blockade of the coasts of Albania, from Durazzo inclusive to the Austrian frontier, will be established by the Ottoman forces; and to request that I would take the same into consideration, and, if the notification is sufficient, I would draw up and transmit to your Lordship a notice of the said blockade for publication in the "Gazette."

In obedience to your Lordship's commands I have taken this matter into consideration, and have the honour to report—

1st. That this note is obviously insufficient for the preparation of any "Gazette" notice, inasmuch as it only intimates an intention to establish the blockade in question as from the 13th instant, and does not state the fact of the actual establishment of any blockade.

2ndly. With a view to British commercial interests, the note of M. Musurus, may, however (if your Lordship thinks fit), be forthwith officially communicated to the Chairman of "Lloyd's," or made public in any manner short of formal and official publication in the "London Gazette."

3rdly. So many errors and inaccuracies constantly occur on the part of foreign Legations as to notifications of blockade, and their effect both upon private and international rights may be so serious, that I venture to suggest that your Lordship may possibly intimate (confidentially) to M. Musurus that a distinct announcement of the actual establishment of the blockade on and from a particular day, corroborated, if practicable, by an extract from or reference to a communication to this effect received from the Naval Commanding Officer on the spot, is the only "notification" which Her Majesty's Government can properly recognize by insertion in the "Gazette."

I have, &c.
(Signed) J. D. HARDING.

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No. 66.

The Attorney-General to Lord Wodehouse.—(Received April 12.)

Dear Lord Wodehouse, *Lincoln's Inn, April 12, 1861.*

BELGIUM.

Civil-process in England against a Belgian vessel employed in the postal service.

THE words of the Treaty are so large that they must have been understood as containing an engagement that a vessel "freighted," that is, taken up, by the Belgian Government for the postal service should be free from every Civil process when in an English harbour.

But unless there is an Act of Parliament expressly authorizing this Government to enter into such a stipulation, it would have no effect on the rights of individuals. I cannot find any such Act of Parliament, and I shall be obliged to your Lordship to direct that immediate information be given to the Law Officers as to the Act of Parliament, if any, which it was supposed warranted the stipulation contained in this Treaty.

But, whether there be any such Act or not, it is clear that the Belgian Government has a right to assume that we had power to enter into the stipulation in question. And it is clear, therefore, that the English Government must take immediate steps for the release of the Belgian vessel, and must, with the consent of the Belgian Government, take upon itself the defence of that vessel to the action. I say with the consent of the Belgian Government, because it is clear that if in the result of that action it shall be proved that the Belgian vessel was in the wrong, the English Government will be entitled to a complete indemnity against the expenses it may have incurred for the Belgian; for it is by no means the intent or effect of the Treaty that the Belgian vessels should be indemnified against the consequences of any wrongful acts committed by them.

Pray send an early answer, and you shall have our joint opinion on Monday. I see the vessel was attacked on the 21st of last November; why has there been such delay by the Belgian Government?

Yours sincerely,
(Signed) RICHARD BETHELL.

No. 67.

The Law Officers of the Crown to Lord J. Russell.—(Received April 13.)

My Lord, *Doctors' Commons, April 13, 1861.*

SPAIN.

Seizure and detention of the "Louisa." Full compensation should be demanded.

WE are honoured with your Lordship's commands, signified in Lord Wodehouse's letter of the 28th March ultimo, stating that, with reference to our Report of the 23rd February last,* he was directed to transmit to us two despatches from Her Majesty's Minister at Madrid (Nos. 114 and 117), reporting that the Spanish Government have determined to restore the "Louisa" and her cargo to the owners, but without any indemnity for their losses.

Lord Wodehouse was also pleased to inclose three letters from the War Office, inclosing the reports of the Governor of Gibraltar on the same subject, and to request that we would take this case again into consideration, and report to your Lordship our opinion whether Her Majesty's Government would be justified in demanding an indemnity from the Spanish Government for the owners of the "Louisa."

The former papers were inclosed for convenience of reference.

We are also honoured with Lord Wodehouse's letter of the 1st April instant, transmitting a further letter dated March 30, 1861, and its inclosures, from the War Office, respecting the decision arrived at by the Spanish Government with regard to the "Louisa."

In compliance with your Lordship's instructions we have read and considered the additional papers which have been transmitted to us, and have the honour to report—

That the case presents two aspects: one as respects the national outrage, it being now clear that a British merchant-ship was violently captured by a Spanish vessel of war in British waters; the other, as respects the injury done to the owners of the ship and cargo by such unwarrantable seizure and detention.

The Decree of the Spanish Court of Appeal admits that "it has not been sufficiently proved that the tartaro "Louisa," when seized, was within the maritime zone of Spain" (which zone, as appears from another part of the Decree, is unwarrantably claimed as extending to six miles from the shore); but the later evidence collected by Sir William Codrington proves incontestably that the "Louisa" was captured in British waters, as the commander of the "guarda costa" must have known at the time.

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* Page 30.

The Decree then attempts to make out a case of probable cause for the seizure, by alleging "the irregularity observed in the Consular documents, the discrepancy observed in the number of bales found on board, and the alteration attempted to be made in the Consular register by one of the crew of the "Louisa;" but the answer is, not only that these allegations are denied by the testimony of the captain and crew of the "Louisa," but that the original prior act of the seizure and boarding of the "Louisa" by the "guarda costa" was an illegal outrage, and that nothing done or found on board the "Louisa," after this illegal act, can be appealed to as justifying or excusing it.

We are, therefore, of opinion that the circumstances fully justify Her Majesty's Government in claiming from the Spanish Government a full indemnity for every description of loss, damage, and expense sustained by the owners, in consequence of the seizure and detention of the "Louisa" and her cargo.

We have, &c.
(Signed) J. D. HARDING.
RICHARD BETHELL.
WM. ATHERTON.

No. 68.

The Queen's Advocate to Lord J. Russell.—(Received April 15.)

My Lord, *Doctors' Commons, April 13, 1861.*

TURKEY.

Transmission of a writ of summons against Consul Skene through the Foreign Office.

I AM honoured with your Lordship's commands, signified in Mr. Hammond's letter of the 3rd April instant, stating that he was directed to transmit to me a letter from Messrs. King and McMillin, dated March 27, 1861, inquiring whether a writ of summons issued by Her Majesty's Court of Exchequer against Mr. Skene, Her Majesty's Consul at Aleppo, who is stated to be indebted to clients of that firm in a sum of 717*l.* 12*s.* 5*d.*, can be transmitted through the Foreign Office, and to request that I would report to your Lordship my opinion whether the Secretary of State can properly undertake to forward to a Consul abroad writs of summons issued against such Consul by one of Her Majesty's Courts of Law.

In obedience to your Lordship's commands I have taken this matter into consideration, and have the honour to report—

That I am of opinion that your Lordship's question must be answered in the negative in point of general principle. There are no such special circumstances stated in this case as to require your Lordship's interference.

I have, &c.
(Signed) J. D. HARDING.

No. 69.

The Queen's Advocate to Lord J. Russell.—(Received April 15.)

My Lord, *Doctors' Commons, April 15, 1861.*

FRANCE.

Complaint of Mr. Colbeck for arrest and imprisonment by French authorities at Douai.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 8th of April instant, stating that he was directed to transmit to me the accompanying papers, as noted in the margin,* respecting the arrest and imprisonment of Mr. Colbeck by the French authorities at Douai; and to request that I would report to your Lordship my opinion as to the course which should be pursued by Her Majesty's Government in this matter.

In obedience to your Lordship's commands I have taken this matter into consideration, and have the honour to report—

That assuming the entire correctness of the statements in the "Enquête"

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* From Mr. Colbeck, received February 16; to Mr. Colbeck, February 19; to Earl Cowley, No. 196; from Earl Cowley, No. 475.

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(Inclosure No. 3 in Earl Cowley's No. 475), I do not see any sufficient ground for the interference of Her Majesty's Government in this case.

Mr. Colbeck's statement does not contain a complete narrative of all that passed between him and the authorities, and it is not attested or corroborated by any of his family or workmen.

Possibly your Lordship may consider it proper to transmit a translation of the "Enquête" to Mr. Colbeck, with an intimation that the circumstances therein stated must prevent your Lordship from interfering in his behalf. It will then be open to him to make any further communication to your Lordship which he may think expedient.

Unless Mr. Colbeck's treatment was either absolutely illegal, or at least more severe than that which any Frenchman would have received under precisely the same circumstances, your Lordship cannot interfere; he does not establish either position: and the French system of procedure, habits, and ideas on the subject of any resistance to or neglect of the regulations, or formal acts, of any constituted authorities, are so different from anything with which Englishmen are familiar, that I see no probability of his being able to make out any sufficient case for the intervention of Her Majesty's Government.

I have, &c.
(Signed) J. D. HARDING.

No. 70.

The Attorney-General to Lord Wodehouse.—(Received April 15.)

BELGIUM.

Civil process in England against a Belgian vessel employed in the postal service.*

* See also page 62.

April 15, 1861.

My dear Lord Wodehouse,

EVERY man-of-war of a foreign country is protected from seizure or attachment in any form of civil process by international law. The term "man-of-war" would include every vessel of the regular navy of a foreign State, being the property of that State, and manned and commanded by a crew and officers in the naval service of that State (all this is explained in our Report): but this is not the case with the "Ruby;" she does not belong to the Belgian Government, is not borne on the books of the navy of that Government, and her officers and crew are not in the regular naval service of Belgium, at least so we understand; but in all these cases we constantly desiderate more accurate information as to facts.

The "Ruby" is, as recollected, freighted only by the Belgian Government; it was a very great oversight entering into a contract with Belgium to give civil immunity to such vessels, which we had no legal authority to do.

I drew a report on Saturday, and sent it to the Solicitor-General. You will no doubt have it to-day.

Yours sincerely,
(Signed) RICHARD BETHELL.

No. 71.

The Queen's Advocate to Lord J. Russell.—(Received April 16.)

TURKEY.

Proposed regulations for the government of foreign lightermen and boatmen in the port of Constantinople.

My Lord, *Doctors' Commons, April* 12, 1861.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 27th March ultimo, stating that he was directed to transmit to me the accompanying correspondence as noted in the margin,* respecting the regulations proposed to be put in force by the Porte for the government of foreign lightermen and boatmen in the port of Constantinople, and to request that I would take these papers into consideration, and inform your Lordship whether, in my opinion, Her Majesty's Government would be justified in claiming, on behalf of British and Ionian subjects, exemption from the regulations in question.

Mr. Hammond was also pleased to inclose, for my information, the correspondence with Mr. Hornby, relative to the question raised by that officer in regard to his right of exercising jurisdiction over the masters and sailors of such small port craft as tugs and lighters, belonging to British subjects, and plying on the Bosphorus, in cases where the masters or sailors themselves are foreigners.

I am also honoured with Mr. Hammond's letter of the 2nd April instant, transmitting a further despatch from Her Majesty's Consul-General at Constantinople, respecting the proposed regulations for the government of foreign lightermen and boatmen at that port.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That in point of principle and of international law your Lordship's question must be answered in the negative.

Sir H. Bulwer in No. 116 to your Lordship, and in his despatch to Consul Cumberbatch of the 12th February, 1861 (Inclosure No. 4 in Sir H. Bulwer's No. 184), has taken the right view of this subject.

With respect to Consul Cumberbatch's observations and arguments, I must remark—

First, that there is nothing to show that other foreign Powers adopt this view.

Secondly, that Admiral Slade's "Memorandum" thereon (not dated or numbered, but inclosed in Sir H. Bulwer's No. 187), disposes of many of his observations.

Thirdly, the parties most directly interested do not appear to have addressed any remonstrances either to Sir H. Bulwer or to your Lordship.

With respect, however, to the compelling British or Ionian watermen and lightermen to become members of an "Esnaf" or Turkish Corporation, to the consequences to be apprehended therefrom, and to the alleged policy of Turkey in this respect, Mr. Cumberbatch's observations appear to me to be important, and not to have been effectually met or disposed of. There are obviously many peculiar considerations on this point applicable to Turkey.

This, however, is not a question of international law; but it does not seem to me to be essential to the registration and due control of the watermen and lightermen, nor altogether reasonable, that they should become members of a Turkish Corporation.

Mr. Hornby's correspondence on the subject of the jurisdiction of the Supreme Consular Court at Constantinople over steam-tugs and lighters the property of British subjects or Ionians, has been, I presume, finally disposed of by the Law Officers' Report of the 31st December, 1860. If this is not so, I must request a further and fuller communication thereon.

I have, &c.
(Signed) J. D. HARDING.

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* From Sir H. Bulwer, Nos. 116, 184 and 187; from Mr. Cumberbatch, No. 14.

No. 72.

The Queen's Advocate to Lord J. Russell.—(Received April 16.)

MOSQUITO.

Mosquito land claims.

My Lord, *Doctors' Commons, April* 16, 1861.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 13th April instant, stating that various subjects of Her Majesty assume to have claims to lands formerly, and now, in the occupation of the Mosquito Indians; that the nature of those claims is explained in a Report of the Attorney and Solicitor-General, dated 24th November, 1851, and in a Report presented to the Secretary of State in the year 1849, by two gentlemen who had been appointed to inquire into them, which papers were inclosed.

Mr. Hammond was also pleased to state that under the Treaties with Honduras and Nicaragua those claims, instead of being, as formerly, to be preferred against the Mosquito Ruler alone, are now to be preferred severally, in certain proportions, against the Governments of the two Republics and the Mosquito Ruler; and the time having arrived for making arrangements for deciding upon these claims, your Lordship has caused to be prepared drafts of instructions to Mr. Green, Her Majesty's Consul at Greytown, with reference to the claims on Nicaragua and on the Mosquito King, and that your Lordship has already desired Her Majesty's Consul at Comayagua to make a communication to the Government of Honduras on the subject.

Mr. Hammond was also pleased to state that your Lordship also considers

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that some notice of the intention to proceed to the examination of the claims should be inserted in the "London Gazette," and that drafts of such notice have been prepared accordingly.

Mr. Hammond was also pleased to state that in transmitting to me these drafts, he was to request that I would take them into consideration, and report my opinion on the course which it is proposed to pursue, and on the manner in which it is proposed that public notice should be given of the intended course; and to add that if I could make my Report, at latest, by Tuesday morning the 16th April instant, your Lordship could transmit the instructions to Greytown by the mail of that evening.

In obedience to your Lordship's commands I have taken this matter into consideration, and have the honour to report—

That such of these papers as relate to the arrangement for the settlement of the claims in question with the Republics of Nicaragua and Honduras respectively present no peculiar difficulties; and as time presses, I have perused and settled the drafts noted in the margin,* and transmit them herewith, as requested.

The Commissioners, when actually appointed, should duly advertise beforehand the day and place of their sittings, and in case of any considerable adjournment, the particulars of such adjournment, sending home copies for insertion in the Gazette.

It will also probably be advisable for the Commissioners, at their first meeting, or as early as practicable thereafter, to give public notice by advertisement of their being duly constituted, and prepared to adjudicate upon claims; and also to fix and advertise a date *after* which they will not receive any claims; sending home a copy of the advertisements for insertion in the "London Gazette," if necessary.

The Gazette notices transmitted herewith should, of course, be duly advertised in the newspapers circulating in Honduras and Nicaragua, and especially at Greytown.

I presume that it is intended to send to the Representative of Her Majesty's Government at (Comayagua) Honduras, a note or instruction similar to that now prepared for Mr. Green at Greytown, in his character of Representative of Her Majesty's Government to that of Nicaragua.

In the event of the same person having claims against both Nicaragua and Honduras, care should be taken by the Commissioners to manage their sittings, as to such claims, as to secure to the claimant proper opportunities for supporting his claim at each place.

The papers relating to the claims on the so-called Mosquito reserve or territory (proper), present some peculiar difficulties, and I have therefore, by arrangement with Mr. Hammond, reserved them for a further and separate Report.

I have, &c.
(Signed) J. D. HARDING.

P.S.—Article V of the Treaty with Honduras refers to *other* claims than those to lands, but I am not aware what is doing as to *such* claims.

J. D. H.

No. 73.

The Queen's Advocate to Lord J. Russell.—(Received April 18.)

VENEZUELA.

Complaint of Messrs. Syers, Braasch and Co., against the system of levying duties on goods at La Guayra.

My Lord, *Doctors' Commons, April* 16, 1861.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 2nd April instant, stating that he was directed to transmit to me a despatch and its inclosures from Her Majesty's Chargé d'Affaires at Caracas (No. 13, March 1, 1861), respecting a complaint made by Messrs. Syers, Braasch and Co., a commercial firm at La Guayra, that the Venezuelan Government have shown an unfair partiality towards another firm in La Guayra, Messrs. Seixas and Co., in regard to the application of a Decree issued by that Government on the 24th August, 1860, exempting certain goods from duty;

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* 1. "Gazette" Notice, Nicaragua; 2. Instructions to Mr. Green; 8. Note to M. Marcoleta; 4. "Gazette" Notice, Honduras.

and to request that I would take the inclosed papers into consideration, and report to your Lordship my opinion whether Her Majesty's Government would be justified in giving any support to Messrs. Syers' complaint against the Venezuelan Government on the ground of undue preference having been shown to Messrs. Seixas.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That it is much to be regretted that in a case turning entirely upon the terms and construction of a Venezuelan Decree, Mr. Orme should have omitted to forward any copy or translation of the Decree in question. I beg to invite attention to this singular omission as a strong illustration of the necessity for the issuing of the Consular circular alluded to in my note of the 8th April instant.

As the matter actually stands, I am unable to say that there is any sufficient cause for any further interference by Her Majesty's Government; but a copy and translation of the Decree should be transmitted, and the papers may be again submitted to me therewith.

I have, &c.
(Signed) J. D. HARDING.

No. 74.

The Queen's Advocate to Lord J. Russell.—(Received April 18.)

TURKEY.

Turkish blockade of coast of Albania.

My Lord, *Doctors' Commons, April* 17, 1861.

WITH reference to a verbal communication which I had with Mr. Hammond and Lord Wodehouse at the Foreign Office on the 15th April instant, I beg to state that I had a personal interview yesterday, the 16th instant, with his Excellency the Turkish Ambassador (by his desire) on the subject of the notification of the blockade of the Adriatic coast of Albania (see my Report of the 10th April instant*), when his Excellency expressed his intention of making a communication to his Government requesting further particulars on the subject.

I have, &c.
(Signed) J. D. HARDING.

No. 75.

The Law Officers of the Crown to Lord J. Russell.—(Received April 18.)

TURKEY.

Refusal of Turkish Minister of Finance to exchange for good money caimés deposited in British Consulate by M. Valsamachy.

My Lord, *Doctors' Commons, April* 17, 1861.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 19th March ultimo, in which he stated that he was directed by your Lordship to transmit to us a despatch, together with its inclosure, which had been received from the Judge of the Supreme Consular Court at Constantinople, requesting instructions with reference to a refusal of the Turkish Minister of Finance to exchange for good and current money old caimés for 2,000 piastres which had been deposited under seal in the iron safe of the British Consulate, by a defendant in a suit in the said Supreme Consular Court, during whose absence in England all caimés of the nature deposited were called in by the Ottoman Government, and to request that we would report to your Lordship our opinion as to the answer which should be returned to Mr. Hornby's application.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That the first question is, whether the deposit made by Valsamachy of the 2,000 piastres in the hands of Mr. Ward, remained so deposited at the sole risk of Valsamachy, or at the joint risk of the two contending parties? The Supreme Court at Constantinople appears to have decided that the deposit remained at the sole risk of Valsamachy, and probably the decision was right.

The question then remains whether Valsamachy has any ground of complaint against the English Government by reason of any neglect on the part of its Consul, Mr. Ward, or any such just cause of complaint against the Turkish Government as to entitle him to the interference of the English Government on his behalf?

We are of opinion that he has no cause of complaint in either case.

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* Page 61.

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1. Whether Mr. Ward ever knew, or knowing forgot, the contents of the deposit, is, on Mr. Hornby's statement, ambiguous. One passage states he never knew, another admits that he did. It is immaterial, if it be correct (as is stated in another sentence) that Mr. Ward could not properly open the deposit parcel without the consent of the depositor. It was the duty of Valsamachy, who knew what he had deposited, to provide for the exchange, and the loss has resulted from his own neglect.

2. As to the conduct of the Turkish Government, we understand the caimé to be a metallic coinage, and that the old caimé is still worth the intrinsic value of the metal, though not equal to the current value. These coins appear to have been called in by the Turkish Government, and a peremptory time fixed by public notice, after which the old coins would not be received. This is the proper and usual course, and there is no ground for any interference by the British Government.

If, however, the caimés are paper-money, and now of no value whatever, we must desire further and fuller information; and especially as to whether Mr. Valsamachy, as depositor, now advances a claim against the Turkish Government, and if so, on what particular grounds. A translation of the Government note (the caimé) should be laid before us.

We have, &c.
(Signed) J. D. HARDING.
RICHARD BETHELL.
WM. ATHERTON.

No. 76.

The Law Officers of the Crown to Lord J. Russell.—(Received April 20.)

My Lord, *Doctors' Commons, April* 18, 1861.

TURKEY.

Forfeiture of British protection in Turkey by British subjects returning without permission after being deported by Consular Court.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 28th of February ultimo, in which he stated that he was directed by your Lordship to transmit to us despatches from Mr. Hornby (Nos. 9 and 11 of February 6 and 8), and which appeared to your Lordship to make it desirable to reconsider the provision of the last clause of section 50 of the Order in Council of the 27th of August ultimo, in regard to the forfeiture of British protection in the Ottoman dominions by British subjects returning without permission to those dominions after being deported from thence by sentence of a Consular Court.

Mr. Hammond was also pleased to state that this clause was taken from a similar provision in the previous Order in Council of the 19th of June, 1844; and also that it appeared from the inclosed despatches, and also from the previous despatch from Mr. Hornby, No. 34 of the 9th of November, 1859, that Mr. Hornby leans to the opinion that, considering the defective state of criminal jurisprudence in Turkey, the abandonment of British subjects returning without permission from deportation subjects them to a degree of hardship almost intolerable, and that, consequently, it would be desirable to modify the clause of the Order in Council so as to make the return from deportation a substantive offence cognizable by the British Consular Court, and punishable as any other offence.

Mr. Hammond was also pleased to state that if such a course could in our opinion be adopted, your Lordship would be glad if we would suggest the means of proceeding; but that, whether it can be adopted or not, there will remain for consideration a still wider question, namely, the extent to which Her Majesty's Government, through Her Majesty's Diplomatic or Consular servants in the East, can interfere to mitigate the hardships inflicted on prisoners in Turkish custody, either previously to or subsequently to their conviction for offences against Turkish Law, and triable by a Mixed Tribunal under Article 42 of the Capitulations.

Mr. Hammond was also pleased to state that it appeared from Mr. Hornby's statements, both in his recent despatch, and in his other Reports in the accompanying volume, that there is great reason to complain of the dilatory manner in which the Judicial authorities of the Porte deal with such cases, and also of the severity in excess of the sentences passed by the Turkish Courts, in consequence of defective arrangements of the Porte for carrying such sentences into

execution; and that it seems, therefore, to be deserving of consideration how far Her Majesty's Government can justly interfere with the ordinary course of the Turkish administration to secure for prisoners amenable to Turkish Tribunals a speedy hearing, and to prevent the sentences passed upon them from being aggravated by the mode of carrying them out.

Mr. Hammond was also pleased to state that your Lordship apprehends that any measures which may be required for this purpose, or any representations which may be addressed to the Porte, would fall not within the province of the Consular Officer, but within that of Her Majesty's Ambassador as the supreme protector of British subjects in the Ottoman dominions; and also, that even in the case of returned convicts, it may be supposed that the forfeiture of British protection extends no further than such protection as British subjects are entitled to as regards being subject either to the exclusive or co-ordinate jurisdiction of a British officer, which jurisdiction is peculiar to Turkey and countries similarly situated, but that it does not extend to deprive a British subject of that ordinary protection which would be extended to him under all circumstances in countries where no such peculiar jurisdiction exists.

Mr. Hammond was pleased to state that your Lordship also apprehended that, as a general rule, the British Representative in a foreign country would be entitled to remonstrate in behalf of British prisoners in positions such as are described in the accompanying papers, where unreasonable delay is shown in bringing them to trial, where the trial is manifestly conducted irregularly, and where the sentence is rendered more severe than by its terms it should be, in consequence of the defective arrangements made for carrying it out.

Mr. Hammond was also pleased to state, if we concurred in these views, your Lordship would be prepared to instruct Her Majesty's Ambassador in conformity with them; and also that although the Consular authority may be the proper person to ascertain the facts, yet it would seem to be rather within the province of the Ambassador to represent those facts to the Turkish Government, and to call upon the Porte to deal with British prisoners in Turkish custody with justice and humanity.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That by section 50 of the Order in Council of August 1860, deportation is not imposed as a punishment for crime, but rather as a preventive measure, where the individual deported is unable to find that security for future good conduct which his actions have entitled the Judge to require. No doubt a return after such deportation may be treated as an offence, and punished with imprisonment, under an Order in Council properly framed for this purpose.

And if the British Court at Constantinople has a prison attached to it in which such delinquents may be incarcerated, it would be on every account better to substitute an order to this effect for the latter part of section 50.

But if this is not the case, and deported persons on returning and being sentenced to imprisonment must suffer such imprisonment in a Turkish prison, such punishment would be too severe, it being in a great majority of cases equivalent to sentence of death.

It seems to be an idle thing to assume the administration of our own criminal law in Turkey, unless the Criminal Courts are provided with proper means of incarcerating offenders both before and after trial, and also of carrying sentences of penal servitude into execution. It is true that great part of the criminals tried and sentenced by British jurisdiction in Turkey are either Maltese or Ionians, and that great part of the evil complained of would be removed by sending Maltese criminals to undergo their sentences in Malta, and Ionians in like manner to Corfu.

With respect to the more general questions proposed in Mr. Hammond's letter, we are of opinion that, where the subjects of one country go to reside in another, and become subject to its municipal law, either civil or criminal, it is not competent to the native Government of such subjects to make any complaint of that municipal law, or to require its alteration, but that if any of such subjects are committed to prison in such foreign country under the charge of having broken its criminal law, and there is unreasonable delay in bringing the accused to trial, that delay forms a subject of just complaint by the country of the accused; or if a prisoner, before or after trial, is kept imprisoned in a manner not consistent with humanity, or which, in the case of the condemned criminal,

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greatly aggravates the sentence, we think the native Government of the accused or convicted person has a clear right to interfere, even though the native subjects of such foreign country are, when in prison, subjected to similar treatment. No country has a right to violate the laws of humanity with regard to the subjects of another country, even if it violates them with regard to its own.

We therefore concur with the views of your Lordship, as stated in Mr. Hammond's letter, except that one of the suggested grounds of interference, viz., "where the trial is manifestly conducted irregularly," is too loose and indefinite. Where a trial is conducted in a manner at variance with the universally acknowledged principles of criminal justice, there might be a just ground of interference.

It is, we think, quite clear that it is within the province of the Ambassador, and not of the Consul or Judge, to represent your Lordship's views to the Turkish Government.

We have, &c.
(Signed) J. D. HARDING.
RICHARD BETHELL.
WM. ATHERTON.

No. 77.

The Law Officers of the Crown to Lord J. Russell.—(Received April 20.)

Doctors' Commons, April 19, 1861.

My Lord,

PORTUGAL.

Claim of Portuguese Consul to take charge of effects of Portuguese subjects dying intestate in British Guiana.

WE are honoured with your Lordship's commands, signified in Mr. Hammond's letter of the 5th April instant, stating that, with reference to our Report of the 11th February last,* he was directed to transmit to us a letter, dated March 20, which your Lordship caused to be addressed to the Colonial Office, together with the reply, dated March 31, received from that Department, respecting the administration of intestate estates in British Guiana, and to state to us that, before your Lordship pronounces any opinion on the proposed instructions to Governor Wodehouse, your Lordship would be glad to receive any further observations which we may have to offer on the subject.

In compliance with your Lordship's instructions we have taken this matter into consideration, and have the honour to report—

That we have read the despatch proposed to be sent by the Colonial Office to Governor Wodehouse, of which we entirely approve as very clearly and correctly expressing the opinions and recommendations contained in our former Report. No other observations have occurred to us.

We have, &c.
(Signed) J. D. HARDING.
RICHARD BETHELL.
WM. ATHERTON.

Inclosure 1 in No. 77.

Mr. Fortescue to Mr. Hammond.

Downing Street, March 31, 1861.

Sir,

I AM directed by the Duke of Newcastle to acknowledge your letter of the 20th instant, respecting the claims of the Portuguese Consuls to deal with the estates of Portuguese subjects dying intestate in British Guiana.

It appears from that letter that the proper disposal of the property of these persons, in the absence of heirs, depends upon their domicile—such property belonging to the British Crown if the Portuguese has acquired a domicile in British Guiana, but probably to the Portuguese Crown if he has not acquired such a domicile.

This distinction renders it impossible that the instructions sent out to British Guiana should be couched in the terms of my letter of the 12th November, in which Lord John Russell has expressed his concurrence.

The Duke of Newcastle, therefore, thinks it best to request Lord John Russell to peruse the inclosed draft of a despatch which his Grace proposes to address to the Governor of British Guiana, and to inform him whether the course there prescribed is in accordance with his Lordship's views.

I am, &c.
(Signed) C. FORTESCUE.

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* Page 22.

Inclosure 2 in No. 77.

Proposed Despatch to Governor Wodehouse.

Downing Street, , 1861.

Sir,

THE right of the Portuguese Consuls to take charge of the personal property of Portuguese subjects dying in British Guiana, which has formed the subject of several despatches addressed by you to this Department, has been brought under the notice of Her Majesty's Government by the Portuguese Minister in this country; and, after communication with the Secretary of State for Foreign Affairs, I have to give you the following instructions upon the subject:—

The question arises upon Article II of the Treaty of the 3rd July, 1842, which provides that the subjects of either of the Contracting Parties may dispose, by will, of their effects in the territories of the other, and that their heirs may succeed to those effects, "and may obtain possession of the same, in due course of law, either in person or by other persons appointed by them to act in their behalf."

"In the event of the absence of heirs," the Article proceeds, "or of persons duly appointed to act for them, the Consul may be authorized to take charge, in due course of law, of the said effects until the owner shall have made the necessary arrangements for obtaining possession of the property."

Disputes between different claimants are to be "decided by the Courts of the country in which the property is situated."

On the other hand, a Local Ordinance (No. 7 of 1851) provides that the Administrator-General shall take possession of the effects of any person dying intestate in British Guiana when the heir is unknown or absent from the Colony without an attorney or agent in the Colony to represent him (section 2, paragraphs 3 and 4), subject to a provision that the Administrator-General shall not give up possession of an estate which he considers insolvent, unless the person claiming it will give security for payment of the intestate's debts.

In virtue of Article II of the Treaty above quoted, the Portuguese Consul, acting under instructions from his Government, appears to have asked for a return of the Portuguese subjects dying in British Guiana, in order that the balances of their estates might be handed over to the proper authority in Lisbon. It appears that hitherto no such return has been furnished, and it is to be assumed that the unclaimed effects of deceased Portuguese, after satisfying the creditors, are paid over by the Administrator-General to the Receiver-General of British Guiana (Ordinance, Section 83), and after a lapse of ten years (Section 86) become the property of the Colony.

I do not consider that this mode of proceeding (if I have rightly apprehended it) is capable of satisfactory defence, since the effect must be to leave in the British Guiana Treasury the proceeds of property, the ownership of which might be ascertained if proper means were taken to discover it. Among the most obvious of such means (independently of any Treaty) is the communication to the Portuguese Consul of every information which would enable him to discover the heirs of his deceased countrymen. It is clear, then, that such information ought to be regularly and correctly given.

But, besides receiving such information, the Consul may, as I understand the Treaty, be authorized by his Government "to take charge, in due course of law, of the effects of the deceased person in the absence of the heirs, or of any person duly appointed to represent them." This clause does not appear to be intended to secure to the Portuguese Consuls the right of administering the estates of deceased Portuguese, but only of receiving for transmission to Portugal, or elsewhere, any balances of such estates which "in due course of law," and subject, therefore, to the rights of creditors and co-heirs, would be ultimately receivable by representatives of the deceased not resident in British Guiana. But this right presupposes the existence of such representatives. If no such representatives can be found, I am advised that the proper disposal of the property of the deceased person depends on his domicile. If he is domiciled in British Guiana his property (in the absence of creditors, heirs, and legatees) belongs to the British Crown, and may be disposed of according to the law of British Guiana. If, on the contrary, though resident in British Guiana, he retains his Portuguese domicile, his property (in the absence of creditors, heirs, and legatees) will be disposed of as provided by the law of Portugal in such cases. It may be assumed it would belong to the Portuguese Crown.

Under these circumstances, it appears to me the effects of a Portuguese dying intestate, and without heirs in the Colony, should, on grounds of general convenience, and may, consistently with the terms of the Treaty, be taken possession of in the first instance by the Administrator-General, as provided by law in the case of other persons so dying, that the claims of creditors upon the estate should, "in due course of law," be satisfied by him, and that proper steps should be taken by advertisement, by lapse of time, or other recognized methods, to give the heirs, if resident in British Guiana, the opportunity to come forward; and at the same time the Portuguese Consul ought to receive a notification of the death and intestacy, with the information most calculated to enable him to discover the parties entitled to the net assets, if not resident in British Guiana.

If an heir appears, and proves his claim, the property will of course be handed over to him, or to any "person duly appointed by him," or to the Consul, being authorized to claim, on behalf of the heir, by some special or general instruction of his own Government.

If no specific claim is established on the part of any heir, the residue (after satisfying the creditors) may be handed on to the Portuguese Consul, under the following circumstances:—

1. If the Portuguese subject retain his Portuguese domicile, in which case it is clear that the property must belong either to the Portuguese Crown, or to some representative of the deceased not resident in British Guiana.

2. If it be sufficiently shown that heirs exist elsewhere than in British Guiana, of whose interests (though their rights *inter se* remain a matter of dispute or inquiry) the Portuguese Consul is the legitimate guardian.

But if the deceased Portuguese is domiciled in British Guiana, and if the Portuguese Consul is unable to establish the fact that he has left heirs behind him, then the property will be retained by the Administrator-General, and be subject to the law of British Guiana like the property of a British subject dying under similar circumstances.

You will ascertain from the Attorney-General whether any alteration is necessary in the law of the Colony, in order to enable you to give effect to these instructions, and if this should be the case, will proceed, with his assistance, to frame such Legislative measures as may be required.

I have, &c.

No. 78.

The Queen's Advocate to Lord J. Russell.—(Received April 20.)

TURKEY.

Turkish blockade of coast of Albania.

My Lord, *Doctors' Commons, April 20, 1861.*

I AM honoured with your Lordship's commands, signified in Mr. Hammond's letter of the 18th April instant, stating that, with reference to my Report of the 10th April instant,* respecting the insufficiency of the information contained in M. Musurus' note of the 6th April, to enable me to draw up a notification of the blockade of the coast of Albania, he was directed to transmit to me the accompanying note from M. Musurus, containing further information on that subject, and to request that I would take the same into consideration, and if the information is sufficient, that I would draw up and transmit to your Lordship a notice of the said blockade, for publication in the "Gazette."

In obedience to your Lordship's commands, I have taken this subject into consideration, and have the honour to report—

That I have prepared and herewith transmit, a form of Notification for insertion in the "Gazette."

I assume, of course, that Her Majesty's Government is satisfied that such a state of armed insurrection or revolt against the Turkish Government exists in and throughout the coasts now blockaded, as to render the imposition of this blockade by the Turkish Government justifiable by the Law of Nations.

It will be the duty of the Turkish Government to provide forthwith a properly-constituted Prize Court at some convenient port, to hear and determine, according to the Law of Nations, all cases of capture for the breach of this blockade.

Possibly it may be advisable to call the attention of the Turkish Government to this point, and to request information thereon.

I have, &c.

(Signed) J. D. HARDING.

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[*] Pages 61 and 67.

Inclosure in No. 78.

*Draft Notification.**

Foreign Office, April , 1861.

IT is hereby notified that the Right Honourable Lord John Russell, Her Majesty's Principal Secretary of State for Foreign Affairs, has received from his Excellency *Musurus Bey*, the Ambassador of His Imperial Majesty *the Sultan*, an official communication, dated London the 18th April instant, informing his Lordship that the Imperial Government of the *Sultan* at Constantinople had received a telegraphic despatch from Dilaver Bey, commanding the Turkish naval forces charged with the blockade of the coast of Albania, announcing that on the 13th April instant he had, with the naval forces under his orders, established a blockade of the ports and of all the coasts of Albania, from Durazzo (which is included in the said blockade) to the Austrian frontier.

J. D. H.

[Qy. make the titles and designation correct.—J. D. H.]

[Qy. "the Emperor of the Ottomans?" make this correct.—J. D. H.]

Put the title of "Musurus" without "Monsieur" or "Bey."—R.

No. 79.

The Queen's Proctor to Mr. Hammond.—(Received April 20.)

BELGIUM.

Civil process in England against a Belgian vessel employed in the postal service.*

* See also pages 62 and 64.

Sir, *Doctors' Commons, April 20, 1861.*

I HAVE the honour to acknowledge the receipt of your letter of the 16th instant, transmitting to me copy of a note from the Belgian Minister, calling attention to the circumstances under which an Admiralty warrant had (as supposed) been issued for the arrest of the Belgian packet-boat "Rubis," pending the result of some legal proceedings taken against that vessel by the owners of the British vessel "Antagonist," stated to have been run down by the "Rubis."

You also inclosed a copy of a report which Her Majesty's Attorney and Solicitor-General had drawn up on this case, and stated you were directed by Lord John Russell to request that I would take immediate steps to obtain the release of the "Rubis" forthwith from the action of the Admiralty warrant.

In reply I beg to state, from inquiries I have made, it appears that an action has been entered in the High Court of Admiralty against the owners of the "Rubis" in the sum of 1,200*l.* in a cause of damage for having run down the British vessel "Antagonist," but the warrant has not been executed, and consequently the "Rubis" has not been detained.

I am informed by Messrs. Clarkson, the Proctors engaged for the "Antagonist," that instead of stopping the "Rubis" by executing the warrant, they thought it proper, as a matter of courtesy, to communicate with Mr. Latham, the Belgian Consul at Dover, and put him in possession of the facts of the case.

Mr. Latham in his reply states that the "Rubis" is a Belgian Government mail-packet running between Ostend and Dover, and that he had forwarded their communication to the Belgian Government, and that they should hear from him again on the subject, which they have not yet done.

Under these circumstances it appears to me that the High Court of Admiralty has no jurisdiction to try the case, unless with the consent of Her

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[*] Gazetted April 23, 1861.

Majesty's Government, acting on behalf of and with the consent of the Belgian Government, who, in the event of proceedings being taken, should indemnify Her Majesty's Government for the expenses incurred in trying the question.

If a good defence can be given to the action, the opinion of the High Court of Admiralty may easily be obtained in a short space of time and at a moderate expense; but I take the liberty of suggesting that as the owners of the "Antagonist" are only poor fishermen, and have nothing to depend on but their boat for the support of their wives and families, whether it would not be an act of grace on the part of the Belgian Government to pay their demand (about 800*l.*) without any legal proceedings.

I have, &c.
(Signed) F. H. DYKE.

No. 80.

The Law Officers of the Crown to Lord J. Russell.—(Received April 22.)

My Lord, *Doctors' Commons, April* 19, 1861.

SPAIN.

Disposal of slaves and crew of a slave-vessel wrecked on one of the Bahama cays.

WE are honoured with your Lordship's commands, signified in Lord Wodehouse's letter of the 14th March ultimo, stating that, with reference to our report of the 5th March ultimo,* upon certain questions arising out of the recent wreck of two slave vessels within British jurisdiction in the Bahama Islands, he was directed to transmit to us, together with the former papers, two further letters and their inclosures from the Colonial Office, reporting the proceedings of the Colonial authorities in regard to the disposal of the slaves and crew of the slave-vessel which was wrecked on one of the Bahama cays in the month of July last, and to request that we would take these papers into consideration, and report to your Lordship whether there is anything contained in them which would induce us, in any way, to alter the opinion expressed in our Report of the 5th March ultimo, or which calls for any special observations.

Lord Wodehouse was also pleased to request that we would report to your Lordship our opinion whether, with reference to the case of the slaves who were wrecked in December last on one of the Bahama cays, and subsequently transhipped to Cuba, Her Majesty's Government would be justified in requiring them to be liberated by the Spanish authorities.

We are also honoured with Lord Wodehouse's letter of the 26th March ultimo, transmitting a letter from the Colonial Office, inclosing copies of further despatches from the Governor of the Bahama Islands, containing information respecting proceedings connected with the wreck of the slave-vessel which took place on Cay Labos, one of the Bahama Cays, in the month of December last.

In compliance with your Lordship's instructions we have taken these papers into consideration, and have the honour to report—

That we find nothing in these papers to induce us to alter the opinion expressed by us in our Report of the 5th March ultimo.

Her Majesty's Government has acted in the whole matter under the advice of Mr. Rothery.

The prosecution against the crew of the wrecked slaver was abandoned, and the prisoners were discharged by the Governor under the advice of the Colonial Attorney-General, and probably in consequence of the communication to him of the opinion of Mr. Rothery, that a criminal offence had not been committed.

In the event of their being evidence of the crew of a slaver, afterwards found within British jurisdiction, having violated English law whilst voluntarily within British jurisdiction (as by navigating a slaver in British waters, or by detaining persons in slavery on British territory, on land, whether inhabited or not), it will be for the local authorities, under the advice of their Law Officers, to proceed cautiously to institute criminal proceedings against them, as pointed out in our Report of the 5th March.

The case of landing and transhipping slaves in British territory is obviously cognizable by British law. Even if after being wrecked on British territory the master and crew detained the slaves as slaves, we are of opinion that, upon sufficient proof, a conviction would not be a breach of international law. The nature of the proof, and the circumstances of the case, must be considered by the local Law Officers.

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* See Page 41.

The whole case points clearly to the urgent necessity for the immediate employment of an adequate British naval force in the waters of the Bahamas, and to the propriety of promptly and handsomely rewarding Pinder and the other British subjects concerned, for their conduct on this occasion. They will not, however, be entitled to bounty, as for capture at sea, or to a similar scale of reward.

The last question in Lord Wodehouse's letter must, in our opinion, be answered strictly in the negative. Her Majesty's Government has not, by the Treaty of June 28, 1835, or by international law, any strict right to require the liberation of the slaves in question.

A representation of the circumstances of the case may be made to the Spanish Government, and the punishment of the crew for violating the Spanish law by landing slaves in Cuba should be demanded, and the liberation of the slaves requested.

With reference to the additional papers transmitted with Lord Wodehouse's letter of the 26th March ultimo, we approve of the course adopted by the Attorney-General at Nassau, of having the materials of the wreck of the slaver "Atlantic" arrested as derelict property, with the view of subjecting the conduct of the wreckers, should they think fit to appear as claimants, to a judicial investigation.

Apart from this, we agree with the Attorney-General at Nassau that the existing evidence would not authorize any proceedings, criminally or otherwise, against either the wreckers or the light-house keepers, however strong our moral conviction may be of their complicity in the crimes of the captain and crew of the slaver.

If any sufficient evidence can, however, be procured, offering a reasonable probability of convicting any of the parties implicated in committing a felony (by landing and transhipping slaves) within British territorial limits, they should be arrested and prosecuted at Nassau: it will be for them to prove that they acted under "duress," and, if found guilty, the circumstances may be considered in mitigation of punishment.

We entirely concur with Governor Bayly's despatch (January 12, 1861; Inclosure No. 3 in Colonial Office letter of March 20, 1861), as to the necessity of giving prompt and liberal rewards to those British subjects who well deserve them by acting rightly under circumstances of strong temptation.

All the facts and particulars connected with the case of the United States' slaver "Atlantic" (managing owners, Abranches, Almeida, and Co., New York, 699 tons, pretending to be a whaler) should be communicated to the Government of the United States and to that of Spain, and the arrest and condign punishment of the guilty parties demanded.

We have, &c.
(Signed) J. D. HARDING.
RICHARD BETHELL.
WM. ATHERTON.

No. 81.

The Queen's Advocate to Lord J. Russell.—(Received April 25.)

My Lord, *Doctors' Commons, April* 24, 1861.

VENEZUELA.

Claim of Mr. Nevett for forcible seizure of his property by a party of insurgents.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 16th April instant, stating that, with reference to my Report of the 22nd March,* in conjunction with Her Majesty's Attorney and Solicitor-General, as to the responsibility of the Venezuelan Government for damage done to the property of foreigners by insurgents, he was directed to transmit to me a letter from Mr. Nevett, dated March 22, 1861, requesting that Her Majesty's Government will support his claim on the Venezuelan Government for the forcible seizure of his property by a party of insurgents; and to request that I would take this paper into consideration, and report to your Lordship my opinion whether there is any ground for the interference of Her Majesty's Government in this case.

In obedience to your Lordship's commands I have taken this paper into consideration, and have the honour to report—

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* The correct date is the 25th February; see page 32.

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That I know not to what Report of the Law Officers reference is intended to be made, unless it be to that of February 25, 1861, on losses sustained by British subjects in Venezuela by the acts of insurgents against the Government there. I am not aware of any Report dated the 22nd March, 1861.*

The Law Officers, in the above Report, stated (in accordance with my previous Report of September 8, 1860) that "the Venezuelan Government could not be held responsible, generally, for injuries inflicted on the property or persons of foreigners resident in the country by insurgents engaged in open and armed hostility to the Government, and which injuries the Government had not the power to prevent."

The effect of this opinion appears to me to be decidedly adverse to Mr. Nevett's claim to the interference of Her Majesty's Government in his favour in this particular case; but I am not sure that I understand his letter, which may be referred to Mr. Orme for determination, in accordance with the principle stated in the above Reports.

I have, &c.
(Signed) J. D. HARDING.

No. 82.

The Law Officers of the Crown to Lord J. Russell.—(Received April 26.)

MOROCCO.

Claims for losses sustained during the war between France and Morocco in 1844.

My Lord, *Doctors' Commons, April 22, 1861.*

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 4th April instant, stating that he was directed to transmit to me a despatch from Her Majesty's Minister in Morocco (No. 23), reporting that the French Government have obtained from the Moorish Government compensation for the losses which certain French subjects are declared to have sustained during the hostilities between France and Morocco in the year 1844; that Mr. Hay states that other foreign countries intend to advance the claims of their subjects on account of property pillaged by the wild tribes of Morocco in 1844, and he requests instructions for his guidance in the event of any similar claims being put forward by British subjects.

Mr. Hammond was also pleased to inclose, for my information, the correspondence which took place in the year 1844 with reference to the claims made at that time by certain British subjects on account of losses then sustained; and to request that I would take this question into consideration, and report to your Lordship my opinion as to the course which Her Majesty's Government should take in regard to it.

In obedience to your Lordship's commands I have taken this question into consideration, and have the honour to report—

That the matter is not at present in such a shape as to enable me to advise your Lordship on the course which Her Majesty's Government should pursue.

I observe that my predecessor reported his opinion on this subject on the 17th of September and the 6th of November, 1844; and that the Earl of Aberdeen, then Secretary of State for Foreign Affairs, adopted the opinion expressed by Sir John Dodson, and on the 16th November, 1844, officially instructed Mr. Drummond Hay "that Her Majesty's Government could not advance any claim against the Government of Morocco;" and that especially as regarded Mr. Willshire's losses at Mogadore, "it could not be questioned that the persons by whom the plunder was effected were quite beyond the control of the authorities of the Emperor of Morocco." I presume that the claimants acquiesced, or have, in fact, been silent ever since; and I am not aware of anything material having taken place from that time to the present.

Mr. Hay in his despatch No. 23 (11th March last) gives no new information bearing on the question, or tending to alter this decision of Her Majesty's Government, announced *recenti facto*, and adhered to for upwards of sixteen years.

The circumstance stated by him, that the French Government (which was at war with Morocco in 1844) has recently received a considerable sum on account of losses then suffered by French subjects is by no means conclusive; *non constat* how these losses were sustained, or on what terms, or by what international agreement they have now been compensated: at all events, this was a matter arising *inter belligerentes*, and does not directly bear upon neutral claims. It does not appear that any other Government has as yet sustained, or even formally made, any claim in respect of these losses.

Mr. Hay merely adds, that some of the other Foreign Agents at Tangier intend also to put forward the claims of their subjects whose property was pillaged by the wild tribes during the war of 1844; he does not say whether any such claims were originally advanced in or soon after 1844, and with what result; nor does he give any further particulars, or any intimation as to the course which the Government of Morocco is likely to take, nor suggest any special reason for the intervention of Her Majesty's Government.

It is obvious, therefore, that this is one of that class of cases in which instructions are requested without any adequate materials for such instructions being supplied.

It remains to be seen whether what may hereafter ensue will induce Her Majesty's Government to take any and what steps in a matter on which it has already expressed a strong opinion, and on which all the British claimants are apparently silent: but I cannot at present, and as the case actually stands, see the slightest reason for any interference on the part of Her Majesty's Government.

I have, &c.
(Signed) J. D. HARDING.

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* See Page 54 (TURKEY).

No. 83.

The Law Officers of the Crown to Lord J. Russell.—(Received April 26.)

NETHERLANDS.

Sale, by British subjects, of estates at Surinam with slaves attached.

My Lord, *Doctors' Commons, April 25, 1861.*

WE are honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 16th April instant, stating that with reference to his letter of the 27th February last, inclosing a despatch from Her Majesty's Consul at Surinam, reporting the contemplated sale by British subjects in that island of three estates with slaves attached, he was directed to transmit to us a further despatch from Mr. Munro (No. 4, March 19, 1861), reporting the transfer of Mr. Macdonald Parry's half-share of Plantations Alkmaar and Fredericksdorp, with all the slaves attached, to Mr. Barnett Lyon.

In compliance with your Lordship's instructions we have taken this matter into consideration, and have the honour to report—

That the Consul merely transmits a copy of a newspaper, containing an advertisement of the transfer of a certain share of a plantation in Surinam, "with all attached."

There is no Report or statement of facts tending to show that, as a matter of fact, any British subject has violated the English law.

We can only refer to our Report of the 7th November, 1860, and point out the necessity of a more explicit communication from the Consul.

We have, &c.
(Signed) J. D. HARDING.
RICHARD BETHELL.
WM. ATHERTON.

No. 84.

The Law Officers of the Crown to Lord J. Russell.—(Received April 26.)

TURKEY.

Complaint of Mrs. Parry against Mr. Hornby *in re* Crawford *v.* Parry.

My Lord, *Doctors' Commons, April 25, 1861.*

WE have the honour to acknowledge the receipt of Mr. Hammond's letter of the 12th instant, containing observations on the Report we had the honour of making to your Lordship on the 7th ultimo,* on the complaint made by Mrs. Parry against Mr. Hornby, the Chief Judge at Constantinople, and the letter of explanation addressed by Mr. Hornby to your Lordship.

In the observations which we felt it our duty to make on Mr. Hornby's conduct, *and the language of his letter*, we were by no means forgetful of the

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* Page 46.

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13th section of the Order in Council, 1857 (now revoked), or of the correspondent sections in the Order of August 27, 1861.

We prepared those Orders, and are well aware of their spirit and effect.

They were intended to empower and exhort the Judge to be zealous in discharging one of the highest judicial duties, namely, to promote reconciliation and mutual agreement between parties litigant in his Court.

But we entirely dissent from the conclusion that, having regard to these orders, the Chief Judge at Constantinople may with propriety act as the private adviser of parties in business transactions.

Suppose two persons in England engage in a treaty (as in the present case), the one to buy and the other to sell an estate; would they think of resorting to one of the Judges of Westminster Hall to settle their contract? and if a Judge entertained such an application, performing duties usually discharged by Counsel and Solicitors, and a legal dispute afterwards arose between the parties, would he feel himself qualified to sit as a Judge to decide the cause?

The Judges of Westminster Hall constantly abstain from taking any part in the decision of matters in which they have acted as Counsel.

For the mind of a Judge should be entirely free from any antecedent impression, and influenced solely by the evidence in the cause; but this cannot be the case where the Judge has had previous communications with the parties.

This cause of Crawford *v.* Parry has been heard and decided by Mr. Legal Vice-Consul Wroth, sitting for Mr. Hornby; but any further proceeding in the cause would come before Mr. Hornby. Can any man read Mr. Hornby's letter to your Lordship, and say that he could, with propriety, sit as a Judge between these parties?

We must, therefore, in the strongest manner, but with great respect to your Lordship, express our dissent from any interpretation of the Orders in Council, or any opinion, that would extend to the Chief Judge of the Supreme Court at Constantinople a latitude of action which would be disapproved of in a Judge at home.

We beg to refer to section 5 of the Order in Council of August 27, 1860.

We desire that the rules of conduct deemed essential for the purity of the administration of justice in England should be required to be observed abroad; and from our official experience (now, in the case of two of us, extending over several years) we are daily more and more convinced that the administration of justice in the East requires the most severe and vigilant superintendence. We wrote our former Report under the influence of these general considerations, but as we can have no feeling but that of entire goodwill to Mr. Hornby, we most gladly adopt your Lordship's suggestion as to the omission of the latter part of that Report.

We therefore beg leave, in accordance with the suggestion contained in Mr. Hammond's letter of March 12, to send your Lordship another Report, containing merely the first three paragraphs of our Report of March 7, and we may be permitted to add that it will afford us sincere pleasure if your Lordship shall receive from Mr. Hornby a most satisfactory explanation.

We have, &c.
(Signed) J. D. HARDING.
RICHARD BETHELL.
WM. ATHERTON.

Inclosure in No. 84.

Report from the Law Officers, to be substituted for their Report dated March 7, 1861, printed at page 46.

Doctors' Commons, April 25, 1861.

My Lord,

WE were honoured with your Lordship's commands signified in Mr. Hammond's letter of the 23rd of February last, stating that he was directed to transmit to us a letter which your Lordship had received from Mrs. Parry, dated February 2, complaining of the conduct of Mr. Hornby, the Judge in the Supreme Consular Court at Constantinople, in the case of her husband, who had been arrested at the suit of Mr. James Crawford, for the non-payment of a sum

of money which Mr. Crawford had expended in repairing certain buildings on a farm belonging to Mr. Parry, of which he had taken a lease, and which sum had been decided to be due to Mr. Crawford by a sentence of the Supreme Consular Court.

Mr. Hammond also transmitted a despatch from Mr. Hornby (No. 12), explaining the course pursued by him with regard to this matter, and was pleased to request that we would favour your Lordship with our opinion upon this case.

In obedience to your Lordship's commands we have carefully considered the above-mentioned papers, and have the honour to report—

That we think it right that a copy of Mrs. Parry's letter be immediately transmitted to Mr. Hornby, and that he be requested to give specific answers to the statements therein.

We also recommend that Mr. Legal Vice-Consul Wroth be desired to transmit a copy of his notes, taken on the trial of Crawford *v.* Parry, and to report to your Lordship his opinion on the case.

There certainly appears to us to be matter in this case which demands the most serious inquiry.

We have, &c.
(Signed) J. D. HARDING.
RICHARD BETHELL.
WM. ATHERTON.

No. 85.

The Law Officers of the Crown to Lord J. Russell.—(Received April 26.)

Doctors' Commons, April 26, 1861.

My Lord,

JAPAN.

Trial of Mr. Moss in the Consular Court at Kanagawa for going out shooting, and for assaulting and wounding a Japanese officer sent to apprehend him.

WE were honoured with your Lordship's commands signified in Mr. Hammond's letter of the 22nd of March last, in which he stated that he was directed by you to transmit to us certain papers therein mentioned respecting the case of Mr. Moss,* a British subject, who had been tried, in the British Consular Court at Kanagawa, in Japan, on a charge of going out shooting, contrary to the laws of Japan, and of assaulting and wounding a Japanese officer sent to apprehend him.

Mr. Hammond informs us that the defendant was sentenced by the Consul to deportation from the country, and to a fine of 1,000 dollars, which sentence was confirmed by the Consul-General at Yeddo, who, however, further adjudged the prisoner to be imprisoned for three months at Hong Kong.

Mr. Hammond was pleased to request that we would take this case into our consideration, and favour your Lordship with such observations as we may have to offer thereupon; and added, for our information, with reference to the subsequent release of Mr. Moss from prison (on the ground that the Order in Council of January 23, 1860, was not in force in the Colony of Hong Kong), that it has been ascertained that, through an oversight on the part of the Council Office, that Order was not at the time communicated to the Colonial Department.

We were further honoured with a letter from Mr. Hammond of the 25th of March last, stating that the point raised in the correspondence of the Governor of Hong Kong in regard to the Letters-Patent by which the Supreme Court in that Colony is empowered to take cognizance of questions arising out of the Japanese Order in Council, will in the first instance be considered by the Duke of Newcastle, and that our attention need not be directed to that point, but merely to the special case of Mr. Moss; and when that is disposed of, the correspondence of the British Consul at Kanagawa with the British Residents at that place.

In obedience to your Lordship's commands, we have carefully considered the whole of the papers transmitted to us for our consideration, and have the honour to report that—

1. As to the trial of Mr. Moss, we think that there was evidence to warrant

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* Mr. Salomons, February 15, 1861; Ditto, February 17, 1861; Mr. Alcock, No. 81, 1861; Colonial Office, March 21, 1861; to Mr. Salomons, February 23, 1861; to Mr. Alcock, February 23, 1861.

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the finding of these two facts—first, that Mr. Moss had gone out shooting; and secondly, that, returning from his sport, being assailed by certain Japanese, his gun was discharged by him, and an officer of the Tycoon seriously wounded.

It was, however, a very inexpedient course to make these two matters (so widely different in their nature and gravity), the subject of one conjoint accusation. With respect to these two acts, we are of opinion that the mere act of "going out shooting" by a British subject in Japan, was not an offence cognizable by the Consular Court there; for, with the exceptions mentioned in the 30th section of the Order in Council of the 23rd January, 1860 (and no one of which applies to the present case), those acts alone are to constitute crimes when committed by British subjects in Japan, which, if done in England, would have been punishable as crimes by Courts having criminal jurisdiction at home. But the mere act of going out with the appliances and for the purpose of shooting, is not a crime in England; nor can a violation of the game laws in England, by shooting game without a license, be regarded as a crime in the sense of that word as used in the Order in Council.

It is true that the act of going out shooting with fire-arms is a violation of the Japanese municipal law; and in our opinion the Consul might and ought to have availed himself of his power, under the 4th and 5th sections of the Order in Council, to make and publish "Rules and regulations for the peace, order, and good government of Her Majesty's subjects being within the dominions of the Tycoon of Japan;" and such rules, &c., might very properly have included a prohibition against shooting, carrying fire-arms on the person, and other dangerous or inconvenient violations of the municipal law of the place, provided that such law was not in itself either unjust or unreasonable.

Rules and regulations should, without delay, be framed and published, on full and careful consideration of the requirements of the case.

The Notification of the 4th November, 1859, was issued previous to the date of the alleged offence; but it is not a "rule or regulation," enforceable by "fine or imprisonment," within Article IV of the Order in Council.

The further and more serious charge against Mr. Moss, which was entertained by the Consul, that of wounding the officer of the Tycoon, and shooting at him with intent to do him grievously bodily harm, proceeded on the assumption that the officer was, when wounded, engaged in a lawful attempt to apprehend a criminal. But Mr. Moss having, as we have pointed out, committed no act which, according to the terms of the Treaty and of the Order in Council, was criminal in him, the Japanese officer had no legal authority to apprehend Mr. Moss; and the latter was, according to English law, justified in resisting the attempt to arrest him, and was not, at all events, guilty of the aggravated assault and wounding with which he was charged.

2. As to the sentence on Mr. Moss.

The sentence pronounced by Mr. Consul Vyse appears to us to have been a legal sentence, under sections 20 and 26 of the Order in Council, assuming the conviction to have been proper; except that we think he had no power to include "costs" as part of the sentence.

We are further of opinion that the Consul-General had no power, under the 30th section, to couple imprisonment, as a part of Mr. Moss's punishment, with the fine of 1,000 dollars. His power to "vary" the punishment awarded by the Consul cannot, we think, extend to exceed the maximum punishment which it is in the power of the subordinate Consular officer to inflict, namely, imprisonment for twelve months, or a fine of 1,000 dollars.

3. As to the Letters-Patent, dated the 30th January, 1860.

The error pointed out in the letter of Chief Justice Adams, of January 31, 1861, ought, we think, to be corrected without delay; and we have no doubt that this will receive the prompt attention of Her Majesty's Government.

4. With respect to the correspondence between Consul Vyse and the British residents, it proves the urgent necessity of a well-considered Code of Rules and Regulations, by which a breach of such Japanese laws and usages as are reasonable in themselves should be made punishable to a moderate extent, and in express and appropriate legal terms, by the Consul. Until such a code is published, mere breaches of Japanese laws or customs, however calculated to produce collision or mischief, will not be, *ipso facto*, offences for which Her Majesty's subjects can be punished.

We invite attention to the barbarous treatment of Mr. Moss by the Japanese officers, and to the necessity of a stipulation that any British subject arrested by Japanese authority should be immediately brought and delivered to the custody of the Consul.

We have, &c.
(Signed) J. D. HARDING.
RICHARD BETHELL.
WM. ATHERTON.

No. 86.

The Queen's Advocate to Lord J. Russell.—(*Received April* 29.)

Doctors' Commons, April 27, 1861.

SPAIN.

Sale of the cargo of the "Mio Zio" at Port Mahon.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 24th April instant, stating that with reference to my Report of the 14th of February last,* respecting the case of the "Mio Zio," he was directed to transmit to me, together with the previous papers, a letter from Mr. Blake, dated the 23rd of April, 1861, stating the present circumstances of this case, and requesting the interference of Her Majesty's Government in order to prevent the sale of the cargo; and to request that I would report to your Lordship my opinion as to the course which Her Majesty's Government should pursue.

I am also honoured with Mr. Hammond's letter of the 25th April instant, transmitting a further despatch from Her Majesty's Consul at Mahon.

In obedience to your Lordship's commands I have taken this subject into consideration, and have the honour to report—

That it appears from Consul Peel's No. 8 (20th April) that the Superior Court at Palma has confirmed the judgment of the Inferior Court at Port Mahon, to the effect that "the maize is unfit for shipment," and the owners intend appealing from Palma to Madrid.

Under these circumstances, and pending such appeal, I cannot advise your Lordship to interfere to prevent the sale of the cargo: possibly the appeal to Madrid may prevent this sale; but if the sale takes place, the Consul may be instructed to secure the clearest evidence as to the condition of the maize being perfectly fit for shipment, with a view to ulterior measures.

The case should be recommended to the special attention of the Legation at Madrid, to which the Consul's Report of the 25th of February should be transmitted; and although Her Majesty's Government cannot technically appear or intervene in the suit, the Legation should cause the case to be carefully watched; and when it is decided, should furnish a clear business-like Report (with Spanish legal assistance if requisite),—

1st. Of the circumstances and merits of the case of the cargo of the "Mio Zio."

2ndly. Of the operation of the system of law and procedure under which this particular species of fraud is carried out.

3rdly. Of the best and easiest reform or remedy which may be applicable thereto, with a view to a friendly representation to the Spanish Government.

On the subject of the refusal of Her Majesty's Government to interfere in this particular case, I must observe that the "Mio Zio" is a Roman vessel; that Mr. Robinson (the British owner of the cargo) did not apparently acquire it until after the commencement of the voyage, by purchase from a Greek firm in England (the original consignees); that the owner, by his British agent, litigated and appealed the case, and acted contrary to the advice of the British Consul at Port Mahon, who suggested an application to the Military Governor (an officer who in Spain, as "Captain-General," has a peculiar jurisdiction over all foreigners). Under such circumstances the impropriety and inutility of any official intervention of Her Majesty's Government *pendente lite*, in order to prevent the carrying out of a decree or order of a Spanish Court, such as is suggested by Mr. Blake in his letter of the 23rd April, will be apparent.

I have, &c.
(Signed) J. D. HARDING.

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No. 87.

The Queen's Advocate to Lord J. Russell.—(Received April 30.)

DOMINICA.

Non-validity of marriage by civil contract without performance of religious ceremony.

My Lord, *Doctors' Commons, April* 29, 1861.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 12th April instant, stating that he was directed to transmit to me a despatch from Her Majesty's Consul at Santo Domingo (No. 8), inclosing a Decree issued by General Santana, directing that no marriage by civil contract shall be considered valid without the performance of the religious ceremony.

Mr. Hammond was also pleased to state, that as Mr. Hood anticipates that this Decree is likely to interfere with the rights and privileges of British subjects, he was to request that I would take the same into consideration, and report to your Lordship my opinion as to the instructions which should be addressed to Mr. Hood upon the subject.

In obedience to your Lordship's commands I have taken this subject into consideration, and have the honour to report—

That I must observe, that the portion of the Dominican Republic which was under the control of General Santana has, I believe, been recently delivered up to Spain; and that this matter may thus, at present, be subject to special considerations in relation thereto.

Subject to this remark, I can only say that several different questions arise upon this Decree, as to which I must request further and more specific information before I can advise Her Majesty's Government what course to adopt:—

1st. I observe that the question of the legal or constitutional power of General Santana to alter the law of the Republic by a Decree made by virtue of his own sole authority seems open to some doubt, and this point must be cleared up.

2ndly. A copy of the Decree of the 15th July, 1848, referred to in Article I of the above Decree (January 19, 1861), should be furnished, with explanations.

3rdly. There is no explicit statement from the Consul of the authority upon which, or mode in which, the validity of marriages in the Republic by civil contract, even where both parties were Roman Catholics, or one party only was a Roman Catholic, and where both were natives or citizens, or where one or both were British subjects or foreigners, was legally secured or admitted before the Decree; nor is the form of such recognized civil contract indicated. This portion of the Consul's letter evidently requires, on the face of it, further elucidation.

4thly. The Decree does not, in my opinion, constitute a breach of the Treaty. I am at a loss to understand how the right of marrying by civil contract can be considered as included in Article VIII of the Treaty of 1850. It is only in very modern times that any such right has been established (by statute altering the common law) in England.

5thly. The principal question is, the state of the law as to the validity of marriages by civil contract in the Republic of Dominica, especially as applicable to British subjects, previous to the Decree, and the consequent extent and effect thereupon of the alteration thereby made. I must observe that, in the abstract, there is nothing contrary to reason, or to international comity or usage, in the law of a Roman Catholic country refusing to recognize any other than a regular Roman Catholic marriage where either spouse is a Roman Catholic.

As at present advised, I confess that I cannot see any solid or sufficient ground for the intervention of Her Majesty's Government. If, however, the practical operation of the Decree will be retrospective, or otherwise so seriously oppressive to Her Majesty's subjects as to call for interference, this may alter my opinion.

I would suggest that, if Consul Hood thinks it necessary or desirable, he should obtain the most competent legal assistance in furnishing the necessary information, first, as to the state of the law previously to, or independently of, the Decree; secondly, as to the validity and operation of the Decree; thirdly, as to the practical effect thereof, more especially in cases where one or both the spouses are British subjects, and may have celebrated a British Consular marriage in the Republic; lastly, it is possible that there may be other Powers interested in this question (such, for instance, as the United States, Prussia, and Holland), who may have Representatives in the Republic. The Consul should, in this event, ascertain and state the view taken of this Decree by such Representatives.

I have, &c.
(Signed) J. D. HARDING.

No. 88.

The Law Officers of the Crown to Lord J. Russell.—(Received May 4.)

CANADA.

Apprehension of fugitive offenders in foreign countries.

My Lord, *Doctors' Commons, April* 30, 1861.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 6th April instant, stating that he was directed to transmit to us the accompanying letter from the Colonial Office, dated March 28, 1861, inclosing an Act passed by the Legislature of Canada, entitled "An Act respecting the 96th Chapter of the Consolidated Statutes of Upper Canada, respecting the Apprehension of Fugitive Offenders in Foreign Countries;" and to request that we would take this paper into consideration, and report to your Lordship our opinion whether there is any objection to leaving this Act to its operation.

In compliance with your Lordship's instructions we have taken this subject into consideration, and have the honour to report—

That, in our opinion, there is nothing contrary to law or justice in the Act passed by the Legislature of Canada, and to which our attention has been directed by Mr. Hammond's letter; and we, therefore, see no objection to leaving it to its operation.

We have, &c.
(Signed) J. D. HARDING.
RICHARD BETHELL.
WM. ATHERTON.

No. 89.

The Queen's Advocate to Lord J. Russell.—(Received May 4.)

MOROCCO.

Spanish Consular jurisdiction in Morocco.

My Lord, *Doctors' Commons, May* 1, 1861.

WITH reference to Mr. Hammond's letter of the 29th April ultimo, on the subject of Spanish Consular jurisdiction in Morocco, I desire to point out—

1. The note of Señor Collantes to Sir A. Buchanan, dated April 1, 1861 (Inclosure No. 2 in No. 137), alludes to a note of Sir A. Buchanan, "dated 6th October last." This is, I presume, an error for "6th September" last, and alludes to the note from Mr. Edwards to Señor Collantes, dated 6th September (Inclosure in Mr. Edwards' No. 122); if not, I request further information.

2. The last-mentioned note of Señor Collantes (1st April, 1861) alludes to a note of Sir A. Buchanan's of the 29th March, 1860, which *latter* note I cannot find, and with which I must request to be supplied.

3. Draft No. 43 to Mr. Edwards refers to a despatch, No. 283, from Sir A. Buchanan of May 20, 1860, which is stated to have contained Señor Collantes' "reply" to certain representations of Sir A. Buchanan; I cannot find either No. 283 or Señor Collantes' *reply* (not dated or numbered).

I have therefore returned these papers, and must request to have the various official communications which have passed directly between the Government of Spain and that of Her Majesty, placed together in one bundle, and in a consecutive series; as, until this is done, it is impossible to ascertain the precise state and position of this international controversy.

I have, &c.
(Signed) J. D. HARDING.

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No. 90.

The Queen's Advocate to Lord J. Russell.—(*Received May* 4.)

My Lord, *Doctors' Commons, May* 1, 1861.

MOSQUITO.

Mosquito land claims.*

* See also page 65.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 13th April ultimo, stating that various subjects of Her Majesty assume to have claims to land formerly and now in the occupation of the Mosquito Indians; and that the nature of those claims is explained in a Report of the Attorney and Solicitor-General, dated November 24, 1851, and in a Report presented to the Secretary of State in the year 1849, by two gentlemen who had been appointed to inquire into them; copies of these papers were inclosed.*

Mr. Hammond was also pleased to state, that under the Treaties with Honduras and Nicaragua, those claims, instead of being, as formerly, to be preferred against the Mosquito Ruler alone, are now to be preferred severally, in certain proportions, against the Governments of the two Republics and the Mosquito Ruler.

That the time having arrived for making arrangements for deciding upon these claims, your Lordship has caused to be prepared drafts of instructions to Mr. Green, Her Majesty's Consul at Greytown, with reference to the claims on Nicaragua and the Mosquito King, and that your Lordship has already desired Her Majesty's Consul at Comayagua to make a communication to the Government of Honduras on the subject.

Mr. Hammond was also pleased to state that your Lordship considers that some notice of the intention to proceed to the examination of the claims should be inserted in the "London Gazette," and that drafts of such notices have been prepared accordingly.

Mr. Hammond was also pleased to state, that in transmitting to me these drafts, he was to request that I would take them into consideration, and report my opinion on the course which it is proposed to pursue, and on the manner in which it is proposed that public notice should be given of the intended course.

In obedience to your Lordship's commands I have taken this matter into consideration, and have the honour to report—

That I beg to refer to my Report of April 16th ultimo on a portion of this subject. With reference to that portion of the papers which relates to the "Mosquito reserve," or territory of the Mosquito Ruler or King, I observe that Article I of the Treaty with Nicaragua, January 28, 1860, "recognizes as belonging to and under the sovereignty of the Republic of Nicaragua, the country hitherto occupied or claimed by the Mosquito Indians within the frontier of that Republic," whatever that frontier may be; and Her Majesty stipulates that "the British Protectorate of that part of the Mosquito territory shall cease three months after the exchange of the ratifications of the Treaty."

Article II stipulates that a district within the territory of the Republic of Nicaragua shall be assigned to the Mosquito Indians, "which district shall remain, as above stipulated, under the sovereignty of the Republic of Nicaragua." The district is then defined; and it is further stipulated that "it may not be ceded by the Indians to any foreign person or State, but shall be and remain under the sovereignty of the Republic of Nicaragua."

Articles III, IV (as to future "absolute incorporation" of the Mosquito Indians with the Republic), V, VI, VIII, and IX of the Treaty, are also deserving of consideration.

By this Treaty the King of Mosquito has become (as it would be called in Germany) "mediatized;" his sovereignty is abolished; the "Mosquito reserve" seems to be placed almost in the position of private property, as regards foreign Governments. Not only can it not be ceded to any foreign person, but it is to remain under the "sovereignty of the Republic of Nicaragua;" and by Article IV the Indians and their "reserve" may at any time agree to absolute incorporation into the Republic on the same footing as other citizens of the Republic, subjecting themselves to be governed by the general law and regulations of the Republic;" including those as to land, even *quoad* "the Mosquito reserve."

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* Mr. Green, No. 5, January 31, 1861; Ditto, No. 6, February 1, 1861; Ditto, No. 7, February 1, 1861.

Under these circumstances, even if no steps towards incorporation have been taken, the Republic probably looks to such incorporation, and may be considered to have acquired a species of vested or inchoate interest or right in the reserve, over which she has the legal and actual sovereignty. She will probably claim to ratify and confirm any grants of land, or other public acts of the King or Chiefs, or the Indians, who will probably, not of themselves, independently of her, have the means or machinery necessary for carrying out any important or binding obligations, either with Her Majesty's Government, or with British subjects, especially as to land claims. The position of all parties is, at all events, somewhat peculiar; and it will probably be of little avail for Her Majesty's Government to settle these claims on the Mosquito reserve separately, as between Her Majesty and the Mosquito Ruler, unless the cordial concurrence of Nicaragua, and her formal and binding assent both to such settlement and to the subsequently carrying it into full effect, can be ensured.

Mr. Green, at page 7 in No. 6 (February 1, 1861), adverts to this difficulty; he proposes in that despatch, as I understand it, the payment of a pecuniary compensation to the *bonâ fide* grantees of land in the Mosquito reserve, to be secured as therein pointed out; but it is obvious (as is remarked by Mr. Hammond, in his draft to the Consul), that this mode of settlement would not provide for the "quieting of titles" in the case of existing *bonâ fide* grants of land, now occupied under such grants (if there be any such), nor can I see the justice of compelling such grantees (in effect) to cede their lands in consideration of a money payment.

I observe, moreover, from Consul Green's despatch No. 6, that the total value of claims against the Mosquito Indians cannot exceed 10,000*l.* sterling.

Under these circumstances, therefore, I am not satisfied of the expediency of now treating the Mosquito Chief (in effect) as a Sovereign Power, and putting him on the same footing in this matter as the Republic of Nicaragua, by enabling him to name a Commissioner, Arbitrator, and so forth, which seems to me scarcely necessary under the circumstances.

The settlement of the claims against Nicaragua and Honduras may probably (in effect) dispose of some of the claims against the Mosquito reserve, which may depend on the same original grant or title; if this is probable, Her Majesty's Government should wait for such settlement, before entering upon the claims against the reserve *separately*.

If this is not so, it would seem to me that an advertisement might be issued for all claimants to lands within the reserve to send in their claims to Her Majesty's Consulate at Greytown before a particular date; and that, when Her Majesty's Government was thus in possession of the number, extent, and nature of those claims, it might deal with their settlement according to circumstances, with Nicaragua, or with the Mosquito Chief, and possibly, without all the formalities of a Convention, Arbitrator, Umpire, and so forth.

Thus Her Majesty's Government may, first, satisfy itself of the validity and amount of the claims against the reserve, applying to the King or Chiefs for any information it may require, without making him or them formal parties to a compact, and may then act according to circumstances, so as to secure a satisfactory arrangement.

Upon this subject, therefore, I have abstained from settling the drafts, and I have the honour to await your Lordship's further instructions.

I have, &c.
(Signed) J. D. HARDING.

No. 91.

The Law Officers of the Crown to Lord J. Russell.—(*Received May* 6.)

My Lord, *Doctors' Commons, May* 4, 1861.

BELGIUM.

Civil process in England against a Belgian vessel employed in the postal service.*

* See also pages 62, 64, 73.

WE are honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 26th April ultimo, in which he stated that, with reference to the opinion given by two of us on the case of the Belgian vessel "Rubis" as submitted by the Secretary to the Treasury, he was directed by your Lordship to transmit to us a note from the Belgian Minister at this Court giving the particulars as to the national character of the "Rubis," which were requested

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by your Lordship in the note of which a draft is inclosed; and to request that we would take these papers into our consideration, together with the case herewith returned, and that we would acquaint your Lordship, at our earliest convenience, with our opinion whether the information now furnished by M. Van de Weyer does not show that the "Rubis" is entitled to be treated as a man-of-war, and is therefore exempt from the jurisdiction of the Admiralty Court.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we are of opinion that the information furnished by M. Van de Weyer shows that the "Rubis" is clearly entitled to be treated as a Belgian man-of-war, and that she is exempt from the jurisdiction of the Admiralty Court.

We have, &c.
(Signed). J. D. HARDING.
RICHARD BETHELL.
WM. ATHERTON.

No. 92.

The Queen's Advocate to Lord J. Russell.—(*Received May* 7.)

Doctors' Commons, May 6, 1861.

ARGENTINE CONFEDERATION.

Tax levied at Panamá and at Colon on agencies of the Royal Mail Steam-Packet Company.

My Lord,

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 18th of April ultimo, stating that he was directed to transmit to me a despatch from Her Majesty's Consul at Panamá (No. 9, March 2), respecting the tax which has been levied by the Government of the State of Panamá on the Agencies of the Royal Mail Steam-Packet Company at that place and at Colon; and to request that I would take into consideration the circumstances of this case, and report to your Lordship my opinion whether Her Majesty's Government would be justified in interfering in this matter.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I cannot, on the face of this "Statement," see anything to call for, or to justify, the interference of Her Majesty's Government.

The subject of this tax would seem to have been previously submitted to the consideration of Her Majesty's Government (although this circumstance is not alluded to in the Statement), and the Company in question has never yet supplied the necessary information to enable Her Majesty's Government to understand the grounds of its claim to exemption. I beg to refer to my Reports of December 13, 1856, February 3 and March 27, 1857, from which this is apparent.

I do not even now understand whether this Statement is drawn up by the Consul as a Report, pursuant to his instructions, or whether, although transmitted by the Consul, it is, in fact, supplied by an agent of the Company: this should be explained.

I cannot, however, see that the Statement establishes any case for the intervention of Her Majesty's Government. It appears that a similar tax to that now in question has been imposed and paid since 1850, and that this particular tax has been in operation since 1857.

I am not aware, and it is not stated, that any other person, or firm, or Company in Panamá, save only the Royal Mail Steam-Packet Company, has hitherto complained of its illegality; and I must observe that the Company, which is an English Joint Stock Company, with (I presume) a Board of Directors in London, is perfectly able to state and to support its own case, which it evinces a somewhat singular reluctance to do.

I cannot discover from the extract of the Law of 1857, or the other papers annexed to the Statement, any clear grounds for exemption. The Company seems to be included under the words, "Companies of Navigation or their Agencies;" and there is not even a legal opinion produced to the effect that it is not so included, or is exempt, or that the tax is illegal as not being one which the State of Panamá (as distinct from the Federal Government) is competent to impose, although this is suggested. I can discover no trace of the Company having, in its own character, and on its own behalf, ever hitherto formally and directly raised the point with the local authorities, as by legal proceedings, formal appeal, or otherwise; and under these circumstances, I can see no ground for official intervention.

I have, &c.
(Signed) J. D. HARDING.

No. 93.

The Queen's Advocate to Lord J. Russell.—(*Received May* 7.)

Doctors' Commons, May 6, 1861.

NEW GRANADA.

Liability of importers to pay over again to Central Government duties already collected by the *de facto* Government.

My Lord,

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 18th April ultimo, stating that he was directed to transmit to me a despatch from the Acting British Consul at Carthagena, New Granada, inclosing a Decree issued by the *de facto* Government at that place, declaring certain ports, which the Central Government had ordered to be closed, to be open to commerce, and inquiring whether, in the event of the re-establishment of the authority of the Central Government, importers would be liable to be called upon by the Central Government to pay over again the amount of duties already collected by the *de facto* authorities.

Lord Wodehouse was also pleased to inclose, for my information, a copy of a note from Judge Black to Her Majesty's Minister at Washington, stating the opinion of the United States' Government with regard to a similar question, which might arise from the present state of affairs in South Carolina; and to request that I would inform your Lordship what answer should, in my opinion, be returned to Mr. Druce's despatch.

In obedience to your Lordship's commands I have taken this matter into consideration, and have the honour to report—

That as to the question affecting the ports of New Granada, I can only refer to my Reports of November 21, 1859, and May 18 and November 22, 1860, upon this subject: and I must repeat, that being still without any sort of explanation or statement of facts (for which I have so often applied), I cannot offer an opinion, more especially in the absence of any particular case, in which any intelligible point of law or fact is specifically raised. I beg to refer especially to the conclusion of my Report of November 22, 1860. If Her Majesty's Legations and Consulates in South America will not supply the necessary information in such cases as this, they must be left without instructions until they do supply it, or until a case arises in which it is supplied from some other quarter.

In the present case, for instance, Her Majesty's Government seems to have been left uninformed as to the facts, dates, and so forth, for upwards of eighteen months; Consul Druce's despatch of the 4th March last is (by itself) quite unintelligible to me; the ports in question have not (as I understand the facts) ever been blockaded or actually "closed," but have been long occupied by the insurgents, and have always, in such occupation, remained open to commerce, and, I presume, upon payment of the regularly established duties; how, therefore, they have been "closed" by the Central Government (except upon paper), or "*re-opened* by the rebel Chief Mosquera," when never closed by him, or what practical effect upon British interests, and upon the payment of duties, this (so-called) "closing" or "re-opening" has actually produced, is left in perfect obscurity; no application whatsoever from any British subject is forthcoming: there is no statement as to what duties have been levied by the one party, or what are threatened by the other; and the matter is simply unintelligible.

If, however (as is probably the case), my inability to understand the case is simply owing to my ignorance, and if the facts are well known at the Foreign Office, I have to request a full and specific statement of them, and one or more distinct questions thereupon.

At the same time I must observe that it may not be advisable to pledge Her Majesty's Government beforehand, and merely upon an hypothesis, to resist in any event the repayment of duties, or to give official notice to Her Majesty's subjects that they now act at their peril in trading at these ports, and subject to the risk of being possibly hereafter compelled to pay over again the amount of duties already paid; and I do not see how the Consul's question can be effectually answered, without doing one or the other.

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With respect to the note (dated January 8th) from Judge Black (whoever he may be) to Her Majesty's Minister at Washington, it seems to me to amount to a refusal on the part of the Federal Government of the United States to give any definite answer whatever to the question put by Lord Lyons.

The Federal Government generally reserves all its rights (whatever they may be) to Customs duties at the Southern revolted ports; *sed non constat* in what mode or under what circumstances it will (if at all) enforce them against British subjects or goods.

This letter, therefore, throws no light upon the course to be hereafter taken in New Granada, in the event of repayment of duties already paid at the ports being demanded by the Central Government.

There is thus no information on this essential point from New Granada, or from Washington, and I can only request that, if my opinion is still required, the particular facts upon which it is required may be distinctly stated.

I have, &c.

(Signed) J. D. HARDING.

No. 94.

The Law Officers of the Crown to Lord J. Russell.—(Received May 7.)

TURKEY.

Apprehension of certain Societies lest the Order in Council of 9th October, 1860, should cause embarrassments to Christian missionaries in Ottoman dominions.

My Lord, *Doctors' Commons, May* 7, 1861.

WE were honoured with your Lordship's commands signified in Mr. Hammond's letter of the 24th April ultimo, in which he stated that he was directed by your Lordship to transmit to us a letter which the Earl of Shaftesbury had forwarded from the Secretaries of the Society for the Conversion of the Jews, and of the Church Missionary Society, stating that it was apprehended that the portion of the Levant Order in Council of the 9th October, 1860, which affects questions of a religious nature, is worded in such a manner as to cause possible embarrassments to Christian missionaries in the Ottoman dominions; and your Lordship accordingly requested that we would take the matter into our consideration, and report to you our opinion as to whether any, and, if so, what steps should be taken on this subject.

In obedience to your Lordship's commands we have taken the matter into our consideration, and have the honour to report—

That we do not see any reasonable grounds for apprehending that sections 49 and 50 of the Order in Council of the 27th of August, 1860, will be used, as suggested in this letter, "against Christian missionaries when engaged in the peaceful and legitimate prosecution of their work."

We observe that the letter does not point out any instance in which this has been done, or explain the particular cases or circumstances in which it is imminent, or even apprehended that it will be done; nor does the letter state that any missionary or other person residing in the Turkish dominions has addressed any specific complaint or statement on the subject to either of the Societies whose Secretaries subscribe the letter.

The Order in Council and Rules were passed on the 27th of August, 1860, but did not come into effect until the 1st of March, 1861, in order to afford time for remonstrances or observations from the parties to be thereby affected; none such have as yet come to our knowledge. These sections were introduced in consequence of an outrage committed by British officers in a mosque at Cairo.

All the rules and regulations for carrying the Order in Council into effect are (by Section 66) to be approved, exhibited, and sold as therein directed.

We cannot anticipate that any missionary "engaged in the peaceful and legitimate prosecution of his work" will be proceeded against under the Order; but should he unfortunately violate its provisions, there is no reason for exempting him from its operation. Under these circumstances we cannot advise your Lordship to enter a correspondence involving abstract legal and political questions, of some nicety, with the Secretaries of Missionary Societies; and we do not see the necessity of any peculiar steps being taking in the matter.

We have, &c.

(Signed) J. D. HARDING.
RICHARD BETHELL.
WM. ATHERTON.

No. 95.

The Queen's Advocate to Lord J. Russell.—(Received May 7.)

ARGENTINE CONFEDERATION.

Claim of Mr. R. Duffy for losses sustained during the war between the Argentine and Uruguayan Republics in 1842.

My Lord, *Doctors' Commons, May* 7, 1861.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 23rd April ultimo, stating that he was directed to transmit to me a despatch from Her Majesty's Minister at Panamá (No. 22, 1st March), respecting a claim preferred by Mr. Richard Duffy, a British subject, on account of losses which he sustained in 1842 from the war between the Argentine and Uruguayan Republics; and to request that I would take this case into consideration, and report to your Lordship my opinion as to whether there is any ground for interference on the part of Her Majesty's Government in this case, and, if so, what instructions should be given to Mr. Thornton thereupon.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That the relations between the South American Republics on the Rio de la Plata, *inter se*, and the international position in which they have at various times stood towards Great Britain, have been so peculiar that I may not have rightly understood the legal state and condition of this claim, in which case I must request more explicit information on the subject.

Subject to this observation, I must remark that as a general principle of international law, and in the absence of express stipulation *contrà*, the Government of a country which has suffered from foreign invasion cannot be held responsible to foreign residents or Governments for damage or destruction of property inflicted on them by the forces of the invading army. Such results arise, *inter hostes*, from the fortune (or rather misfortune) of war, in which all persons domiciled in a belligerent country are involved: *plectuntur Achivi*—it is true that the innocent and the stranger suffers; but inasmuch as his sufferings cannot be attributed to the Government of the (invaded) country of his choice, that Government cannot be expected or required to compensate him.

This principle appears to apply to Mr. Duffy's claim against the Argentine Confederation (which Republic, I presume, is what Mr. Thornton means by the words "this Republic"); and the decision of the Commissioners under the Convention ratified at Panamá, March 27, 1860, (which is, I presume, that alluded to by Mr. Thornton as "the Convention of 1858"), seems to me correct.

Mr. Duffy was not (as I understand his case) "a British subject who had suffered losses in the commotions of civil war which had befallen the Republic," within the true intent and meaning of this Convention; but I merely offer this as an opinion formed without any accurate knowledge of the facts.

With reference to Mr. Duffy's claim against the Republic of Uruguay (which is, I presume, what Mr. Thornton means by the "Monte Videan Government"), whose invading army actually caused Mr. Duffy's losses in Entre Rios, I observe no allusion by Mr. Thornton to the date when the claim was preferred against this Republic; to the view originally taken of it by Her Majesty's Government; or to the Agreement of June 23, 1857, for the settlement of claims of English and French subjects "on account of losses suffered during the war" (whatever this may mean).

If Mr. Duffy's claim was presented to the Commissioners under this agreement, and rejected, it was, I fear, by the terms of the agreement (Article 1) "definitively settled as to its justification and amount;" if not, the time for presenting it has elapsed.

It arose in 1842, and the silence of Her Majesty's Government upon it hitherto requires explanation.

Apart from this Agreement I cannot see any solid ground upon which the claim can be supported against the Republic of the Uruguay, more especially at this date, and considering that Mr. Duffy was permanently domiciled in Entre Dios.

The principle involved is, however, very important as affecting British interests in South America, and there is at least one other British claim of the same class; and the relations of these countries *inter se* and towards Great Britain, and their arrangements as to British claims upon them, have been and are peculiar. Mr. Thornton's despatch throws very little light upon the question.

He does not complain of the adverse decision of the Argentine Commission: he does not complain of the rejection of the claim by Uruguay; he does not state that the settlement of this peculiar class of claims was ever contemplated or intended to be included in either Convention; he does not state that any foreign Government has successfully supported similar claims; he, nevertheless, seems to view the claim as clearly valid, and only asks "from which of the two Governments Mr. Duffy is entitled to expect compensation for his losses whenever they may be legally proved?"

I can only say that, apart from express stipulation (unless I have misunderstood the facts), Mr. Duffy would not, in the absence of any Treaty stipulation, be entitled to compensation from either Government: not from the Argentine Confederation, for the reasons I have above stated; nor from the Republic of the Uruguay, since in war all persons remaining domiciled in the enemy's country, whatever their origin, are considered as enemies, and their property as *res hostium;* but if I have not fully understood the facts, if his case is within the equity of any special stipulation, or if similar claims of other foreigners have been conceded by either Government, I must request further information.

I have, &c.
(Signed) J. D. HARDING.

No. 96.

The Law Officers of the Crown to Lord J. Russell.—(Received May 10.)

TURKEY.

Mr. Hornby's instructions to the Consul and Legal Vice-Consul at Smyrna.

My Lord, *Doctors' Commons, May* 8, 1861.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 15th of April ultimo, stating that Mr. Hornby, Judge of Her Majesty's Supreme Consular Court at Constantinople, having been desired to prepare drafts of instructions to the Consul and Legal Vice-Consul at Smyrna, to be issued to those officers under the signature of the Secretary of State, he was directed to transmit to us the draft which Mr. Hornby has drawn up; and to request that we would report to your Lordship whether in our opinion they may properly be adopted by your Lordship.

In obedience to your Lordship's commands we have taken this subject into consideration, and have the honour to report—

That, generally speaking, we see nothing objectionable in either of these drafts.

With respect to the precise division of duties between the Consul and the Legal Vice-Consul, we have to observe that it is, in our opinion, essential to the proper administration of justice that the Legal Vice-Consul's duties should be confined, as far as practicable, most strictly to those immediately connected with his important and peculiar judicial position; and that serious public detriment will ensue, and the very object of his appointment will be exposed to failure, if he attempts to discharge ordinary Consular duties, or to embark in or mix himself up in the ordinary Consular discussions and difficulties, with the local authorities, foreign Consulates, and individuals. We have adverted to this point (as regards Mr. Hornby) in our Report of the 22nd of September, 1860, and we beg to invite your Lordship's particular attention to the expediency of avoiding any mischief of this kind in the first establishment of a Judicial officer at Smyrna.

He should be especially instructed to bear in mind his high and independent position as Judge, and representative of the Supreme Consular Court; entrusted with legal and equitable jurisdiction, and powers of great extent and variety; deprived of that control of professional and public opinion, and those opportunities for consultation with other Judges, which are enjoyed in this country; and representing, amongst Mahometan and European foreigners, the dignity and integrity of the British judicature.

He should cautiously beware of mixing himself up in his private and individual capacity with, or even discussing or expressing opinions, or offering advice on, any matters which there is any reason to suppose may subsequently come before the Court judicially.

He should attend carefully to section 5 of the Order in Council of August 27, 1860; and should bear in mind that all questions of procedure, remedies, and

execution of judgments, are to be decided by and according to the British (Consular) law and system exclusively: thus, although the interpretation of a contract made (say) in France or Ionia will be according to the French or Ionian law, the proceedings and remedy thereon, and its enforcement, will be regulated by the British (Consular) law and system exclusively.

He has no power to administer any law excepting English law, modified by the custom of the Levant; and he has no power or jurisdiction to administer or enforce Ionian law, whether criminal or civil, even between Ionians, or by acquiescence or consent.

We recommend that the substance of these remarks should be added to the draft instructions to the Legal Vice-Consul

We have, &c.
(Signed) J. D. HARDING.
RICHARD BETHELL.
WM. ATHERTON.

No. 97.

The Law Officers of the Crown to Lord J. Russell.—(Received May 10.)

TURKEY.

Mr. Hornby's report of proceedings of the Consular Court at Constantinople in 1860.

My Lord, *Doctors' Commons, May* 9, 1861.

WE were honoured with your Lordship's commands signified in Mr. Hammond's letter of the 3rd April last, in which he stated that he was directed by your Lordship to transmit the inclosed Report from Mr. Hornby (No. 13, February 18), respecting the proceedings of the Consular Court at Constantinople in the year 1860.

Your Lordship was pleased to direct our attention to three points, viz.:—

1. The imperfections of the Local Courts and the measures by which Mr. Hornby considers those imperfections may be amended.

2. The manner in which the concession made on the part of Her Majesty's Government in regard to the expulsion by Turkish authority of British subjects from Constantinople is acted upon by the Porte, with reference to which matter Mr. Hammond transmitted to us the correspondence after which that concession was made; and

3. The practice which appears to have grown up on the part of the Turkish authorities of remitting, for the decision of the Supreme Council, questions which ought to be determined by the ordinary tribunals acting in concurrence with a British Consular authority.

On these several points your Lordship was pleased to request our opinion with a view to the instructions to be given on them, either to Her Majesty's Ambassador or to Mr. Hornby.

In obedience to your Lordship's commands we have the honour to report—

That we have considered the Report inclosed in Mr. Hammond's letter, from Mr. Hornby, respecting the proceedings of the Consular Court at Constantinople in the year 1860, and,

1. We do not recommend the adoption of any measure in the sense suggested by Mr. Hornby at page 9, with reference to Austrians voluntarily submitting to the jurisdiction of the Supreme Court.

2. With reference to the alleged imperfections of the Local Courts, and the measures by which Mr. Hornby considers those imperfections may be amended, we understand Mr. Hornby's suggestion to be, in substance, the substitution in the Mixed Courts, and with a view to a just administration, as regards British subjects, of a permanent Judge, in lieu of the foreign merchants, who, under existing Treaties, sit as Judges along with the Turkish Judges, in those cases in which foreigners are interested. Accepting Mr. Hornby's statement of the inconveniences and injustice of which the present system is made the occasion, we see no objection to so much of the new scheme proposed by Mr. Hornby. We do not feel it to be within our province to advert to considerations of the expense and the like, in carrying out the plan, should it be approved by Her Majesty's Government.

It is obvious that the consent of the Turkish Government, by a fresh Treaty, will be requisite to any such change; and, beyond the substitution of a

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permanent Judge for foreign merchants, attending at various times, we do not see how the Porte can be fairly called upon to make any change in the composition of the Court of the Tidjaret.

The Court being a Turkish Court, it seems to us to be equally unreasonable to expect, and unwise to ask for, a "procedure" framed on that of the Consular Courts.

3. With reference to the conduct of the Turkish authorities in regard to the summary expulsion of British subjects from Constantinople, we beg to refer to our opinions on that subject of the 16th May and 7th July, 1860. We also entirely concur in the propriety of the instructions as to the course to be pursued with regard to the expulsion of vagabonds, being British subjects, from Constantinople, contained in the letter from the Foreign Office to Sir Henry Bulwer of the 23rd August, 1860.

In the part of Mr. Hornby's Report which relates to this subject he appears to us to confound his own judicial function and the diplomatic authority of the British Ambassador.

It is not for the Judge of the Supreme Consular Court, but for the Ambassador, to be satisfied that the misconduct of a British subject, assigned by the Turkish Executive as the ground for intended summary deportation, is not a criminal offence ordinarily cognizable, and yet is such as to render the deportation just and reasonable with regard to the safety and tranquillity of the country.

As Mr. Hornby speaks for himself only, and does not profess to represent the experience or views of the Embassy at Constantinople, we are unable to arrive at any satisfactory conclusion as to whether, in this respect, the Turkish Government has or has not acted in good faith, and according to the course so clearly described in the letter, already referred to, of the 23rd August, 1860.

The imprisonment of such persons alluded to by Mr. Hornby deserves the vigilant attention of Her Majesty's Embassy, which should call the attention of Her Majesty's Government to any case of abuse.

With reference to the practice described of remitting questions to the Supreme Council, such practice appears to us to be in violation of Article 42 of the Capitulations; and, so far as we are able to judge, the case would seem to be one for a serious and firm remonstrance with the Turkish Government, with the object of securing, for the future, a fair and full observance of the letter and spirit of the Article in question.

It does not occur to us to make any observations on any other points in Mr. Hornby's Report.

We have, &c.
(Signed) J. D. HARDING.
RICHARD BETHELL.
WM. ATHERTON.

No. 98.

The Queen's Advocate to Lord J. Russell.—(Received May 11.)

My Lord, *Doctors' Commons, May* 9, 1861.

TURKEY.

Claim of Messrs. Ede and Co. for repayment of money advanced to Turkish Government.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 1st May instant, stating that he was directed to transmit to me the accompanying letter, and its inclosures, from Messrs. Ede and Co., dated April 30, 1861, stating their inability to obtain payment of money advanced by them to the Turkish Government under the circumstances therein set forth, and requesting your Lordship to interfere on their behalf through the Turkish Ambassador at this Court; and Mr. Hammond was pleased to request that I would take these papers into consideration, and report to your Lordship my opinion as to the course which it would be proper and expedient for Her Majesty's Government to pursue in this case.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That the Turkish Government appears to have repeatedly failed to discharge its most formal obligations to Messrs. Ede; and they appear to me to be entitled to expect prompt payment of this debt, with legal interest. Their claim for consequential damages cannot, at present, be formally supported by Her Majesty's Government.

Whether the particular measure which they suggest (viz., an application by your Lordship to the Turkish Ambassador at this Court in their favour) will have any useful result, or will be desirable on public grounds, is a question which I must leave to your Lordship's decision.

I should conceive that Her Majesty's Legation at Constantinople, which has already exerted itself in their favour, would be the proper channel of communication. This is, however, not a legal, but an official question.

Messrs. Ede and Co. appear to me (more especially on behalf of their creditors) to have a claim on the assistance and support of Her Majesty's Government, in whatever shape it will be most readily available, in aiding them to recover payment of a debt so formally acknowledged by, and so long due from, the Sultan's Government, against which they have, I presume, no legal remedy.

I have, &c.
(Signed) J. D. HARDING.

No. 99.

The Queen's Advocate to Lord J. Russell.—(Received May 13.)

My Lord, *Doctors' Commons, May* 10, 1861.

SPAIN.

Claim of Mr. A. Robinson. Detention of the "Mio Zio" at Port Mahon.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 3rd May instant, stating that, with reference to his letter of the 25th April ultimo, he was directed to transmit to me a further despatch from Her Majesty's Consul at Port Mahon (No. 10 of April 27) relative to the case of the "Mio Zio."

In obedience to your Lordship's commands I have taken this despatch into consideration, and have the honour to report—

That I can only refer to my Report of the 27th April ultimo,* and repeat that, although the facts appear very adverse to the judgment of the Superior Court at Palma (now transmitted, and dated the 19th April last), yet that an appeal has, as I understand, been made from that judgment, by the British owner of the cargo, to some superior Tribunal at Madrid, where, I presume, it is now pending. Until, therefore, this appeal is finally disposed of, I do not see how Her Majesty's Government can formally interfere.

The British owner does not deny the jurisdiction of the Spanish Courts over the subject matter, for he has twice appealed, and thereby founded or admitted such jurisdiction. He contends that the decision is either contrary to or unwarranted by the facts, or has been (howsoever) improperly obtained; but Her Majesty's Government cannot interfere, *pendente lite*, with proceedings actually *sub judice* in the Spanish Courts, at the instance of Mr. Robinson, as appellant.

If the Spanish Courts should ultimately do him justice, there will be no ground for any interference by Her Majesty's Government; if they should fail to do so, or when they shall have finally and irrevocably refused to do so, the whole question must be considered *ab initio* by Her Majesty's Government, with a view to any interference which may be expedient.

I have, &c.
(Signed) J. D. HARDING.

No. 100.

The Queen's Advocate to Lord J. Russell.—(Received May 13.)

My Lord, *Doctors' Commons, May* 11, 1861.

TURKEY.

Codicil of Miss Caroline Cooper's Will, respecting property at Jerusalem.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 30th April ultimo, stating that, with reference to my Report of the 22nd February last† respecting an application from Her Majesty's Consul at Jerusalem (No. 23 of April 6, 1861) as to the course which he should pursue with regard to certain steps which the legal managers in London of the estate of the late Miss Caroline Cooper desire him to take with respect to a codicil to that lady's will, he was directed to transmit to me a despatch from Mr. Finn (No. 23), containing full information on this subject, and to request that I would report to your Lordship my opinion as to the course which should now be pursued in this matter.

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* Page 81.

† Page 29.

The former papers were also inclosed.

In obedience to your Lordship's commands I have taken this matter into consideration, and have the honour to report—

That I can only repeat the suggestion which I made in my former Report of the 22nd February, 1860, that all the papers should, with this Report, be placed at once in the hands of the Queen's Proctor, who should report to your Lordship what is requisite to be done, after communicating with Messrs. Wadeson and French (who are highly respectable proctors, and who are apparently acting for the executors), and after consulting me, if necessary.

I feel it my duty to point out that, although Mr. Finn seems to have acted properly throughout, yet that he has not, even now, attempted to transmit any clear or business-like statement or explanation of the matter; he merely transmits the correspondence *in extenso*, as ordered, and does not even point out the particular letter which induced him to write his despatch No. 5 of January 12, 1861, which originated this case.

The information which I requested in my former Report, as to the Consul's official duty or instructions applicable to the case at the date of Miss Cooper's death, is not supplied, and it is desirable that this should be clearly explained to the Queen's Proctor.

I have, &c.
(Signed) J. D. HARDING.

No. 101.

The Law Officers of the Crown to Lord J. Russell.—(Received May 16.)

BRAZIL.

Purchase of slaves by a British subject, with a view of ultimately freeing them.

My Lord, *Doctors' Commons, May* 15, 1861.

WE were honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 26th April ultimo, in which he stated that he was directed by your Lordship to transmit to us the accompanying despatch from Mr. Christie, Her Majesty's Minister at Rio de Janeiro (Slave Trade, No. 6, March 23, 1861), reporting that a British subject resident at Brazil had, for some years past, from philanthropic motives, been in the habit of purchasing slaves with a view of freeing them after they had repaid him, either by services to himself or by the hire of their services to others, the amount of purchase-money, together with 12 per cent. per annum interest thereon up to the day of their emancipation.

Lord Wodehouse was pleased further to say, that Mr. Christie also stated that this same gentleman had about 100 slaves in his employ, hired from periods varying from one to five years, and he requested that he might receive instructions as to whether the proceedings of this gentleman are legal.

And Lord Wodehouse was also pleased to request that we would take this despatch into our consideration, and favour your Lordship with our opinion as to the instructions which it would be proper to give to Mr. Christie in this matter.

In obedience to your Lordship's commands we have taken the despatch into our consideration, and have the honour to report—

That we are of opinion that the conduct of the gentleman in question, in purchasing and holding slaves as stated, is illegal, being in contravention of the Statute 6 and 7 Vict., cap. 98.

It falls within the words "dealing, trading, purchasing, and transferring slaves," contained in that Statute, and makes him liable to the penalties thereby imposed.

We have, &c.
(Signed) J. D. HARDING.
RICHARD BETHELL.
WM. ATHERTON.

No. 102.

The Queen's Advocate to Lord J. Russell.—(Received May 16.)

UNITED STATES.

Blockade of ports within the Confederate States. Treatment of Secession privateers as pirates.

My Lord, *Doctors' Commons, May* 16, 1861.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 13th May instant, stating that he was directed to transmit to me a copy of a despatch from the United States' Secretary of State, dated April 20, 1861, which has been communicated to your Lordship by Mr. Dallas, on the 11th instant, inclosing a copy of a Proclamation by President Lincoln, imposing a blockade of all ports within the Confederate States, and declaring that the United States' Government will hold to be amenable to the laws of the United States for the prevention and punishment of piracy, any person who may molest a vessel of the United States, or the persons or cargo on board of her, under the pretended authority of the Confederate States; and to request that I would take this Proclamation into consideration, and report to your Lordship my opinion thereupon.

Copies of the Proclamation of President Lincoln, issued on the fall of Fort Sumter, and of the Proclamation of President Davis, in reply thereto, were inclosed for reference.

In obedience to your Lordship's commands I have taken this subject into consideration, and have the honour to report—

That I assume it to be the intention of Her Majesty's Government to treat both the Government of the United States, and also that of the "Confederate States," as two *de facto* separate Sovereign and independent Governments, *ut hostes, et belligerentes in justo bello*, and to observe the strictest neutrality between them.

Upon this assumption I observe—

1. That President Lincoln's announcement of a blockade of the ports within the States of South Carolina, Georgia, Alabama, Florida, Mississippi, Louisiana, and Texas, is not such a notification of blockade as can be favourably recognized as such, *inter gentes*, or published in the Gazette. It only announces an intention to blockade the ports of those States at some future undefined time.

2. The maintenance of an effective simultaneous and sustained blockade of such a number of ports, so widely distant from each other, and extending from the boundary of North and South Carolina, in latitude 34° north, to the mouth of the Rio Grande del Norte (the boundary of Texas and Mexico), in latitude 26° north, will require the constant employment of a very large and effective naval force, and the exertion of great naval resources, energy, and perseverance. The attention of Her Majesty's naval officers should be invited to the necessity of constantly watching and reporting how and by what force this blockade (when established) is actually maintained off each separate port in the above States.

3. President Lincoln's Proclamation states that "if, with a view to violate such blockade, a vessel shall approach, or shall attempt to leave any of the said ports, she will be duly warned by the commander of one of the blockading vessels, who will endorse on her register the fact and date of such warning; and if the same vessel shall again attempt to enter or leave the blockaded port, she will be captured." The requiring a formal warning to each particular ship, and some subsequent "overt act" of violation on her part, previous to her capture, is rather in accordance with French than with British prize law and practice, which does not consider any such individual and formal warning absolutely necessary to justify capture. The adherence to this particular system of warning will, however, be greatly to the advantage of neutral commerce, and will tend to the diminution of causes of difference between the Federal Government and all neutral Powers; and it is much to be desired that President Lincoln may steadily carry out, in practice, the system thus announced. Possibly your Lordship may consider it advisable to make some formal communication to him in this sense, with a view to pledging him definitely to its observance.

4. With respect to the concluding paragraph of the Proclamation, relating to the treatment of Secession privateers as pirates, I do not consider it necessary at present to enter fully into its consideration. I will merely observe that pirates, *jure gentium*, are *hostes omnium*—"common robbers upon the seas," having a general and indiscriminate *animus depredandi* against all persons in general;

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which cannot be properly predicted of rebels or insurgents, acting under letters of marque from a *de facto* sovereign and independent Government, only seeking to capture the property of the subjects or citizens of the particular Government to which they are themselves hostile; and, above all, carrying their prizes into port for legal adjudication. Her Majesty's Government is not concerned as to the treatment which President Lincoln may choose to inflict upon any persons captured in privateers who may not be British subjects; but British subjects who are only hostile "privateersmen," cannot rightfully, when captured as such on the high seas, be treated as pirates, *jure gentium*, by President Lincoln. The laws of the United States (to which he alludes) cannot rightfully make a British subject guilty of piracy on the high seas merely for serving in a hostile privateer.

It is to be hoped, however, that no necessity may arise for discussing this point.

I have, &c.
(Signed) J. D. HARDING.

No. 103.

The Law Officers of the Crown to Lord J. Russell.—(*Received May* 16.)

My Lord, *Doctors' Commons, May* 16, 1861.

UNITED STATES.

Slave Trade carried on under the flag of the Confederate States.

WE have been honoured with a letter from Lord Wodehouse of May 14, 1861, in which Lord Wodehouse informs us that he is directed by your Lordship to transmit to us the accompanying letter from the Admiralty of May 13, 1861, and to request that we would take Lord Wodehouse's letter into our consideration, and favour your Lordship with our opinion at our earliest convenience upon the questions submitted by the Board of Admiralty in their letter above mentioned.

In obedience to the directions of your Lordship we have taken these papers into our consideration, and have the honour to report—

That upon the first question therein, namely, "whether any further instructions for the guidance of the Commanders of British cruizers engaged in the suppression of the Slave Trade should be sent to the Commanders-in-chief of Her Majesty's naval forces on the West Coast of Africa and in the West Indies, now that the flag of the Southern Confederate States has been recognized as the flag of a belligerent Power;"—we are of opinion that no further instructions will be requisite, except merely information of the fact that the flag of the Southern Confederate States has been and is so recognized.

Upon the second question therein, namely, "whether the co-operation of Commanders of Her Majesty's cruizers with United States' cruizers engaged in the suppression of the Slave Trade is to be continued,"—we are of opinion that such co-operation ought not to be continued, because of the great danger of its ending in some act of hostility against some vessel of the Southern Confederacy, and, consequently, in a breach of neutrality.

Upon the third question therein, namely, "whether notice of the presence of vessels carrying the flag of the Southern Confederation, and suspected of being engaged in Slave Trade on the West Coast of Africa, may be conveyed to the cruizers of the United States, without incurring the charge of conveying information to an enemy, and of so violating the absolute neutrality ordered to be observed by the officers of Her Majesty's navy,"—we are of opinion that such notice of the presence of suspected vessels carrying the flag of the Southern Confederation ought not to be conveyed to the cruizers of the United States, as the conveying such notice would be inconsistent with the duties of neutrality.

We have, &c.
(Signed) J. D. HARDING.
RICHARD BETHELL.
WM. ATHERTON.

No. 104.

The Law Officers of the Crown to Lord J. Russell.—(*Received May* 17.)

My Lord, *Doctors' Commons, May* 16, 1861.

SPAIN.

Injunction of Court of Chancery upon Lieutenant-Colonel Wyatt's pension from Spanish Government.

WE were favoured with your Lordship's commands signified in Lord Wodehouse's letter of the 7th instant, in which he stated that he was directed by your Lordship to transmit to us a letter from Lieutenant-Colonel Wyatt, late of the British Auxiliary Legion, stating the circumstances under which he is prevented, by an injunction of the Court of Chancery, from receiving his pension from the Spanish Government, and requesting your Lordship's interference in his favour with the Spanish Minister at this Court; and Lord Wodehouse was pleased to request that we would favour your Lordship with our opinion upon this question; and as to the answer which should be returned to Lieutenant-Colonel Wyatt.

In obedience to your Lordship's commands we have carefully considered the above-mentioned letter, and have the honour to report—

That we recommend your Lordship not to interfere in this matter.

In our opinion, Lieutenant-Colonel Wyatt acted very unadvisedly (if he had a good defence against his mortgagee), in assuming that the Court of Chancery had no jurisdiction, and, therefore, not appearing in the suit instituted against him.

The Spanish Minister and Agent have acted very properly in respecting the injunction of the Court.

We have, &c.
(Signed) J. D. HARDING.
RICHARD BETHELL.
WM. ATHERTON.

No. 105.

The Queen's Advocate to Lord J. Russell.—(*Received May* 21.)

My Lord, *Doctors' Commons, May* 18, 1861.

MOSQUITO.

British claims on lands within Mosquito reserve.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 14th of May instant, stating that he was directed to transmit to me therewith, with reference to the observations contained in my Report of the 1st of May, amended drafts of instructions to Mr. Green, and of notice to be inserted in the "Gazette," respecting British claims on land situate within the Mosquito reserve; and to request that I would take the same into consideration, and report to your Lordship my opinion at my earliest convenience.

In obedience to your Lordship's commands I have taken these drafts into consideration, and have the honour to report—

That I have perused and settled the two amended drafts (one, a draft "Gazette" notice, and the other, a draft despatch to Consul Green). From want, however, of sufficient acquaintance with the peculiar facts of the case, and with local and legal details, I am not able to settle them with perfect confidence.

1. I am not fully aware whether the whole of the Mosquito Reserve (as to lands in which district exclusively these claims are confined) is within the territory of the Republic of Nicaragua, or whether any of it is in Honduras (see Treaty with Honduras, 1859, Article II). If any of the Reserve, as to which claims are apprehended, is in Honduras, the draft notification and despatch must be amended accordingly.

2. With respect to the paragraph in the draft despatch as to claims in respect of emancipated slaves, I do not understand the ground or origin of such claims by Her Majesty's subjects as against the Mosquito Indians, or how they can be now recognized as valid; more especially, seeing the remarks of Consul Green at folios 11 and 12 of No. 6, February 1, 1861, as to slavery never having been acknowledged in the Mosquito territory or in Nicaragua, and bearing in mind the English law on the subject. I have therefore struck through the passage in the draft despatch on this subject; and I have not introduced any

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words appropriate to claims in regard of slaves into the draft "Gazette" notification. I invite particular attention to this question, which must be fully considered before the matter proceeds.

3. I am not aware what other claims, excepting land-claims (and possibly slave-claims) exist, against the Mosquito Indians, or are to be now dealt with.

4. I beg respectfully again to suggest the expediency of delaying this matter, either until the result of the claims against Honduras and Nicaragua is ascertained, or until a complete understanding is arrived at with Nicaragua as to these Mosquito Reserve claims, for the reasons indicated in my former Report of May 1, or at least until Consul Green can be further communicated with, more especially as regards the slave-claims.

If, however, it is to proceed, the Consul should be hereafter instructed to notify a particular date after which no claim will be received, which notification should also be inserted in the "London Gazette."

I have, &c.
(Signed) J. D. HARDING.

No. 106.

The Law Officers of the Crown to Lord J. Russell.—(*Received May* 24.)

Doctors' Commons, May 22, 1861.

My Lord,

FRANCE.

Extradition from British Guiana of French criminals escaping from Cayenne.

WE were honoured with your Lordship's commands signified in Mr. Hammond's letter of the 16th April ultimo, in which he stated that with reference to our Report of the 31st of July last, transmitting the draft of an Ordinance to be issued by the Legislature of British Guiana for the extradition of French criminals convicted of certain crimes, who might escape from Cayenne into British Guiana, he was directed by your Lordship to transmit to us a printed copy of the Ordinance as it had been passed in the Colony.

Mr. Hammond was pleased to say, that on a full consideration of the evils likely to result to the Colony if it became a place of refuge for men of desperate character escaping from Cayenne, Her Majesty's Government thought it desirable to extend the operation of the proposed measure to some other offences of the gravest character, in addition to those specified in the Convention with France of 1843.

That in other respects the Ordinance was nearly in the terms of our draft, and the reasons for such variations as had been made therefrom were stated in the Report of the Attorney-General of British Guiana, inclosed in the letter from the Colonial Office which was transmitted to us.

Mr. Hammond was also pleased to say, that he inclosed for our further information the correspondence which had taken place on the subject since the matter was last before us, and to request that we would report to your Lordship our opinion "whether there is any objection to the Ordinance, as passed, being submitted for Her Majesty's confirmation."

In obedience to your Lordship's commands we have perused the Ordinance and correspondence submitted to us, and have the honour to report—

That in accordance with Lord Wodehouse's letter of the 12th June, 1860, we confined the terms of the Draft Ordinance, as then prepared by us, to the crimes specified in the Treaty with France of 1843, namely, murder, attempt to commit murder, forgery, and fraudulent bankruptcy. Lord Wodehouse stated in effect that both the arrangement and the Ordinance were to be thus limited, and that "arrangements of an analogous kind had been made at different times between certain of Her Majesty's Colonies in the West Indies and the adjacent Republics for the mutual surrender of criminals."

We observe that the Ordinance, as settled by us, has been altered in the the Colony, *inter alia*, by the addition of the crimes of "arson, rape, burglary, house-breaking, and robbery (comprehending the crimes known in the French Penal Code, as "vol avec violence ou effraction").

Thus it will be seen that the above crimes are, although not included in those enumerated in the Convention of 1843, and not the subjects of extradition of persons accused as between France and England, are to be so treated by the Ordinance as between British and French Guiana with reference to persons convicted.

This will not, in our opinion, affect the legal validity of the Ordinance should it be confirmed by Her Majesty, but as a matter of general principle, and as a precedent, it may be productive hereafter of some inconvenience.

It is also possible that under Section 7 of the Ordinance, some difficulty may be experienced in obtaining complete reciprocity as to these crimes on the part of French Guiana.

We observe that the questionable propriety of extradition for mere "theft" has already attracted your Lordship's attention. To the other alterations made by the Colony in our Draft Ordinance we see no serious objection; and under these circumstances we must leave the question of the propriety of the confirmation of the Ordinance as it stands (which is rather a question of policy than a legal question), to the final decision of Her Majesty's Government.

We have, &c.
(Signed) J. D. HARDING.
RICHARD BETHELL.
WM. ATHERTON.

No. 107.

The Law Officers of the Crown to Lord J. Russell.—(*Received May* 27.)

Doctors' Commons, May 25, 1861.

My Lord,

JAPAN.

Trial of Mr. Moss in the Consular Court.

WE were honoured with your Lordship's commands signified in Mr. Hammond's letter of the 4th instant, in which he stated that he was directed by your Lordship to transmit to us drafts of despatches and letters (5) respecting the case of Mr. Moss in Japan, which have been prepared in consequence of the observations contained in our Report of the 26th ultimo, and requested that we would take the same into our consideration, and acquaint your Lordship whether they are right and proper to be sent, and correctly represent our views as stated in our Report.

In obedience to your Lordship's commands we have the honour to report—

That we have read and considered the two draft despatches.

In the letter to Mr. Moss's father (No. 2), we do not think it necessary to suggest any alteration.

In the letter to Mr. Alcock (No. 1), we take the liberty of suggesting that in page 2, the words "to warrant a conviction on each of them" be struck out, and in lieu thereof, these words, "to prove the allegations," be inserted.

In page 6 strike out the word "faulty," and insert "illegal." We have made these alterations in the copy before us.

In the despatch to Mr. Alcock Nos. 3 and 4, and the letter to the Colonial Secretary No. 5, we do not find it necessary to suggest any alteration.

We have, &c.
(Signed) J. D. HARDING.
RICHARD BETHELL.
WM. ATHERTON.

No. 108.

The Queen's Advocate to Lord J. Russell.—(*Received May* 31.)

Doctors' Commons, May 31, 1861.

My Lord,

UNITED STATES.

Hostilities between the Northern and Southern States.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 28th May instant, stating that he was directed to transmit to me a letter from the Admiralty, inclosing a copy of a letter from Rear-Admiral Milne, asking certain questions with reference to the impending hostilities in North America, together with the draft of answer which your Lordship proposes to return thereto, and to request that I would take the same into consideration, and report to your Lordship, at my earliest convenience, my opinion whether it is right and proper.

In obedience to your Lordships commands I have taken this matter into consideration, and have the honour to report—

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That, subject to some slight alterations which I have made in the draft (herewith returned), I am of opinion that it is right and proper.

I have, &c.
(Signed) J. D. HARDING.

Inclosure in No. 108.

Proposed Draft to Admiralty, as submitted to the Queen's Advocate.

Sir, *Foreign Office, May* , 1861.

I HAVE laid before Lord J. Russell your letter of the 27th instant, inclosing a copy of a letter from Rear-Admiral Milne, dated the 1st instant, in which he requests instructions with regard to questions arising out of the impending hostilities between the Northern and Southern States of North America.

I am to request that you will state to the Lords Commissioners of the Admiralty that Lord J. Russell is of opinion that Rear-Admiral Milne should be informed in answer to the first question, that the Northern and Southern States are to be considered as in a state of actual war.

With regard to the second question, namely, as to how far British vessels and goods will be affected by the Paris Declaration of 1856 in regard to free ships making free goods, if not contraband of war, and neutral goods, with the exception of contraband of war, not being liable to capture under an enemy's flag, his Lordship requests that the Rear-Admiral should be instructed that that Declaration will not be applicable to British vessels and goods until the terms of it have been assented to by the belligerents.

Rear-Admiral Milne's third question is, whether the belligerents are to be allowed to visit and search British merchant-vessels upon the high seas. Lord J. Russell conceives that the Admiral should be told in reply that the British Courts recognize the right of visit and search as a right appertaining to belligerents.

With regard to contraband of war, which forms the fourth question, it must rest with the belligerents to define what articles will be so considered.

And, lastly, with respect to blockades, Lord J. Russell requests that Rear-Admiral Milne may be informed that there cannot be a doubt that the validity of a blockade depends upon its efficiency.

I am to add that this letter has been submitted to, and has received the concurrence of, the proper Law Advisers of the Crown.

I am, &c.

Draft to Admiralty, as approved by the Queen's Advocate.

Sir, *Foreign Office, May* , 1861.

I HAVE laid before Lord J. Russell your letter of the 27th instant, inclosing a copy of letter from Rear-Admiral Milne, dated the 1st instant, in which he requests instructions with regard to certain questions stated by him as arising out of the impending hostilities between the Northern and Southern States of North America.

State of war.

I am to request that you will state to the Lords Commissioners of the Admiralty that Lord J. Russell is of opinion that Rear-Admiral Milne should be informed in answer to the first question,* that the Northern, or "United" States, and Southern, or "Confederate" States, are to be considered as in a state of actual war with each other.

Declaration of Paris. Free ships; free goods.

With regard to the second question, namely, as to how far British vessels and goods will be affected by the Paris Declaration of 1856 in regard to free ships making free goods, if not contraband of war, and neutral goods, with the exception of contraband of war, not being liable to capture under an enemy's flag, his Lordship requests that the Rear-Admiral should be instructed that neither the Northern nor the Southern States having as yet acceded to the Declaration of Paris, the rules laid down in that Declaration will not be applicable to British vessels and goods, as the vessels and goods of neutrals, during the war between the Northern and Southern States, until further notice and fresh instructions to you.

Right of search.

Rear-Admiral Milne's third question is, whether the belligerents are to be allowed to visit and search British merchant-vessels upon the high seas. Lord J. Russell conceives that the Admiral should be told in reply, that the right of visit and search is regarded by Her Majesty's Government as a right appertaining to the lawfully commissioned cruizers of belligerents when exercised by them subject to and in conformity with the modern law and usage of nations.

Contraband of war.

With regard to contraband of war, which forms the fourth question, the Admiral should be instructed that, excepting as to arms, ammunition, and military stores (which are clearly "contraband of war" by the common law and usage of nations), it must be left to the Governments and Prize Courts of the belligerents, in the exercise of a reasonable discretion, in accordance with the law and usage of nations, to define and announce what articles will be so considered and treated by them.

Blockade.

And, lastly, with respect to Rear-Admiral Milne's fifth question, which is as follows, "the validity of a blockade held to be dependent upon its efficiency," Lord J. Russell is of opinion that the answer to this question, as he understands it, is decidedly in the affirmative.

I am to add that this letter has been submitted to, and has received the concurrence of, the proper Law Advisers of the Crown.

I am, &c.

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* I would suggest that each of Rear-Admiral Milne's questions should be copied verbatim from his despatch.—J. D. H.

No. 109.

The Law Officers of the Crown to Lord J. Russell.—(Received June 1.)

My Lord, *Doctors' Commons, May* 29, 1861.

PERU.

Claim of Mr. Carwell to administer ~~to administer~~ to property of late Mr. M. Winder, in Peru.

WE were honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 30th day of April last, in which he stated that he was directed by you to transmit to us a despatch and its inclosures from Her Majesty's Chargé d'Affaires at Lima (No. 12), together with a letter from Messrs. Dawes and Son, dated April 27, respecting the difficulties with which Mr. Carwell had been met in Peru in his endeavours to administer to the property of his father-in-law, the late Mr. Michael Winder; and Lord Wodehouse was pleased to request that we would take the papers into our consideration, and favour your Lordship with our opinion as to the instructions which should be sent to Mr. Jerningham upon the subject.

And Lord Wodehouse also inclosed a further despatch from Mr. Jerningham (No. 13), stating that Mr. Carwell wished to send home a box containing personal property belonging to Mr. Winder, and placed by Mr. Carwell under the protection of the British Legation, and requested that we would advise your Lordship what instructions should be sent to Mr. Jerningham with regard to the disposal of this box.

In obedience to your Lordship's commands we have perused the despatches and inclosures submitted to us, and have the honour to report—

That it is stated by Messrs. Dawes and Sons, in their letter of April 27, 1861, that England was the place of the domicil of the late Mr. Winder at the time of his death; and this is assumed by Mr. Carwell throughout his correspondence with Mr. Jerningham, Her Majesty's Chargé d'Affaires at Lima. If such be the case, the personal property of Mr. Winder being at Lima ought to be administered by Mr. Carwell under the English probate. But it is to be collected that this is the matter in dispute, Mr. Winder's widow setting up a Peruvian, and therefore denying the English, domicil, and appealing to the Peruvian Courts to interfere in her behalf, and decree distribution according to Peruvian law. If such be the case, then, so long as the ordinary course in like cases is pursued, and the law itself is not contrary to the common principles of natural justice (which we have no reason to suppose), we are of opinion that Her Majesty's Government could not, with any propriety, interfere. The question is one clearly within the jurisdiction of the Peruvian Courts; and Mr. Carwell is in error in supposing that he is exempt, by reason of his being a British subject, from such jurisdiction, so long as he remains in Peru, and with reference to property there found and being.

It is also a mistake to suppose that property, part of the late Mr. Winder's estate, is withdrawn from Peruvian jurisdiction, by being deposited (as it is expressed) "under the British flag." Under the circumstances, and especially

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seeing that Mr. Pike has already received a notification from the Peruvian Courts respecting the property (the box and contents) thus deposited, it appears to us that Mr. Jerningham should be instructed to adhere to the determination already expressed by him, and described in his despatch of March 28, 1861 (No. 13), that is, not to part with possession of the box without the joint authority of Mr. Pike and Mr. Carwell, and the return to him of the receipt which he gave on the box being delivered to him.

Should Mr. Jerningham receive any notification from the Peruvian Courts, he will do well to respect it.

The personal restraint under which Mr. Carwell has been placed appears to be a means of compelling him to give security or bail; and here again no just ground of international complaint arises, provided the ordinary law of the country has been applied. Mr. Carwell is personally within the Peruvian jurisdiction by his own act: the subject matter, being property in Peru, is also subject thereto; and before the Peruvian tribunals he must be left to fight out his legal battle with the widow, with such local professional assistance as he may think proper, but without the official intervention of Her Majesty's Government.

We have, &c.
(Signed) J. D. HARDING.
RICHARD BETHELL.
WM. ATHERTON.

No. 110.

The Queen's Advocate to Lord J. Russell.—(Received June 1.)

PORTUGAL.

Fine imposed on the "Prince Albert" for throwing ashes overboard in Lisbon Harbour.

Doctors' Commons, May 30, 1861.

My Lord,

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 16th May instant, stating that he was directed to transmit to me a correspondence respecting a case which has arisen out of a fine imposed in October last on the master of the British vessel "Prince Albert," for throwing ashes overboard in Lisbon Harbour, in contravention of the Regulations of that port, and to request that I would take this case into consideration, and report to your Lordship my opinion whether there are sufficient grounds for any further interference on the part of Her Majesty's Government.

I am also honoured with Lord Wodehouse's letter of the 23rd May instant, transmitting a further despatch from Her Majesty's Minister at Lisbon respecting this case.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That considering all the circumstances of this case, and especially those appearing in the papers transmitted to me with Lord Wodehouse's letter of the 23rd May, I am of opinion that there are no sufficient grounds for any further interference on the part of Her Majesty's Government.

I have, &c.
(Signed) J. D. HARDING.

No. 111.

The Law Officers of the Crown to Lord J. Russell.—(Received June 1.)

UNITED STATES.

Exclusion of ships of war and privateers of United States and Confederate States with prizes from ports of United Kingdom and Colonial or other possessions abroad.

Doctors' Commons, June 1, 1861.

My Lord,

WE are favoured with Mr. Hammond's note of May 30, stating that Her Majesty's Government propose that all ships of war and privateers of the United States, and of the so-styled Confederate States of North America, shall be excluded from taking prizes into the ports belonging to Her Majesty, whether in the United Kingdom or in Her Majesty's Colonial or other possessions abroad.

Mr. Hammond requests that we will have the goodness to consider and report to your Lordship, with as little delay as possible, our opinion whether Her Majesty's Government will be justified by the law of nations in so doing; and whether the draft of letter, herewith sent, may properly be addressed to the Lords Commissioners of the Admiralty and to Her Majesty's Principal Secretaries of State for the Colonial, War, and Indian Offices.

We have the honour to report—

That it is perfectly consistent with the law of nations for a neutral Power to interdict the privateers of a belligerent from entering its ports under any circumstances.

It is competent to a neutral to interdict the regularly-commissioned ships of a belligerent from entering its ports, except under circumstances of urgent necessity.

These rights and principles have been repeatedly acted on by European nations, especially during the late war with Russia, and they have been adopted to their full extent by the United States of America.

We would refer to the following authorities: Hopner *v.* Appleby, 5 Mason's Reports, 77; Act of Congress, March 3, 1805; French Ordinance of 1861 (see Pistoye et Duverdy, 449).

There cannot be any doubt, therefore, of the interdict contained in your Lordship's proposed letter being fully warranted by the law and practice of nations.

It may be a question whether the principles embodied in the Declaration of Paris might not require that the use of our ports should be interdicted to privateers under any circumstances.

We beg leave to suggest that the alterations we have made in your Lordship's letter be adopted, subject to which we approve of the letter.

We have, &c.
(Signed) J. D. HARDING.
RICHARD BETHELL.
WM. ATHERTON.

No. 112.

The Queen's Advocate to Lord J. Russell.—(Received June 4.)

UNITED STATES.

United States' blockade of the port of Charleston and adjacent coast.

Doctors' Commons, June 4, 1861.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 3rd June instant, stating that he was directed to transmit to me a despatch, and its inclosures, from Her Majesty's Minister at Washington (No. 205) respecting the blockade which had been instituted by the United States' frigate "Niagara," of the port of Charleston and the adjacent coast; and to request that I would take these papers into consideration, and report to your Lordship, at my earliest convenience, my opinion upon the various questions therein raised in relation to this blockade.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I see no ground for the official interference of Lord Lyons in this matter with the Government of the United States, and his instructions to Consul Bunch appear to me to have been proper, under the circumstances.

It is impossible to determine, merely upon these papers, whether the blockade of Charleston (which was effective from the 11th to the 15th May inclusive) had altogether ceased, or had only been temporarily or imperfectly maintained, from the 15th to the *20th May*, which is apparently the date of the last communication, by telegraph, from the Consul.

However this may be, I concur with Lord Lyons as to the inexpediency of his making any formal communication to the United States' Government, either for an extension of time to British vessels to leave Charleston, or on any other point, founded on the supposed invalidity or imperfection of the blockade.

With respect to the Consul's private letter to Lord Lyons of the 17th May, as to what he calls "the conversion" of American into English vessels (I presume, by sale, and the granting of a Consular "provisional certificate of registry" thereupon), the communication is so short that it is not easy to deal with it. It does not follow that vessels so purchased "*must be protected*," at all hazards, from capture; to which, on the contrary, they may, in my opinion, be liable.

With respect to the Consul's allusion to "fraud on the United States," I can only say that, whilst he should not give any facilities to fraud, there is no

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reason why he should absolutely refuse to issue such certificates when satisfied that a *bonâ fide* purchase, for adequate value, and without any secret or colourable arrangement, has actually taken place. But he should not encourage such dealings, and he should warn all the parties concerned that they effect such sales and purchases at their own risk, and subject to all legal and international questions relative thereto.

The legal effect and operation of the purchase of enemies' ships by neutrals, *flagrante bello*, is a question for the decision of the Government or the Prize Court of the captor. The prize law and practice of nations on this point is not uniform: France, for instance, absolutely refuses to recognize the validity of such "conversions" after war has commenced, whilst England recognizes them under certain circumstances, as when satisfied of their *bona fides*, that the value was paid, and the entire interest transferred; that there was no secret agreement between the parties, *in fraudem juris gentium;* see, for instance, the "Ariel" (Sorensen *v.* the Queen), 11 Moore's Privy Council Reports, page 119; the "Maria" (Batten *v.* the Queen), ibid., page 271.

I am unable to say whether the United States' Government or Prize Courts have as yet determined this question, as to which the Consul and British purchasers should inform themselves. The Consul and Lord Lyons should transmit full information on this point from the best possible quarters.

It is impossible to send the Consul instructions merely upon this private letter, and without further information, especially as to the view taken by the United States' Government and by its Prize Courts on the subject.

As regards the want of a formal and official public notification of blockade, I can only say that it does not appear to me to be for the interest of Her Majesty's Government, as a neutral Power, to complain at present, inasmuch as the United States' practice (which has been formally announced) of giving notice to each individual ship is more favourable to neutrals than that of Great Britain, which considers all parties as "affected with notice" who have (howsoever) received actual knowledge from any credible source of the official notification, and which even infers such notice after the lapse of a sufficient time.

I have, &c.
(Signed) J. D. HARDING.

No. 113.

The Queen's Advocate to Lord J. Russell.—(Received June 5.)

My Lord, *Doctors' Commons, June* 3, 1861.

MUSCAT.

Slave Trade carried on from the East Coast of Africa.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 15th May ultimo, stating that he was directed to transmit to me the accompanying letter from the India Office, dated 24th April, 1861, with its inclosures, from the Government of Bombay, and from Colonel Rigby, Her Majesty's Agent and Consul at Zanzibar, relative to the Slave Trade which is carried on from the East Coast of Africa.

Lord Wodehouse was also pleased to state that I should perceive by a despatch dated the 26th November last (No. 79), from Colonel Rigby to the Secretary to the Government of Bombay (which forms one of the inclosures in the India Office letter), that on the occasion of the capture by the authorities of the Sultan of Zanzibar, in His Highness' port of Lamoo, of a slave-vessel without papers, the master of which vessel acknowledged that he had come for slaves, the French Consul endeavoured to persuade the Sultan that he had no power, under any circumstances, to capture a slave-vessel, unless he had a Treaty empowering him to do so with the nation to which the slaver might belong; and that the Sultan, being ignorant of the law of nations, has requested the opinion of Her Majesty's Government on the subject.

Lord Wodehouse was also pleased to request that I would take these papers into consideration, and report to your Lordship my opinion upon the point raised by the French Consul; and as to the instructions which it would be proper to give to Colonel Rigby in this matter.

Lord Wodehouse also stated that he transmitted a further despatch from Colonel Rigby (No. 5A, 14th January, 1861), reporting that the Sultan has handed over the captured slave-vessel to the Commander of Her Majesty's ship

"Persian;" and requested that I would report to your Lordship my opinion whether there is any legal objection to this proceeding.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

Seizure of the "Formosa Estrella."

That the first question to be considered is: "Was the Sultan's seizure of the 'Formosa Estrella' in a port of Zanzibar justifiable; and on what ground, according to the law of Zanzibar, by reason of some act done by the master or crew in the territory or waters of Zanzibar?"

The *onus* is legally on the Sultan to justify his seizure of this (apparently) Spanish ship in one of his ports. If this question can be answered affirmatively, the mere absence of any Treaty between Spain and Zanzibar will have no effect upon the legality of the seizure. But without explicit information as to the law of Zanzibar on this point, it is impossible for me to deal properly with the case.

I may, however, point out—

1st. That the master is not stated to have protested or objected.

2ndly. That although it appears that the ship was under the Spanish flag when seized, yet she had no Spanish "ship's papers," and apparently no regular set of "ship's papers," and she had recently shown both French and Mexican colours.

3rdly. That she was equipped as a slaver; and that the master admitted that he had come there to procure slaves.

4thly. That it is not stated whether there is any Spanish Consular authority in Zanzibar; or whether the Spanish subjects there are under French or any other Consular protection, provisionally or permanently, by international arrangement, or *de facto*, and by usage; and it does not appear that the French Consul officially interfered on behalf of the ship or the master.

5thly. It may on further investigation turn out that the seizure was legally justifiable on some other ground than her slave equipment; as for defect of papers, for having no register, for having ten men not entered on her list of crew or muster-roll, and so forth.

These points should be cleared up with a view to enable Her Majesty's Government to support or advise the Sultan not only in this case, but in this class of cases hereafter, inasmuch as they seem likely to recur.

It may be suggested to Colonel Rigby, in case of the law of Zanzibar being doubtful or defective as to such cases, to point out to the Sultan the expediency of promptly enacting and publishing some simple laws and regulations, making the Slave Trade and the using or equipping of vessels for that trade within his territory a punishable offence; and expressly authorizing and enjoining the seizure and forfeiture of all slave-vessels and cargoes, and the liberation of all slaves found howsoever, or brought by whomsoever, within his territorial jurisdiction.

It would also be desirable to know whether the equipping or using a slave-ship, or the doing of any and what overt act in furtherance of an admitted general design to carry on the Slave Trade, either within Spanish jurisdiction or generally and beyond it (whether, in short, the conduct of the master of the "Formosa Estrella" in this case), is or is not an offence against the law *of Spain*, as it would be against that of England; this information can be obtained through Her Majesty's Legation at Madrid.

I must also desire to be referred to the Treaty or Treaties now in force between the Sultan of Zanzibar and Her Majesty, and also between him and any other Power, for the suppression of the Slave Trade.

With respect to the last question in Lord Wodehouse's letter, I can only say that I am unable to find in the three despatches from Colonel Rigby (Nos. 44, 78, and 79 of 1860) transmitted with these papers, any mention of the captured slave-vessel having been handed over by the Sultan to the Commander of Her Majesty's ship "Persian." If, therefore, my opinion is desired upon this point (which, however, cannot well be determined until the legality of the original seizure is ascertained), I must request further information, with which the Admiralty has doubtless been furnished by that officer.

I have, &c.
(Signed) J. D. HARDING.

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No. 114.

The Queen's Advocate to Lord J. Russell.—(*Received June* 5.)

ITALY.

Messrs. Scott's claim. Goods imported into Naples from Malta under the French flag.

Doctors' Commons, June 4, 1861.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 4th May ultimo, stating that with reference to my Report of the 20th December last, upon the subject of Messrs. Scott's claim, under the Treaty of 1845, for a reduction of 10 per cent. on some British goods imported by them into Naples from Malta, under the French flag, he was directed to transmit to me a further despatch from Her Majesty's Consul at Naples, together with the former papers upon this subject, and to request that I would take the same into consideration and report to your Lordship my opinion as to the nature of any instruction which should be addressed to Mr. Consul Bonham in reply to his last despatch.

In obedience to your Lordship's commands, I have taken these papers into consideration, and have the honour to report—

That the information forthcoming on this matter is still very scanty; and it does not appear whether any, and what, other nations have similar Treaties with the late Government of the Two Sicilies, or how these are interpreted and applied to the point in question.

As at present advised, I can only say that the case of the Sardinian Government, as stated in the letter of the Director-General of the Indirect Customs to the Consul, dated April 3, 1861, is not satisfactory.

I cannot discover from a perusal of the Treaties between Her Majesty and the King of the Two Sicilies of April 29, 1845, and of September 26, 1816 (referred to therein), any sufficient ground upon which it can be maintained that the words "merchandize and productions of the United Kingdom of Great Britain and Ireland, her Colonies, Possessions, and Dependencies, imported by them into His Majesty's dominions," in Article XIV of the Treaty of 1845, are either in express terms or by necessary implication limited or restrained by reference to Article VII; or that in order to entitle such merchandize or productions so imported to the reduction of 10 per cent. stipulated in Article XIV, importation thereof must have taken place in a British ship.

The VIIth Article seems to me to have been stipulated *alio intuitu;* the words therein "which can legally be imported into either country from the other in ships of the other," were probably introduced for a peculiar object connected with that Article, and do not extend to the general stipulation contained in Article XIV, which Article, moreover, contains no reference to Article VII, nor can I discover anything in the Convention of 1816 to favour such a contention.

It is observable that Article XIV refers to the VIth preceding Article (and not to the VIIth). The VIth Article is favourable to the British claim; it is in the most general terms, and in the nature of a reciprocal and most-favoured nation Article; "expressio unius est exclusio alterius." It would have been natural to have found a reference in this XIVth Article to the VIIth as well as to the VIth preceding Article, if the Director's arguments are well founded.

At all events the importance of this question deserves a more formal discussion than it has as yet received on the part of the Sicilian (or Sardinian) authorities; and it will be for your Lordship, after ascertaining how the point stands with other nations, either to instruct the Consul to raise it, or to raise it directly with the Sardinian Government, as may be thought advisable.

I have, &c.
(Signed) J. D. HARDING.

No. 115.

The Queen's Advocate to Lord J. Russell.—(*Received June* 7.)

UNITED STATES.

Blockade of port of Charleston. Claim of Messrs. Byrne and Co. Proceedings against the "Monmouth" and "Hilja."

Doctors' Commons, June 6, 1861.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 4th of June instant, stating that with reference to my Report of the 4th of June instant,* respecting the blockade of the port of Charleston, he was directed to transmit to me copies of a letter and its inclosures from Messrs. Byrne and Co., of Liverpool, dated June 3, 1861, preferring a claim against the United States' Government on account of the proceedings of the United States' frigate "Niagara" towards the British ship "Monmouth," of which Messrs. Byrne and Co. are part owners; and to request that I would take this case into consideration, and report to your Lordship my opinion thereupon at my earliest convenience.

I am also honoured with two further letters from Mr. Hammond, dated the 5th of June instant, transmitting further papers relating to this case.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

1st. That as regards the British vessel "Monmouth," she appears to have sailed from Liverpool on the 24th of March, with orders to proceed to Savannah, if Charleston was blockaded. She arrived off Charleston on the 12th of May, and was boarded by an officer from the United States' frigate "Niagara," who endorsed her papers, "Boarded May 12, and ordered off the whole Southern Coast of the United States of America, it being blockaded." She thereupon proceeded to British North America. Her owners claim compensation. It is suggested that neither Savannah nor the whole South Coast was then blockaded; but until this fact is ascertained beyond all doubt, more especially as to Savannah, it is obvious that Her Majesty's Government cannot interfere. It should also be ascertained whether any and what conversation took place between the master and the boarding officer as to the blockade of Savannah (to which port she had an alternative destination), and whether the intention to proceed thither was stated to the boarding officer, and what thereupon ensued. The grievance in this case would seem to be confined to the notice deterring her from going to Savannah. Charleston was effectually blockaded on the 12th of May, and she was rightfully warned off that port. It is obvious that this case is not quite ripe for decision. The facts as to the blockade of Savannah on the 12th of March must be explained.

2ndly. The British vessel "Hilja," which also sailed from Liverpool on the 24th of March, was also boarded off Charleston by an officer from the "Niagara" on the 12th of May, and her papers were endorsed in a similar manner to those of the "Monmouth," and she likewise proceeded to a British North American port, and her owners claim compensation. It is not alleged that the "Hilja" had any alternative destination, or any design to proceed to any other Southern port in the event of Charleston being blockaded, or on discovering that it was, in fact, blockaded. I do not, therefore, at present see how her owners' claim for compensation can be sustained. The notice as to the blockade of all the Southern ports (even if untrue and improper) was, as regards the "Hilja" (for all that appears), *damnum absque injuria.*

3rdly. With reference to the interruption of the blockade of Charleston after May 15, by the temporary absence of the "Niagara," in pursuit, as would seem, of a particular vessel laden with arms from Belgium (the "Niagara" being, I presume, the only blockading vessel), the circumstances of her absence require explanation.

4thly. I consider it my duty to state, with great deference, that I do not, as at present advised, perceive the practical advantage which is to be expected from Her Majesty's Minister officially calling the attention of the United States' Government either to this particular circumstance, or to every interruption or imperfection of an established blockade which may occur, and making demands in connection therewith, on the United States' Government. Such communications seem to me rather calculated to stimulate the vigilance and rigour of the Government, and to excite some irritation in the highly sensitive temperament of the United States' authorities, without any sufficient adequate or direct advantage. A blockade must be regularly and effectively maintained, in order to be legal against neutrals; and if British vessels should be captured for breaking an illegal or partial and fluctuating blockade, or warned off ports not blockaded, this may form a just ground of complaint; but I would venture to suggest that such complaints should be founded on a clear "constat" of facts, and on some actual case of wrong sustained, and that, especially at the very commencement of a civil war, it may not be expedient for Her Majesty's Government to enter, without urgent necessity, into discussions with that of the United States on this blockade, unless in some urgent case, or where there is some good reason to

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suppose that the Government of the United States will concede that which is sought.

I would also express my entire concurrence with Lord Lyons as to the great expediency of his endeavouring to secure the co-operation of other foreign Legations in any general representations to the United States' Government on the subject of the blockade.

I have, &c.
(Signed) J. D. HARDING.

No. 116.

The Queen's Advocate to Lord J. Russell.—(Received June 7.)

My Lord, *Doctors' Commons, June 7,* 1861.

UNITED STATES, AND GENERAL.

Interdiction of British ports to privateers and their prizes.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 6th June instant, stating that he was directed to transmit to me therewith notice of a question to be asked your Lordship in the House of Commons, respecting the practice which has been heretofore observed in regard to the interdiction of British ports to privateers and their prizes; and to request that I would furnish your Lordship, at my earliest convenience, with any information on the matter which may enable your Lordship to answer this question.

In obedience to your Lordship's commands I have taken this subject into consideration, and have the honour to report—

That if the question relates to the former practice of Great Britain exclusively, I have only to observe that I am unable at this moment to refer to any instance in which this country has actually put in force her right of excluding from her ports prizes captured by the contending parties in a war in which she was neutral.

It is to be observed that as regards international wars, Great Britain has rarely, in modern times, been neutral during a naval war carried on between maritime Powers on any extensive scale. As regards civil wars or revolts, she has frequently been neutral: but in most of such cases, as (for instance), Spain and South America, 1817-19 and 1823-26; Turkey and Greece, 1825-26; Prussia and Denmark, 1848-49; and in several cases the South American Republics, *inter se;* the naval resources of the parties have been limited, or the contest has been carried on in such localities, or under such circumstances, as did not threaten to involve this country in any serious practical difficulties with either belligerent, and did not call for any stringent measures on her part in order to preserve intact the complete neutrality of her ports and waters, and to maintain her undoubted power of excluding therefrom the cruizers and the prizes of all belligerents. Possibly further search may elicit something in point as to some of these peculiar instances.

In the present case, however, I need only allude to the geographical and political position of all parties; to the scale on which naval hostilities between the belligerents are likely to be conducted; to the announcement of a blockade extending from the Capes of Virginia, latitude 36° north, to the mouth of the Rio Grande del Norte, latitude 26° north; and to the immediate proximity to the theatre of war of such British Possessions (for instance) as the Bahamas (as to which the position of the Florida coast and Florida channel or stream, and the American forts at Key West and the Tortugas, are remarkable) and the Bermudas, to show the very peculiar features of the present case.

Great Britain, moreover, when herself engaged in the contest with her revolted subjects, which is known as the "war of American independence," called upon neutral nations to act in the manner in which she is now herself acting: see her communications with Holland, as to the exclusion of American vessels, and especially as to Paul Jones, his prizes and prisoners (Martens, "Nouvelles Causes Célèbres," vol. i, pp. 116, 118, *et seq.*, 152, 156); who was apparently forbidden to receive "ni secours, ni asile," and compelled to leave Holland.

Lastly (although the case is not precisely in point), I would beg leave to remind your Lordship that Great Britain, although neutral between Turkey and Greece in 1827, finding the excesses of the Greek private armed vessels unbearable, issued orders to seize, *even on the high seas,* "every armed vessel met with under the Greek flag," excepting the ships of war of the Greek Government. (See the Order in Council, November 16, 1827, Hertslet's "State Papers," vol. iv, p. 784.)

The exercise of the right in question, under various modifications, has been so frequently and notoriously the subject of Treaty stipulations between various nations, more particularly the United States of North America, that I abstain, from want of time, from elaborate references. I may, however, mention the Treaty between Great Britain and the United States, November 19, 1794, Articles XXIV and XXV, and that of December 31, 1806, Articles XVII, XVIII, and XIX, which contain peculiar stipulations on the point in question. (See Hauterive et De Cussy, "Recueil des Traités," vol. vi, pp. 208, 229.)

With respect to the general question of the right of a neutral Power to exclude belligerent ships of war, privateers, and prizes from its ports and waters, there can be no doubt.

As regards the United States of America, I would refer to the Act of Congress, Session 2, chapter 41 (approved March 3, 1805), sections 4 and 5, empowering the President "to permit or interdict at pleasure the entrance of the harbours and waters under the jurisdiction of the United States to all armed vessels belonging to any foreign nation, and by force to repel and move them from the same, excepting in cases of distress, danger of the sea, or pursuit by an enemy, or when charged with despatches or business from the Government to which they belong;" and further authorizing "the employment of force to compel their departure, in case of their failing to depart after being required so to do:" to the judgment of Mr. Justice Story, in the case of Hopner *v.* Appleby, reported in 5 Mason's "Reports of the Circuit Court of the United States," p. 77, who says: "In general, neutral nations allow them (captors) an asylum in their ports. *They may, indeed, prohibit their entry into their ports,* or the sale of their prizes there, from motives of policy or public convenience; . . . . it is one of those points which every neutral nation arranges according to its own sound discretion and policy—*it is free to refuse or grant it.*"

Wheaton's "Elements of International Law," part 4, cap. 3, sec. 14, p. 498, edition of 1857; Kent's "Commentaries," vol. i, p. 124.

As regards *France*, see the Ordinance of 1681, Articles 9 and 14, and comments thereon of Pistoye et Duverdy, "Traité des Prises Maritimes," p. 449 (a book of recent and very high authority); Hautefeuille, "Droits et Devoirs des Nations Neutres," vol. i, p. 480; Ortolan, "Régles Internationales et Diplomatie de la Mer," vol. ii, p. 266.

This right is, moreover, *in viridi observantiâ,* and was exercised with various modifications by many of the neutral Powers of Europe in 1854, on the occasion of the last war between Great Britain and her allies with Russia: amongst others by Sweden, Declaration, April 8, 1854, Article 9; Spain, Decree, April 12, 1854, Article 1; Hamburgh, Ordinance, April 26, 1854; Lübeck, same date, Article 3; Belgium, April 25, 1854; Mecklenburg, Ordinance; Hanover, Law of May 5, 1854, Article 2; Two Sicilies, May 17, 1854; Austria, Decree, May 23, 1854, Article 7; Tuscany, Ordinance, June 3, 1854, Article 2. See the various documents *in extenso,* Pistoye et Duverdy, Annexe II, vol. ii, p. 477, *et seq.*

I have, &c.
(Signed) J. D. HARDING.

P.S.—I beg to apologise for any errors, owing to the extreme haste with which this Report has been necessarily prepared.

Inclosure 1 in No. 116.

Memorandum on the Treatment of Privateers during the War between Mexico and the United States.

DURING the war between Mexico and the United States an American barque, the "Carmelita," was captured by a Mexican privateer off the coast of Spain about the month of April 1847.

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About the same time the Spanish Consul at Gibraltar reported that a Mexican privateer, the "Rosita," had left the port of Oran to cruize in the Mediterranean against American commerce.

Mr. Bancroft, May 14, 1847.

Upon receipt of this intelligence the American Minister in London (Mr. Bancroft) reported the facts to the Foreign Office, and expressed a hope that Lord Palmerston, who was then Secretary of State for Foreign Affairs, "would take such measures as would prevent Gibraltar or any other British port in the Mediterranean becoming a place of refuge for these depredators on British property (which he pointed out was on board such American vessels) as well as on American commerce."

To Mr. Hay, No. 4, June 5, 1847.

Information having been received by the British Government that the facts reported with respect to the privateer "Rosita" were correct, and that she was sailing under Spanish colours, and intended to carry her prizes for sale into the ports of Morocco, Mr. Drummond Hay, Her Majesty's Chargé d'Affaires in Morocco, was (on the report of the Queen's Advocate) furnished with the following instructions.

In the first place he was informed that in the opinion of some eminent writers upon the law of nations the Government of a neutral State had a right to admit into its ports belligerent cruizers with their prizes, and to permit such prizes to be sold therein; but that there seemed to be no reason to doubt that a neutral State might, if it thought proper, withhold the exercise of that privilege, although, if it did so, it should refuse it equally to both belligerents.

He was then told that in a case which occurred during the last war, Lord Stowell, speaking of prizes being carried into a neutral port and there sold, had said:—

"The neutral State had nothing to do with the rights of force possessed by the one belligerent against the other; that it had nothing to do with the enforcement or consummation of such rights; that it owed to both parties the simple rights of hospitality, and that even these were very limited in the practice of most civilized States; that by the regulations of France foreign vessels were forbidden to enter with prizes into a port of France, except in cases of distress, and then they were permitted to stay no longer than their necessity existed;" and it was added that in this opinion other foreign jurists coincided.

Mr. Drummond Hay was then instructed, in the event of an opportunity offering, to advise the Emperor of Morocco to follow the rule stated in Lord Stowell's judgment to be that of France, because that rule seemed most consistent with perfect neutrality, and pointing out that it would be unwise for the Emperor to draw upon himself unnecessarily the ill-will of the United States; but he was desired to be careful to confine himself to merely stating what the rule was, and not to recommend it to the Emperor for adoption, on the ground that in so doing he would be following the example of France.

Mr. Bancroft, May 29, 1847.

Ultimately the Spanish Government, having been appealed to, caused the captain and crew of the pretended Mexican privateer "Unico," *alias* "Rosita," to be taken out of their vessel by a party of soldiers, and lodged in the town prison of Barcelona to await their trial as pirates under Article XIV of the Treaty of 1795 between Spain and the United States, the Mexican flag was hauled down, and the vessel placed in charge of a Spanish war steamer.

England was neutral in this war between Mexico and the United States.

E. HERTSLET.

Foreign Office, June 7, 1861.

Inclosure 2 in No. 116.

Extract from Wheaton's "International Law," Part IV, cap. 3, *s.* 14.

AN opinion is expressed by some text-writers that belligerent cruizers not only are entitled to seek an asylum and hospitality in neutral ports, but have a right to bring in and sell their prizes within those ports. But there seems to be nothing in the established principles of public law which can prevent the neutral State from withholding the exercise of this privilege impartially from all the belligerent Powers, or even from granting it to one of them, and refusing it to others, where stipulated by Treaties existing previous to the war. The usage of nations, as testified in their Marine Ordinances, sufficiently shows that this is a

rightful exercise of the sovereign authority which every State possesses, to regulate the police of its own sea-ports, and to preserve the public peace within its own territory. But the absence of a positive prohibition implies a permission to enter the neutral ports for these purposes.

No. 117.

*The Attorney-General and Solicitor-General to Lord J. Russell.**—(*Received June* 8.)

Doctors' Commons, June 8, 1861.

My Lord,

JAPAN.

Mr. Moss's imprisonment. Propriety of laying papers before Parliament.

WE have had the honour of receiving your Lordship's commands, signified in Mr. Hammond's letter of the 7th instant, in which he stated that he was directed by your Lordship to refer us to that part of Mr. Moss's letter of the 20th ultimo, in which he states that it is his son's intention to commence an action for damages on account of his imprisonment by order of the Consular Courts in Japan, and Mr. Hammond requested that we would report to your Lordship our opinion as to whether, under these circumstances, it would be right for Her Majesty's Government to assent to a motion in the House of Commons that the papers in this case should be laid before Parliament.

In obedience to your Lordship's commands we have the honour to report—

That, in our judgment and opinion, the circumstances stated by your Lordship are not a sufficient reason for refusing to produce the papers in the case, if, but for such circumstances, the Government would be willing so to do.

We have, &c.
(Signed) RICHARD BETHELL.
WM. ATHERTON.

No. 118.

The Law Officers of the Crown to Lord J. Russell.—(*Received June* 10.)

Doctors' Commons, June 8, 1861.

My Lord,

MOROCCO.

Spanish Consular jurisdiction in Morocco.

WE are honoured with your Lordship's commands, signified in Mr. Hammond's letter of the 29th April last, stating that, with reference to our Reports of the 27th July and 15th October, 1860, respecting the pretensions of Spain in the matter of Consular jurisdiction in Morocco, he was directed to transmit to us—

1. The draft of an instruction which your Lordship addressed, on the 11th August last, to Her Majesty's Chargé d'Affaires at Madrid, acquainting him with the view which Her Majesty's Government have taken of the question.

2. A despatch from Mr. Edwards. inclosing a copy of a note which he in consequence addressed to the Spanish Government.

3. A despatch from Sir Andrew Buchanan, inclosing the reply of the Spanish Government.

4. The draft of an instruction which your Lordship addressed to Her Majesty's Minister in Morocco on the 30th October last, subsequent to the receipt of our Report of the 15th of the same month, and which refers more especially to the correspondence therewith transmitted, marked A.

Mr. Hammond was also pleased to transmit the previous correspondence on this subject, as noted in the List B, and to request that we would take these papers into consideration, and report to your Lordship our opinion as to the answer which should be returned to the Spanish note of April 1, 1861.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That the question between the two Governments has been already so fully discussed, and the Spanish Government is so resolved not to concede, and shifts its ground so frequently, that we see little use in continuing the controversy.

* See the Report from the Queen's Advocate, page 112.

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Subject to this observation, we remark that the only new point now put forward by Spain in the note of Señor Collantes, April 1, 1861, is (in effect), that whatever may be the terms of the Treaty between Spain and Morocco of 1799, Article VI, the interpretation which Spain has put upon it in practice has been at variance with those terms, and such as altogether to "oust" Morocco of all jurisdiction, and to give to the Spanish Consuls the power of arbitrarily seizing, without any application or notice to the local authorities, every person of Spanish origin, accused of committing an offence on shore in Morocco, even although he might be serving on board a British vessel lying in harbour; and it is suggested that Morocco has acquiesced in this interpretation. Señor Collantes offers no other answer to our arguments on the effect of the words of that Article of that Treaty, or on the absence therefrom of any similar words in favour of Spain to those contained in favour of Great Britain in Article XIX of the Treaty of 1856.

Upon this we must observe, that the circumstance of Spain having seized Macias in breach of her Treaty with Morocco (even in the absence of any complaint from Morocco, to which jurisdiction Macias did not appeal), will not give her any claim of right as against Great Britain, or as against Macias in this case. The offence, if any, committed by Macias, was committed in Morocco, and only against the law of Morocco; and unless Spain had jurisdiction expressly conferred by Treaty, and unless she acted in accordance with the stipulations of such Treaty in exercising it, she could have had no rightful jurisdiction at all over Macias in respect of any such offence.

The Spanish Government does not explain how it happens that this question has only now arisen for the first time, or why she has hitherto permitted the exercise of British Consular jurisdiction over the numerous seamen of Spanish origin serving on board British vessels in the waters of Morocco, which is asserted by Mr. Hay, and which obviously must be the fact.

Lastly, we must point out that if Spain can do with impunity to others as she has done to Macias, in every case, other European Powers may and will do the same; and thus every British ship will be exposed to be deprived of her foreign seamen, in any part of Morocco, upon even frivolous charges or slight offences purposely committed by deserters, by means of this (hitherto novel) assertion of foreign Consular jurisdiction.

The question is of great importance to British interests; and we adhere to the opinions which we have stated in our former Reports on this case.

We have, &c.
(Signed) J. D. HARDING.
RICHARD BETHELL.
WM. ATHERTON.

No. 119.

The Queen's Advocate to Lord J. Russell.—(Received June 10.)

JAPAN.

Imprisonment of Mr. Moss. Threatened action against Mr. Alcock. Presentation of papers to Parliament.

My Lord, *Doctors' Commons, June* 10, 1861.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 7th June instant,* stating that he was directed to refer the Law Officers to that portion of Mr. Moss's letter of the 20th May ultimo, now before them, in which he states that it is his son's intention to commence an action for damages on account of his imprisonment by order of the Consular Courts in Japan; and to request that they would furnish your Lordship with their opinion as to whether, under the circumstances, it would be right for Her Majesty's Government to assent to a motion in the House of Commons that the papers in this case should be laid before Parliament.

In obedience to your Lordship's commands I have taken this matter into consideration, and have the honour to report—

That the production of the papers to Parliament in this case being, as I conceive, entirely a question for the discretion of Her Majesty's Government, and there being no urgent public interest, and no great principle of right or justice involved in the question of their being laid before Parliament; I humbly submit that, inasmuch as their publication whilst an action for damages is pending at the suit of Mr. Moss against Mr. Consul Alcock may be highly prejudicial to the Defendant, whilst it will not be attended with any advantage to Her Majesty's service, and is not absolutely required in the interests of justice or public policy, Her Majesty's Government ought not to assent to the motion.

Mr. Alcock, although acting in my opinion very ignorantly and illegally, yet acted according to the best of his judgment and without malice or improper motive, under trying circumstances; and Her Majesty's Government ought not, in my opinion, to assist the case of the Plaintiff (Mr. Moss), who is, *pendente lite*, a memorialist for compensation from the Crown, and more especially ought not to do so without notice to the Defendant.

I much regret to differ with my colleagues on this question.

I have, &c.
(Signed) J D. HARDING.

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* Page 111.

No. 120.

The Queen's Advocate to Lord J. Russell.—(Received June 12.)

NEW GRANADA.

Right of seceding States to levy duties on goods destined for Central States of New Granada.

My Lord, *Doctors' Commons, June* 8, 1861.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 10th May ultimo, stating that with reference to my Report of the 6th May ultimo,* he was directed to transmit to me a despatch from Her Majesty's Chargé d'Affaires in New Granada (No. 11), reporting that some of the States which formerly formed a portion of New Granada have declared themselves temporarily independent of the Central Government, and have assumed the name of "United States of New Granada."

Validity of Decree issued by Chief of seceding States annulling contracts made by Government of Bogotá.

Lord Wodehouse was also pleased to state that a question has arisen as to the right of the *de facto* authorities of the Coast to levy duties upon goods destined for consumption in territories which remain under the jurisdiction of the Government of which they have declared themselves independent; and also regarding a Decree issued by General Mosquera, the Chief of the Seceding States, annulling all contracts entered into by the Government of Bogotá since the 8th May, 1860.

Liability of British merchants to pay duties twice over.

Lord Wodehouse was also pleased to state that with a view to afford me all the information on these points possessed by the Foreign Office, he was to inclose a Memorandum on the state of affairs in New Granada so far as it affects these questions; and to request that I would take these papers into consideration, and report to your Lordship my opinion as to the instructions which should be given to Mr. Griffith, and Her Majesty's Consuls in New Granada on these matters.

Right of *de facto* Government to close ports of Buenaventura, Carthagena, &c., without their being duly blockaded.

That the particular points on which my advice is requested are "as to whether any steps, and if so what steps, should be taken by Her Majesty's Chargé d'Affaires or Her Majesty's Consuls in New Granada, by protest or otherwise, to protect British merchants from being compelled to pay Customs duties twice over; and whether British merchants are bound to pay attention to a Decree such as that communicated to Mr. Henderson by the New Granadian Intendant at Panamá, on the 1st April last, as to the closing of the port of Buenaventura, or to the communication made by the Intendant to Mr. Doyle, on the 21st March last, respecting the closing of the ports of Carthagena, Sabanilla, and Zapote, the ports in question being, as it appears, in the actual possession of a *de facto* government of States, which have separated from the Central Government of New Granada as hitherto constituted, and have declared themselves independent, and not being duly blockaded by a naval force.

Lord Wodehouse was also pleased to state that your Lordship gathers from my Report of the 6th May ultimo, that I had a difficulty in giving an opinion upon the question raised in Mr. Druce's despatch, from the absence of full information on what is passing in New Granada; but as the despatches now transmitted to me contain further information, your Lordship would wish to be furnished with my opinion, as far as I may be able to give it, with reference to the facts now submitted to me.

The former papers in this matter were inclosed for reference.

I am also honoured with Lord Wodehouse's letter of the 15th May ultimo,

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transmitting a despatch from Her Majesty's Consul at Panamá (No. 16), inclosing copies of a correspondence between the Intendant-General of Panamá and himself, relative to the conveyance of passengers and cargo between the ports of Colon and Carthagena.

I am also honoured with Lord Wodehouse's letter of the 31st May ultimo, transmitting a letter from Mr. Joshua Finner, dated May 27th, calling attention to a notice received by the New Granadian Consul at Liverpool from the New Granadian Minister in this country, regarding the closing of the ports at Rio Hacha, Santa Martha, Sabanilla, Carthagena, and Zapote.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That upon consideration of the complicated and somewhat doubtful state of facts indicated in these papers, as actually existing in New Granada, I am of opinion that, inasmuch as no force has been used, or is apparently about to be forthwith used, to compel British merchants to pay Customs duties twice over, there is no urgent necessity for instructing Her Majesty's Minister or Consuls to make any further protests than those which they have made, more especially as it is not easy to point out what further should be done.

With respect to the closing of the ports of Buenaventura, Carthagena, Sabanilla, and Zapote, by the mere decree of the Central Government, whilst these ports are held by a *de facto* Government, representing certain States seceding from the Central Government, and are not blockaded, I am of opinion that such Decree cannot be considered as sufficient to authorize the Central Government to detain or capture British vessels *upon the high seas*, merely for designing or attempting to proceed to those ports, as long as they remain unblockaded. If the Central Government has not been informed to this effect, this should be done.

If, however, the intended operation of the Decree is merely to forbid the importation, or to impose penalties or duties on the importation, into the territory of the Central Government by land or internal navigation, of goods originally imported from abroad into a seceded (and closed) port, other questions may arise.

The peculiar and fluctuating state of political events in New Granada renders it almost impossible to instruct Her Majesty's Chargé d'Affaires or Consuls effectually beforehand, as to their conduct in particular cases, which may or may not occur.

It is not (for instance) clearly explained in these papers, what measures either party is likely to take, in order to enforce any unjust or illegal claims against Her Majesty's subjects, or what are the intentions of Her Majesty's Government as to recognizing the sovereignty and independence of the Seceded States. I presume that Her Majesty's Government considers the opposing parties as belligerents, and desires to remain neutral, just as in North America; and does not dispute that the *de facto* Government of the Seceded States is in a condition to maintain law and order, and to levy Customs duties at its ports.

Liability of British subjects who remain domiciled in a foreign country during civil war.

I will, therefore, confine myself to pointing out that British subjects voluntarily remaining domiciled in New Granada, during a civil war, become subject to the laws enacted by that portion of the country in which they dwell, in respect of all acts done in that country; and war, legally and in theory, renders all persons domiciled in the enemy's territory "hostile," and interdicts trade with them. If, therefore, the importation of goods from the Seceding States into the territory of the Central Government should be forbidden, or rendered penal by any local law, made in accordance with international law and usage; or even if extra duties should be expressly imposed and actually levied on all goods so imported, by whomsoever, and indiscriminately as between natives and foreigners, British subjects cannot claim any exemption from such local law or duties.

So, again, as to the right of the seceded States to levy Customs duties at the ports (against which the foreign Legations seem to have protested), if the destination of those goods be clearly the Central (and not the Seceded) territory, there seems much justice in that protest; but it remains to be seen what answer is received thereto.

The Government of the Seceded States being a *de facto* Government, may fairly say, "If you import goods into our territory, you shall pay the duties: and if you will not pay them, you shall not land or import the goods *here*, whatever may be their alleged destination."

The Decree of Señor Mosquera, December 31, 1860, appears to me to be fairly open to the objections stated in Mr. Griffith's despatch No. 11, January 31, 1861.

The letter of Mr. Finner can only receive a formal and courteous acknowledgment. The notice or communication of Señor Martin to the New Granadian Consul at Liverpool is not formally or officially before Her Majesty's Government, but, probably, your Lordship may inquire of Señor Martin whether his Government seriously means to establish a blockade of the ports in question, and, if so, with what force; or what is the meaning of this "notice."

I regret not to be able to render your Lordship more effectual assistance; but I must observe that the words of the Decrees are vague: there is no statement of the precise form or manner in which it is expected they will be enforced; and, lastly, no one case has as yet arisen calling for official intervention.

It is not generally advisable to enter into discussions of abstract principles with the authorities of these ephemeral South American Governments; and the principles of international law cannot always be rigorously acted on in relation to them, owing to the mixture of weakness and severity which they so frequently evince in their conduct towards foreign merchants.

I have, &c.
(Signed) J. D. HARDING.

No. 121.

The Law Officers of the Crown to Lord J. Russell.—(Received June 12.)

My Lord,
Doctors' Commons, June 8, 1861.

JAPAN.

Imprisonment of Mr. Moss.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 23rd May ultimo, in which he stated that he was directed by your Lordship to transmit to us a letter from Mr. Moss, senior, dated the 20th ultimo, inclosing a copy of an Address forwarded to his son by the merchants at Yokohama, and to request that we would take into our consideration the statements it contains relative to the offence on account of which Mr. Moss, junior, was convicted in the Consular Court, and that we would favour your Lordship with our opinion thereupon, at the same time that we report upon the drafts of despatches and letters in this case, which were sent for our consideration on the 4th ultimo.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That this Address requires no comment from us.

It adds no very important facts or observations to those already brought under our notice, and most of its arguments are anticipated in our Report of the 26th of April.* It appears to us to be ably composed, and should be forwarded to Mr. Alcock, if he is not already in possession of a copy.

We have, &c.
(Signed) J. D. HARDING.
RICHARD BETHELL.
WM. ATHERTON.

No. 122.

The Law Officers of the Crown to Lord J. Russell.—(Received June 12.)

My Lord,
Doctors' Commons, June 11, 1861.

JAPAN.

Imprisonment of Mr. Moss. Demand for compensation.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 6th instant, in which he stated that, with reference to his letter of the 23rd ultimo, sending to us further papers in the Moss case, he was directed by your Lordship to transmit to us a letter from Mr. Moss, senior, dated the 4th instant, applying, on behalf of his son, for compensation on account of the proceedings taken against him in the Consular Courts in Japan, and to request that we would take this matter into our consideration, and favour your Lordship with our opinion as to the answer which should be returned to Mr. Moss.

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In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That inasmuch as it appears in some of the papers formerly transmitted to us in this case, that Mr. Moss, junior, has commenced an action against Mr. Alcock in the Supreme Court of Hong Kong, the question of compensation to him, on the part of Her Majesty's Government, must stand over, at least until the result of the action is known.

We have, &c.
(Signed) J. D. HARDING.
RICHARD BETHELL.
WM. ATHERTON.

No. 123.

The Queen's Advocate to Lord J. Russell.—(Received June 12.)

ITALY.

Laws of Florence with regard to succession to personal property.

My Lord, *Doctors' Commons, June* 11, 1861.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 8th June instant, stating that he was directed to transmit to me a letter from Messrs. Clayton and Son, dated the 6th instant, requesting to be supplied with certain information as to the laws of Florence with regard to the succession to personal property; and to request that I would take this paper into consideration, and report to your Lordship my opinion whether your Lordship could properly interfere for the purpose of obtaining the information sought for by the parties.

In obedience to your Lordship's commands, I have taken this matter into consideration, and have the honour to report—

That your Lordship's question must be answered in the negative.

There is not the slightest reason for complying with the extraordinary request of Messrs. Clayton and Son. There is no public question or interest involved; and the party really interested does not apply for himself. These gentlemen are solicitors, acting for their private client, whose name they do not disclose, but who, being domiciled at Florence, can have no difficulty in obtaining there the information which he requires.

The Secretary of State for Foreign Affairs cannot undertake to procure information on questions of foreign law merely for the convenience of English solicitors; more especially when the client is himself domiciled in the foreign country as to the law of which information is sought.

I have, &c.
(Signed) J. D. HARDING.

No. 124.

The Law Officers of the Crown to Lord J. Russell.—(Received June 12.)

NETHERLANDS.

As to legality of Mr. Munro, Her Majesty's Consul at Surinam, acting as administrator to three slave-estates.

My Lord, *Doctors' Commons, June* 11, 1861.

WE were honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 3rd of May ultimo, in which he stated that a report having reached you that Her Majesty's Consul at Surinam was acting as administrator to three slave estates in that island, Mr. Munro was instructed to inform your Lordship whether there was any foundation for the report in question; and Lord Wodehouse was pleased to say that he was directed by your Lordship to transmit to us the reply, dated the 29th of April ultimo, which had been received from Mr. Munro on the subject, and to request that we would favour your Lordship with our opinion as to whether Mr. Munro's proceedings, according to his own showing, are incompatible with his character as Her Majesty's Consul.

In obedience to your Lordship's commands we have perused Mr. Munro's statement, and have the honour to report—

That Mr. Munro's proceedings, as detailed by himself, are, in our opinion, in some respects incompatible with his character as Her Majesty's Consul. We refer to—

1. His acting as attorney for his sister-in-law Mrs. Macintosh, in the management of the coffee and plantation estate called "Leliendaal," on which it appears about 180 slaves are employed; and

2. His accepting the executorship under the will of the late Gordon Macdonald; if (as we infer was the case), the two plantations "Moy" and "Perseverance," part of the estate of Mr. Macdonald, were slave plantations; for, in the former case, Mr. Munro acted as the agent of a slave-holder, and, in the latter, he held slave property himself; both acts being utterly at variance with the spirit, if not the letter, of the English law for the suppression of the Slave Trade.

The last act to which Mr. Munro refers (the accepting of a bequest of a partial interest in five slaves, only to proceed at once, so far as in him lay, to manumit them), appears to us to be commendable, and in no wise inconsistent with the character, with which Mr. Munro is invested, of Her Majesty's Consul.

We have, &c.
(Signed) J. D. HARDING.
RICHARD BETHELL.
WM. ATHERTON.

No. 125.

The Queen's Advocate to Lord J. Russell.—(Received June 13.)

SPAIN.

Claim of Mr. G. Stiebel for compensation for illegal detention and imprisonment at Azua and Santo Domingo.

My Lord, *Doctors' Commons, June* 12, 1861.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 6th June instant, stating that he was directed to transmit to me a despatch, and its inclosures, received from Her Majesty's Consul in Santo Domingo (No. 17), respecting the complaint of Mr. George Stiebel, a British subject, of his having been illegally detained and imprisoned by the authorities at Azua and at Santo Domingo, in consequence of which, as well as of injury alleged to have been thereby sustained by him in a commercial speculation on which he was engaged, he claims compensation from the responsible authorities.

Mr. Hammond was also pleased to state that I should perceive from Mr. Stiebel's account of this transaction, that upon his arrival at Azua from Hayti, on the 21st March last, he found the Spanish flag flying there in lieu of the Dominican; the Dominican portion of the island having been incorporated with the Spanish dominions on the 18th of that month, as announced in General Santana's Proclamation of that day, when the Spanish flag was hoisted in the capital.

Mr. Hammond was also pleased to state that the Spanish Government have accepted this annexation, which Her Majesty's Government in recent despatches to Madrid have virtually recognized, although there has been no formal communication made to the Court of Madrid to that effect; and to request that I would take Mr. Stiebel's case into consideration, and report to your Lordship my opinion whether sufficient grounds exist for an appeal to Madrid in the matter in question.

Mr. Hood's despatches containing the account of the annexation of Santo Domingo were inclosed for information.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That from want of any sufficient explanation of the merits of the case, either from Mr. Stiebel or the Consul, there exist, as yet, no sufficient grounds for any appeal to Madrid in this matter.

It is remarkable that the Consul, in his despatch No. 17 of March 30, should give no information either as to his belief of the truth of Mr. Stiebel's story, or of the supposed reason or pretext for his arrest.

Full information as to the real facts and merits of the case must be procurable without any great difficulty on the spot; it can be ascertained (for instance) what law or regulation Mr. Stiebel was supposed to have violated;

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whether he was molested by error; or how otherwise: but until this is supplied, it is impossible for Her Majesty's Government to take any step.

I have, &c.
(Signed) J. D. HARDING.

No. 126.

The Queen's Advocate to Lord J. Russell.—(*Received June* 13.)

UNITED STATES.

Instructions of Rear-Admiral Milne to Commanders of Her Majesty's cruizers on coast of North America.

My Lord, *Doctors' Commons, June* 13, 1861.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 11th June instant, stating that he was directed to transmit to me a letter, and its inclosures, from the Admiralty, dated the 10th instant, and to request that I would take into my consideration the instructions addressed by Rear-Admiral Milne, on the 30th May ultimo, to the Commanders of Her Majesty's cruizers stationed on the coast of North America for the protection of British commerce, and that I would report to your Lordship, at my earliest convenience, whether I see any reason why those instructions should not be approved.

In obedience to your Lordship's commands I have taken these instructions into consideration, and have the honour to report—

That I see no sufficient reason why these instructions should not, on the whole, be approved.

There are, however, two or three observations which I venture to offer thereon:—

Article I. "In any intercourse you may have with citizens of the United States, or of the Confederate States," should stand thus: "with any officers or citizens of the United or Confederate States."

Article 3. "Representing your views to the Commander of the blockading squadron," should be amended, by adding the words, "in courteous but precise terms, and with full particulars in writing; and forthwith report to me all the particulars, and sending me copies of all communications between you and such Commander, and also sending to the Admiralty copies of such reports and communications by the earliest opportunity."

With respect to Article 4, I can only say that it is a question of policy (and not of law) whether there is at present so much reason to anticipate the perpetration of piratical outrages by the Confederate privateers against British vessels and goods, as to require the issuing of such strong and peremptory orders. In the case referred to by the Admiral (18th June, 1818, South America) it appears that "divers piratical acts and outrages" had been *actually committed* against British vessels and goods.

With respect to Article 9, it is for Her Majesty's Government to consider whether it is practically prepared fully to adopt, and embody in the Admiral's orders, the legal observations which I have felt it my duty to offer to the Secretary of State for Foreign Affairs on the Proclamation of President Lincoln; if so, it may possibly be considered proper to give President Lincoln notice to this effect.

I presume that Her Majesty's naval officers have already been instructed in the sense suggested in paragraph 2 of my Report of the 16th May ultimo, "to watch and report instantly the manner in which the very extensive blockade is actually maintained as to each respective port (with dates and particulars)." I only mention this important matter, because I observe no allusion to it in these instructions.

I have, &c
(Signed) J. D. HARDING.

P.S.—I request to be furnished with a copy of these instructions, when finally approved.

J. D. H.

Inclosure in No. 126.

Instructions by Rear-Admiral Sir A. Milne for the Guidance of Cruizers employed on the Coasts of America in the Protection of British Commerce.

(Confidential.) *"Nile," at Halifax, May* 30, 1861.

HER Majesty having, through her Principal Secretary of State for Foreign Affairs, signified her pleasure that in the civil war raging in America her naval forces are not to indicate any partiality or preference for either party, it will be your duty to exercise the strictest neutrality between the contending parties (both of whom are recognized by Her Majesty's Government as invested with belligerent rights), and with this view you will, while preserving a firm but conciliatory demeanour, abstain in any intercourse you may have with citizens of the United or the Confederate States not only from acting but from expressing sentiments contrary to Her Majesty's pleasure, and you will enjoin the same line of conduct upon all under your orders.

Article 2. While, however, it is your duty to observe the strictest neutrality between the contending parties, it is equally an imperative duty to afford the greatest possible protection to lawful British commerce, which will be effected, on the one hand, by the blockades about to be, or which may have been, *de facto* established by the Northern States, and, on the other, by the letters of marque which are being issued by the Southern Confederation.

Article 3. *Blockades.*—The President of the United States, by his Proclamation of the 19th ultimo, declared his intention of blockading the ports of the States of South Carolina, Georgia, Alabama, Florida, Mississippi, Louisiana, and Texas, and by his Proclamation of the 28th of that month also of those of Virginia and North Carolina, of which the blockades have been actually announced by Commodore Prendergast, commanding the United States' squadron, who states that he has sufficient force at his disposal to maintain them effectively. If such blockades are effectively established and maintained, it will be your duty to respect them, but even should the force employed be in your opinion insufficient to render the blockade effective, you will content yourself with representing your views to the Commander of the blockading squadron, so that any British sufferers whose right to claim redress might eventually be recognized by Her Majesty's Government may have the benefit of reference to your reclamations made on the spot. Should your advice in respect to such blockades be asked for by any British ships you might happen to fall in with, it would, while referring to the inclosed Queen's Proclamation of the 13th instant, which is sent herewith for your guidance, be prudent on your part simply to state that such and such places are known to be blockaded effectively, and that Her Majesty's Government had recognized each party as a belligerent, and, consequently, entitled to all the rights of war as against neutrals, avoiding as much as possible all technical points of international law upon which you, as an observer, are not called upon to act or decide, but which, if open to objection, would, in the ordinary course of events, be subsequently adjusted by the respective Governments.

Art. 4. *Privateers.*—The President of the Confederate States has, on the other hand, by his Proclamation of the 17th ultimo, offered letters of marque to private armed ships, which there is reason to believe will lead to the fitting-out of many privateers; and as, from the unscrupulousness with which privateering is generally conducted, British commerce may suffer severely from lawless depredations, you will adopt every possible lawful measure to protect British ships from molestation by such privateers; not hesitating, in a clear case of piracy on British ships, to deal with the aggressor as a pirate, in accordance with the instructions issued by the Lords Commissioners of the Admiralty on the 8th of June, 1818, which are contained in Appendices 2, page 74, of the Station Order Book.

Art. 5. It will be expedient that you should approach for observations and for necessary communication with the blockading squadrons within the limits assigned to you, but unless protection to British life should absolutely demand it, you are to avoid entering into any ports in the occupation of Confederate authorities or troops, as the visit of any of Her Majesty's ships might probably

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be interpreted into a disposition on the part of Her Majesty's Government to give countenance and support to the Secession movement, and, consequently, any step calculated to convey such an impression is to be avoided. Their Lordships' letter of the 1st March, No. 122, and of the 18th May, No. 250, and their inclosures, by which you will be strictly guided, will put you in possession of the views of Her Majesty's Government in respect to vessels flying the Palmetto, or other Secessionist flag.

Art. 6. You are to understand that, although the civil war in America confers belligerent rights on both of the contending parties, yet that the position of Great Britain remains unaltered, and, consequently, the instructions you have received prohibiting the visit or search of United States' (or Secessionist) merchant-ships, are not affected thereby. In the event, however, of falling in with a British merchant-vessel which you may have reason to suppose had not intentionally disregarded Her Majesty's Proclamation of the 13th instant above referred to, and which may have been detained by a vessel carrying a letter of marque, you would be quite justified in ascertaining the authority for, as well as the cause of, such detention.

Art. 7. You will furnish me with the usual monthly Return of the foreign vessels met with, including therein full particulars of all privateers and other suspicious vessels, and especially of all blockading squadrons fallen in with, and of which you will be careful to give the numbers, force, &c., as well as to state your opinion as to whether they are in each case adequate to maintain efficiently the blockade upon which they may be engaged.

Art. 8. Great caution is to be exercised in approaching the American coast, many of the lights being already removed, and it is not improbable that others may be dealt with in a similar manner.

Art. 9. With reference to the expressed intention of the United States to deal with Secessionist privateers as pirates, the following opinion has been given thereon by Her Majesty's Advocate-General in respect to British subjects captured in and serving in such privateers:—

"With respect to the concluding paragraph of the Proclamation relating to the treatment of Secession privateers as pirates, I do not consider it necessary at present to enter fully into its consideration.

"I will merely observe that pirates (*jure gentium*) are *hostes omnium*, common robbers upon the seas, having a general and indiscriminate *animus depredandi* against all persons in general, which cannot be properly predicated of rebels or insurgents acting under letters of marque from a *de facto* Sovereign and independent Government only seeking to capture the property of the subjects or citizens of the particular Government to which they are themselves hostile, and, above all, carrying their prizes into port for legal adjudication. Her Majesty's Government is not concerned as to the treatment which President Lincoln may choose to inflict upon any persons captured in privateers who may not be British subjects; but British subjects who are only hostile privateersmen cannot rightfully, when captured as such on the high seas, be treated as pirates, *jure gentium*, by President Lincoln. The laws of the United States (to which he alludes) cannot rightfully make a British subject guilty of piracy on the high seas merely for serving in a hostile privateer."

(Signed) ALEX. MILNE,
Rear-Admiral and Commander-in-chief.

No. 127.

The Queen's Advocate to Lord J. Russell.—(Received June 14.)

UNITED STATES.

British ship "Susan G. Owens" warned off the coast of all the Southern States by United States' blockading vessel.

Doctors' Commons, June 13, 1861.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 8th June instant, stating that he was directed to transmit to me a letter dated the 7th instant from Messrs. Armstrong and Gerard, representing the case of their vessel, the "Susan G. Owens," which, on leaving the port of Charleston on the 13th of May, was warned by the United States' blockading vessel "Niagara" off the coast of all the Southern States of the United States, the warning being indorsed upon the ship's register; and that Messrs. Armstrong and Gerard apprehend that the effect of this proceeding may be to expose their vessel to the risk of capture, without further warning, should she return to any part of the Southern coast during the continuance of the war: and Mr. Hammond was pleased to request that I would take this case into consideration and report to your Lordship my opinion thereupon.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That as the papers actually stand, it cannot, in my opinion, be maintained, that the owners of the British vessel "Susan G. Owens" have, as yet, sustained any damage, or are entitled to any redress, by reason merely of the endorsement of that ship's register to the effect stated, namely, "Boarded, informed of the blockade, and warned off the coast of the Southern States by the United States' ship "Niagara," May 13, 1861: Edward E. Potter, United States' Navy"; and I would suggest that they should be simply informed "that Her Majesty's Government cannot, upon the facts stated in the letter, claim any redress for them, or interfere with the United States' Government on their behalf."

I may observe (confidentially) that unless the ship should hereafter be actually captured and condemned for breach of blockade, and this without receiving any further notice whatsoever of the existence of such blockade, no international question will arise out of the mere endorsement of her register, of which her owners now complain, and that, with respect to the possible effect of this endorsement upon her liability to condemnation in the hypothetical event of her being hereafter captured for attempting to enter some blockaded port of the Confederate States, without receiving any further or other notice of such blockade than this endorsement, it must remain to be seen what may be the decision of a United States' Prize Court; and, therefore, it is obviously impossible for Her Majesty's Government to express any confident opinion beforehand.

I would also observe that Her Majesty's Government has not (so far as I am aware), as yet received any accurate information as to the actual facts or dates bearing on the blockade of each or any of the ports of the Confederate States.

If, therefore, the substantial objection meant to be relied on by Messrs. Armstrong and Gerard is, that the notice endorsed was not true, in fact (the coast of all the Southern States not being blockaded on the 13th May ultimo), there is, at present, no evidence on this point to impugn the substantial correctness of the endorsement, which cannot be *assumed* to be untrue.

Whatever may be the ultimate result, it is obvious that Her Majesty's Government cannot at present interfere.

I have, &c.
(Signed) J. D. HARDING.

No. 128.

The Queen's Advocate to Lord J. Russell.—(Received June 15.)

Doctors' Commons, June 14, 1861.

FRANCE.

Refusal of Governor of Sierra Leone to allow a French merchant-vessel to proceed beyond the harbour of Freetown.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 28th May ultimo, stating that he was directed to transmit to me a letter from the Colonial Office of April 29, inclosing a copy of a despatch dated the 20th of May last, from the Governor of Sierra Leone, forwarding a correspondence which had passed between himself and the French Vice-Consul, in regard to an application from the latter for permission for a French merchant-vessel to proceed up the Sierra Leone river beyond the harbour of Freetown, and which the Governor had not thought it expedient to accede to.

Mr. Hammond was also pleased to observe, that in transmitting this correspondence he was to state that your Lordship would be glad to be favoured by me with information as to the general law of nations bearing upon the question of the right of navigation of rivers, as well as with any observations which I might have to offer upon the particular case in question.

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General question of right of navigation of rivers.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That although the attempt to comply with your Lordship's request for "information as to the general law of nations bearing upon the question of the right of navigation of rivers," would require the compilation of a treatise, it may possibly be sufficient for the immediate purpose of this case, for me to state generally that where one nation is in possession of both banks of a river at the mouth, and commands the navigable channel, which nation has not conceded the right of free navigation thereof, and where there exist no recognized "riparian" States higher up the river, there is no sufficient authority for maintaining that any other nation can, irrespectively of Treaty or usage, lawfully enforce the right of navigating the river above its mouth, and beyond the territorial limits of the State owning both banks thereof.

With respect to the particular case in question, I can only say that all material information is so effectually withheld from me that I am wholly unable to offer any useful observations.

I remark, first, that the Governor has acted by the advice of his Council, and in accordance with the professional opinion of the Chief Justice and the Queen's Advocate; but no information as to what passed at the Council Board, or as to the grounds or reasons of such advice or opinion, is forthcoming;

Secondly, the Governor states that he believes that he is acting in conformity with law and usage; whilst the letter of the French Vice-Consul of March 6, to his Excellency, solicits the "preliminary authorization in accordance with the regulations in force;" and, moreover, states that the same question has arisen twice during his Consulship, and that no objection was made to it upon the presentation of the letter of advice, and the application for authority.

The Governor's answer to the Vice-Consul takes no notice of either of these statements; nor does his despatch of March 19, 1861, allude to them; but it is obvious that full explanation of the regulations in force are necessary to the decision of the question; and the Vice-Consul's allegations should have been dealt with by the Governor in some manner.

According to my present impression of the facts, the Governor was right in his refusal; the circumstances under which such permission was granted in two former instances should nevertheless be explained, but the fact of express permission having been applied for seems conclusive against any general French claim of right.

I have, &c.
(Signed) J. D. HARDING.

No. 129.

The Queen's Advocate to Lord J. Russell.—(Received June 15.)

My Lord, *Doctors' Commons, June* 15, 1861.

UNITED STATES.
— —
Articles considered contraband of war.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 11th June instant, stating that he was directed to transmit to me the accompanying despatches and their inclosures from Her Majesty's Minister at Washington (Nos. 222 and 223), respecting the blockade of the Southern ports of North America, together with a despatch and its inclosures from Her Majesty's Minister (No. 224), relative to what articles are considered by the United States' Government to be contraband of war, and to request that I would take these papers into consideration, and report to your Lordship any observations which I might have to offer thereupon.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

(A.) As to Lord Lyons' despatch No. 244 (described as relating to what articles are considered by the United States contraband of war), I can only say that, however desirable it would be for Her Majesty's Government, in common with all neutral maritime Powers, to be furnished with a list of such articles, the Circular dated May 2nd, and signed "S. P. Chase, Secretary of the Treasury," does not, in strictness, contain any such list; this Circular only interdicts the supply of certain articles to "the insurgents" (Confederate States), from or within the territory of the United States, and orders their seizure by the Custom-house officers, and reminds all persons supplying such articles to the insurgents that they are guilty of high treason.

The "second circular" (not forthcoming) is apparently disclaimed by the United States as having reference to contraband of war, and represented as only applying to the coasting-trade, from which British subjects in the United States are excluded.

I need scarcely point out that the international question of what is "contraband of war," relates to goods laden on board neutral vessels *captured by a belligerent on the high seas.* All British subjects and goods *within the territory of the United States* are legally subject to the jurisdiction, laws, and regulations of those States, so far as relates either to acts done within such jurisdiction (such, for instance, as trading with the enemy," or "high treason"), but these offences against local and municipal law, committed by those whose persons or goods are *infra territorium,* are different from international offences of "carrying contraband of war," which is committed, *extra territorium,* on board a neutral vessel out of the municipal jurisdiction; and the list or catalogue of articles now furnished, is by no means necessarily identical with that of articles "to be treated as contraband of war," and, as such, captured in British vessels on the high seas. These observations will particularly apply to the word "provisions."

It must, therefore, be kept in mind that hitherto the United States Government has not published any list or catalogue of articles to be considered internationally as contraband of war, the carrying which to the Confederate States will subject neutrals "on the high seas," to the (international) penalties of capture, and condemnation in a Prize Court administering the law of nations.

(B.) With respect to Lord Lyons' No. 222 and inclosures, I have to observe—

1. That anonymous newspaper paragraphs cannot be safely acted on in such questions.

Vessels coming out of blockaded ports with cargoes liable to capture.

2. That by international law (especially as interpreted and applied in this country) all vessels coming out of a blockaded port with cargo are *primâ facie,* and in strictness, liable to capture, and restitution would only take place on their proving to the satisfaction of the Prize Court adjudicating on them, that the cargo was laden or (possibly) embarked (as in lighters) before the blockade was established.

3. That the period of fourteen days, being a voluntary concession in favour of neutrals, made by the United States' Government, must, to a reasonable extent, and as to details, be subject to the construction put upon it by that Government.

4. That I have not at hand the official document granting the concession in question.

5. That it is impossible, merely upon these newspaper paragraphs, and before any specific case of serious practical hardship has actually arisen, or is adduced with all particulars, for your Lordship to instruct Lord Lyons upon this point.

(C.) With respect to Lord Lyons' No. 223 and inclosures, I observe that—

Blockade.

1. Lord Lyons has applied to Mr. Seward on behalf of the merchants as a matter of grace and favour, and that Mr. Seward's answer is not forthcoming. My opinion on these cases is therefore somewhat premature; but I can see no reason for any official support being given to Messrs. Graham's application as regards either the British ship "Roscoe," or the Russian ship "Heros," mentioned by Messrs. Graham and Co., New Orleans, or as to the cases (not named) of shipment to New Orleans, mentioned by Messrs. Peter Maxwell and Co., New Orleans.

2. The circumstance of these shipments having been made in Europe before the parties interested could have had any notice of the blockade, or even before it was established, will not of right operate to prevent the ships in question being warned off, and captured and condemned for any subsequent attempt to break an effective blockade of the port *ad quem.*

(D.) With respect to the cases (not named), but alluded to at page 2 of Messrs. Maxwell and Co.'s letter, of shipments made at New Orleans in vessels which have left the port, but are detained by causes beyond their control (l

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presume want of water or temporary obstruction of channels), no dates, names, or particulars are given; and therefore it is useless to attempt to deal with cases which are left by the parties interested entirely destitute of all necessary details. Subject to this observation, this class of cases, as far as I can at present collect the facts which are so scantily supplied, is strongly entitled to favourable consideration. Vessels which had left New Orleans outward bound, before any blockade of that port, or even after such blockade, if with cargoes laden on board before the commencement of the blockade, will, I conclude, either come within the operation of the fourteen days of grace, or will be allowed to pass out generally.

They would, at all events, according to my impression, be entitled to restitution before a Prize Court, in case of being captured and sent in for adjudication. (See 1 "Kent's Commentaries," p. 146.)

I would, in conclusion, venture to point out the urgent necessity for British subjects being required to supply names, dates, facts, and particulars in full, in all cases in which they seek for the interposition of Her Majesty's Legation; and to the expediency of distinguishing, as far as can be done, in all communications with the United States' Government, between those cases which may be susceptible of applications *ad gratiam* or *ad misericordiam* (as, for instance, vessels bound inwards to a blockaded port), and those which may deserve support as matter of international right, *ex debito justitiæ*, as, for instance, vessels outward bound from a blockaded port, but having actually quitted it, or having cargoes laden on board before the establishment of the blockade.

I have, &c.
(Signed) J. D. HARDING.

No. 130.

The Queen's Advocate to Lord J. Russell.—(*Received June* 19.)

UNITED STATES.

Landed property belonging to Mr. W. H. Ross, in Alexander county, Virginia, taken possession of by United States' Government.

My Lord, *Doctors' Commons, June* 17, 1861.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 13th June instant, stating that he was directed to transmit to me a letter, dated the 11th instant, from Mr. W. H. Ross, stating that he has been informed that troops, acting under the orders of the United States' Government, have taken possession of a property belonging to him in Alexander county, Virginia, and have commenced throwing up earth-works, &c., thereby doing the estate very great injury, and requesting that your Lordship would instruct Her Majesty's Minister at Washington to make such representations to the United States' Government as may secure Mr. Ross from loss, or will advise him how to proceed in the matter.

And Mr. Hammond was pleased to request that I would take Mr. Ross' letter into consideration, and report to your Lordship my opinion as to the answer which should be returned thereto.

In obedience to your Lordship's commands I have taken Mr. Ross' letter into consideration, and have the honour to report—

That an answer may be returned to Mr. Ross to the effect, "that his landed property in Virginia must be held subject to all the local obligations, laws, and regulations incident thereto.

"That it is not suggested that these have been violated in his case; or that he has as yet taken any step whatever to obtain compensation on his own behalf; or that his agent on the spot has done anything whatever in the matter. It would seem that the only information alluded to by Mr. Ross is derived from the 'New York Herald' of the 20th May ultimo, confirmed by a letter from a friend, whose address is not mentioned.

"That under these circumstances your Lordship must decline to make any representation to the Government of the United States; and that your Lordship can only advise Mr. Ross to inform himself of the facts, and of the local laws and regulations applicable to the case, and to be guided in his conduct in this matter by the opinions of the most trustworthy and competent persons in America."

Many citizens of the United States and of Virginia must be in the same position as Mr. Ross.

I have, &c.
(Signed) J. D. HARDING.

No. 131.

The Queen's Advocate to Lord J. Russell.—(*Received June* 19.)

SPAIN.

Claim of Mr. Rankin for losses incurred on account of his vessel "Fahrenheit" being ordered to proceed from Malaga to Port Mahon to perform quarantine.

My Lord, *Doctors' Commons, June* 17, 1861.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 12th of June instant, stating that he was directed to transmit to me a letter from Mr. Rankin dated the 29th ultimo, setting forth the circumstances under which he requests the interference of Her Majesty's Government with the Government of Spain to obtain compensation for losses which he has incurred by the proceedings of the authorities at Malaga in directing his vessel, the "Fahrenheit," to proceed to perform quarantine at Port Mahon; and to request that I would take this paper into consideration, and report to your Lordship my opinion as to whether Her Majesty's Government will be justified in interfering in this matter.

In obedience to your Lordship's commands I have taken this paper into consideration, and have the honour to report—

That Mr. Rankin would seem to have a *primâ facie* case of serious complaint, and Her Majesty's Government may probably be ultimately justified in taking up the case; but inasmuch as there is nothing from the Consulate at Malaga, and no information as to the Spanish Sanitary Regulations, or the particular circumstances on which Mr. Rankin relies in support of his claim for compensation, Her Majesty's Government is not at present in a position to address the Spanish Government on the question.

I would beg to refer to my Report of June 18 and August 8, 1860, on the case of the "Azorian," and to be informed of the result of that case.

I would suggest that the points to be kept in view are chiefly—

1. Was the conduct of the Spanish authorities strictly legal or illegal, under the existing Laws and Regulations?
2. If illegal, on what ground?
3. If not illegal, was it so unreasonable and oppressive as to justify the interference of Her Majesty's Government, and on what ground?
4. Is the fault in the Regulations themselves, or in the manner in which they were interpreted and enforced at Malaga?
5. Is this case one of a class, or is it exceptional?
6. Were any and what steps taken on behalf of the owner at the time, at Malaga; and if not, why not?

I may add that, from the extensive British trade with Malaga, the case assumes an important practical aspect, and the Consul should report fully on it.

I have, &c.
(Signed) J. D. HARDING.

No. 132.

The Queen's Advocate to Lord J. Russell.—(*Received June* 19.)

UNITED STATES.

Information desired by Messrs. Fernie, Brothers and Co., as to blockade of Southern coast of United States.

My Lord, *Doctors' Commons, June* 18, 1861.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 14th June instant, stating that he was directed to transmit to me a letter from Messrs. Fernie, Brothers and Co., stating that they are highly interested, either as owners or ship's husbands, in shipping, and they have now in Liverpool two vessels, the "Ellen" and the "Essex," which they propose to send to Savannah, Georgia.

Mr. Hammond was also pleased to state that Messrs. Fernie and Co. have, however, observed that the "Hilja" was boarded off Charleston on the 12th May, by a boat from the United States' blockading vessel "Niagara," and was warned off the whole Southern coast of the United States. That they also know that the "Monmouth" was likewise ordered away from Charleston, and that when she proposed to go into Savannah, she was informed that she could not go in there, as that port was blockaded; although, as Messrs. Fernie affirm, it was well known that there was at that time no blockading force off the port of Savannah.

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That Messrs. Fernie and Co. also refer to a notice issued by Her Majesty's Consul at New Orleans, on the 17th of May, in which he stated that he had not even then received any official notice as to the time when the blockade of the Mississippi river would be established.

Mr. Hammond was also pleased to state that under these circumstances Messrs. Fernie and Co. request to be informed whether Her Majesty's Government have received any information as to the nature and extent of the blockade actually put into operation by the United States; and to request that I would take Messrs. Fernie and Co.'s letter into consideration, and furnish your Lordship with my opinion as to the answer which should be returned thereto.

Mr. Hammond was also pleased to add, that the notice mentioned by Messrs. Fernie and Co. as having been issued by Mr. Moore has not yet been received at the Foreign Office.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That your Lordship will perceive that the answer to be given to this question depends to some extent upon the information actually in possession of Her Majesty's Government, "of the nature and extent of the blockade actually put into operation by the United States;" on this point I have no knowledge whatsoever.

There is too much reason to apprehend that Her Majesty's Government has not any full or exact information on the subject; and that it has not even the same amount of information thereon as is possessed by many private persons in this country; but it is not expedient to say this.

I can only therefore suggest that some decorously evasive and official answer should be given to Messrs. Fernie and Co., to the effect that your Lordship "regrets that it is not in your power to give them the information which they request," or to some similar effect.

I have, &c.
(Signed) J. D. HARDING.

No. 133.

The Queen's Advocate to Lord J. Russell.—(Received June 20.)

Doctors' Commons, June 18, 1861.

My Lord,

UNITED STATES.

Seizure of the "Hiawatha" and "Crenshaw" by blockading squadron, and sent to New York for condemnation. Claim of Messrs. John Gilliat and Co.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 14th June instant, stating that he was directed to transmit to me a letter dated the 11th instant, from Messrs. John Gilliat and Co., stating the nature of their interest in the cargoes of the British barque "Hiawatha" and the American schooner "Crenshaw," which it is affirmed have been seized by the United States' blockading squadron, and sent to New York to be condemned; and that Messrs. Gilliat and Co. request that instructions may be addressed to Her Majesty's Consul at that port with a view to the protection of their property, and to its being allowed to proceed to its destination.

And Mr. Hammond was pleased to request that I would take this case into consideration, and report to your Lordship my opinion thereupon.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That Messrs. Gilliat and Co. do not state from what port either vessel sailed, or on what ground it is supposed that either was captured. The captures are said to have been made by "the blockading squadron of the United States," and therefore (I presume) for breach of blockade; but of what port, or whether by egress or ingress, does not appear.

The "Crenshaw" is stated to be an American barque, but it is not stated who are her owners, or whether they are domiciled in the Northern (United) States, or in the United (Confederate) States; Messrs. Gilliat and Co. appear to be interested in part of the cargo of each ship.

Her Majesty's Consul at New York cannot, merely on this imperfect statement, be instructed, as requested, to interfere so that "Messrs. Gilliat and Co.'s property may be protected, and allowed to proceed to its destination;" or to interfere at all.

These captures cannot be assumed to be unjustifiable, or in breach of international law. Messrs. Gilliat and the other parties interested must proceed as claimants in the Prize Court, or otherwise, as they may be advised.

The case of the "Hiawatha," being the first British ship of the capture of which Her Majesty's Government has, as far as I am aware, received intelligence, should be particularly recommended to the attention of the Consul.

Her Majesty's Consul at Richmond (who is referred to by Messrs. Gilliat) should be requested to report, and forward all particulars within his knowledge.

I have, &c.
(Signed) J. D. HARDING.

No. 134.

The Queen's Advocate to Lord J. Russell.—(Received June 20.)

Doctors' Commons, June 19, 1861.

My Lord,

UNITED STATES.

Cases of the "Monmouth" and "Hilja," ordered off the port of Charleston by United States' blockading vessel.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 13th June instant, stating that he was directed to transmit to me—

1. A letter dated the 11th instant from Mr. Horsfall, inclosing further papers respecting the cases of the "Monmouth" and the "Hilja," which were ordered off the port of Charleston by the United States' blockading ship "Niagara;" and

2. A despatch from Her Majesty's Consul at Charleston (No. 63, May 2), reporting that the "Niagara" had disappeared, and that that port was consequently entirely open; and to request that I would take these papers into consideration, and furnish your Lordship with any observations which I might have to offer thereupon.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I can only refer to my Report of the 6th June instant,* as to which these papers do not alter my opinion.

I may add, that at the time the "Monmouth" and the "Hilja" were warned off Charleston (namely, the 12th May), the port seems to have been effectually blockaded.

The circumstance that the blockade was subsequently, on and after the 15th May, abandoned, relaxed, or interrupted, will not therefore affect the validity of the warning off, as regards these two ships. As regards the "Hilja," I have (in my former Report) observed that she had no alternative destination; and I cannot at present see how her owners can be entitled to compensation, merely by reason that when she was warned off Charleston (the port of her destination, which was then blockaded), she was also warned off *other ports* to which she had no destination; all of which may not have been then blockaded.

The "Monmouth" may possibly (as I have therein pointed out) have some claim in respect of *her* alternative destination to Savannah; but upon this point I need not at present repeat my opinion, inasmuch as the facts and details are still wanting.

Mr. Consul Bunch should be requested to explain on what grounds he expressed, in his letter to Messrs. Mure and Co. of May 18, his individual opinion that the owners of these ships have a fair claim for compensation and damages from the Government of the United States.

I have, &c.
(Signed) J. D. HARDING.

No. 135.

The Queen's Advocate to Lord J. Russell.—(Received June 20.)

Doctors' Commons, June 19, 1861.

My Lord,

SPAIN.

Position of certain Protestant chapels and schools at Dominican ports since annexation of San Domingo to Spain.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 6th June instant, stating that he was directed to transmit to me a despatch from Mr. Hood, Her Majesty's Consul at San Domingo (No. 16), adverting to the position in which certain Protestant chapels at Dominican

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ports under the Treaty between Great Britain and the Dominican Republic of 1850, and to which schools have since been attached, will be placed, in regard to the question of religious toleration, in consequence of the recent annexation of San Domingo to Spain; since there appears reason to apprehend that the Spanish Government may not grant a greater amount of toleration to such establishments in San Domingo, under the new order of things, than is shown in Spain.

Mr. Hammond was also pleased to state that the question of the recognition by Great Britain of the annexation of San Domingo to Spain is treated of in his letter of the 6th June instant, inclosing a further despatch from Mr. Hood; and to request that I would take the question now submitted to me into consideration, and report to your Lordship my opinion as to the course which Her Majesty's Government should take in the matter.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That the Consul should merely be instructed to report fully upon any attempt which may be made by the Spanish authorities to interfere with the British chapels or schools, or with the British burial-grounds, at San Domingo; and should any such attempt be made, he should officially request the Spanish authorities to inform him of the particular ground or authority under which they act in relation thereto; *non constat*, as yet, however, that any such attempts will be made.

As to the *schools*, the Treaty is silent; and I am not aware of the legal authority for their erection and appropriation, nor in whom they are legally vested, in trust or otherwise, which should be explained.

If Her Majesty is about to recognize the acquisition of the Dominican Republic by Spain, it will perhaps think fit, as a condition precedent, to insist on the Treaty of 1850 being acceded to by the latter Power as binding on it. Should this not be done at the time of recognition, some difficulties may be expected to arise in relation to the future position and status of British subjects and British interests in the (heretofore) Republic, now practically annexed to Spain.

I have, &c.
(Signed) J. D. HARDING.

No. 136.

The Queen's Advocate to Lord J. Russell.—(Received June 24.)

UNITED STATES.

Discontinuance of blockade of Charleston. Cases of the "Monmouth" and "Hilja."

My Lord, *Doctors' Commons, June* 24, 1861.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 20th June instant, stating that he was directed to transmit to me a despatch from Her Majesty's Minister at Washington (No. 241, of June 3), inclosing a copy of the answer returned by Mr. Seward to the note addressed to him by Her Majesty's Minister, respecting the discontinuance of the blockade of Charleston, of which a copy was submitted to me in Mr. Hammond's letter of the 5th June instant.

Mr. Hammond was also pleased to inclose, together with the former papers, the draft of a despatch which was addressed to Her Majesty's Minister at Washington on the 8th June instant, showing the nature of the instructions with which he has been furnished in regard to the cases of the "Monmouth" and the "Hilja," and to state that he has been furnished (confidentially) with a copy of my Report of the 6th June.

Mr. Hammond was also pleased to state that unless I should be of opinion that the papers now sent throw any further light upon those two cases, your Lordship conceives that it may be desirable to await the receipt of further information before coming to any final decision in regard to them; and to request that I would take into consideration the answer returned by Mr. Seward to Lord Lyons respecting the absence of any blockading force from the port of Charleston, and that I would favour your Lordship with my opinion thereupon.

In obedience to your Lordship's commands I have taken this matter into consideration, and have the honour to report—

That inasmuch as it is highly desirable at present to avoid discussions upon abstract principles of international law with the Government of the United States, and only to interfere officially in particular cases, when British subjects have clearly sustained substantial losses or actual wrongs, for which neither the Prize Court nor any other Courts will afford them any redress, and when all the necessary particulars are fully supplied, I am happy to observe that (as far as I can judge from Lord Lyons' No. 141) no international discussion need apparently be raised as to the blockade of Charleston, excepting possibly in the case of the "Monmouth;" and if this should turn out to be the case, it will be very desirable to avoid a critical international discussion upon this single case.

The United States' Government appears to me upon the whole to have acted liberally in regard to this blockade, and it may be proper at a convenient time for Her Majesty to acknowledge that it has done so.

I observe, however, that Mr. Seward and Consul Bunch are at variance as to the facts and dates.

Mr. Seward in his note of the 27th May intimates that the blockade was only intermitted for a day or two between the departure of the "Niagara" and the arrival of the "Harriet Lane;" whilst Lord Lyons (citing Consul Bunch's No. 66) infers that the blockade was intermitted from the 16th to the 28th of May.

Under these circumstances I abstain from troubling your Lordship at present with any observations on the abstract legal considerations applicable to intermissions of blockade.

Lord Lyons has in my opinion decided rightly in abstaining from bringing any particular case before the United States' Government without instructions from your Lordship, and there is no necessity for coming (as yet) to any final decision upon either of these two cases.

I have, &c.
(Signed) J. D. HARDING.

No. 137.

The Queen's Advocate to Lord J. Russell.—(Received June 26.)

SPAIN.

Case of the "Fahrenheit."

My Lord, *Doctors' Commons, June* 25, 1861.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 21st June instant, stating that with reference to my Report of the 17th June instant,* regarding the case of the "Fahrenheit," he was directed to state to me that Mr. Mark, Her Majesty's Consul at Malaga, is at present in this country on leave of absence, and that your Lordship is of opinion that it may be convenient that I should be placed in communication with Mr. Mark in this matter.

Lord Wodehouse was also pleased to state that, if I should have no objection to this step, he would be glad to learn from me the day and hour on which it may be convenient for me to receive Mr. Mark.

Lord Wodehouse was also pleased to acquaint me that the decision of the Portuguese (qy. Spanish) Council in the case of the "Azorian" has not as yet been made known to Her Majesty's Government.

Mr. Rankin's letter of the 29th of May last was inclosed for reference, and is herewith returned.

In obedience to your Lordship's commands I have taken this subject into consideration, and have the honour to report—

That I presume that the word "Spanish" should be substituted for "Portuguese" Council, as applied to the case of the "Azorian" in Lord Wodehouse's letter.

I beg to suggest that Consul Mark should see all the papers, including my Report of the 17th June instant (herewith returned), on the case of the "Fahrenheit," and should also see all the papers (including my Reports) in the case of the "Azorian;" if when he has read them he will let me know, I will make an appointment with him, and I shall be happy to see him on the subject.

I have, &c.
(Signed) J. D. HARDING.

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No. 138.

The Law Officers of the Crown to Lord J. Russell.—(*Received June* 27.)

BRAZIL.

Mixed Commission of claims at Rio.

My Lord, *Doctors' Commons, June* 24, 1861.

WE are honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 12th June instant, stating that with reference to our previous Reports as to the questions which have arisen regarding the Mixed Commission at Rio, he was directed to transmit to us the correspondence which has taken place between Her Majesty's Minister at Rio (No. 41), and the Brazilian Government, since the matter was last submitted to us, and especially a despatch from Mr. Christie (No. 53), inclosing a note which he has received from the Brazilian Minister for Foreign Affairs, in reply to a note which he had addressed to him, with a view to ascertaining the views of the Brazilian Government as to whether the Convention is to be considered as having now fallen to the ground.

And Lord Wodehouse was also pleased to request that we would take these papers into consideration, together with the previous correspondence, and report to your Lordship our opinion whether Her Majesty's Government will be justified in maintaining that the Convention has expired.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That even if it were true that the sittings of the Commissioners were suspended on account of "unforeseen and unavoidable circumstances," still the powers of the Commissioners would not have continued beyond the two years mentioned in the IIIrd Article, except under mutual agreement of both Governments for an extension of time; there has not been (as we collect) any such mutual agreement, and, therefore, until such agreement be made, the powers of the Commissioners must be considered as no longer subsisting.

We have, &c.
(Signed) J. D. HARDING.
RICHARD BETHELL.
WM. ATHERTON.

No. 139.

The Law Officers of the Crown to Lord J. Russell.—(*Received June* 27.)

TURKEY.

Mrs. Parry's complaint against Mr. Hornby in the case of Crawford *v.* Parry. Mr. Hornby's explanation satisfactory.

My Lord, *Doctors' Commons, June* 25, 1861.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 11th June instant, in which he stated that he was directed by your Lordship to transmit to us, with reference to our report of the 25th April ultimo,* a despatch from Mr. Hornby (No. 42 of May 29, 1861), containing his own remarks on Mrs. Parry's letter of the 2nd February ultimo, and inclosing Mr. Vice-Consul Wroth's report and notes of the trial in the case of "Crawford *v.* Parry," and to request that we would take these papers into consideration, and report our opinion as to the further steps, if any, which should be taken in the matter.

Mr. Hammond was also pleased to transmit to us, with reference to the concluding passages of Mr. Hornby's despatch, the instruction which, as we were informed by Mr. Hammond's letter of the 12th March ultimo, your Lordship was prepared to address to Mr. Hornby; and he was also pleased to state that your Lordship thought it right that we should be apprized that your Lordship had not hesitated at once to express to Mr. Hornby your entire satisfaction with the clear and explicit answer which he had given to the inquiry which has given him so much pain, and which your Lordship only put to him on account of the view which we seemed to entertain of Mr. Hornby's conduct.

Mr. Hammond was also pleased to state that we should observe that Mr. Hornby has accidentally omitted to sign his despatch, but that he would be desired to send a signed duplicate.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we are happy to be able to state that Mr. Hornby's answer to the

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* Page 77.

charges of Mrs. Parry appears to us to be satisfactory; and therefore we do not recommend that any further step be taken in the matter.

We have, &c.
(Signed) J. D. HARDING.
RICHARD BETHELL.
WM. ATHERTON.

No. 140.

The Queen's Advocate to Lord J. Russell.—(*Received June* 27.)

TURKEY.

Refusal of the Porte to allow Mrs. Abbott to open a calico manufactory at Smyrna.

My Lord, *Doctors' Commons, June* 26, 1861.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 17th June instant, stating that he was directed to transmit to me the accompanying despatch and its inclosure from Her Majesty's Ambassador at Constantinople (No. 383), respecting the refusal of the Porte to allow Mrs. Abbott to open a calico manufactory at Smyrna, and to request that I would take this question into consideration, and report to your Lordship my opinion whether there is anything in the Treaty stipulations between Great Britain and Turkey which would justify Her Majesty's Government in interfering on behalf of Mrs. Abbott.

In obedience to your Lordship's commands I have taken this question into consideration, and have the honour to report—

That I am not aware of any Treaty stipulation whatsoever on this subject; but I would request that, if any such exists, it may be pointed out.

I observe that Sir H. Bulwer states (at page 2 of No. 383) that Consul Blunt is of opinion that the conferring of the exclusive privilege in question by Vizirial order, "is contrary to *the Treaties* with Great Britain." No Treaty is mentioned, and no reason is stated.

The Memorandum from Aali Pasha to Sir H. Bulwer of the 13th May is in very vague terms, and no information is given as to the actual state and working of the law and practice of Turkey as to the issuing of these exclusive privileges to carry on a particular manufacture at a particular place.

The general question is one of importance to British interests, and these papers contain, in my opinion, no exact or sufficient information upon it, and leave it involved in much obscurity.

It is obvious that if there be anything contrary to Treaty in these exclusive grants or concessions, this should be pointed out; and that however this may be, the state of the matter should be fully explained and considered, with a view to future cases.

These papers, as they stand, are quite useless for any practical purpose.

I have, &c.
(Signed) J. D. HARDING.

No. 141.

The Queen's Advocate to Lord J. Russell.—(*Received June* 27.)

UNITED STATES.

Complaint of Mr. Harley, master of the "Culloden," of ill-treatment and confinement at Mobile.

My Lord, *Doctors' Commons, June* 27, 1861.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 17th June instant, stating that with reference to my Report of the 11th March last, he was directed to transmit to me, together with the former papers, a despatch from Her Majesty's Minister at Washington (No. 161), inclosing such further information as the present Acting Consul at Mobile has been able to obtain in regard to the ill-treatment complained of by Mr. Harley, the master of the British ship "Culloden," and to request that I would take these further papers into consideration, and furnish your Lordship with any observations I may have to offer thereupon.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That the depositions (especially those of the master and mates of the

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"Culloden") appear to me to show that their conduct to Anna McDonnell was not only illegal, but unmanly and disgraceful.

In my opinion the master, even on his own showing, may well have deserved the "tarring and feathering" with which he was threatened, but which was not inflicted on him. I should certainly advise your Lordship not to interfere to obtain any compensation for him from the authorities at Mobile, who succeeded in protecting him from the violence threatened; it is only to be regretted that such things can be done with perfect impunity to female passengers in British ships.

With respect to his imprisonment by the Consul, and to the general circumstances of the case, I can only say that there is no information whatsoever forthcoming; and the inability of Acting Consul Magee to supply any information as to such imprisonment, or on the other matters of so much recent notoriety, is to me, I own, incomprehensible.

I have, &c.
(Signed) J. D. HARDING.

No. 142.

The Law Officers of the Crown to Lord J. Russell.—(Received June 28.)

UNITED STATES.

Intention to declare ports of Seceded States to be no longer ports of entry, and to confiscate any vessel resorting thereto. Evasion of international law respecting blockade.

My Lord, *Doctors' Commons, June* 25, 1861.

WE were honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 20th of June instant, stating that he was directed by your Lordship to transmit to us the accompanying despatches from Her Majesty's Minister at Washington (Nos. 212 and 240), relative to the measures which it is proposed to ask Congress to adopt at its meeting on the 4th of next month.

That among those proposed measures, is said to be one giving to the President the right to declare the ports of the Seceded States to be no longer ports of entry, and to confiscate any vessel which shall attempt to resort to them; the apparent object of this measure (as stated by Her Majesty's Minister) being to free the United States' Government from the obligation of observing the rules of international law respecting the blockade, but especially to do away with the necessity of keeping at all times a force on the coast sufficient to render it effective.

Lord Wodehouse was pleased to request that we would take into our consideration the project said to be entertained by the United States' Government for closing the Southern ports by the means above indicated.

In obedience to your Lordship's commands we have the honour to report—

That any attempt on the part of the Northern (United) States to close, by an Act of Congress, all the ports in the Southern (Confederate) States against British commerce, would be inconsistent with the pacific and commercial relations at present subsisting between the "United States of America" and this country.

Further, we are of opinion that no belligerent Power has a right, by mere prohibitory enactment, to require neutral nations to abstain from all commercial dealings with another belligerent Power, which would be the result of the expected enactment. Such a right can extend only to ports of which the belligerent is in actual possession, and into which he can therefore not only forbid entry, but by competent force upon the spot give effect to such prohibition. We are, therefore, of opinion that any paper enactment by Congress, to the effect anticipated by Lord Lyons, may be treated as nugatory by the Law of Nations; and any attempt to enforce it by the seizure and confiscation of a neutral ship may be justly regarded as an act of hostility.

We would suggest the expediency of this country and other European Powers concurring in a representation to this effect to the Government of the Northern (United) States.

We have, &c.
(Signed) J. D. HARDING.
RICHARD BETHELL.
WM. ATHERTON.

No. 143.

The Law Officers of the Crown to Lord J. Russell.—(Received June 29.)

PERU.

Claim of Mr. Carwell to administer to property of late Mr. Michael Winder.

My Lord, *Doctors' Commons, June* 25, 1861.

WE are honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 30th May ultimo, stating that he was directed to transmit to us for consideration two further despatches (Nos. 17 and 18), with their inclosures, from Her Majesty's Chargé d'Affaires in Peru, relating to the administration to the estate of the late Michael Winder.

We are also honoured with Lord Wodehouse's letter of the 4th June instant, transmitting our former Report of the 29th May ultimo,* together with the former papers on this subject.

We are also honoured with Lord Wodehouse's letter of the 18th June instant, transmitting a further despatch from Mr. Jerningham (No. 21), together with a letter, dated the 13th instant, from M. Osma, the Peruvian Minister at this Court, relative to this case.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That the papers transmitted with Lord Wodehouse's letter of the 30th May ultimo do not appear to us to require any important observations, the whole question, in its present state and condition, being (in effect) disposed of by our former Report of the 29th of May.

Mr. Jerningham on receiving the receipt (transmitted with the papers) rightly returned the property deposited with him to those who had deposited it.

We forbear to enter into the correspondence between Mr. Jerningham and the Peruvian Government, which was begun and carried on by him under imperfect information as to the law of the case.

The liability of the Peruvian Government in respect of any "laches" relating to the bonds, or to the non-arrest of Winder, or in respect of Mr. Carwell's somewhat singular demand of 250*l. per diem* (in the nature of damages in respect of his arrest) cannot be finally considered until the termination of the legal proceedings now pending.

The papers transmitted with Lord Wodehouse's note of the 18th June disclose an apparent want of good faith on the part of the Peruvian authorities, especially of Señor Melgar, as remarked by Mr. Jerningham.

Señor Melgar is, moreover, connected with Mrs. Winder (Mr. Carwell's opponent); and the facts alleged by Mr. Carwell in his letters No. 17 of the 19th April, and No. 18 of the 20th April, as to the improper means used by the Government to deter one of his counsel (Señor Zejeda) from continuing to act for him, and the suspicious communication held with another of his counsel (Señor Albertini) have a most discreditable aspect; but we do not see how Her Majesty's Government can officially interfere further at present, or, indeed, at all *pendente lite*.

The Peruvian Courts (as we have explained in our former Report) have jurisdiction over the property locally situate in Peru; and Mr. Jerningham's attention is fully alive to the importance of the case, and to the suspicious conduct of the authorities.

We do not see, under all the circumstances, how any further instructions can usefully be sent to him.

We have, &c.
(Signed) J. D. HARDING.
RICHARD BETHELL.
WM. ATHERTON.

No. 144.

The Law Officers of the Crown to Lord J. Russell.—(Received June 29.)

PERU.

Arrest of Captain M. White on charge of attempt on the life of General Castilla in 1860.

My Lord, *Doctors' Commons, June* 25, 1861.

WE were honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 15th June instant, in which he stated that he was

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directed by your Lordship to transmit to us two despatches from Her Majesty's Chargé d'Affaires in Peru (Nos. 14 and 16), inclosing correspondence regarding the arrest of Captain Melville White on a charge of being concerned in an attempt on the life of General Castilla in 1860.

Lord Wodehouse was also pleased to inclose a note dated the 13th of May last, which had been received on the subject from M. de Osma, the Peruvian Minister at this Court, and to request that we would take the papers into our consideration and report to your Lordship our opinion as to the course to be taken by Her Majesty's Government in the matter.

In obedience to your Lordship's commands we have taken the papers submitted to us into our consideration, and have the honour to report—

That the first question to be considered is, was the arrest, imprisonment, and general treatment of Mr. White, strictly legal, or illegal, by Peruvian law?

Upon this material question we can find but little information in Mr. Jerningham's despatches and notes.

In his note to Señor Melgar of April 17, Mr. Jerningham states that "it is against the law of Peru to arrest a person without exhibiting a written order issued by a competent authority, except of cases of *in fragrante* (*in flagranti*)." He does not cite this law by reference, and he refers to no other law. It is not suggested by him, for instance, that Mr. White may not be legally kept in prison, and in solitary confinement for an indefinite period, or as long as the Peruvian Government may choose.

It is, indeed, scarcely conceivable that such should be the law of Peru: and if Mr. White's arrest and imprisonment should turn out to be illegal, or if the provisions of the law in his favour have been disregarded, the case will assume a very serious aspect.

Assuming, however, that the law of Peru has not been violated or disregarded, *then* we can only suggest that Mr. Jerningham should be instructed to use all his efforts, adopting a courteous and moderate tone in his official correspondence, to induce the Peruvian Government, (1), to mitigate the extreme severity of Mr. White's treatment; (2), to allow him to know the precise crime with which he is charged; (3), to allow him to see the British Consul and his legal adviser from time to time under reasonable restrictions; (4), to hasten his trial.

We would also suggest that Señor Osma's note of the 13th May to your Lordship may properly be answered to the effect that your Lordship has heard with pain and surprise that Mr. White was arrested and placed in severe and solitary confinement ("incomunicado") on the 23rd March ultimo, and had apparently so continued up to the 28th April; that he was treated with great personal indignity and severity; that he received no written document containing any notice of the charge on which he was imprisoned; that he had not been confronted with any witness, nor subjected to any public preliminary hearing or proceeding, nor allowed to see any legal adviser; and that all substantial information as to the motives for this extraordinary severity had been withheld from Mr. Jerningham, and all explanation refused notwithstanding his application for it.

That your Lordship was at a loss to comprehend how such treatment of a British subject, even if technically justified by Peruvian law (which remained to be seen), could be seriously adopted and defended by the Peruvian Government as being in accordance with the ordinary usage and comity of civilized nations; that M. Osma must be aware that no Peruvian could possibly be thus treated in England; and that, far from disapproving Mr. Jerningham's conduct, your Lordship must, on behalf of Her Majesty's Government, insist upon receiving a prompt and satisfactory explanation of the whole matter, and must invite the most serious attention of the Peruvian Government to all the circumstances of the case of Mr. White, and require: (1), that he receive distinct legal notice of the charge against him; (2), that he have access to legal advice; (3), that his public and legal trial be expeditiously and duly proceeded with."

We have, &c.
(Signed) J. D. HARDING.
RICHARD BETHELL.
WM. ATHERTON.

No. 145.

The Queen's Advocate to Lord J. Russell.—(Received June 29.)

My Lord, *Doctors' Commons, June 28, 1861.*

NEW GRANADA.

Right of New Granada to prohibit a direct trade between its own ports and those held by its opponents.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 18th June instant, stating that, with reference to my Report of the 8th June instant,* respecting the closing of New Granadian ports, he was directed to transmit to me a despatch (No. 19) from Mr. Henderson, Her Majesty's Consul at Panamá, in the third inclosure in which a question has been raised as to the right of the New Granadian Government to prohibit a direct trade being carried on between its own ports and those held by its opponents.

Lord Wodehouse was also pleased to state that as this question does not appear to have been raised in the former papers submitted to me, he was to request that I would report to your Lordship my opinion whether this prohibition can be legally enforced by the authorities in the New Granadian ports upon British ships.

In obedience to your Lordship's commands I have taken this question into consideration, and have the honour to report—

That both Commodore Dunlop and Consul Henderson appear to me to have taken a correct view of this question.

The Commodore's order of the 30th April, if taken with the qualification of the Consul's despatch to Captain Bruce of May 13, will properly deal with the case.

Subject to this observation, and so far as I can understand the actual state of the facts, your Lordship's question must be answered in the affirmative.

Nothing is stated in the papers as to the right of British vessels to carry on the coasting (or intermediate) trade between two or more New Granadian ports, and the Treaty of 1825 (Columbia) appears to contain no stipulation on this point. Something may, however, turn upon the scale on which the measure in question is attempted to be carried out. A Federal Government may, for instance, be justified in closing (say) one or two ports in the temporary occupation of revolters; but if the revolters acquire by time and circumstances, and by the nature and extent of the quarrel, the consistency, power, and resources of a separate and independent Government, claiming to be so treated, acting as such, and formally and permanently seceding from the Federation, occupying and retaining in full possession many ports and a large extent of coast, and *if the coasting or intermediate trade is not dependent on the absolute discretion of the Federal Government*, but is secured under a "most favoured nation clause" in a Treaty, or by any formal or binding Act, the Federal Government must resort to an effective blockade, and cannot permanently do, *merely on paper*, what it cannot effectually do in fact.

I am wholly ignorant of the circumstances actually existing in New Granada, but I perceive with satisfaction that no British vessel has been as yet molested or seriously threatened by either party.

I would suggest that it may be desirable in such cases for the British authorities to concert measures, where practicable, for acting in the same sense with the other European Maritime Powers in regard to questions of this character.

I beg to refer to the Report of the Law Officers of June 25th, on the question of the right of the United States' Government to close Southern ports by an Act of Congress.

The despatch No. 19, from Mr. Henderson, Her Majesty's Consul at Panamá, transmitted with these papers, has been sent to the Foreign Office, in pursuance of Lord Wodehouse's letter of the 27th June instant.

I have, &c.
(Signed) J. D. HARDING.

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No. 146.

The Queen's Advocate to Earl Russell.—(Received July 2.)

China.

Mr. Duddell's claim on account of destruction of flour and baking stores at Hong Kong.

My Lord, *Doctors' Commons, June* 29, 1861.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 17th June instant, stating that he was directed to transmit to me, together with the previous papers, a letter from Mr. George Brooks, forwarding a petition from Mr. Duddell, whose claim on account of the destruction of his flour and baking stores at Hong Kong formed the subject of my Report of the 14th May, 1857; and to request that I would take Mr. Duddell's petition into consideration, and report to your Lordship my opinion whether it contains anything to alter or modify the opinion expressed in that Report adverse to Mr. Duddell's claim.

In obedience to your Lordship's commands I have taken this petition into consideration, and have the honour to report—

That this petition contains nothing to alter or modify the opinion which I expressed in my Report of the 14th May, 1857.

I have, &c.
(Signed) J. D. HARDING.

No. 147.

The Queen's Advocate to Lord J. Russell.—(Received July 2.)

New Granada.

Complaint of Messrs. Crossthwaite and Co. of forcible impressment of men for military service.

My Lord, *Doctors' Commons, June* 29, 1861.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 19th June instant, stating that he was directed to transmit to me a despatch (No. 18) from Mr. Griffith, Her Majesty's Chargé d'Affaires at Bogotá, regarding a representation which he has received from Messrs. Crossthwaite and Co., complaining of certain proceedings of the New Granadian authorities on the occasion of the forcible impressment of men for the military service of the Republic; and to request that I would take this subject into consideration, and report to your Lordship my opinion whether the case of Messrs. Crossthwaite is one in which Her Majesty's Government would be justified in interfering.

In obedience to your Lordship's commands I have taken this subject into consideration, and have the honour to report—

That, according to my present impression, your Lordship's question must be answered in the affirmative.

I observe in Mr. Griffith's No. 18, that Messrs. Daniel and Leopold Schloss, partners in the firm of Crossthwaite and Co., are expected in this country, and will furnish Her Majesty's Government with further information.

I would further point out—

1. That the general question involved in this case is one of extreme importance to British interests; for if the Government of New Granada can impress for military service, at its arbitrary and uncontrolled discretion, all the labourers of one person or class of persons (exclusively), it can ruin, with impunity, any or all of those British subjects employing and dependent on numerous labourers, towards whom it may entertain unfavourable feelings; and, considering the circumstances of the country, this state of things may lead to very serious results.

2. Mr. Griffith's well-founded apprehension of such cases giving a great deal of official and international trouble seems to me to be no sufficient reason for the acquiescence of Her Majesty's Government. The wrong complained of was done by the direct authority of the Executive Government, acting under colour of law, during a civil war, and a resort to the local tribunals in New Granada would be practically useless in such a case.

3. It is to be regretted that Messrs. Crossthwaite have not forwarded a copy, or full explanation, of the particular Article of the Constitution and Law which they suggest to have been violated; together with the text, or a full

explanation of the law, if any, under which the Government assumes to be authorized or justified in what it has done; for the first question to be settled is, was this impressment legal or illegal, and, in either event, on what authority or grounds?

I have, &c.
(Signed) J. D. HARDING.

No. 148.

The Queen's Advocate to Lord J. Russell.—(Received July 3.)

Greece.

Action at law in a Greek Court between two Ionians. Right of property to brig "Solon."

My Lord, *Doctors' Commons, July* 1, 1861.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 25th of June ultimo, stating that he was directed to transmit to me a despatch and its inclosures from Her Majesty's Consul at Patras (No. 28, June 6, 1861), requesting instructions as to the course which he should pursue in a case of an action at law brought in a Greek Court, between two Ionian subjects, in a question of right of property to the Ionian brig "Solon;" and to request that I would report to your Lordship my opinion as to the instructions which should be given to Mr. Ongley in this matter.

In obedience to your Lordship's commands, I have taken this matter into consideration, and have the honour to report—

That the Consul should be instructed not to interfere at all in this case.

It is not stated that any of the parties concerned have asked for his interference; the Ionian Government has not requested it; and Her Majesty's Government has no interest in the matter. The case is full of complication, and probable fraud, which may be very properly investigated by a legal Tribunal.

It is a private dispute between Ionians, two of whom are brothers, having opposite interests. Any Consular intervention would be either useless or prejudicial to some, if not to all, of the parties concerned, whose conflicting claims involve questions of law and fact, with which neither Her Majesty's Government nor that of Ionia has any concern.

I observe that the Consul does not transmit the papers, or explain the circumstances which have already induced Sir Thomas Wyse to interfere (ineffectually) in this case.

With respect to the 179th Article of the "Instructions of the Board of Trade," I have to observe—

1st. That these instructions, as is apparent from their "heading," refer to British ships exclusively.

2ndly. That, although not very distinctly worded, neither this Article (nor any Article) could reasonably be intended, or so construed, as to direct the Consul, in cases where the parties litigant are all British or Ionians, to interfere in favour of the defendants exclusively; or, in other words, to "obtain the release" from arrest of any British or Ionian vessels arrested at the suit of a British or Ionian plaintiff; for the plaintiff is, obviously, at least as likely to be right as the defendant, and Her Majesty's Government must act with impartiality between them.

The Article, in my opinion, is intended to apply only to cases of British vessels detained or arrested abroad at the suit or instance of foreigners.

The Consul should carefully abstain from official interference in any litigation existing in Greece between British or Ionians, *inter se*, without specific instructions to the contrary effect; any deviation from this rule may involve him and Her Majesty's Government in serious consequences.

The Consul should be cautioned to consider and construe the Instructions of the Board of Trade with more care, discretion, and common sense, than he would seem to have done in this case.

I have, &c.
(Signed) J. D. HARDING.

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No. 149.

The Queen's Advocate to Lord J. Russell.—(Received July 3.)

UNITED STATES.

Blockade of port of Charleston.

My Lord, *Doctors' Commons, July* 2, 1861.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 29th June ultimo,[*] stating that with reference to my Report of the 24th June ultimo, he was directed to transmit to me a further despatch, and its inclosures, from Her Majesty's Minister at Washington (No. 268), and also a despatch from Her Majesty's Consul at Charleston (No. 66), respecting the question of the blockade of that port.

Lord Wodehouse was also pleased to state that the papers forwarded by Lord Lyons contain the particulars of the case of the British vessel "Eliza and Catherine," and that Mr. Consul Bunch adverts to the course pursued by him with regard to applications made to him, since the blockade became effective, to convert American into British vessels; and to request that I would take these papers into consideration, and report to your Lordship any observations which I may have to offer upon their contents.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That these papers do not appear to me to call for any observations, excepting:—

1st. That the United States' Flag Officer Stringham, of the "Minnesota," appears to have acted liberally and courteously in the case of the "Eliza and Catherine."

2ndly. That the contention of Mr. Secretary Seward in his note to Lord Lyons of the 27th May (alluded to in my Report of the 24th June), to the effect that this blockade was only intermitted for a day or two between the departure of the "Niagara" and the arrival of the "Harriett Lane," appears to be discredited by the facts now stated by Consul Bunch.

3rdly. That the Consul's proceedings appear to have been judicious and correct.

I have, &c.
(Signed) J. D. HARDING.

No. 150.

The Queen's Advocate to Lord J. Russell.—(Received July 3.)

UNITED STATES.

Blockade of the Mississippi.

My Lord, *Doctors' Commons, July* 2, 1861.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 29th June ultimo, stating that he was directed to transmit to me a despatch, and its inclosure, from Her Majesty's Minister at Washington (No. 269), respecting the blockade of the Mississippi; and to request that I would take these papers into consideration, and furnish your Lordship with any observations which I may have to offer thereupon.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That these papers do not appear to me to require any observations.

The Consul does not distinctly state on and from what day the blockade was actually established by the "Brooklyn;" but I conclude that this was the 27th May.

I have some reason to believe (but from newspapers only), in confirmation of Lord Lyons' impression as to the instructions issued to the blockading force, that the ships alluded to have, in fact, been allowed to pass out without molestation.

I have, &c.
(Signed) J. D. HARDING.

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No. 151.

The Queen's Advocate to Lord J. Russell.—(Received July 4.)

NETHERLANDS.

Liability of Daniel Swan, a British subject domiciled in the Netherlands, to military service.

My Lord, *Doctors' Commons, July* 3, 1861.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 27th June ultimo, stating that he was directed to transmit to me a despatch from Her Majesty's Minister at the Hague (No. 19), setting forth the circumstances under which the Netherlands Government claim the military services of a British subject born in Scotland of British parents, and subsequently domiciled in the Netherlands; and to request that I would take this subject into consideration, and report to your Lordship my opinion on the points submitted by Sir Andrew Buchanan.

I am also honoured with Lord Wodehouse's letter of the 1st July instant, transmitting a further despatch from Sir A. Buchanan respecting the case of Daniel Swan.

In obedience to your Lordship's commands I have taken this subject into consideration, and have the honour to report—

1st. That no copy of the Law of Holland (under which Daniel Swan's liability to military service is alleged to arise) being with the papers, I can express no opinion thereupon.

2nd. I perceive that he has presented a petition to the King, which may be favourably received, and pending which he has received six weeks' leave of absence; this petition, if granted, will dispose of the case as far as he is personally concerned; he would thus seem to have (in effect) conceded the liability in question. A copy of this petition should be forwarded.

3rd. The principle involved is very important to all British subjects domiciled in Holland, and it is singular that if the Dutch law is as stated, this should be apparently the first case of the kind which has occurred. This question should be cleared up: "Has the law been invariably hitherto construed and enforced as now, in this class of cases; or is this the first case in which the point has arisen?"

4th. The best legal opinion in Holland should be obtained on the case of Swan, and transmitted with a copy and translation of the text of the law. The extreme consequences which will ensue from the law being applied as proposed should be suggested in the case, and a question should be put to the Advocate consulted as to whether any, and what, legal means of obtaining redress, or of raising the question of his liability to serve, are open to Daniel Swan.

5th. When the precise state of the Dutch law is ascertained, the propriety of making a communication to the Dutch Government, and the terms of that communication, may be further considered.

6th. In the event of Swan's petition to the King being complied with, the international question will be (for the present) waived or postponed, or rather none will have formally arisen; the general principle involved should nevertheless be cleared up.

I have, &c.
(Signed) J. D. HARDING.

No. 152.

The Law Officers of the Crown to Lord J. Russell.—(Received July 5.)

UNITED STATES.

Temporary suspension of postal service in certain of the States of America.

My Lord, *Doctors' Commons, June* 25, 1861.

WE are honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 22nd June instant, in which he stated that he was directed by your Lordship to transmit to us two letters (dated the 10th and 12th instant), and inclosures, from the General Post Office, from which we should perceive that the Postmaster-General of the United States notified on the 25th ultimo the temporary suspension, from and after the 31st ultimo, of the postal service in certain of the States of America, and announced that letters for offices temporarily closed by that order would be forwarded to the United States' Dead Letter Office; and that we should also perceive that in consequence of that

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announcement a notice has been published by Her Majesty's Postmaster-General, stating that all letters sent to the Dead Letter Office at Washington would be returned to the Dead Letter Office in London, where they would be opened and sent back to the writers.

Lord Wodehouse was also pleased to state that it appeared, however, from the inclosed further letter from the General Post Office, dated the 20th instant, that a question has arisen as to how far the United States' Post Office has the right, under the Post Office Convention with this country of the 15th December, 1848, to detain or to return to this country letters addressed to any place in the United States, more particularly paid letters, upon which the United States' rate of postage has been collected in advance, and accounted for to the United States' Post Office; and that he was, therefore, to request that we would take this matter into consideration, and favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That it is true that, by the Convention with the United States, they are bound to convey letters duly posted in the United Kingdom to all parts of the United States; and it is also true that the Northern States contend that the country of the Southern States is still part of the territory of the United States, and that all the rights, and therefore all the obligations, of the United States belong to them (the Northern States); but, notwithstanding this alleged abstract right, it is clear that, in practice, foreign letters and correspondence addressed to the Southern States could not be transmitted from the Northern to the Southern States except by means of some mutual agreement between the two parties, which this country cannot reasonably require the Northern States to enter into. Inasmuch, therefore, as the Northern States are disabled from giving effect to the Convention, we see no remedy, except the opening of postal relations with the Southern States; and we recommend that notice be given to the Northern States that this course must be adopted, if they (the Northern States) persist in refusing to make arrangements with the South for the transmission of the foreign correspondence. The Northern States may be required to return the amount of postage received on the letters returned through the Dead Letter Office.

We have, &c.
(Signed) J. D. HARDING.
RICHARD BETHELL.
WM. ATHERTON.

No. 153.

The Queen's Advocate to Lord J. Russell.—(Received July 5.)

My Lord, *Doctors' Commons, July* 3, 1861.

UNITED STATES.

Blockade of Savannah and its subsequent interruption.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 29th June ultimo, stating that he was directed to transmit to me two despatches and inclosures from Her Majesty's Minister at Washington (Nos. 270 and 272), reporting the establishment of the blockade of Savannah and its subsequent interruption; and to request that I would take these papers into consideration, and furnish your Lordship with any observations which I may have to offer thereupon.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That inasmuch as it does not appear that any British vessel has been warned off or captured at Savannah, or that any British interests are involved, either in the establishment of the blockade (on the 28th May) or by its subsequent discontinuance or interruption (from about the 1st of June to the 5th of that month, the date of the Consul's despatch to Lord Lyons), I do not conceive that these papers require any observations from me in point of general principle.

I will merely point out with reference to my Report of June 6,* on the cases of the "Monmouth" and the "Hilja," that the "Monmouth" was warned off Charleston, "and all the Southern Coast of the United States of America, it being blockaded," and her papers were endorsed to that effect by an officer of the United States' frigate "Niagara" on the 12th May; her owners suggest that she had an alternative destination for Savannah, to which port this warning prevented her from going.

It would now appear that Savannah was not blockaded at all until about the 28th of May; if this turns out to be the fact, it may have an important bearing on the claim of the owners of the "Monmouth" for compensation.

I have, &c.
(Signed) J. D. HARDING.

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* Page 106.

No. 154.

The Queen's Advocate to Lord Wodehouse.—(Received July 5.)

Doctors' Commons, July 3, 1861.

PORTUGAL.

Right of Consul at Madeira to charge 2½ per cent. on property of late Mr. Unwin.

(For Report see page 179.)

THE Queen's Advocate presents his compliments to Lord Wodehouse, and with reference to his letter of the 20th June ultimo, on the subject of the right of Her Majesty's Consul at Madeira to charge a commission of 2½ per cent. on the property of the late Mr. J. Unwin, who died in that island, requests to be furnished with a copy of the Order in Council of the 1st May, 1855, referred to in Lord Wodehouse's letter herewith.

No. 155.

The Queen's Advocate to Lord J. Russell.—(Received July 5.)

My Lord, *Doctors' Commons, July* 4, 1861.

UNITED STATES.

Blockade of Mobile.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 1st July instant, stating that he was directed to transmit to me a despatch, and its inclosures, from Her Majesty's Minister at Washington (No. 271), relative to the blockade of Mobile; and to request that I would take these papers into consideration, and furnish your Lordship with any observations I may have to offer thereupon.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That all the British vessels at Mobile when it was blockaded, except two, have left the port without hindrance, and there was no apprehension that these two would be interfered with: all British ships appear also to have quitted Pensacola without molestation.

The United States' officer in command of the blockade (Captain Porter, of the "Powhatan") appears to have acted courteously and liberally; and it is for your Lordship to consider the propriety of acknowledging his conduct.

The Consul in his despatch to Lord Lyons of the 29th May, says, "the 'Powhatan' has sailed to the eastward;" he does not say when she so sailed, or whether the port was at the above date actually blockaded, or supposed to be so, by any, and what, United States' cruizers, or was altogether open, which he should have done.

I have, &c.
(Signed) J. D. HARDING.

No. 156.

The Queen's Advocate to Lord J. Russell.—(Received July 5.)

My Lord, *Doctors' Commons, July* 4, 1861.

UNITED STATES.

Charter of Cunard Company's steamer "Kedar" by

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 28th June ultimo, stating that he was directed to transmit

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United States' Government. Question of conveyance of United States' despatches on board the Cunard Company's packets.

to me two despatches, and inclosures, from Her Majesty's Minister at Washington (Nos. 235 and 236), relative to the circumstance of the Cunard Company's steamer "Kedar" having been lately chartered by the United States' Government, and also respecting the question of the conveyance of the despatches of that Government on board the Cunard Company's packets; and to request that I would take these papers into consideration, and furnish your Lordship with any observations which I may have to offer thereupon.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That these papers are not in such a shape as so enable me to offer any useful observations thereon.

I cannot gather from them either the facts, dates, or legal questions upon which my opinion is required.

As far as I understand Mr. Cunard's letter to Lord Lyon's of the 1st June, 1861, no international question has arisen, or is anticipated, as to the chartering of the "Kedar" by the United States' Government. The charter-party is stated to have expired May 11; and the nature and object of the service or employment of the vessel is not stated.

I must, therefore, request that if my opinion is desired, the facts and dates may be stated, and the nature of the international question involved or anticipated may be indicated.

I have, &c.
(Signed) J. D. HARDING.

No. 157.

The Queen's Advocate to Lord J. Russell.—(Received July 6.)

UNITED STATES.

Seizure of the British barque "Hiawatha" on a charge of breach of blockade of Norfolk.

My Lord, *Doctors' Commons, July* 5, 1861.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 2nd of July instant, stating that with reference to my report of the 18th of June ultimo, he was directed to transmit to me a despatch from Her Majesty's Minister at Washington (No. 273), inclosing copies of his correspondence with the United States' Secretary of State, and with Her Majesty's Consul at New York, respecting the case of the British barque "Hiawatha," which has been taken to New York as a prize on a charge of breach of blockade.

Lord Wodehouse was also pleased to state that Lord Lyons' despatch No. 191 of the 11th of May, referred to in this present despatch, is contained in the accompanying printed copy of papers lately laid before Parliament, respecting the blockade of the Southern ports; and to request that I would again take the case of the "Hiawatha" into consideration, and furnish your Lordship with such further observations as I may have to offer in regard to it.

Lord Wodehouse was also pleased to add, that Her Majesty's Minister at Washington has been instructed to direct the Consul at New York to watch the case.

Lord Wodehouse was also pleased to inclose the draft of the instructions to Lord Lyons, as well as the draft of the answer returned to Messrs. Gilliat and Co.; and to state that your Lordship would be glad to have my opinion as to the expediency, or otherwise, of any further communication being for the present addressed to these gentlemen.

I am also honoured with Lord Wodehouse's letter of the 4th of July instant, transmitting a further letter from Messrs. Gilliat on this subject, dated July 3, 1861.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That the "Hiawatha" (as I understand the facts) was captured on the 20th of May, by the United States' cruizer "Minnesota," for breach of the blockade, not of Charleston, but of Norfolk, Virginia, by egress therefrom. Consul Archibald, in his despatch to Lord Lyons of May 29, states that she was captured for the alleged violation of the blockade of the port of Charleston, but I presume that this is erroneous.

The date of the commencement of the blockade of Norfolk is not set forth

in the papers. Her lading was complete on the 15th of May; she commenced her voyage on the 17th; she was, on her voyage "down the river," boarded more than once, and allowed to pass outwards by "officers of the United States' Government" (whoever they may have been); she proceeded on the 18th; was windbound on the 19th; and proceeded finally on her voyage on the 20th, the day of her capture. I presume that one question is, whether she was fairly within the terms or spirit of the fifteen days' concession set forth in Mr. Gideon Wells' letter of May 11 at page 11 of the printed Parliamentary Papers.

It will be seen that from the want of the date of the commencement of the blockade of Norfolk, I am unable to form any conclusive opinion on this question; and if this date can be accurately supplied, I request that it may be done.

If this blockade actually commenced on the 30th of April, as would appear from the notifications of Captain Pendergrast (at pages 5 and 12 of the printed papers), and from no other date being suggested by the Consul, then I fear that the case is not within the letter or spirit of the "fifteen days' concession;" and that inasmuch as Lord Lyons' application for her release as a matter of favour has failed, Her Majesty's Government can do no more for her at present, more especially adverting to inclosures 9 and 11 at page 10 of the printed papers above referred to; the fate of the ship and cargo must therefore rest for the present with the Prize Court. The fact of "officers of the United States' Government" having allowed her to pass outwards on the 17th of May, seems strongly in her favour; if they were aware of the commencement of the blockade on the 30th of April, I do not see why they did this.

It is to be remarked, however, that the period of fifteen days, without reference to the date at which the lading was completed, was a voluntary and liberal concession to neutrals on the part of the United States; and if the "Hiawatha" has failed (howsoever) to bring herself within its terms or spirit, Her Majesty's Government has no ground of complaint at the vessel being sent before the Prize Court. Seeing, however, that this is the first, and possibly the the only, British vessel captured for breach of blockade, and that her master appears to have had no deliberate design to break this particular blockade, it would be a gracious act on the part of the United States to release her. This Government, however, may possibly feel (as Her Majesty's Government might feel in a similar case) that the captor's claims should be considered, and that the question should be left to the Prize Court.

Messrs. Gilliat and Co. may be informed that Lord Lyons has unsuccessfully attempted to procure her release from the United States' Government, and that by the last advices she was to be sent before the Prize Court at New York, where they should act for themselves under legal advice in support of their interests.

No additional instructions to Lord Lyons seems to be required, but his attention should be called to the circumstance of her being boarded and permitted to pass "down the river," on the 17th, by "officers of the United States," which requires explanation, and the Consul at Richmond may, perhaps, be enabled to add some material information.

I have, &c.
(Signed) J. D. HARDING.

No. 158.

The Queen's Advocate to Lord J. Russell.—(Received July 8.)

MUSCAT.

Seizure of the Spanish slave-vessel "Formosa Estrella" by the Sultan of Zanzibar.

My Lord, *Doctors' Commons, July* 5, 1861.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 18th June ultimo, stating that with reference to my Report of the 3rd June ultimo,* upon questions arising out of the capture, by the Sultan of Zanzibar, of the Spanish slave-vessel "Formosa Estrella," he was directed to transmit to me, together with the former papers, two further despatches from Colonel Rigby, Her Majesty's Agent and Consul at Zanzibar (Nos. 1 and 5 A), stating the circumstances under which this vessel was detained by the Sultan's

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* Page 104.

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authorities, and subsequently handed over to the Commander of Her Majesty's ship "Persian;" and to request that I would again take this case into consideration, and inform your Lordship whether there is anything in the papers now transmitted which would enable me to express a further opinion upon the points submitted in Lord Wodehouse's letter of the 15th May last.

I am also honoured with Lord Wodehouse's letter of the 3rd July instant, transmitting a letter and its inclosures from the Admiralty, dated June 28th last, reporting the circumstances under which this vessel was handed over by the Sultan to the Commander of Her Majesty's ship "Persian."

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

1. That the existing Treaties between Her Majesty and the Sultan of Zanzibar with which I requested to be furnished in my former Report are not forthcoming.

2. That these papers do not enable me to express any further opinion on this case.

3. The proceedings against this vessel before the "Mixed Commission Court at the Cape" (I presume the Spanish Mixed Commission Court established under the Treaty of 1835) should be sent home, with a special report on the facts and law by the Advocate acting for the Crown in the suit, in case of the Spanish Government hereafter raising any question of jurisdiction or otherwise. Copies of the "ship's papers," and all particulars of the vessel and her proceedings, should be transmitted to Spain, with a request for the condign punishment of all concerned (see the Spanish Law of 1845, 7 Hertslet's Treaties, 1014).

4. The repeated misconduct of the French Consul in covering the Slave Trade, and his pretensions to interfere on behalf of all Roman Catholic slave-traders, of whatever nationality, having no Treaties or international relations with the Sultan of Zanzibar, as detailed by Colonel Rigby, should be brought to the notice of the French Government with a view to his speedy removal.

I have, &c.
(Signed) J. D. HARDING.

No. 159.

The Queen's Advocate to Lord J. Russell.—(Received July 8.)

TURKEY.

Claim of Ottoman Bank. Bill for 151,567 piastres drawn by Superior of Convent of Antonaki, and discounted by branch of Ottoman Bank at Beyrout.

My Lord, *Doctors' Commons, July 6*, 1861.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 28th June ultimo, stating that he was directed to transmit to us the accompanying letter dated the 24th June last, and its inclosure, from the Ottoman Bank, requesting that Her Majesty's Ambassador at Constantinople may be instructed to interfere in order to obtain payment of a bill for 151,567 piastres drawn by the Superior of the Convent of Antonaki, and discounted by the branch of the Ottoman Bank at Beyrout; and to request that I would take these papers into consideration, and report to your Lordship my opinion as to how far Her Majesty's Government would be justified in interfering in this matter.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That although the Law Officers' Report of the 12th April, 1859, upon a very similar claim from "the Ottoman Bank," is not adverted to in these papers, it appears to me, in effect, to dispose of this case, and to show that Her Majesty's Government cannot interfere.

If I have misunderstood either this or the former case, I must request further information.

I have, &c.
(Signed) J. D. HARDING.

No. 160.

The Queen's Advocate to Lord J. Russell.—(Received July 8.)

UNITED STATES.

Claim of Mr. O'Connor to property on board the "Hiawatha," seized for breach of blockade.

My Lord, *Doctors' Commons, July 6*, 1861.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 2nd July instant, stating that with reference to his letter of the 2nd July instant respecting the case of the "Hiawatha," he was directed to transmit to me a letter from Mr. O'Connor dated the 24th June last, stating that he is interested in the cargo of that vessel, and also that he has a quantity of tobacco at Richmond which he cannot get away, and which he is afraid may be seized by the Northern States.

Lord Wodehouse was also pleased to state that Mr. O'Connor also refers to the case of his ship the "Queen of England" which is now lying in Hampton Roads; and to request that I would take Mr. O'Connor's letter into consideration, and advise your Lordship as to the answer which should be returned to it.

In obedience to your Lordship's commands I have taken this letter into consideration, and have the honour to report—

That three separate cases are mentioned in Mr. O'Connor's letter:—

1. Tobacco purchased and paid for in Virginia in March, and which he states to be now "remaining at Richmond without possibility of removal, and which may be seized by the Northern States." I do not see any probability of this property being so seized; private property on land, such as tobacco belonging to a neutral, is not likely to be treated as prize or booty, even in the event of the capture of Richmond by the United States' forces, which does not seem to be immediately impending. If it is laden on board it should be unshipped and warehoused; the blockade may prevent its removal, but with this your Lordship cannot interfere.

2. Twenty hogsheads of tobacco on board the "Hiawatha." This is disposed of by my Report of the 5th July instant on that case. The fact of this tobacco being Mr. O'Connor's property may be mentioned to Lord Lyons. Mr. O'Conner may be informed to this effect; and further that Lord Lyons' efforts to procure the release of this ship and cargo have failed, and that the case is now before the Prize Court at New York, to which he must have recourse as he may be advised.

3. His vessel the "Queen of England" now lying in Hampton Roads waiting to take his tobacco, purchased in March, from Richmond, Virginia, to England. Under existing circumstances, especially considering that there exists a blockade of all Virginian ports, it is impossible for your Lordship to interfere in this case.

An answer to the above effect may be returned to Mr. O'Connor, and a copy of his letter sent to Lord Lyons for his consideration in the event of its being found practicable to do anything on Mr. O'Connor's behalf.

I have, &c.
(Signed) J. D. HARDING.

No. 161.

The Queen's Advocate to Lord J. Russell.—(Received July 12.)

NEW GRANADA.

Tonnage duties levied on packets and colliers of the Liverpool Pacific Steam Navigation Company.

"Patente," or trading licence, levied on agency of the Company at Panamá.

My Lord, *Doctors' Commons, July 10*, 1861.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 28th June ultimo, stating that he was directed to transmit to me a letter from the Liverpool Pacific Steam Navigation Company, dated the 8th of June ultimo, setting forth the circumstances under which they request the interference of Her Majesty's Government with the Government of New Granada, respecting the following matters:—

1. Tonnage dues at one time levied on the Company's packets, and up to the present time on the colliers chartered by them.

2. The "patente," or trading licence, levied on the agency of the Company at Panamá.

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Lord Wodehouse was also pleased to state that, as regards the latter point, he was to transmit to me a further letter which your Lordship has received from the Royal Mail Steam-Packet Company since the date of my Report of the 6th May last, and to request that I would report whether the statements therein contained modify my previous opinion on the subject.

Lord Wodehouse was also pleased to state that with respect, however, to the tonnage dues, I should perceive from the correspondence therewith transmitted to me that these duties have been levied in virtue of a New Granadian Law (26th June, 1857), and that except in the case of the vessels of the Royal Mail Steam-Packet Company (exempted by special stipulation) the tax has been considered as leviable on the ships of all nations.

That the merchant-vessels of the United States have, however, uniformly refused to pay these duties; and the United States' vessels of war on each side of the Isthmus of Panamá have been instructed to resist the levying of the tax.

That under these circumstances British vessels have paid the duties under protest; but that Her Majesty's Government did not consider it expedient to enter into a discussion on the subject until they should be made acquainted with the result of a negotiation which was for some time pending between the Governments of the United States and of New Granada, and which might include a settlement of the points in dispute.

Lord Wodehouse was also pleased to state that the Convention between the two Governments alluded to, which was signed at Washington on the 10th of September, 1857, and of which the ratifications were exchanged on the 5th of November last, did not contain any stipulations affecting the point in question; and that it now becomes a question whether Her Majesty's Government will be justified in resisting the action of the tonnage duties imposed on British vessels, or calling upon the New Granadian Government to refund the duties which British subjects have paid under protest since the promulgation of the Law of 1857; and to request that I would take this subject into consideration and report to your Lordship my opinion on the points above referred to.

The former correspondence on this subject was inclosed for convenience of reference.

In obedience to your Lordship's commands I have taken this subject into consideration, and have the honour to report—

That I have so frequently reported upon these questions, and so often pointed out the information which was required, and remarked upon the singular manner in which the Pacific Steam-Navigation Company has hitherto persisted in withholding the necessary information, of which it has always been in possession, that I can only refer to my former Reports, especially to those of the 13th December, 1856, 3rd February and 27th March, 1857, and the 6th May, 1861.

Whether the substance of my Reports of 1856 and 1857 was promptly conveyed to the Company I know not. If this was done, the Company has taken, at least, four years to answer the questions put to it. However this may be, the only material answer or additional information now forthcoming is contained in the Company's letters of the 8th and 20th June, and Memorandum of the 1st July, 1861. This information seems to me to be very unsatisfactory.

It would now appear that the only opinions which the Company has ever obtained upon the legality of the tax of which it has been complaining for many years were: first, that of Mr. Consul Perry (who was also the Company's agent); and next, that of Mr. Consul Henderson; and that the Company has advisedly abstained not only from any legal proceedings calculated to raise the question of the legality of the tax, but also from obtaining any legal opinion in England or New Granada on the subject.

The Company asserts, in its Memorandum of the 1st July, 1861, that it "does not act in the capacity of merchants or traders, and therefore that the Directors do not consider that they are legally liable."

Such a mode of dealing with a legal question is wholly unworthy of a great public Company: if it has any case, it is trifling with Her Majesty's Government; and if it has none, it is endeavouring to mislead Her Majesty's Government, and dealing with it as it would not be allowed to deal with another Company or firm in an ordinary matter of business.

If the Company is not "a merchant or trader," and not within the terms or spirit of the Law, it can surely obtain good legal opinions to this effect, with reasons, and transmit them (together with the text of the Law) to Her Majesty's Government. Until it does this, it has not made out any *primâ facie* case for the interference of Her Majesty's Government.

It is, moreover, to be borne in mind that the Company, after paying the tax for many years, has ceased to pay it since April 1860, when in some manner, which is not explained, it became exempt therefrom (see letter of the 8th June); and it now desires Her Majesty's Government to make New Granada refund what it has received from the Company.

The Convention between New Granada and the United States signed in 1857, and ratified on the 5th of November last, is not transmitted; but inasmuch as it is stated "not to contain any stipulations affecting the point in question," I presume that it has no bearing on the case.

I cannot discover that the subjects or the Governments of any other foreign nation but those of the United States have resisted the tax; and there are probably special grounds on which the resistance of the United States is founded, which are not set forth by the Company.

The steady increase of the tax appears very oppressive, and the mode of its assessment to be open to objection; but this is a totally distinct question from that of the Company's legal liability; and it is hardly possible for Her Majesty's Government to object to the mode of assessment alone, without (by implication) admitting such liability.

Upon the whole, therefore, I cannot advise your Lordship to interfere. Either the Company's case has no sound foundation, or the Company is so utterly incapable of stating and establishing its case (which has now lasted for many years) in an ordinary, business-like, and rational manner, that Her Majesty's Government cannot safely take any international step in its favour.

I have, &c.

(Signed) J. D. HARDING.

No. 162.

The Law Officers of the Crown to Lord J. Russell.—(Received July 13.)

Doctors' Commons, July 11, 1861.

UNITED STATES.

Interference on behalf of British subjects taken by United States' authorities while serving on board Southern privateers.

My Lord,

WE are honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 29th June ultimo, stating that he was directed to transmit to us a despatch from Her Majesty's Minister at Washington (No. 259), requesting to be instructed as to whether, and if so, how far, he is to interfere on behalf of British subjects who may be taken by United States' authorities while serving on board Southern privateers; and to request that we would take this despatch into consideration, and furnish your Lordship with our opinion as to the answer it may be expedient to return thereto.

Lord Wodehouse was also pleased to annex, for our information, a draft of the letter respecting Rear-Admiral Milne's instructions which was addressed to the Admiral, on the receipt of the Law Officers' Report of the 13th June ultimo,* and to add that a copy of that letter has been sent to Lord Lyons.

In obedience to your Lordship's commands we have taken this despatch into consideration, and have the honour to report—

That Lord Lyons should be instructed not to interfere unless he shall see sufficient grounds for apprehending that one or more of Her Majesty's subjects, captured on board (Southern) Confederate privateers, will be treated by the United States' authorities as pirates, and not as prisoners of war: should reasonable grounds for such apprehension exist, then he should at once address an urgent remonstrance to the United States' Government, and state therein that should such remonstrance be disregarded, the consequences may be, in the estimation of Her Majesty's Government, very serious, and must be accepted by the Government of the United States.

We may add that the nature of Lord Lyons' communication is rather a question of Imperial policy for the consideration of Her Majesty's Government than of mere law; and that inasmuch as a Southern (Confederate) privateer has recently been captured by a United States' cruizer, the crew of which privateer did not, we believe, comprise any British subject, something may turn upon the manner in which her crew may be treated by the United States' Government.

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* Page 118.

The Attorney and Solicitor-General concur with the opinion already expressed on this question by the Queen's Advocate in his separate Reports.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 163.

The Law Officers of the Crown to Lord J. Russell.—(Received July 16.)

GREAT BRITAIN.

Expediency of concluding Conventions for the better ascertainment of the Law of Foreign Countries when pleaded in Courts within Her Majesty's Dominions.

My Lord, *Doctors' Commons, July 16, 1861.*

WE are honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 29th June ultimo, stating that he was directed to transmit to us the accompanying letter from Mr. A. M. Dunlop, M.P., calling attention to the Act 24 Vict., cap. 11, entitled "An Act to afford facilities for the better ascertainment of the Law of Foreign Countries when pleaded in Courts within Her Majesty's Dominions" (which refers to Act 22 and 23 Vict., cap. 43), and representing the advantage which would accrue from Conventions being entered into with foreign countries on this subject, and to request that we would furnish your Lordship with our opinion as to the course which it may be advisable for Her Majesty's Government to take in this matter.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we are of opinion that it will be advisable for Her Majesty's Government to take steps for negotiating Conventions, in accordance with the statute, with those foreign countries with which Her Majesty's subjects have most frequent dealings.

We would suggest that copies of the Statute be sent to the principal foreign Legations, with instructions to communicate with the proper authorities, and report whether a favourable disposition is manifested towards such Conventions.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 164.

The Law Officers of the Crown to Lord J. Russell.—(Received July 17.)

PERU.

Imprisonment of Mr. T. M. White.

My Lord, *Doctors' Commons, July 15, 1861.*

WE were honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 28th of June last, stating that he was directed by your Lordship to transmit to us a further despatch and its inclosures from Her Majesty's Chargé d'Affaires in Peru (No. 23), respecting the case of Mr. Thomas Melville White, which formed the subject of Lord Wodehouse's letter of the 15th of June last.*

In obedience to your Lordship's commands we have carefully considered the above-mentioned papers, and have the honour to report—

That, with reference to the case of Mr. Melville White, these papers require no additional observations; they throw no light either upon the nature of the case attempted to be made against him, or the evidence by which it is supported, or upon the legality of his arrest and imprisonment.

With reference to the exemption of Mr. Jerningham from any obligation to give evidence before a Peruvian Judge, and to his entire exemption from the jurisdiction of the Peruvian Courts. we are of opinion that Mr. Jerningham is, in the matter in question (by general international law), wholly exempt from the jurisdiction of any Peruvian Judge or Court; and that he cannot be legally compelled to give evidence in any criminal proceeding in Peru. He has, in our opinion, taken a correct view of his own position in this respect.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

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* See previous Report, page 133.

No. 165.

The Law Officers of the Crown to Lord J. Russell.—(Received July 17.)

PERU.

Administration to property of late Mr. Winder.

My Lord, *Doctors' Commons, July 15, 1861.*

WE are honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 28th of June ultimo, stating that he was directed to transmit to us a further despatch and its inclosures from Her Majesty's Chargé d'Affaires at Lima (No. 22), respecting the administration to the property of the late Mr. Winder.*

We are also honoured with Lord Wodehouse's letter of the 1st of July instant, transmitting a letter from Messrs. Dawes dated the 29th of June last, together with the former papers relating to this subject.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That the letter from Messrs. Dawes and Sons, solicitors, of the 29th June, does not alter or affect our previous Report.

The despatch of Mr. Jerningham, No. 22 and inclosures, disclose the disgraceful conduct of Judge Ponce in sheltering in his house Manuel Winder, in resisting the execution of the warrant for his apprehension, and in presenting pistols and threatening to shoot Mr. Carwell.

These facts must at least disqualify Judge Ponce from intermeddling any further with this case, and it is to be hoped may lead to his disgrace.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 166.

The Queen's Advocate to Lord J. Russell.—(Received July 17.)

CHINA.

Rules and Regulations in force in Consular Courts in China.

My Lord, *Doctors' Commons, July 15, 1861.*

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 25th of June ultimo, stating that he was directed to transmit to me a copy of a despatch from Her Majesty's Minister in China (No. 19), inclosing copies of all Rules and Regulations issued by the Chief Superintendent of Trade under the Order in Council of the 13th of June, 1853, and now in force in Her Majesty's Consular Courts in China; together with copies of the printed forms of Judicial Oaths, and of the Table of Judicial Fees.

Lord Wodehouse was also pleased to state, that these copies were forwarded for my own use; but that your Lordship would be glad to receive my observations should I have any to offer in regard to them.

In obedience to your Lordship's commands I have taken the papers transmitted into consideration, and have to report—

That I respectfully submit that some omission or error has probably taken place in this matter. The only documents transmitted are:—

1. Rules of Practice to be observed in Judicial Proceedings before Her Majesty's Consuls in China, made in conformity with the provisions of Article 37 of Her Majesty's Order in Council of June 13, 1853;
2. Form No. 10 (of Oaths);
3. Schedule B, Table of Fees in Civil Causes.

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* See previous Report, page 133.

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Mr. Bruce, in No. 19, states that he incloses "copies of all Rules and Regulations issued by the Chief Superintendent of Trade under the Order in Council of June 13, 1853, and now in force in Her Majesty's Consular Courts in China."

By reference to Section 3 of the above Order, it will be seen that the Chief Superintendent was to make, and enforce by fine and imprisonment, "Rules and Regulations, (1) for the observance of the stipulations of Treaties, and (2) for the peace, order, and good government of Her Majesty's subjects being within the dominions of the Emperor of China, or being within any British ship or vessel at a distance of not more than one hundred miles from the coast of China, and to enforce in like manner such Rules and Regulations as had theretofore been made and continued unrepealed."

Sections 4, 5, and 6 contain further important provisions as to the enforcing such Rules and Regulations.

Some such Rules and Regulations must, I apprehend, be in force in China. The urgent necessity for such Rules and Regulations, and the importance of their being suited to the circumstances of each country, and properly framed, has frequently been adverted to by the Law Officers (see particularly as to Japan, the Law Officers' Report of April 26, 1861, on Mr. Moss' case), and it is desirable that the Law Officers should see them.

The inclosed documents only relate to "rules of practice" in proceedings before Consuls, under Section 37 of the above Order in Council; and if your Lordship should consider it to be desirable to deal with these "rules of practice" alone, as they now stand, I must request the assistance of the Attorney and Solicitor-General in so doing.

I have, &c.
(Signed) J. D. HARDING.

No. 167.

The Queen's Advocate to Lord J. Russell.—(Received July 17.)

GREAT BRITAIN.

Consular Rules and Regulations for the observance of Treaties, and for the peace, order, and good government of Her Majesty's subjects in Mahometan and Pagan countries.

My Lord, *Doctors' Commons, July 15, 1861.*

I BEG respectfully to recall attention to my letter of the 30th July, 1860, on the subject of Consular Rules and Regulations for the observance of Treaties, and for the peace, order, and good government of Her Majesty's subjects in Mahometan and Pagan countries. Except as to the Ottoman Empire (as to which see Report of Law Officers, November 19, 1860, and documents therewith), this matter still remains in entire obscurity, at least as far as my information extends.

In the cases of Japan, Siam, Morocco, and China, either no sufficient Consular Rules or Regulations have been made and published, or they are not forthcoming. The practical importance of this subject is apparent, especially from the recent case of Mr. Moss (Japan), and the necessary steps should be taken without loss of time.

As regards Morocco, the matter has apparently been in hand (howsoever) since October 1858, and remains hitherto without any satisfactory result (see Law Officers' Report, November 20, 1860).

I have, &c.
(Signed) J. D. HARDING.

No. 168.

The Law Officers of the Crown to Lord J. Russell.—(Received July 17.)

NEW GRANADA.

Jurisdiction over British merchant-vessels within ports of New Granada; and closing to foreign commerce of ports not subject to her authority.

My Lord, *Doctors' Commons, July 15, 1861.*

WE are honoured by your Lordship's commands signified in Lord Wodehouse's letter of the 11th May last, stating that he was directed to transmit to us the draft of a despatch which your Lordship proposes to address to Her Majesty's Consul at Panamá, in regard to the pretension of the Government of New Granada to exercise jurisdiction over British merchant-vessels within their ports, and to close to foreign commerce ports that are not subject to their authority.

Lord Wodehouse was also pleased to state that the despatch of Mr. Consul Henderson is founded upon the opinion of Her Majesty's Advocate-General, and to request that we would inform your Lordship whether we consider the terms of the proposed despatch to be right and proper.

In obedience to your Lordship's commands we have taken this despatch into consideration, and have the honour to report—

That, subject to some slight alterations which we have made in the draft herewith, the proposed despatch is in our opinion right and proper. We concur generally in the view taken by the Queen's Advocate in this matter.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 169.

The Queen's Advocate to Lord J. Russell.—(Received July 17.)

NEW GRANADA.

Proceedings of Consul Druce respecting the vessels "Liberty" and "Mompox," and documents belonging to Custom-house at Carthagena.

My Lord, *Doctors' Commons, July 16, 1861.*

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 3rd July instant, stating that, with reference to my Report of the 16th March last, he was directed to transmit to me a despatch, dated the 10th of May last, and its inclosures, from Mr. Druce, in explanation of his proceedings with regard to the vessels "Liberty" and "Mompox," and the documents belonging to the Custom-house at Carthagena.

Lord Wodehouse was also pleased to transmit a letter, dated the 11th of of June last, and its inclosures, from the Admiralty, containing Commander Lyons account of his share in the transactions of which Señor Nieto complained in his letter of the 7th September, 1860; and to request that I would take these papers into consideration, and furnish your Lordship with my opinion upon the explanations offered by Mr. Druce and Commander Lyons.

The previous papers were inclosed for convenience of reference.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That as regards the "Liberty," I observe that Mr. Druce expresses his regret that he did not officially communicate to Señor Nieto the fact that she had changed her national character, and received a British provisional certificate of registry, which he clearly ought to have done; neither did he communicate (as he ought to have done) in his original account of the case, the fact that she went to Jamaica, as was originally contemplated, and there completed her registration as a British vessel. She was in a certain sense a British vessel when interfered with by Señor Nieto, and I see no occasion for any further observations on this case.

I would observe, that although Mr. Druce's conduct cannot be entirely approved, yet his errors were rather errors of form than errors of substance; and I do not consider Commander Lyons deserving of any blame under the circumstances.

As to the "Mompox," neither Mr. Druce's nor Commander Lyons' explanations affect my opinion. I see no sufficient justification for their conduct: the circumstances were so simple, and the national character of the ship so obvious, that I do not consider that Commander Lyons was bound to act, as he did, at the Consul's suggestion, without exercising his own judgment. A British naval officer should beware of interfering with a foreign vessel, even at the suggestion of a Consul, without satisfying himself of his right to do so: here there was no right, and no fair pretext of right. I observe that Admiral Milne entertains the same opinion.

The other subjects alluded to in these despatches do not appear to be in such a shape as to require any observations from me.

I have, &c.
(Signed) J. D. HARDING.

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No. 170.

The Queen's Advcate to Lord J. Russell.—(*Received July* 19.)

VENEZUELA.

Complaint of Messrs. Syers, Braasch, and Co. System of levying duty on goods at La Guayra.

My Lord, *Doctors' Commons, July* 17, 1861.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 3rd July instant, stating that with reference to my Report of the 16th of April last,* respecting Messrs. Syers, Braasch, and Co.'s complaint against the Venezuelan Government, in regard to the alleged partial application of their Decree of the 24th of August, 1860, exempting certain goods from duty, he was directed to transmit to me a despatch from Mr. Orme (No. 40), inclosing, in accordance with my request, a copy of the Decree in question; and to request that I would take this paper, together with the previous ones, therewith returned to me, into consideration, and report to your Lordship my opinion whether Her Majesty's Government would be justified in giving any support to Messrs. Syers' complaint.

In obedience to your Lordship's commands I have taken this paper into consideration, together with the previous ones, and have the honour to report—

That I am opinion that Her Majesty's Government would not be justified in giving any further support to Messrs. Syers and Co.'s complaint.

Mr. Orme has already interfered in their favour without success, and I do not see how anything more can be done.

I have, &c.
(Signed) J. D. HARDING.

No. 171.

The Queen's Proctor to Mr. Murray.—(*Received July* 19.)

TURKEY.

Delivery to Messrs. Wadeson and French of original codicil of late Miss Cooper.

Sir, *Doctors' Commons, July* 18, 1861.

I HAVE the honour to acknowledge the receipt of your letter of the 6th instant, stating that you were directed by Lord John Russell to instruct me to deliver to Messrs. Wadeson and French, who are acting for the deceased lady's executors, the affidavit of Mr. Consul Finn, with the exhibits A and B annexed, together with the original codicil of the late Miss Cooper, which were transmitted to me in your letter of the 31st of May.

In obedience to Lord John Russell's directions I have delivered the papers in question to Messrs. Wadeson and French, taking their receipt for the same, herewith transmitted.

The other papers transmitted to me in your letter of the 31st of May are herewith returned.

I have, &c.
(Signed) F. H. DYKE.

Inclosure in No. 171.

Receipt.

Caroline Cooper, deceased.

RECEIVED of Her Majesty's Proctor the following documents, viz., affidavit of Mr. Consul Finn (11th April, 1861), with exhibits A and B annexed, together with the original codicil of the late Miss Cooper.

(Signed) WADESON & FRENCH.
Doctors' Commons, July 15, 1861.

No. 172.

The Queen's Advocate to Lord J. Russell.—(*Received July* 19.)

NEW GRANADA.

Closing and blockade, by New Granadian Government, of ports in New Granada.

My Lord, *Doctors' Commons, July* 18, 1861.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 4th July instant, stating that with reference to my Report of the 8th June last, therewith returned for my convenience, he was directed to transmit to me a correspondence which has passed between your Lordship and the New Granadian Minister in this country regarding the intentions of the New Granadian Government in the matter of the closing and blockade of ports in New Granada; and to request that I would report to your Lordship any observations which I may have to offer on this subject.

I am also honoured with Lord Wodehouse's letter of the 6th instant, transmitting a translation of some extracts from the Custom-house Code of New Granada, which have been communicated to your Lordship by M. Martin.

In obedience to your Lordship's commands I have taken this subject into consideration, and have the honour to report—

That, being wholly without information of the view entertained by Her Majesty's Government of the *status inter gentes* of the contending States, or parties, in New Granada, as, for instance, whether Her Majesty's Government regards them both as belligerents, or one as the only legitimate Federal Government, and the other as traitors or rebels against it, it is not an easy matter for me to offer any advice. Should the *status* of the two parties be that of *belligerentes inter se*, the case falls within the principle laid down in the Law Officers' Report of the 25th June ultimò, on the United and Confederate States of North America. I can only repeat that no British property, either ashore or afloat, has been as yet molested; and I do not distinctly understand in what shape or manner this undesirable result is practically imminent, or to be immediately apprehended.

Subject to these observations, Señor Martin's note of the 21st June last is open to the following observations:—

1st. At page 2 translation, this note distinctly disclaims any intention on the part of the Federal (or Central) Government of blockading the seceding ports with a competent force.

2ndly. It further states that the orders issued to the Custom-house boats of war, to watch the "coasts of the closed ports," have not been carried into effect.

3rdly. It does not frankly state either what is really about to be done with British vessels trading or attempting to trade with those ports.

4thly. Nor does it admit (what is perhaps the truth) that nothing is going to be done excepting on paper; and that all the apparatus of Laws and Decrees cited and referred to, and even the "circular" in question, are mere devices to deter British merchants from dealing with the seceding ports.

I can only suggest that a note may, perhaps, be addressed to Señor Martin, expressing the satisfaction with which your Lordship observes that no blockade is contemplated, and that no extraordinary measures have been resorted to as to the ports or coasts of the Seceding States; and the confident expectation entertained by Her Majesty's Government that no measures will be enforced against British ships or goods in relation to their intercourse with the ports in question which will call for the intervention of Her Majesty's Government; and that with all due respect for the Laws and Decrees of the Government of New Granada, your Lordship must observe that questions may arise as to their entire conformity with international law, in the event of their being so interpreted and enforced as to cause any loss or injury to British subjects, and that great caution will be requisite in enforcing them against peaceable British merchants who do not enter into the international discussions unhappily raging in New Granada

I have, &c.
(Signed) J. D. HARDING.

No. 173.

The Queen's Advocate to Lord J. Russell.—(*Received July* 19.)

ARGENTINE CONFEDERATION.

Claims of owners of "Cestus" and "Caledonia," under Decree of General Rosas, of February 13, 1845.

My Lord, *Doctors' Commons, July* 18, 1861.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 6th July instant, stating that he was directed to transmit to me a despatch from Her Majesty's Minister to the Argentine Republic (No. 43), respecting the claims of the owners of two vessels, the "Caledonia" and the "Cestus," on account of the manner in which a Decree of General Rosas, dated February 13, 1845, translation of which was therewith inclosed, was put in operation in the case of those vessels, and to request that I would take these papers into consideration, and report to your Lordship my opinion as to the instructions which should be addressed to Mr. Thornton on this subject.

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* Page 66.

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In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That these claims seem to have been preferred (howsoever) before a Commission now sitting (I presume) at Paraná, under some Convention between Great Britain and "the Argentine Government," whatever that designation may include or signify. If this be so, it is obvious that without a copy of this Convention, and the instructions to the Commissioners, I cannot deal with the case. I presume from Mr. Thornton's despatch that the Argentine Government is clearly liable to British claimants in respect of losses ensuing upon the Decrees or Acts of General Rosas. *Sed quo jure?* I know not.

Mr. Thornton does not explain what is the actual position of the cases either of the "Cestus" or of the "Caledonia;" whether he, or who else, has advocated their cases before the Commission; whether the parties interested have been heard or are yet to be heard before the Commission, by Counsel or agents; whether the decision of the Commission is final; what jurisdiction, and with what limitations, is vested in the Commission; as to the amount of compensation or consequential damages which they may award, and so forth. Neither does he state whether he only wants suggestions for influencing the opinions of the Commissioners, or in what way he proposes to "insist," after what he describes as "the positive refusal of the Commissioners."

In short, I have seldom seen, even a South American case, a question so obscurely stated as this: all the necessary facts are within Mr. Thornton's intimate knowledge; but he keeps them so carefully to himself, that he has effectually prevented me from apprehending them. I must, therefore, request further information to enable me to advise your Lordship properly.

I have, &c.
(Signed) J. D. HARDING.

No. 174.

The Queen's Advocate to Lord J. Russell.—(*Received July* 20.)

Doctors' Commons, July 19, 1861.

NETHERLANDS.

Liability of Daniel Swan, a British subject domiciled in the Netherlands, to military service.

My Lord,

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 13th July instant, stating that, with reference to my Report of the 3rd instant,* therewith returned to me, together with the despatches on which it was founded (Nos. 19 and 23), he was directed to transmit to me some further despatches from Her Majesty's Minister at the Hague (Nos. 31, 32, and 33), containing the information which I require respecting the case of Daniel Swan, and the Dutch laws bearing upon it; and to request that I would now take this case into consideration, and furnish your Lordship with my opinion thereupon.

I am also honoured with Lord Wodehouse's letter of the 16th July instant, transmitting further despatches from Sir Andrew Buchanan bearing on this case.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That, as regards Swan's case, it is to be hoped that in consideration of the circumstances, his petition to the King may be granted, and this particular case amicably settled, without necessitating any international discussion, either of the facts or of the principle involved.

As regards the amendment and settlement of the Dutch law for the future, the Clause proposed to be added to Article 18 of the Militia Bill now before the States-General (Inclosure in Sir A. Buchanan's No. 34) will, according to my apprehension, if liberally construed, suffice to provide for the exemption hereafter of the sons of British subjects *in pari conditione* with Swan.

There is no practical liability imposed on aliens in England to serve in the Militia, inasmuch as the Militia ballot is not in fact resorted to; even their theoretical liability thereto is a matter not free from legal doubt; and they are under no liability at all to compulsory military service in the army. If, therefore, this amendment is clearly intended and understood to apply to England, and if adequate words are employed in the clause to give it this effect (which should be duly attended to by Sir A. Buchanan), this matter may be settled on a satisfactory footing, and an international discussion avoided; which is the more desirable, inasmuch as the Dutch law, however harsh in its operation, seems to be clearly in favour of the claim of the Dutch Government.

I have, &c.
(Signed) J. D. HARDING.

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* Page 139.

No. 175.

The Queen's Advocate to Lord J. Russell.—(*Received July* 20.)

UNITED STATES.

Protection of British commerce on West Coast of North America.

My Lord, *Doctors' Commons, July* 20, 1861.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 19th July instant, stating that he was directed to transmit to me, with the former papers, a letter from the Admiralty dated the 8th instant, inclosing copies of two despatches from Rear-Admiral Milne, together with a copy of additional instructions issued by him, for the guidance of cruizers employed in the protection of British commerce on the West Coast of North America; and to request that I would take these papers into consideration, and report to your Lordship whether I see any reason why the additional instruction issued by Rear-Admiral Milne should not be approved.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That this is a question rather of Imperial and international policy than of law; but having regard to Admiral Milne's despatch No. 262 (26th of June), and to your Lordship's letter to the Admiralty of June 14th, and especially to the remarks therein contained upon my observations on the 4th and 9th Article of Admiral Milne's original instructions, I can see no reason why the additional or supplementary instructions issued by Admiral Milne, from on board Her Majesty's ship "Nile," at Halifax, on the 20th of June ultimo, should not be approved by Her Majesty's Government.

I have, &c.
(Signed) J. D. HARDING.

Inclosure in No. 175.

Additional Instructions for the Guidance of Cruizers employed in the Protection of British Commerce on the West Coast of North America.

"Nile," at Halifax, June 20, 1861.

Article 1. Any merchant ship fallen in with flying the flag of the Confederate States is to be treated in all respects the same as those under the United States' flag.

Article 2. Conjoint cruizing of United States' and Her Majesty's ships of war in the suppression of the Slave Trade is no longer to be carried on, as it might lead to an infringement of the strict neutrality that is to be observed.

Article 3. Her Majesty's Government having, with a view to carrying out more effectually the principles of neutrality, interdicted the armed ships, as well as the privateers, of both parties from carrying prizes made by them into the ports, harbours, roadsteads, or waters of the United Kingdom, or of any Her Majesty's Colonies or Possessions abroad, you are to govern yourself accordingly; understanding, however, that this restriction applies to prizes seeking protection from an enemy, or sent to ports to await adjudication, and not to vessels putting into British ports from stress of weather, or being otherwise in distress.

Article 4. As neither of the two contending parties have as yet acceded to the Paris Convention of 1856 (see "Hertslet's Treaties," vol. x, page 547), with respect to free ships making free goods and goods of neutrals not being seizable in enemies' ships, the rules laid down in that Declaration will not be applicable to British vessels and goods.

Article 5. The right of visit and search is regarded by Her Majesty's Government as a right appertaining to the lawfully commissioned cruizers of belligerents when exercised by them subject to and in conformity with the modern law and usage of nations.

Article 6. Excepting as to arms, ammunition, and military stores (which

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are clearly contraband of war by the common law and usage of nations), it must be left to the Government and Prize Courts of the belligerents, in the exercise of a reasonable discretion, to define what articles will be considered and treated by them as contraband of war.

(Signed) ALEX. MILNE,
Rear-Admiral and Commander-in-chief.

No. 176.

The Law Officers of the Crown to Lord J. Russell.—(Received July 24.)

Doctors' Commons, June 25, 1861.

DENMARK.

Extradition Treaty with Great Britain.

My Lord,

WE are honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 2nd February last, stating that he was directed to acknowledge the receipt of our Report of the 19th December last, on the Draft of a Treaty of Extradition between Great Britain and Denmark. That while approving of the draft generally, we stated that it was our opinion that the latter part of the first Article was obscure, and greatly needed a more clear and simple statement of the procedure that will be required in England for the surrender of a person demanded by the Danish Government.

Lord Wodehouse was also pleased to state, that judging from the experience of what had taken place under the Convention with France of 1843 (which the Draft Convention with Denmark follows in the passage upon which we remark), your Lordship doubts whether any misapprehension would be likely to arise on the part of the Danish Government, in regard to the conditions required in England for the surrender of any person demanded by them under the Convention; but your Lordship would nevertheless be glad if we would examine the clause in question, and suggest such alterations therein as will make it, in our opinion, more satisfactory.

In obedience to your Lordship's commands we have the honour to report—

That we have, in compliance with your Lordship's request, again examined the latter part of Article I of the Draft of a Treaty of Extradition between Great Britain and Denmark, to which we particularly adverted in our former Report, and we have suggested in the Draft now laid before us such alterations as appear to us to be called for, in order that that part of the Treaty may be rendered satisfactory.

We have, &c.
(Signed) J. D. HARDING.
RICHARD BETHELL.
WM. ATHERTON.

No. 177.

The Queen's Advocate to Lord J. Russell.—(Received July 24.)

Doctors' Commons, July 22, 1861.

UNITED STATES.

Case of the "Edward," sent to New York by blockading squadron, though not as a prize.

My Lord,

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 15th July instant, stating that he was directed to transmit to me a despatch from Her Majesty's Consul at Charleston (No. 73), reporting the case of the British barque "Edward," which having arrived off the Southern Coast of America with a cargo of salt and coal, was warned off that coast by the United States' blockading squadron, and was eventually sent to New York, though not as a prize; and to request that I would take this case into consideration, and furnish your Lordship with my opinion thereupon.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I do not understand what, if any, question of international law is raised, or intended to be raised, as to the "Edward." She was not captured or detained, but was supplied with water, oil, provisions, and carpenter's labour, by the United States' Flag Officer, Stringham. I can only say that the Flag Officer appears to me to have acted with marked courtesy to the Consul, and with great liberality towards the "Edward," in not capturing and sending her into port for adjudication. The owners do not appear, as yet, to have made any complaint; and if the version of the facts represented by the Consul as "the Flag Officer's version of his conduct," turns to be correct, his conduct deserves, in my opinion, a suitable acknowledgment from Her Majesty's Government.

I have, &c.
(Signed) J. D. HARDING.

No. 178.

The Queen's Advocate to Lord J. Russell.—(Received July 24.)

Doctors' Commons, July 22, 1861.

UNITED STATES.

Blockade of Port of Charleston.

My Lord,

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 15th July instant, stating that he was directed to transmit to me a copy of a despatch from Her Majesty's Consul at Charleston (No. 71), reporting upon the manner in which the blockade of that port has been maintained.

Lord Wodehouse was also pleased to state that your Lordship sends this despatch for my information, but would be glad to receive my observations should I desire to offer any at the present time upon its contents.

In obedience to your Lordship's commands I have taken this despatch into consideration, and have the honour to report—

That with a view to the claims what may be anticipated as likely to be adduced hereafter against the Government of the United States, in connection with the blockade of Charleston, I would point out that every practicable means should be employed to clear up the doubts hanging over the facts connected with it, and to test the accuracy of the Consul's and of Mr. Seward's conflicting allegations.

The paragraph pencilled at page 5 of the Consul's letter deserves particular attention and further investigation. I would further observe that there are some points to be kept in view, as far as practicable, in obtaining further information: I have put these, for convenience, in the shape of questions—

1. Has ingress been allowed by the blockading squadron after the first establishment of the blockade to any, and what, vessels, knowingly and wilfully? and if yea, in what cases, and on what surmised grounds?

2. Repeat the question as to *egress* with cargo laden after the blockade, and in derogation of the fifteen days of grace.

3. Have the suggested intermissions of the blockade been caused by the blockading force being (*a*) wholly and deliberately withdrawn and sent elsewhere by superior orders? or (*b*) by weather? or (*c*) by chasing vessels endeavouring to break the blockade, or other vessels generally?

4. Has the force on the spot, from local considerations, number and class of cruizers, and so forth, been even when actually present (and if so, for what time and in what respect) inadequate to maintain an efficient blockade, or to cause obvious danger to those desiring to break it?

The mere fact that the blockading force was not visible from the shore, or not certainly known at Charleston to be in the offing, or even that certain vessels have succeeded in escaping that force by entering or leaving that port, will not *of itself* render its blockade invalid. This is, in a great degree, a question of *relative* numbers.

In conclusion, I would suggest that the Consul should direct his attention, and if necessary communicate with Lord Lyons, who should resort to the best sources of information and professional advice as to the point or points on which it may be considered that the question of the validity or invalidity is likely to turn; as, for instance, (1st) its general and total imperfection throughout, from want of a proper and sufficient force; or from (2nd) the number of cases in which either egress, or especially *ingress*, has been *permitted* by the blockading force; or (3rd) its partial and temporary interruption, by the withdrawal or absence of the blockading force during certain definite periods. The Consul is, of course, familiar with Kent's "Commentaries on American Law," vol. i, p. 143, *et seq.*, and authorities there cited. I return, herewith, the Consul's despatch No. 71, for reference.

The more general question of the blockade of the Southern ports should be kept separate from that of Charleston; and means should be taken, through the British Legation and Consulates in the United States, to make out a thoroughly

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correct list, for future use, of the date when the blockade of each of those ports commenced, and how it was maintained. Some information is already forthcoming on this point.

I have, &c.
(Signed) J. D. HARDING.

No. 179.

The Queen's Advocate to Lord J. Russell.—(Received July 24.)

Doctors' Commons, July 23, 1861.

SPAIN.

Interview with Consul Mark respecting the case of the "Fahrenheit."

My Lord,

WITH reference to my letter of the 25th June ultimo, on the case of the British ship "Fahrenheit," and on that of the "Azorian," unjustly subjected to quarantine by the Spanish authorities, I have to request that I may be furnished with Consul Mark's address, and that he may be requested to attend me upon these cases at an early day, say Saturday next at 12 A.M., with the papers, or that I may be informed when he can attend me thereon.

I have, &c.
(Signed) J. D. HARDING.

No. 180.

The Queen's Advocate to Lord J. Russell.—(Received July 24.

Doctors' Commons, July 23, 1861.

URUGUAY.

Case of the "Emerald Isle." Accusation against Her Majesty's Consulate-General at Monte Video of issuing a falsified document.

My Lord,

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 10th July instant, stating that he was directed to transmit to me a despatch from Her Majesty's Chargé d'Affaires and Consul-General at Monte Video (No. 27, May 28, 1861), inclosing copies of his correspondence with the Governor of Uruguay, in regard to certain legal proceedings in which the master of a British vessel has been engaged.

Lord Wodehouse was also pleased to state that I should perceive that Señor Rodriguez, the presiding Judge of the Tribunal of Commerce, accuses Her Majesty's Consulate-General of deliberately issuing a document bearing a false date in reference to this case; and to request that I would report to your Lordship my opinion as to the instructions which should be given to Mr. Lettsom in regard to this accusation.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That, as too frequently happens in South American cases, Mr. Lettsom has omitted to transmit a copy of the sentence pronounced by Señor Rodriguez (in the suit as to freight of the "Emerald Isle," apparently instituted by Egan the master against "Llamas, Madeiros, and Co."), of some expressions in which sentence reflecting on Her Majesty's Consulate he complains, and upon the precise terms of which document the whole matter necessarily turns. This omission appears to me very extraordinary, and the sentence *in extenso*, with an exact translation, must be supplied before I can finally dispose of the case, if it is to come before me again. I observe, however:—

1. That the matter seems to have originated in a letter from Mr. Robinson, the agent of Egan, to Mr. Lettsom, dated March 19th.

2. That Egan, in the opinion of Vice-Consul Munro, was justly defeated in this suit, which he ought not to have instituted; and that his defeat was owing to "his neglect of the most ordinary precautions," and in fact to his failure to perform his duty as master.

3. That Egan has not appealed, and that the suit is at an end; thus the matter originates with the agent of a justly defeated suitor whose unfounded claim is now disposed of.

4. That there was in fact an important error committed in this matter by the Vice-Consul in his official character (see his despatch of May 2, page 7).

5. That if the expressions complained of be merely those set forth in Mr. Robinson's letter of March 19, I do not see how they can be officially taken up and resented.

6. That the propriety and expediency of officially applying to a foreign Government, by way of complaint, against expressions used by a Judge in pronouncing a sentence, in itself well founded, and which expressions were used *bonâ fide* and without malice, and for which there was apparently at all events some ground or cause, appears to me very questionable. In a similar case in this country Her Majesty's Government would decline to interfere; a reflection on irregularities in Consular documents is not a national affront, and the Executive Government cannot control or answer for all judicial ebullitions of temper or strong expressions from the Bench, even if they are not altogether justifiable.

7. *Non constat* whether the errors, defects, or contradictions in the Consular archives formed the subject of evidence, or of contest or argument, at the trial, which is an important question; if this was the fact, it is a further justification or excuse for the Judge's remarks.

8. Upon the whole my present impression is, that this matter is not one requiring or deserving any further official intervention, which is not in my opinion likely to lead to any important or satisfactory result; and I should be disposed to advise your Lordship to instruct Mr. Lettsom in this sense.

I have, &c.
(Signed) J. D. HARDING.

No. 181.

The Queen's Advocate to Lord J. Russell.—(Received July 25.)

VENEZUELA.

Claim of Mr. Nevett for forcible seizure of his property by a party of insurgents.

My Lord, *Doctors' Commons, July* 24, 1861.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 18th July instant, stating that with reference to my Report of the 24th April last,* he was directed to transmit to me a further despatch from Mr. Orme, Her Majesty's Chargé d'Affaires at Caracas (No. 41), stating his reasons for thinking that the claim of Mr. Nevett against the Venezuelan Government is not one that ought to be supported by Her Majesty's Government.

Lord Wodehouse was also pleased to transmit a letter and its inclosures from Mr. Nevett, in support of his claim, and to request that I would take these papers into consideration, and furnish your Lordship with my opinion whether Mr. Orme has taken a correct view of this case.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That Mr. Orme appears to me to have taken a correct view of this case.

I have, &c.
(Signed) J. D. HARDING.

No. 182.

The Law Officers of the Crown to Lord J. Russell.—(Received July 26.)

PERU.

Estate of late M. Winder. Mr. Carwell's appeal to be released on parole.

My Lord, *Doctors' Commons, July* 26, 1861.

WE are honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 15th July instant, stating that with reference to our letter of the 23rd [25th] ultimo,† he was directed to transmit to us a further despatch from Her Majesty's Minister at Lima (No. 26), relative to the estate of the late Michael Winder, deceased; and to request that we would take this despatch into consideration, together with the papers previously sent to us, and report to your Lordship our opinion thereupon at our earliest convenience.

We are also honoured with Lord Wodehouse's letter of the 23rd instant, requesting an answer to his letter of the 15th instant.

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* Page 75.

† Page 133.

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In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we have only to observe that Señor Melgar states that the Executive Government cannot interfere with the Tribunals, and that Mr. Carwell must apply to them for leave of absence on medical certificate, and that he can obtain release from the "arraigo" imposed on him by naming an "apoderado," or finding security. Mr. Jerningham makes no observations by way of answer to this statement, and Mr. Carwell merely disputes many of the facts generally, dwells on the urgency of his case, owing to the state of his health, and insists on a demand for his release on parole being made to the Government by Mr. Jerningham. Señor Melgar's statement is not satisfactorily answered, and although the whole case gives rise to grave suspicions as to the conduct and motives of the Peruvian Government, we cannot advise your Lordship to authorize the making of any formal demand for the release of Mr. Carwell on his parole.

Mr. Jerningham may be instructed to facilitate, as far as may be practicable, the object immediately in view, by procuring Mr. Carwell's release upon such terms and conditions, including or not including security, as may be practicable.

We have, &c.

(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 183.

The Queen's Advocate to Lord J. Russell.—(Received July 27.)

Doctors' Commons, July 24, 1861.

My Lord,

UNITED STATES.

Transfers of American vessels to British subjects.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 20th July instant, stating that he was directed to transmit to me a despatch from Her Majesty's Consul at New York (No. 59), requesting instructions with regard to the numerous cases of transfers of American vessels to British subjects.

Lord Wodehouse was also pleased to inclose a letter from the Board of Trade, to which Department Mr. Archibald's despatch was referred; and to request that I would furnish your Lordship with any observations that I may have to make upon this subject.

In obedience to your Lordship's commands I have taken this subject into consideration, and have the honour to report—

That I do not see how, under the circumstances, any official instructions can be issued to the Consul than those suggested by the Board of Trade. He may, however, be informed that in any special case, in which he may have good reason to suspect that the transfer is not made *bonâ fide* for adequate value, but is merely fictitious, or "colourable" (the interest of the American vendor in the ship sold not being, in fact, entirely divested), he may delay the official completion of such transfer until he forwards a full and exact statement of the case, and receives instructions from home. I may remark that, on this subject, it would be desirable (with a view to cases which may hereafter arise, in the event of the continuance of the existing hostilities between the United States and the (so-called) Confederate States, and in which the national character and credit of the British flag may be, at least, indirectly involved) to have early and correct information as to the view taken by each of the contending parties of the validity of sales of ships by an enemy to a neutral, *flagrante bello*. The French prize law altogether refuses to recognize the validity of any such sale; whilst the English prize law recognizes their validity, if made *bonâ fide*, for adequate value, and without any secret reservation of enemy's interest (see, for instance, Sorensen *v.* the Queen (the "Ariel"), in 11 Moore's "Privy Council Reports," page 119; the "Baltic," ibid., page 141; and Batten *v.* the Queen (the "Maria"), ibid., page 271). It would be obviously undesirable for ships under the British flag to be exposed to capture and condemnation at the hands of either of the American belligerents, as was the case *quoad* the flag of Denmark, in the case of several ships fictitiously sold by Russians to Danes during the late war with Russia, but nevertheless captured and condemned in England.

With reference to the Consul's opinion as to the unsatisfactory state of the English law regulating the national character and status of those entitled to own British ships under the Merchant Shipping Act, and the facilities which it offers to evasions of what I conceive to have been the real policy, spirit, and intention of the Act, I entirely concur with the Consul; and I think it very advisable that the attention of Her Majesty's Government should be directed to this point: but this large and important subject has no immediate or direct bearing on the sales at New York, of United States' ships, to persons entitled (howsoever) under the actual law to own "British ships;" the subject does not fall within the province of the Foreign Department, and I have not leisure or opportunity, at present, to enter fully into it. I will only observe that to any person practically familiar with British shipping interests, it must be apparent that the 17th section of 17 and 18 Vict., cap. 104, is so framed as to expose Her Majesty's Government to the constant risk of serious international complications and conflicts of law, in the case of those British shipowners who, although they may be technically British subjects *by descent*, according to British law, are yet by birth, domicile, and interest, both *de jure* and *de facto* the subjects or citizens of those foreign States within which they nevertheless claim to own "British ships."

I have, &c.

(Signed) J. D. HARDING.

No. 184.

The Queen's Advocate to Lord J. Russell.—(Received July 27.)

Doctors' Commons, July 27, 1861.

My Lord,

UNITED STATES.

Endorsement upon register of the "Tartar" by United States' steamer of war, warning her not to attempt to enter any blockaded ports.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 24th July instant, stating that he was directed to transmit to me a letter from the Admiralty dated the 23rd of July instant, inclosing a copy of a letter from Rear-Admiral Milne and other papers, reporting the circumstances under which the "Tartar," schooner, of Halifax, Nova Scotia, was boarded on the high seas by an officer from the United States' steamer of war "Union," who endorsed upon her register a warning not to attempt to enter any port of the United States south of Chesapeake Bay, said ports being under blockade; and to request that I would take these papers into consideration and report to your Lordship my opinion upon this case, and to furnish your Lordship with my opinion whether it would be advisable to communicate through Lord Lyons with the United States' Government, with a view to elicit from that Government a declaration as to the actual existence of an effective blockade of all the ports between Chesapeake Bay and the Mexican frontier.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That, with reference to the general question adverted to by Admiral Milne, of the prevailing doubts as to the actual existence of an effective blockade of all the ports in question, I can only refer to my previous Reports on this subject, especially those of the 13th May, 14th June, and 22nd July. I have, from the first, pointed out how desirable it is that Her Majesty's Government should be kept regularly and accurately informed on this subject; and I regret that no reliable information is as yet available. These papers throw no additional light upon this point. I may add that it is only in case of a British vessel being either captured for breach of blockade, or warned off, and thereby prevented from going to some port to which she was destined, and of her owners suffering loss or damage thereby, that the question of the fact of such blockade, or of the terms of the notice thereof given to her, become material: vessels not bound to blockaded ports are not *primâ facie* injured by even an incorrect notification of blockade. A vessel, for instance, like the "Tartar," bound from Kingston, Jamaica, to Halifax, and, therefore, necessarily, passing along a coast many, if not all, all the ports of which are blockaded, is not injured by such a notification being given to her in latitude 32° north, and longitude 78° west; nor do I understand her owners to complain of it. The question of shotted guns having been fired at the "Tartar," especially if unnecessarily fired, is a separate and serious question; but the circumstance is somewhat vaguely stated: it is not distinctly complained of; and I do not, as at present advised, see the necessity of entering into any formal international discussion thereon.

Your Lordship's last question must, in my opinion, be answered in the negative. I see no advantage, but the contrary, as likely to arise from now asking the United States' Government officially any question as to the dates or actual existence of these blockades; this should be, at all events, postponed until Her Majesty's Government is fully enlightened on the subject from its own sources of information, and until some case arises in which such a step may be requisite.

I may add, in conclusion, that no serious cause of complaint has as yet arisen against the United States' Government in relation to the blockade; and that the officers commanding the blockading force have, as far as I am aware, acted very courteously and liberally towards British vessels; not one case for the demand of redress or compensation is at this time (as far as I am aware) pending between Her Majesty's Government and that of the United States. The absence of a general and public notification is, on the whole, not unfavourable to neutral interests; and special notice to each vessel met with is a measure which does not appear to me unreasonable. It is, in my opinion, desirable to avoid, as far as possible, any irritating discussion of the subject, and, at all events, to wait until some strong case shall actually have arisen of wrong done to a British subject, for which no redress can be obtained in any Court administering either municipal or international law, before Her Majesty's Government impeaches the validity of the blockade either generally, or in any particular instance. It is, moreover, to be borne in mind that regular Prize Courts are established in the United States professing to apply the law of nations correctly and impartially, to which all claimants interested in captured vessels can apply. Her Majesty's Government should, therefore, in my opinion, diligently collect all the necessary information; but it should at present abstain from making any official communication on the subject to that of the United States.

I have, &c.

(Signed) J. D. HARDING.

No. 185.

The Queen's Advocate to Lord J. Russell.—(Received July 30.)

Doctors' Commons, July 29, 1861.

SARDINIA.

Losses sustained by Mr. W. Taylor at Monte Cristo, in consequence of proceedings of Sardinian authorities.

My Lord,

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 22nd July instant, stating that, with reference to my Report of the 16th of March last,* on the case of Mr. Watson Taylor, of the Island of Monte Christo, he was directed to forward to me a letter from Mr. S. Watson Taylor, giving an account of the losses sustained by his brother in consequence of the proceedings of the Sardinian authorities, together with a full Report on the affair drawn up by Her Majesty's Consul at Leghorn, and received from Sir James Hudson.

Lord Wodehouse was also pleased to inclose the other correspondence relating to this matter; and to request that I would furnish your Lordship with any further observations which I may have to offer thereupon.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That the information which I requested in my Report of October 27, 1860, page 7, as to the date of the change of the Government of Tuscany from the Grand Duke to the King of Sardinia, and the form and date of the notice thereof which Mr. Watson Taylor received, has never been supplied: and this question, therefore, still remains in its original obscurity; its relevancy and importance will be seen by reference to the above-mentioned Report.

The Report of Consul Macbean, dated July 3, strengthens and confirms the opinion which I expressed in my Report of October 27, 1860.

It now clearly appears that the official authorization of the proceedings by M. Ricasoli (then Sardinian Governor-General of Tuscany), was either carelessly granted without any inquiry, or improperly granted after a very imperfect inquiry (see Consul Macbean's Report, 3rd July, page 36); that the legality of the

sentence is subject to serious doubt (ibid., pages 34 and 37); that the character and value of the evidence adduced for the prosecution is subject to the gravest suspicion; the whole charge seeming to have resulted from the personal malice of some of the persons on the island; and that the sentences passed on Mr. and Mrs. Taylor (especially the latter), were monstrous in point of severity, even assuming there to be no doubt as to the law or the facts. Upon the whole, I must say that I have seldom seen a case in which a State prosecution, specially instituted and conducted on behalf of any European Government, has been from first to last of so thoroughly discreditable a character.

I do not see that the failure of Mr. Taylor to appear, or offer any defence, offers any material palliation for the conduct of the authorities. It would seem that Sir J. Hudson knew, and did not disapprove, of Mr. W. Taylor's intention to absent himself. I can only repeat that the mere remission of the sentence (which was apparently delayed for many months), is not, in my opinion, a sufficient reparation for the grievous wrong so wantonly inflicted on Mr. and Mrs. Taylor, under colour of law and justice, and after and notwithstanding that the attention of the Sardinian Government had been specially called to the circumstances by Her Majesty's Legation.

With respect to the question of pecuniary compensation, there is considerable difficulty. On the one hand, I cannot see any sufficient justification for the entire abandonment by Mr. Taylor of all his property and interests in the island, from and since August 1860. I do not see any sufficient reason for his refusal or omission formally to empower some person to act for him; at all events, I do not see why official notice was not given, through the Consulate, to the authorities, and their intervention to protect and preserve the property required; and I am not satisfied that, under these circumstances, the Sardinian Government can be held responsible for the ordinary depreciation and damage to Mr. Taylor's property caused by or ensuing on Mr. Taylor's entire dereliction thereof. Mr. Taylor cannot treat Sardinia as an owner (insured) treats an underwriter by "abandoning and going for a total loss."

On the other hand, as to the positive plunder and destruction of Mr. Taylor's property by those on board the British steamer "Orwell" (who were apparently Italian military volunteers, commanded by one Settembrini), the question as to the responsibility of the Sardinian Government in this respect appears to me to turn chiefly upon the consideration whether these persons are rightly to be regarded as being then in the service of, or acting on behalf of, the King of Sardinia.

It is suggested by Mr. Samuel Watson Taylor, in his letter of May 20, that the Italian volunteers on board the "Orwell" were subsequently captured by one of Her Majesty's vessels, and thereupon claimed by Sardinia, and released by Her Majesty's Government, instead of being tried at Malta for piracy. It does not appear what was subsequently done with them; and I am not in a position to say at present whether the Sardinian Government recognized these persons, or adopted them as being in its service, or acting voluntarily on its behalf; but if it did so, it is responsible to Mr. Taylor for their acts.

There remains the question of what effective protection and countenance Mr. Taylor from the Sardinian Government is to receive, in the event of his returning to the island. His brother enters fully into this part of the case in the concluding portion of his letter of May 20. It is obvious that unless something of what is therein suggested is vigorously carried out, Mr. Taylor cannot prudently or safely return to Monte Christo, or obtain any rent or profit therefrom, notwithstanding his large previous expenditure.

I remark a somewhat singular silence on the part of Sir J. Hudson, on the general merits and position of the case; but its general aspect and result appear to me to lead to the conclusion that Mr. Taylor, after spending a very large sum on improving the island, became the victim of petty local malice and ill-will; that the authorities afforded him neither favour, protection, nor justice, and without any serious fault or provocation, persecuted and ruined him. He can obtain neither redress for the past, nor adequate protection for the future, without the vigorous intervention of Her Majesty's Government, to which he is, in my opinion, fairly entitled.

It will be for your Lordship to consider whether the best legal advice at Turin may not properly be taken on the legal validity of the sentence, having

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* Page 50.

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regard to the state of the island at the time, *inter gentes* (whatever it may have been), and to the points adduced in Consul Macbean's Report, with a view to any further official communication to the Government of Sardinia.

The question of pecuniary compensation is, to some extent, dependent on the tone adopted by the Sardinian Government. If that Government were frankly and promptly to express its regret for the past, and to pledge itself to protect Mr. Taylor for the future, the question of compensation might perhaps be dropped, in consideration of all the circumstances; but if Sardinia will give no other answer or explanation than that of the late Count Cavour, the case assumes a more serious aspect, and should be pressed to the utmost.

I have, &c.
(Signed) J. D. HARDING.

No. 186.

The Law Officers of the Crown to Lord J. Russell.—(*Received July* 30.)

Doctors' Commons, July 30, 1861.

JAPAN.

Draft of Letters-Patent amending Letters-Patent of 13th January, 1860. Appeals from Consular Courts in Japan to Supreme Court of Hong Kong.

My Lord,

WE are honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 26th of June ultimo, stating that he was directed to transmit to us a letter from the Colonial Office dated the 20th of June, inclosing a draft of Letters-Patent, which the Duke of Newcastle is of opinion should be passed for the correction of the error which it was discovered, in the case of Mr. Moss, had occurred in framing the Letters-Patent of the 13th of January, 1860, passed to regulate appeals from the Consular Courts in Japan to the Supreme Court of Hong Kong; and to request that we would take this draft of Letters-Patent into consideration, and furnish your Lordship with our opinion as to whether it is right and proper.

Lord Wodehouse was also pleased to inclose, for facility of reference, copies of the Orders in Council of the 23rd of January, 1860, and the 4th of February last; and to add that all the other papers in the Moss case were returned to us with Mr. Hammond's letter of the 15th ultimo.

In obedience to your Lordship's commands we have the honour to report—

That we have taken the draft of Letters-Patent, inclosed in the letter of Sir Frederic Rogers of the 20th of June, 1861, into our consideration; and, subject to some alterations which we have made in the draft, we are of opinion that is right and proper.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

Inclosure in No. 186.

Draft of Letters-Patent to be passed under the Great Seal of the United Kingdom for investing the Supreme Court of Hong Kong with Appellate Jurisdiction in certain cases of Civil Suits between British Subjects heard and determined, under the authority of Her Majesty's Order in Council of the 23rd of January, 1860, *by British Consuls within the Dominions of the Emperor of Japan.*

WHEREAS by an Ordinance passed by the Legislative Council of Hong Kong in the year 1845, intituled No. 6 of 1845, "An Ordinance to repeal Ordinance No. 15 of 1844 for the establishment of a Supreme Court of Judicature at Hong Kong, and to substitute other provisions in lieu thereof," it was enacted that there should be within the said Colony a Court, which should be called the Supreme Court at Hong Kong:

And whereas by certain Letters-Patent bearing date the 30th January, 1860, provision was professedly made for investing the said Supreme Court with appellate jurisdiction, in cases of civil suits heard and determined, under authority of Her Majesty's Order in Council of the 3rd March, 1859, by British Consuls

within the dominions of the Emperor of Japan; but such Order in Council had been repealed previously to the date of the said Letters-Patent, that is to say, by Her Majesty's Order in Council of the 23rd of January, 1860:

And whereas it is expedient that the said Letters-Patent should be revoked:

Now know ye, that upon consideration of the premises, and of Our certain knowledge and mere motion, We have thought fit to direct and ordain, and do direct and ordain as follows:—

1. The aforesaid Letters-Patent of the 30th day of January, 1860, are hereby revoked and determined.

And whereas by the 13th section of an Order in Council bearing date the 23rd day of January, 1860, it was ordered that, in the event of any suit of a civil nature arising between British subjects within the dominions of the Tycoon of Japan, it should be lawful, upon the application of any party to such suit, for the Consul of the district within which the party sued should be found, to hear and determine such suit, subject in case the sum in dispute should exceed 1,000 dollars to an appeal to the Supreme Court of the Colony of Hong Kong; and that every such appeal should be made and conducted in the manner and form, and under the same conditions as were prescribed by the said Order in Council in cases in which the Defendant only was a British subject.

And whereas by the 28th section of the aforesaid Order in Council, it was further ordered that the Supreme Court of the Colony of Hong Kong should have and might exercise, concurrently with Her Majesty's Consul, authority and jurisdiction in regard to all suits of a civil nature between British subjects, arising within any parts of the dominions of the Emperor of Japan: Provided always that the said Supreme Court should not be bound, unless in a fit case it should deem it right so to do, by writ of *certiorari* or otherwise, to debar or prohibit the Consul from hearing and determining, pursuant to the provisions of the several sections of the said Order, any suit of a civil nature between British subjects, or to stay the proceedings of a Consul in any such matter,—

2. We do further direct and ordain, that if any party to any such suit as aforesaid, heard and determined in Japan, and in which the sum in dispute shall exceed 1,000 dollars, shall be dissatisfied with the decision given upon the said suit by the Consul before whom the same shall be heard or tried, it shall be lawful for such party, within fifteen days after such decision, to give to the Consul notice of appeal to the Supreme Court of Hong Kong, whereupon the Consul shall, with as little delay as possible, stamp with his Consular Seal, and transmit to the said Supreme Court, all the documents which were produced before him, and none other, and also the notes taken by him of the evidence adduced in the said suit, together with a statement of the grounds on which he formed his decision, and an exact copy of the order made by him, and shall forthwith notify to the several parties the transmission thereof: Provided always, that it shall be lawful for the Consul to require from any party appealing to the said Court reasonable security, which shall consist in part of one or two sufficient sureties, to be approved by the Consul, that such party shall and will abide by the decision to be given by the said Supreme Court, and pay all such costs of and incidental to such appeal, as the said Supreme Court shall direct.

3. And We do further direct and ordain, that it shall be competent to the said Supreme Court, and the said Court is hereby required, to take into consideration such documents and statements, and decide upon the same, and to communicate its decision to the Consul, who shall forthwith proceed to carry the same into execution.

4. And We do further direct and ordain, that in any appeal to the said Court from the decision of a Consul, it shall not be open to any party, except as hereinafter is provided, to adduce any further evidence than that which was laid before the Consul, and that a party shall not be required to appear personally to prosecute an appeal or support a sentence: Provided always, that in all appeals from the decision of the Consul, it shall be lawful for a party to allege facts essential to the issue of the suit, which have come to his knowledge subsequently to the decision of the Consul, and to produce evidence in support of such facts; and provided also that it shall, moreover, be lawful for the said Court to admit any further legal evidence besides that adduced before the Consul, on its being established to the satisfaction of the said Court by oath on personal examination, or by affidavit, that the party desiring to produce such further evidence was ignorant of the existence of such evidence, or was taken by surprise at the

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hearing before the Consul, or was unable to produce it before the Consul after due and reasonable diligence and exertion on his part in that behalf, or wheresoever, under the particular circumstances of the case, it shall appear to the said Court that further evidence ought to be received.

5. And We do hereby give and grant to the said Supreme Court full jurisdiction, power, and authority, to hear and determine all such causes, suits, matters, and things as are mentioned and comprised in the said XXVIIIth Article of the aforesaid Order in Council of the 23rd January, 1860.

6. And We do further direct and ordain, that it shall be lawful for the said Court to make such Rules, Orders, and Regulations, not being inconsistent with the provisions of the said Order in Council, or with these Our Letters-Patent, or with the laws in force in Hong Kong, as may in the judgment of the said Court be requisite for the speedy and effectual decision of the aforesaid appeals, and also of the said causes, suits, matters, and things: Provided always, that all such Rules, Orders, and Regulations, shall forthwith be communicated to the Governor of Hong Kong, and by him shall be transmitted to Us, Our heirs and successors, under the seal of the said Court, for Our or their approbation or disallowance, to be signified through one of Our Principal Secretaries of State to the said Governor.

In witness whereof, &c.

No. 187.

The Queen's Advocate to Lord J. Russell.—(Received August 1.)

UNITED STATES.

Complaint of Mr. H. Haynes. Register of the "Roscoe" endorsed with notice of blockade of Southern ports of United States.

My Lord, *Doctors' Commons, July* 30, 1861.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 27th of July instant, stating that he was directed to transmit to me a letter and its inclosures from Mr. H. Haynes, complaining of an officer from the United States' blockading vessel "Powhattan" having endorsed on the register of the British ship "Roscoe" a notice of the blockade of the Southern ports of the United States.

Lord Wodehouse was also pleased to transmit a draft of the answer which it is proposed to return to Mr. Haynes; and to request that I would take the case into consideration, and report to your Lordship my opinion whether the proposed answer to Mr. Haynes is right and proper.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That, adverting to the absence of any full or accurate information of the dates and efficiency of the blockades of the Southern ports by the naval forces of the United States, I have introduced a slight alteration into the end of the draft, subject to which I am of opinion that it is right and proper.

I have, &c.
(Signed) J. D. HARDING.

Inclosure in No. 187.

Proposed Letter to Mr. Haynes.

Sir, *Foreign Office, August* , 1861.

I AM directed by Earl Russell to acknowledge the receipt of your letter of the 24th ultimo, inclosing the register of the British ship "Roscoe," on which an officer from the United States' blockading steamer "Powhattan" had endorsed a notice of the blockade of the Southern ports of the United States, and I am to state to you, in reply, that Lord John Russell, having consulted legal authority, is not of opinion that this document is such as to require any remarks from him.

The "Roscoe's" register is returned herewith.

I am, &c.

No. 188.

The Queen's Advocate to Lord J. Russell.—(Received August 2.)

MEXICO.

Traffic in Yucatan Indians between Yucatan and Cuba. Assistance of British cruizers requested.

My Lord, *Doctors' Commons, August* 1, 1861.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 25th of July ultimo, stating that he was directed to transmit to me the accompanying despatch from Mr. Mathew, Her Majesty's Minister at Mexico (No. 28), inclosing a translation of a Decree issued by the Mexican Government prohibiting the traffic in Yucatan Indians, which has for some time past been carried on between Yucatan and Cuba; and also inclosing a translation of a note from the Mexican Government, requesting the assistance of British cruizers to put a stop to this traffic, which the Mexican authorities are themselves totally unable to suppress.

Lord Wodehouse was also pleased to transmit to me a letter from the Admiralty, dated the 17th September last, with its inclosures, from Rear-Admiral Sir Alexander Milne, and Commander Pakenham, of Her Majesty's ship "Racer," containing a report by the latter officer of the result of inquiries which he was directed to make in Yucatan respecting the traffic in Indians between that country and Cuba.

Lord Wodehouse was also pleased to state that I should perceive that it is stated by the authorities in Yucatan, that the Indians who are thus shipped off to Cuba under contracts for labour are only prisoners of war, whom they cannot shoot or detain in prison; but, on the other hand, the information which has reached Her Majesty's Government leaves no room to doubt that an extensive system of kidnapping Indians has for some years past been organized in Yucatan, and that the condition of these Indians when landed in Cuba differs very little from that of the negroes introduced as slaves from Africa.

Lord Wodehouse was also pleased to state that Her Majesty's Government have repeatedly remonstrated with both the Mexican and Spanish Governments on the inhumanity of this traffic, but their remonstrances have hitherto failed in putting a stop to it; and to request that I would take these papers into consideration, and furnish your Lordship with my opinion as to whether this trade is legal; and if not, whether British cruizers would be justified in rendering assistance to the Mexican authorities in suppressing it, and to what extent this assistance may be given.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I am unable to say that the trade in question is clearly illegal, or a "Slave Trade" internationally; it is in the nature of emigration or exporting of Indians from the territory of Mexico (Yucatan); and there are, apparently, formal contracts of service entered into by the emigrants. It appears that some few Indians so exported have even returned to Yucatan, and subsequently left it again to settle permanently in Cuba. The traffic resembles coolie emigration, which is, whenever uncontrolled, a Slave Trade in its effect and operation, although not so technically; but when controlled and regulated, assumes a very different aspect.

However this may be, it is obvious that if Mexico will not or cannot enforce her own laws on land within her own territory, or take any effectual steps to prevent their violation when brought under the cognizance of her own officers, she cannot fairly ask Her Majesty's Government to assist her in enforcing them on the high seas. Thus, when Mexico has allowed the Indians to be collected and shipped, and permitted the ships laden with them to sail, she cannot, with any decency, call on Her Majesty's ships to stop them on the high seas.

Moreover, the present state of Mexico, and the position of Señor Juarez, offer serious objections to entering into any special arrangement on the subject. This Decree may probably not have the force of law, or be considered as binding by Mexico as a Republic; neither am I precisely aware of what are the precise acts which Señor Juarez desires Her Majesty's vessels of war should do in this matter. If he means that all export whatsoever of Indians from Yucatan to Cuba is "slave-trading" by Mexican law (which does not seem to me to be the effect of the Decree of May 6, 1861), then, under the Treaty with Mexico of 1841, Mexican vessels engaging therein may, without any special instructions,

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be captured, and sent to Vera Cruz for adjudication. The stipulations in Article IV, however, require attention, and perhaps modification.

I may remark, that other foreign interests (besides those of Mexico), for instance, Spanish interests, are involved in this question, and the intervention of Her Majesty's ships may lead to serious international complications; and the matter is altogether left in so much obscurity that I cannot recommend Her Majesty's Government to take any steps at present in the sense indicated. If Señor Juarez only means to invoke the assistance of Her Majesty's ships to enforce his own Municipal Law (and this after it has been flagrantly violated on Mexican territory, or by the connivance at least of Mexican authorities), but not to act under the Slave Trade Suppression Treaty for the suppression of acts of "slave-trading," then I cannot, under the circumstances of the case, advise your Lordship to accede to his request.

I have, &c.
(Signed) J. D. HARDING.

No. 189.

The Queen's Advocate to Lord J. Russell.—(*Received August* 2.)

My Lord, *Doctors' Commons, August* 1, 1861.

SPAIN.

Mr. Rankin's claim to compensation for losses on account of his vessel "Fahrenheit" having to proceed to Port Mahon to perform quarantine.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 12th June last, stating that he was directed to transmit to me a letter from Mr. Rankin dated the 29th May last, setting forth the circumstances under which he requests the interference of Her Majesty's Government, with the Government of Spain, to obtain compensation for losses which he has incurred by the proceedings of the authorities at Malaga, in directing his vessel, the "Fahrenheit," to proceed to perform quarantine at Port Mahon; and to request that I would take this paper into consideration, and report to your Lordship my opinion as to whether Her Majesty's Government will be justified in interfering in this matter.

I am also honoured with Lord Wodehouse's letter of the 31st July ultimo, stating that, in accordance with the suggestion contained in my letter of the 23rd July ultimo,* Mr. Mark has read all the papers which were sent to me therewith respecting the cases of the "Azorian" and "Fahrenheit," and that he would call upon me on the 1st of August at 12 o'clock, in order that I might have an opportunity of consulting with him on these cases.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I have conversed with Mr. Mark on this subject.

With regard to the "Fahrenheit" I observe that it is admitted that two of her crew died during the voyage, it is said "from intemperance at Swansea;" but the suspicions of the Spanish Health Officers were naturally excited. There is no *constat* of what resulted from the examinations of the master and crew, and the Spanish authorities were not bound implicitly to believe their version of the cause of these deaths; the master does not appear to have complained to the Consul at Malaga, and there is even now no report from that Consulate. I cannot discover that she sustained any illegal treatment; Mr. Mark concurs with this opinion.

Under these circumstances I cannot advise Her Majesty's Government to interfere. Mr. Mark also concurs with me in considering the case of the "Azorian" to be one of flagrant oppression, for which compensation should be insisted on, if any stand is to be made against the capricious exercise of arbitrary Spanish authority, to the ruin of British interests in this class of cases.

This case of the "Fahrenheit" is, however, of a very different aspect. I can only again call attention to the very objectionable state of the present sanitary laws of Spain, which (in effect) leave the fate of almost every ship and cargo arriving from a British port in the hands of the local Boards of Health.

The opinion of Señor Arguelles, inclosed in Mr. Edwardes' No. 74 of 1860, in the "Azorian" (especially at page 47 and following pages of the translation), deserves attention in connection with this subject, and the propriety of the

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* Page 158.

Spanish Government (at least) appointing more numerous and convenient quarantine stations is apparent.

Mr. Mark's presence in England and long experience in Spanish matters may present a favourable occasion for dealing with this important question.

I have, &c.
(Signed) J. D. HARDING.

No. 190.

The Queen's Advocate to Lord J. Russell.—(*Received August* 2.)

My Lord, *Doctors' Commons, August* 2, 1861.

UNITED STATES.

Case of the "Hiawatha," sent to New York as a prize.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 27th July ultimo, stating that he was directed to transmit to me, with reference to my Reports of the 18th June last* and 5th July ultimo,† a despatch from Her Majesty's Minister at Washington (No. 320), inclosing, with other papers respecting the case of the "Hiawatha," the argument of the Advocate of the owners of that vessel; and to request that I would take these further papers into consideration, and report to your Lordship any observations I might have to offer thereupon.

In obedience to your Lordship's commands I have taken these further papers into consideration, and have the honour to report—

That, under the circumstances, the Consul acted rightly in intervening, by advice of Counsel, for the absent and unrepresented British subjects who are claimants.

The only material document now transmitted is the printed argument of Mr. Edwards, Counsel for the claimants, in the case of the "Hiawatha," in the United States' District Court of the Southern District of New York, sitting, *de facto* and howsoever, as a Prize Court.

Many of the general points raised in this argument, especially those relating to the Constitution of the United States, and the international questions involved in the case as incident thereto, are very important, especially the question therein raised (page 6 *et seq.*) as to the absence of any Constitutional Power in the President to declare war; the difference between rebellion and war; the suggestion that the contest between the United States' Government and the Confederate States is not a war; the question as to the existence of any prize jurisdiction, in an international sense, in the Court; and so forth: but neither the argument for the captors *contrà*, nor the Judgment of Judge Dunlop in the case (apparently) of the "Tropic Wind," which is adverted to by Mr. Edwards, and of which I know nothing, nor the depositions and ship's papers in the case of the "Hiawatha" are forthcoming; and the Court had not, at the date of the last advices, given any Judgment, or intimation of its opinion. Under these circumstances, I cannot usefully offer any observations to your Lordship, merely on Mr. Edwards' argument.

The various points therein made (and, more especially, those of general Constitutional and international importance) will doubtless be steadily kept in view by Lord Lyons; and the propriety of carrying the case by appeal to the Supreme Court of the United States, in the event of an adverse Judgment, will be duly considered, whensoever the Judgment of the District Court shall be pronounced.

I have, &c.
(Signed) J. D. HARDING.

No. 191.

The Law Officers of the Crown to Earl Russell.—(*Received August* 3.)

My Lord, *Doctors' Commons, July* 31, 1861.

UNITED STATES.

Bill laid before United States' Congress to provide for the collection of duties on imports, and for other purposes.

WE were honoured with your Lordship's commands signified in Mr. Murray's letter of the 27th July instant, stating that he was directed by your Lordship to transmit to us a Bill which had been brought before the United States' Congress,

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* Page 126.

† Page 142.

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and is said to have passed both Houses, entitled "A Bill to provide for the Collection of Duties on Imports, and for other purposes."

Your Lordship was pleased to add, that you thought it might be reckoned that upon the 4th section of that Bill the opinion of the Law Officers of the Crown had been already given, but Her Majesty's Government were desirous of consulting us as to the remaining sections. Mr. Murray was therefore pleased to request that we would take them into our consideration, and favour your Lordship with our opinion thereupon.

We were also honoured with a further letter from Mr. Murray, dated the 29th July instant, stating that your Lordship was pleased to direct him to transmit to us a draft of a despatch which your Lordship proposed to address to Her Majesty's Minister at Washington, expressing the views of Her Majesty's Government upon the Law in question, and requesting that we would inform your Lordship whether, in our opinion, the terms of the proposed despatch were in conformity with the law of nations.

We were also honoured with a further letter on the 29th July instant, in which Mr. Murray states that your Lordship was pleased to direct him to transmit to us a despatch from Her Majesty's Minister at Washington, stating that the Bill in question had passed both Houses of Congress; and a further despatch from Lord Lyons, stating that he believed no amendment was made in the Bill beyond substituting the word "Act" for the word "Bill" in the third line of section 6, and inclosing a copy of a confidential opinion given by the Counsel of the Legation on the legal effects of the Act; and requesting that we would report to your Lordship any observations which we might have to make thereupon.

In obedience to your Lordship's commands we have the honour to report—

That we have perused the Bill in question, and your Lordship's draft despatch to Lord Lyons, into which we have, by way of suggestion, introduced some alterations and additions, subject to which we approve of the same.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

Inclosure 1 in No. 191.

A Bill further to provide for the Collection of Duties on Imports, and for other purposes.

BE it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whenever it shall, in the judgment of the President, by reason of unlawful combinations of persons in opposition to the laws of the United States, become impracticable to execute the revenue laws and collect the duties on imports by the ordinary means, in the ordinary way, at any port of entry in any collection district, he is authorized to cause such duties to be collected at any port of delivery in said district until such obstruction shall cease; and in such case the Surveyors at said ports of delivery shall be clothed with all the powers, and be subject to all the obligations of Collectors at ports of entry; and the Secretary of the Treasury, with the approbation of the President, shall appoint such number of weighers, gaugers, measurers, inspectors, appraisers, and clerks, as may be necessary, in his judgment, for the faithful execution of the revenue laws at said ports of delivery, and shall fix and establish the limits within such ports of delivery are constituted ports of entry, as aforesaid; and all the provisions of law regulating the issue of marine papers, the coasting trade, the warehousing of imports, and collection of duties, shall apply to the ports of entry so constituted, in the same manner as they do to ports of entry established by the laws now in force.

Sec. 2. And be it further enacted, That if, from the cause mentioned in the foregoing section, in the judgment of the President, the revenue from duties on imports cannot be effectually collected at any port of entry in any collection district, in the ordinary way and by the ordinary means, or by the course provided in the foregoing section, then and in that case he may direct that the Custom-house for the district be established in any secure place within said district, either on land or on board any vessel in said district, or at sea near the coast; and in such case the Collector shall reside at such place, or on shipboard, as the case may be, and there detain all vessels and cargoes arriving within or approaching said district, until the duties imposed by law on said vessels and their cargoes are paid in cash: Provided, that if the owner or consignee of the cargo on board any vessel detained as aforesaid, or the master of said vessel, shall desire to enter a port of entry in any other district in the United States where no such obstructions to the execution of the laws exist, the master of such vessel may be permitted so to change the destination of the vessel and cargo in his manifest, whereupon the Collector shall deliver him a written permit to proceed to the port so designated: And provided further, That the Secretary of the Treasury shall, with the approbation of the President, make proper regulations for the enforcement on shipboard of such provisions of the laws regulating the assessment and collection of duties as in his judgment may be necessary and practicable.

Sec. 3. And be it further enacted, That it shall be unlawful to take any vessel or cargo detained as aforesaid from the custody of the proper officers of the Customs, unless by process of some Court of the United States; and in case of any attempt otherwise to take such vessel or cargo by any force or combination, or assemblage of persons, too great to be overcome by the officers of the Customs, it shall and may be lawful for the President, or such person or persons as he shall have empowered for that purpose, to employ such part of the army or navy or militia of the United States, or such force of citizen volunteers as may be deemed necessary for the purpose of preventing the removal of such vessel or cargo, and protecting the officers of the Customs in retaining the custody thereof.

Sec. 4. And be it further enacted, That if, in the judgment of the President, from the cause mentioned in the first section of this Act, the duties upon imports in any collection district cannot be effectually collected by the ordinary means and in the ordinary way, or in the mode and manner provided in the foregoing sections of this Act, then and in that case the President is hereby empowered to close the port or ports of entry in said district, and in such case give notice thereof by proclamation; and thereupon all right of importation, warehousing, and other privileges incident to ports of entry shall cease and be discontinued at such port so closed, until opened by the order of the President on the cessation of such obstructions; and if, while said ports are so closed, any ship or vessel from beyond the United States, or having on board any articles subject to duties, shall enter or attempt to enter any such port, the same, together with its tackle, apparel, furniture, and cargo, shall be forfeited to the United States.

Sec. 5. And be it further enacted, That whenever the President, in pursuance of the provisions of the second section of the Act, entitled "An Act to provide for calling forth the Militia to execute the laws of the Union, suppress insurrections, and repel invasions, and to repeal the Act now in force for that purpose," approved February 28, 1795, shall have called forth the Militia to suppress combinations against the laws of the United States, and to cause the laws to be duly executed, and the insurgents shall have failed to disperse by the time directed by the President, and when said insurgents claim to act under the authority of any State or States, and such claim is not disclaimed or repudiated by the persons exercising the functions of Government in such State or States, or in the part or parts thereof in which said combination exists, nor such insurrection suppressed by said State or States, then, and in such case, it may and shall be lawful for the President, by proclamation, to declare that the inhabitants of such State, or any section or part thereof where such insurrection exists, are in a state of insurrection against the United States; and, thereupon, all commercial intercourse by and between the same, and the citizens thereof, and the citizens of the rest of the United States, shall cease and be unlawful so long as such condition of hostility shall continue; and all goods and chattels, wares and merchandize, coming from said State or section into the other parts of the United States, and all proceeding to such State or section, by land or water, shall, together with the vessel or vehicle conveying the same, or conveying persons to or from such State or section, be forfeited to the United States: Provided, however, That the President may, in his discretion, license and permit commercial intercourse with any such part of said State or section, the inhabitants of which are so

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declared in a state of insurrection, in such articles, and for such time, and by such persons, as he, in his discretion, may think most conducive to the public interest; and such intercourse, so far as by him licensed, shall be conducted and carried on only in pursuance of rules and regulations prescribed by the Secretary of the Treasury. And the Secretary of the Treasury may appoint such officers at places where officers of the Customs are not now authorized by law as may be needed to carry into effect such licenses, rules, and regulations; and officers of the Customs and other officers shall receive for services under this section, and under said rules and regulations, such fees and compensation as are now allowed for similar service under other provisions of law.

Sec. 6. And be it further enacted, That from and after fifteen days after the issuing of the said proclamation, as provided in the last foregoing section of this Bill, any ship or vessel belonging in whole or in part to any citizen or inhabitant of said State or part of a State whose inhabitants are so declared in a state of insurrection, found at sea, or in any port of the rest of the United States, shall be forfeited to the United States.

Sec. 7. And be it further enacted, That in the execution of the provisions of this Act, and of the other laws of the United States providing for the collection of duties on imports and tonnage, it may and shall be lawful for the President, in addition to the revenue cutters in service, to employ in aid thereof such other suitable vessels as may, in his judgment, be required.

Sec. 8. And be it further enacted, That the forfeitures and penalties incurred by virtue of this Act may be mitigated or remitted in pursuance of the authority vested in the Secretary of the Treasury by the Act entitled "An Act providing for mitigating or remitting the forfeitures, penalties, and disabilities accruing in certain cases therein mentioned," approved March 3, 1797, or in cases where special circumstances may seem to require it, according to regulations to be prescribed by the Secretary of the Treasury.

Sec. 9. And be it further enacted, That proceedings on seizures for forfeitures under this Act may be pursued in the Courts of the United States in any district into which the property so seized may be taken and proceedings instituted; and such Courts shall have and entertain as full jurisdiction over the same as if the seizure was made in that district.

Inclosure 2 in No. 191.

Proposed Despatch to Lord Lyons.

My Lord, *Foreign Office, August* , 1861.

I HAVE received your Lordship's despatch of the 12th ultimo.

The Bill which you have transmitted to me, entitled "A Bill further to provide for the Collection of Duties on Imports, and for other purposes," raises a very serious question.

By the 1st Section it is proposed to give to the President the power of closing any ports of the United States "whenever it shall, in the judgment of the President, by reason of unlawful combinations of persons in opposition to the laws of the United States, become impracticable to execute the revenue laws, and collect the duties on imports by the ordinary means in the ordinary way," and also to give him the power of causing such duties to be collected at any port of delivery.

The 2nd Section provides for the establishment of the Custom-house, in such case, in any secure place on land, "or on board any vessel in said district, or at sea near the coast," and contains other provisions in aid of this object; and by the words at the end of the 4th Section it is enacted that "if, while said ports of entry are so closed, any ship or vessel from beyond the United States, or having on board any articles subject to duties, shall enter or attempt to enter any such port, the same, together with its tackle, apparel, furniture, and cargo, shall be forfeited to the United States."

It is obvious that this Act gives power to the President to confiscate a foreign vessel, with its cargo, for attempting to enter a port which has not been blockaded, and is not in the possession of the Executive, and as to the closing of which none of the parties interested may have received any previous notice.

The Act, it is to be observed, speaks of "unlawful combinations of persons in opposition to the laws of the United States, and seems to contemplate riotous combinations or insurrections of a partial, temporary, or local nature, not constituting a state or war—combinations of persons simply opposing the laws of the United States. But the joint Resolution of the Senate and Representatives, contained in your Lordship's despatch No. 329 of the 12th instant, speaks a very different language. In this Resolution we find it affirmed that a formidable insurrection has, since the 4th day of March last, arrayed itself in armed hostility to the Government of the United States; that the President, on the 15th day of April, issued his Proclamation calling out 75,000 men to suppress such insurrectionary combinations; that on the 19th day of April he issued his Proclamation setting on foot a blockade of the ports within seven of the States of the Union; that on the 27th of April he proclaimed a blockade of the ports of two more of the States of the Union; that on the 3rd day of May he issued a Proclamation increasing the army by 22,714 men, and the navy by 18,000 seamen.

In addition to these Acts, thus stated by both Houses, we have the information that, in his Message to Congress, the President has called for 400,000 men and 400,000,000 dollars.

After the recital of these immense efforts it seems quite inappropriate to speak of "unlawful combinations." Indeed, it cannot be denied that the state of things which exists is a state of civil war, and there is, as regards neutral nations, no difference between civil war and foreign war.

Acting on these principles, Her Majesty's Government has, accordingly, recognized the state of civil war as existing, and all the rights which belong to a belligerent Her Majesty fully acknowledges to reside in the Government of the United States. But Her Majesty cannot acknowledge that ports in the complete possession of the (so-called) "Confederate States," and which are not blockaded, shall be interdicted to the commerce of Her Majesty's subjects by Decree of the President of the United States, or by a Law passed by their Congress. This would be, in effect, to allow the lawfulness of a paper blockade, extending over 3,000 miles of coast.

Her Majesty's Government cannot admit a right in any Power not in possession of the port, to erect a so-called "Custom-house" on board a ship "at sea near the coast," and there to exact duties.

The principle is in this case so very clear that it is needless to refer ot the case of Spain and Venezuela, or to any other case of a like nature.

Her Majesty's Government decline to discuss the legality or the justice of the conduct of the Confederate States. With the legality or illegality, according to the Constitution and Laws of the United States, of the acts of the (so-called) Confederate States, or their officers and forces, foreign Governments have nothing to do; but they are compelled to recognize this fact, viz., the existence, the extent, and continuance of a formidable resistance to the authority of the United States.

The main question is as to the power assumed to be given to the President, of instituting a mere paper blockade of ports not in his possession. This power Her Majesty's Government cannot acknowledge as belonging to him by international law, or as consistent with the friendly and commercial relations at present subsisting between the United States and Great Britain; and they would consider its exercise as a violation of the unquestionable rights of neutral nations. Her Majesty's Government trust, however, that the President of the United States will not exercise the power which he is enabled to assume by the Act which I have discussed in this despatch. He has in his own hands the right of blockading the Southern ports, in conformity with international law, without raising objections on the part of other maritime Powers.

You will read and give a copy of this despatch to Mr. Seward.

I am, &c.

No. 192.

The Law Officers of the Crown to Earl Russell.—(Received August 5.)

SWEDEN.

Vexatious legal proceedings at Liverpool against Captain Wikman of the Swedish brig "Phœnix," arising out of arrest and discharge of seamen, and actions for wages.

My Lord, *Doctors' Commons, July* 31, 1861.

WE were honoured with your Lordship's commands signified in Mr. Hammond's letter of the 31st of October, 1860, stating that he was directed by your Lordship to transmit to us a correspondence which took place in 1858, with

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reference to a complaint made by the Swedish and Norwegian Minister at this Court of some vexatious legal proceedings to which Captain Wikman of the Swedish brig "Phœnix" was, at that time, subjected at Liverpool.

Mr. Hammond was also pleased to forward a note, with its inclosures, recently received from Count Platen, from which it appeared that the result of the litigation has been that Captain Wikman has had refunded to him the sum of 104*l.*, which, in the first instance, he was obliged to pay into Court on various accounts to free himself from arrest; but that to effect this object, he had been personally put to the expense of 75*l.* 6*s.* 7*d.*, from which he requested that he might, under the circumstances, be relieved; and requesting that we would take these papers into our consideration, and favour your Lordship with our opinion as to the reply which should be made to Count Platen's application.

In obedience to your Lordship's commands we have considered the accompanying papers, and have the honour to report—

That we recommend that, in reply to Count Platen's application, contained in his despatch to your Lordship of the 25th October, 1860, his Excellency should be informed that Her Majesty's Government must decline, under the circumstances, to reimburse to Captain Wikman any part of the sum of 75*l.* 6*s.* 7*d.* mentioned in that despatch. This amount was paid by Captain Wikman, partly in connexion with two several applications made by him to the magistrates at Liverpool, for warrants to send on board the "Phœnix," as deserters, the two seamen, Walstrom and Stephenson; partly in resisting an application to the Lord Chief Baron at Liverpool, to discharge the seaman Walstrom out of custody, on *habeas corpus;* but principally in resisting three actions which were brought by the mariners Stephenson, Walstrom, and Matsson, respectively, against Captain Wikman, for recovery of wages alleged by them to have been earned, and to be then payable, for services rendered on board the "Phœnix."

The portions of the law bills paid by Captain Wikman relative to the warrants for sending the deserters on board, and to the attempt of one of them to obtain his release by *habeas corpus*, present instances of resort by the captain and crew, in turn, to the English Courts for the maintenance of authority, on one side, and the protection of personal liberty on the other. To the captain and crew, equally, the British tribunals were open; so long as both the applicant and the person resisting the application were within the local jurisdiction, these proceedings were strictly according to the English law, and were precisely such as, under the like circumstances, might have been adopted (and would have had the like results) if the ship had been a British ship, and the captain and crew natural-born British subjects. Although, in the words of Mr. Secretary Walpole (see letter of the 6th December, 1858), the powers of the Statute 14 and 15 Vict., cap. 52, appear to have been scandalously taken advantage of and abused, we must observe that this wrong was done, not by the magistrates who administered the English law, but by the Swedish subjects who, by false affidavits, caused it to be put in force for their own improper purposes. The expense to which Captain Wikman has been put, by reason of these proceedings, cannot, on any principal of international law, or of justice, be cast upon the State in which the proceedings occurred. It is obvious that no blame rests with the Liverpool magistrates, or with the Lord Chief Baron, all of whom simply discharged their duty in administering the existing law, according to the prescribed mode of procedure; and in two of the three instances, on the application of the captain himself. The laws thus administered not being contrary to natural justice, it follows that no ground of claim or complaint is, in these cases, furnished to the Swedish Government against the Government of Her Majesty.

With reference to the three actions for wages, the proceedings against the captain by the seaman Stephenson differ from those of the two other plaintiffs. In Stephenson's action, which was instituted in the County Court, no arrest took place, nor was the captain called upon to make any deposit, or to give bail or other security. He was simply served with process of the Court; and thinking it prudent to employ Counsel to conduct his defence, he did so. The defence was successful; and the Court awarded in favour of the captain, and against the plaintiff, the sum of 3*l.* 4*s.* 6*d.* for costs, that sum being the amount legally payable by the losing to the successful party in such a case. It may be that the defeated plaintiff was without the means of paying these costs, and whether they can be deducted from his wages at the end of the voyage, according to the law of Sweden, we are not informed. But, be that as it may, it is equally clear that the Swedish Government cannot found any complaint on the fact of Stephenson's poverty, but for which the captain would have received his awarded costs in the action in the County Court. It is equally clear that the difference between the amount so awarded to Captain Wikman, and the sum he was called on to pay to his solicitors, cannot be justly demanded. For, in the first place, extra costs, even if unavoidably incurred, are an ordinary incident of litigation, and must fall, therefore, on the suitor by whom they are incurred; and in the next, it was competent for the captain and those who advised and acted for him to have kept, in the conduct of the defence, strictly within the limits of the allowed costs in such cases; and although, therefore, the excess may, on the whole, have been a prudent disbursement, it was not a necessary one. The captain having thus, in effect, made the payment voluntarily, must, on common principle, bear the loss.

In each of the two remaining actions Captain Wikman was arrested, and, in order to obtain his release, and as a substitute for bail, he was allowed to pay into Court the amount of the alleged debt, together with additional sums by way of security for the plaintiff's costs. In these actions the captain obtained orders for stay of the proceedings against him, unless the plaintiffs should give security for his costs; that security they failed to give, and consequently the proceedings fell to the ground. The expense of those proceedings to Captain Wikman has exceeded 50*l.*; and, here again, we consider the claim put forward in Count Platen's last despatch to be quite unfounded. By the Absconding Debtor's Arrest Act, 1851 (which followed up the 1 and 2 Vict., cap. 110, sec. 3), any person making an affidavit that another is indebted to him to the amount of 20*l.* or upwards, and showing, on the face of his affidavit, probable cause for a belief entertained that the alleged debtor is about to quit the country, with intent to avoid or delay the creditor, may apply to a country Commissioner of Bankruptcy (amongst others) for a warrant to arrest the debtor, and to compel him, as the condition of his liberation, either to give bail, or to make a sufficient pecuniary deposit with the officer by whom the warrant may have been executed. It was under this Act of 1851 that Mr. Commissioner Perry, acting upon the affidavits of the plaintiffs, granted warrants for the captain's arrest, and the captain deposited the sums which were ultimately refunded to him out of Court. Application was made, on the captain's affidavit, for his relief from bail or deposit to one of the Judges of the Superior Courts of Law, and failed; and it cannot be supposed that the ordinary legal procedure was not fairly followed in each of the two cases. Steps might, according to the ordinary procedure of the Court, have been taken to compel the plaintiffs either to bring their cases before the Court for adjudication, or, if they declined to do so, to compel them to submit, without trial, to an adverse judgment, and, as a consequence, to the liability to Captain Wikman to pay his costs of the proceedings. But the captain seems to have been advised to endeavour to arrest the proceedings, with the view of obtaining security for his costs, and, that security not having been given, to put an end to the suits, without the cases having been submitted to the Court for adjudication, or any judgment having been given; and in these attempts he fully succeeded. This may have been a prudent course, regard being had to the prospect of Captain Wikman's being enabled to obtain from the plaintiffs repayment of any outlay he might have made in the suits. But (as we have pointed out in our remarks on the County Court action of the sailor Stephenson) the poverty of a suitor, which always and of necessity occasions loss to an adversary who is successful, being unavoidable, involves no reproach on the municipal law, and no ground of remonstrance on the part of a foreign Government,

We have, throughout our remarks on the actions for wages, assumed that the Courts to which Captain Wikman was summoned had, under the circumstances, and in conformity with English and public law, jurisdiction to entertain and decide the questions so brought before them. Of the existence of this jurisdiction we entertain no doubt whatever, though Count Platen repeatedly in his despatches claims exclusive jurisdiction in such cases, and with reference to ships generally (including merchant-ships) for the tribunals of the country of the flag. In opposition to his Excellency's views thus expressed, we have to state that in matters of contract the English law admits no such exclusive jurisdiction, but entertains familiarly questions of that class, in whatever part of the world the contract may have been made; provided only the person charged with breach of such contract be within the local jurisdiction, and be there served with the process of the Court. We must add, at the same time, that, in determining the questions so entertained, the English Courts follow the *lex loci contractus* in forming their judgment of the meaning and effect of the contract, and as to whether it has, or has not, been observed. So that, assuming that under the engagements which subsisted between the master and crew of the "Phœnix," no wages were, by the law of Sweden, payable until the completion of the voyage and the arrival in Sweden, the sailors, if they had carried their causes to trial, would have been defeated, and adjudged to pay the defendant's costs. The same result would, as we have stated, have followed if, on legal pressure, they had declined to try. The jurisdiction thus exercised is one which England has ever asserted and enforced; which cannot be given up; and which is not at variance with any recognised principle or rule of international law.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 193.

The Law Officers of the Crown to Earl Russell.—(Received August 5.)

GENERAL.

Act of Governor of Canada amending Provisional Statute for carrying out Extradition Treaty between Great Britain and United States.

My Lord, *Doctors' Commons, July* 31, 1861.

WE were honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 21st June last, stating that he was directed by your Lordship to transmit to us a letter from the Colonial Office, inclosing the copy of a despatch from the Governor of Canada, together with an Act amending the Provisional Statute enacted for carrying out the Treaty with the United States for the Extradition of Criminals,* and requesting that we would take this Act into our consideration, and report to your Lordship whether we saw any objection to its confirmation.

In obedience to your Lordship's commands we have considered the accompanying papers, and have the honour to report—

That we see no objection to its confirmation.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 194.

The Law Officers of the Crown to Earl Russell.—(Received August 5.)

GENERAL.

Right claimed by British Admiral on North American station, to search merchant-vessels (Foreign as well as British) in British waters for deserters, without intervention of the Civil Power.

My Lord, *Doctors' Commons, August* 2, 1861.

WE are honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 15th July ultimo, stating that he was directed to transmit to us a letter and its inclosures from the Admiralty, relative to the right claimed by the British Admiral on the North American station, to search merchant-vessels (Foreign as well as British) in British waters for deserters, without the intervention of the Civil power; and to request that we would take these papers into consideration, and furnish your Lordship with our opinion thereupon.

We are also honoured with Lord Wodehouse's letter of the 24th July last, transmitting a despatch from Lord Lyons on this subject (No. 323, July 8).

In obedience to your Lordship's commands we have taken the papers into consideration, and have the honour to report—

First, that it appears to us that the only statutable authority under which officers of Her Majesty's navy can board any merchant-vessel, whether British or foreign, in search of deserters, is the Act 10 and 11 Vict., cap. 62, which

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* Act returned to the Colonial Office.

authorizes the apprehension by a constable, or where no constable is at hand, by any person in Her Majesty's service, of individuals reasonably suspected of desertion from the navy.

For any other or more general right of search for deserters (when the object is not to apprehend any particular individual), there is not, to our knowledge, any legal authority.

No such right is stated to exist in any book of law to which we have been enabled to refer; and the statute already mentioned seems to us to be hardly consistent with its existence. If it does exist, it can only be by virtue of some immemorial usage, of which we can find no satisfactory proof.

We would add, that no reference to what may have been the practice of officers of the Royal Navy on the high seas can support a general right of searching foreign vessels for deserters. Over such vessels no such right can be exercised, unless when they are within British territorial jurisdiction, in which case its exercise, to be lawful, must depend on the local law.

The instructions to Admiral Milne, under the peculiar circumstances in which he is placed, are obviously a question for the discretion of Her Majesty's Government.

We have endeavoured to state our view of the law for his guidance.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 195.

The Law Officers of the Crown to Earl Russell.—(Received August 5.)

JAPAN.

Action for damages brought by Mr. Moss against Mr. Alcock in the Supreme Court at Hong Kong.

My Lord, *Doctors' Commons, August* 5, 1861.

WE were honoured with your Lordship's commands signified in Mr. Hammond's letter of the 15th of June last, stating that with reference to our Reports of the 26th of April last,* and of the 8th† and 11th of June last,‡ respecting the case of Mr. Moss, you were pleased to direct him to transmit to us a despatch from Mr. Alcock (No. 31, April 3), by which we perceive that, on hearing that Mr. Moss had brought an action against him in the Supreme Court at Hong Kong, he had thought it advisable at once to repair to the Colony, to meet the action with such assistance as he could obtain on the spot.

Mr. Hammond also inclosed, confidentially, two private letters from Mr. Alcock to himself of April 5 and May 1, from the last of which we would see that the action cannot for the present be proceeded with, and that Mr. Alcock has returned to Japan.

Mr. Hammond requested that we would consider the present position of this case, and advise your Lordship as to the course which should be pursued in the interest of Her Majesty's Government, who are resolved, considering the difficult circumstances in which Mr. Alcock was placed, to bear him harmless; and as to the instructions which should be addressed to Mr. Alcock with reference to the contingency of proceedings being hereafter commenced against him.

Liability to which Her Majesty's Diplomatic and Consular officers are subject, of being diverted by process of law from the performance of their duties, and being subjected to be cast in damages, which being unable to meet, they might be liable to arrest and imprisonment.

That there was, however, a further and very serious question involved in this case, namely, the liability to which Her Majesty's Diplomatic and Consular officers were subject of being diverted by process of law from the performance of their proper duties, and being subjected to be cast in damages which they might be unable at once to meet, and consequently to arrest and imprisonment in default of payment.

That such a state of things might be brought about by circumstances over which they had no control, and in regard to which a Superior Court of Justice might hold them irresponsible; yet the public interests would in all cases suffer, not only by the disparagement in the estimation of the people of the country, which a Diplomatic or Consular Officer would needs suffer, but possibly by the British community at large in the country where they now reside, being deprived

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* Page 79. † Pages 111, 112, and 115. ‡ Page 115.

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of the protection and support which the presence of the Diplomatic or Consular Officer is calculated and intended to afford.

Your Lordship was pleased to suggest that we should, after disposing of the immediate case, take this point into our special consideration, with the view of suggesting, if possible, some mode by which the inconvenience of such a state of things as had occurred in regard to Mr. Moss' case might be obviated.

We were honoured with a letter from Lord Wodehouse dated the 28th of June last, stating that he was directed by your Lordship to transmit to us a despatch from Mr. Alcock (No. 43, May 8) inclosing an opinion given by the Attorney-General of Hong Kong in the case of Mr. Moss, and requesting that we would take these papers into our consideration, together with those submitted to us in Mr. Hammond's letter of the 15th of June last, in which we were requested to advise your Lordship as to the course which should be pursued in the interest of Her Majesty's Government, and also as to the mode by which the inconveniences which had occurred in the Moss case might be obviated for the future.

In obedience to your Lordship's commands we have considered the accompanying papers, and have the honour to report—

That, with reference to Mr. Hammond's letter of June 15, we have to observe that the best course to be taken is to instruct the Attorney-General at Hong Kong to act as he may think best, and to use his best exertions on behalf of Mr. Alcock in any legal proceedings pending, or hereafter instituted, against him at Hong Kong, at the suit of Mr. Moss. The suggestion contained in Mr. Alcock's despatch No. 31, page 16, as to his having the assistance of the Attorney-General at Hong Kong whenever occasion may arise for seeking it, appears to us to deserve favourable consideration. We are not aware of what is the precise meaning of "the same right of reference to the Attorney-General for assistance which the Minister in China enjoys," as this is not explained; but we consider it desirable that Mr. Alcock and Her Majesty's other Consular officers in Japan should receive whatever professional assistance in the discharge of their duties, and in defending any actions brought against them for their public and official acts, the Attorney-General may be able to render them.

With reference to the more general question recommended to our special consideration, we must observe—

1st. That the personal presence of Consular officers either at Hong Kong or in any other Colony, or in England, where legal proceedings may be instituted against them for damages in respect of their official acts, is, as a general rule, by no means essential to their protection.

2nd. There was, in our opinion, in this case, no necessity for Mr. Alcock's leaving Japan and proceeding to Hong Kong, merely by reason of his having received notice of action at the suit of Mr. Moss.

3rd. As a general rule Consular officers should be instructed not to leave their posts in such cases; and the Law Officers of the Crown, at whatever place such proceedings may be instituted or pending, should be generally instructed in such cases to appear for them, and defend their interests, and generally to act on their behalf as they may consider most expedient.

These suggestions, if properly carried out in practice, will tend greatly to obviate many of the serious results alluded to in Mr. Hammond's letter.

We must add, 4thly, that if Consular officers in countries like Japan will neither publish "Rules and Regulations," as they are specially instructed and required to do, nor construe and apply the extraordinary criminal jurisdiction and powers entrusted to them with ordinary judicial discrimination, it will be scarcely possible for Her Majesty's Government altogether to shelter or protect them from all liability in respect of acts of serious illegality, which, although done *optimâ fide*, and with the most honest intentions, are attended with the gravest and most injurious results to individuals.

5th. The 41st section of the Order in Council of January 23, 1860 (Japan), provides to a certain extent for the protection of Consular officers, and all persons acting under the authority and in execution of the power or jurisdiction of Her Majesty, entrusted to them by the Order, or in execution of any of the provisions of the Order; and if it should be considered by Her Majesty's Government necessary for the public interest to extend the protection already secured thereby, and by the general law, to Consular officers in respect of their judicial acts, we can only say that the whole subject should be maturely considered upon Imperial grounds, and such further legislative action thereupon taken as may be

thought expedient and practicable. An Order in Council cannot protect those who act in excess of its provisions, and not "under or by virtue of its authority," and the Legislature may be reluctant to provide for exceptional cases.

We consider it our duty to observe that Mr. Moss's case does not appear to us to be, either *per se*, or as one of a class of cases, of such a character or complexion as to call for any further legislative enactment.

Were the practices of going out shooting, or of carrying arms, properly restrained by Consular "Rules and Regulations" in Japan, such cases would seldom, if ever, recur.

With reference to the papers which we are desired by Lord Wodehouse's letter of the 28th June to take into our consideration, we have to observe that, in our opinion, no action can be successfully maintained by Mr. Moss against Mr. Alcock, in the Supreme Court at Hong Kong, in respect of the treatment which Mr. Moss suffered, under what we have already advised was the illegal sentence pronounced by Mr. Alcock. Under the Order in Council of the 23rd of January, 1860, the Court is to exercise jurisdiction "concurrently with Her Majesty's Consul" only (section 28), and the Consul is unable, of course, to exercise jurisdiction in a case to which he himself is party.

With reference to protecting statutes, to which Mr. Small, the Attorney-General for Hong Kong, refers at large, the case stands thus:—

1st. The 42 Geo. III, cap. 85, sec. 6, only extends to public officers having power abroad to commit persons to safe custody, the privileges of the 21 Jac. I, cap. 12, and that with the qualification that acts done abroad may be described in pleading, as done at Westminster; thus, in effect, only conferring upon a defendant, within its provisions, the privilege of pleading the general issue, and giving his defence in evidence under it.

2nd. The 11 and 12 Vict., cap. 44 (Jervis's Act) has no bearing upon the case. It relates, in its terms, to Justices of the Peace only; and is not, like the 21 Jac. I, cap. 12, extended by any other statute to officers abroad, &c.

3rd. Under the Order in Council of January 23, 1860 (section 41) the provisions of the Foreign Jurisdiction Act, 6 and 7 Vict., cap. 94, are made applicable to persons in the position of Mr. Alcock, and those provisions require the action to be brought within a limited time; and the defendant is also entitled to notice of action, and may tender amends, as is provided in favour of Justices of the Peace by the 24 Geo. II, cap. 44.

We think that Mr. Alcock is not exempt from liability to be sued at law for illegal acts which he may commit in the exercise of his Consular judicial authority, as being the Judge of a Superior Court.

We think that jurisdiction is sufficiently conferred on the Supreme Court at Hong Kong to try British subjects for crimes committed in Japan, by the 27th Article of the Order in Council of January 23, 1860, and that it would not be expedient, at present, to endeavour to obtain an alteration of the law, as suggested by Mr. Small, in his letter of the 8th of May.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 196.

The Law Officers of the Crown to Earl Russell.—(*Received August* 10.)

PORTUGAL.

Commission of 2½ per cent. charged by Consul at Madeira for arrangement of property of late Mr. J. Unwin.

My Lord, *Doctors' Commons, August* 8, 1861.

WE were honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 20th June last, stating that he was directed by your Lordship to transmit to us a correspondence that had taken place between your Office, Mr. W. Unwin, and Her Majesty's Consul at Madeira,* respecting the estate of the late Mr. J. Unwin, a British subject, who died in that Island in July 1860, and that the Consul having requested the opinion of the Secretary of State upon the propriety of making a claim under the provisions of the Act

* From Consul Erskine, No. 11, January 30, 1861; to Consul Erskine, February 19 and May 12, 1861; from Mr. W. Unwin, May 2, 1861; from Acting Consul Hayward, No. 31, June 1, 1861.

6 Geo. IV, c. 87, and the Order in Council of May 1, 1855, for the management of the property in question, your Lordship was pleased to inform Mr. Erskine that, under the circumstances stated by him, your Lordship was of opinion that he was fairly entitled to a commission of 2½ per cent.

That the representatives of the deceased, however, disputed the right of the Consul to receive it; and Lord Wodehouse was pleased to request that we would favour your Lordship with our opinion whether your Lordship was borne out in the opinion expressed by you to the Consul.

In obedience to your Lordship's commands we have considered the accompanying papers, and have the honour to report—

That we think the opinion expressed by your Lordship to the Consul is not well founded.

It would, in our opinion, be highly proper and expedient that Her Majesty should, by Order in Council, authorize an amended Table of Fees, by which reasonable fees should be allowed to Consuls for services of the nature of those rendered in the present case; and, also, that the Consul's interposition, in circumstances like those of the present case, to preserve the property of British intestates from depredation before any person having a lawful title thereto can take charge thereof, should be made (by legislation if necessary) part of his official duty. (The Bill on the subject of domicile, introduced by the present Lord Chancellor, having now become law, this latter object has, we conceive, been accomplished.) But, in the present case, the question is whether the Consul is entitled, under the existing Table of Fees, to a commission of 2½ per cent. on the late Mr. Unwin's property? That commission is allowed by the second part of the Table, which relates to "matters in which the Consul's interposition is to be given only when required by the parties interested;" and, under such circumstances (*i. e.*, when the Consul has acted upon the requisition of the parties interested), it is allowed for "management of property." But, in the present case, the Consul's action was spontaneous, and not upon the requisition of any party interested; and we also find it very difficult to say that the mere act of placing the Consular seal upon the repositories in which the intestate's property was found at his death, and giving the Consular sanction to the continuance of that property under the charge of the intestate's confidential servant, who was already in the house, can be held to amount to "management" within the meaning of the Table. "Management of property" seems to us, in the proper sense of the words, to imply active duties, involving both legal responsibility, and the expenditure of time and labour, as well as some continuous exercise of judgment and discretion; and the principle and scale of remuneration, by a commission of 2½ per cent., appears suitable to such duties, according to the analogy of Commission Agents and Indian executors and administrators, who are allowed by law similar commissions.

For this class of services such a commission may be no more than a fair and reasonable remuneration; but we think it might in many instances be excessive and unreasonable, if paid for such services only (however useful) as those rendered by Mr. Erskine in this case, which is an additional reason for supposing that it was not intended to apply to such a case. Upon the whole we think that the Consul's claim cannot be sustained.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 197.

The Law Officers of the Crown to Earl Russell.—(Received August 10.)

TURKEY.

Application of T. G. Aslan to have a declaration of part-ownership in a British vessel

My Lord, *Doctors' Commons, August* 9, 1861.

WE were honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 25th of June last, stating that he was directed by your Lordship to transmit to us a despatch from the Acting British Consul at Cairo (No. 25, May 30, 1861), requesting instructions as to whether he should or should not comply with an application made to him in that place by a person named Themistocles George Aslan, to have his declaration of part-ownership in

attested at the British Consulate at Cairo; he being unprovided with a Foreign Office passport, and therefore not entitled to British nationality in Egypt.

a British vessel attested at the British Consulate, seeing that the person in question, being unprovided with a Foreign Office passport, had no right to claim British nationality in Egypt; and requested that we would report to your Lordship our opinion as to the answer that should be returened to Mr. Calvert.

In obedience to your Lordship's commands we have considered the accompanying papers, and have the honour to report—

That in our opinion the question of Mr. Aslan's right to have his declaration of part-ownership in a British vessel attested at the British Consulate at Cairo depends not upon the terms of his letters of naturalization, nor upon the circumstance of his having or not having a foreign passport, but upon the provisions of the Merchant Shipping Act, 17 & 18 Vict., cap. 104, section 18. By that Act persons who are naturalized by or pursuant to statute are rendered capable of being owners or part-owners of a British ship, only if they "are and continue to be during the whole period of their so being owners, first, resident in some place within Her Majesty's dominions, or, second, if not so resident, members of a British factory, or partners in a house actually carrying on business in the United Kingdom, or in some other place within Her Majesty's dominions." Mr. Aslan, as it appears, is not a person fulfilling the first of these conditions, but it does not appear whether he is or is not a member of a British factory, or a partner in a house actually carrying on business within Her Majesty's dominions: if he is, we think that the application made by him to the British Consul at Cairo to attest his declaration of ownership ought to be complied with; if not, he is by law incapable of being owner or part-owner of a British ship, and the ship of which he is owner or part-owner cannot be deemed to be British; in which case we think that the Consul ought not to attest his declaration.

The clause in Mr. Aslan's letters of naturalization excepting from the grant "any rights and capacities of a natural-born British subject out of and beyond the dominions of the British Crown and the limits thereof," appears to us to be intended only to prevent the person thereby naturalized from claiming, by virtue of his naturalization, as against foreign Governments while within their territories, the benefit of the *status* of a British subject. We do not think that it applies, or was it intended to be applicable, to the right and capacity of the person naturalized (provided he fulfils the requirements of the Merchant Shipping Act), to be and continue, while locally resident beyond the limits of Her Majesty's dominions, an owner or part-owner of a British ship; and to do, while there, all acts proper to be done by him in that character. Such a right is not one of which any foreign locality can be predicated merely because the person entitled to it may happen to be residing abroad; it is, in its nature, essentially a British right, its subject being a British ship having her port of registry within the dominions of the British Crown; and, if locality is to be ascribed to it at all, we think it must follow the port or domicile of the ship, and not the residence of the owner.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 198.

The Law Officers of the Crown to Earl Russell.—(Received August 13.)

CHINA.

Consular Passports to British subjects to visit Peking.

My Lord, *Doctors' Commons, August* 12, 1861.

WE were honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 8th of July last, stating that he was directed by your Lordship to transmit to us a despatch and its inclosures from Mr. Bruce, Her Majesty's Minister in China (No. 28, April 10), respecting the visits of Her Majesty's subjects to Peking; and also the draft of the answer which it was proposed to return thereto, and a letter from the Earl of Elgin, who had been consulted on the subject; and requested that we would take these papers into our consideration, and report to your Lordship any observations we might have to offer upon the proposed instruction to Mr. Bruce.

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Lord Wodehouse was pleased to inclose copies of the Treaties of Tien-tsin and Peking, and of the Orders in Council of June 13, 1853, and March 3, 1859, for reference if required.

In obedience to your Lordship's commands we have considered the accompanying papers, and have the honour to report—

That the IXth Article of the Treaty of Tien-tsin purports to authorize British subjects generally to travel, for their pleasure or for purposes of trade, "to *all parts* of the interior" of China, "under passports *which will be issued* by their Consuls, and countersigned by the local authorities." It is, undoubtedly, competent for the Consuls, under instructions from the Chief Superintendent of Trade, to refuse passports to any part of China, for reasons applicable to the persons applying for them; but it appears to us that it can hardly be competent for the Chief Superintendent for Trade, in the exercise of a merely administrative discretion, to forbid the delivery of any passports, to *any* British subjects, for one particular city, not excepted from the Article of the Treaty; for this would be to suspend and nullify, by an act of administrative discretion, the whole operation of this stipulation in the Treaty, as to that particular place. We therefore recommend that Mr. Bruce should not be instructed, in the terms of the proposed despatch, to continue, as long as he deems it expedient, to forbid the delivery to British subjects of passports for Peking; but that he should be instructed to exercise the powers vested in him as Chief Superintendent of Trade, by issuing, without delay, proper rules and regulations on the subject of passports generally, by which the mode and conditions of the delivery of passports shall be defined, and the penalties to be inflicted upon British subjects travelling without passports, beyond the allowed limits, fixed and ascertained. By such rules and regulations it may, in our opinion, be provided that while passports will be granted generally, and under the ordinary rules, for such places, and within such limits, as may be thought expedient, passports for other places (including Peking) will be granted only under special circumstances, and after a reference of each application (if that shall be thought necessary) to the personal consideration of the Chief Superintendent of Trade, who may be expressly authorized either to grant or refuse the same, as in the exercise of his judgment and discretion, in each particular case, he may deem expedient.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

Inclosure in No. 198.

Proposed Despatch to Mr. Bruce.

Sir, *Foreign Office, July* , 1861.

YOU will perceive from the inclosed correspondence that I have consulted the Earl of Elgin upon the question raised in your despatch No. 28 of the 10th of April, and its inclosures, respecting the visits of Her Majesty's subjects to Peking, and I have now to state to you that, having taken the matter into consideration, Her Majesty's Government approve your proceedings as reported in that despatch, and authorize you to continue, as long as you deem it expedient, to forbid the delivery to British subjects of passports for Peking.

I have no doubt that you would be justified under the powers vested in you as Chief Superintendent of Trade, in issuing a rule or regulation to this effect, and in affixing a penalty to the violation of it, but the expediency of your adopting so extreme a measure may be open to question, and I should hope that by your instructing Her Majesty's Consuls not to issue passports for Peking, you will be able equally to secure the desired object.

I am, &c.

No. 199.

The Law Officers of the Crown to Earl Russell.—(Received August 15.)

GENERAL.

Mr. Rothery's Report to the Treasury, suggesting the expediency of consolidating and amending the Slave Trade Acts.

My Lord, *Doctors' Commons, August* 15, 1861.

WE are honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 18th July ultimo, stating that he was directed to transmit to us the accompanying letter from the Treasury, dated the 29th of June last, together with a Report and its inclosures from Mr. Rothery, the legal adviser of their Lordships on Slave Trade matters, suggesting the expediency of consolidating and amending the Slave Trade Acts; and to request that we would furnish your Lordship with our opinion whether it would be advisable to carry out Mr. Rothery's suggestion; and if so, whether that gentleman would be a fit and proper person to be entrusted with the work.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we are of opinion that it will be advisable to carry out Mr. Rothery's suggestions; but that the proposed consolidation should not be confined to questions of bounties to captors (with which the Treasury is chiefly concerned), but should extend to the "Slave Trade Suppression Acts" generally; and we would suggest that provision should be made for adapting and applying the Imperial legislation, as far as practicable, to new Conventions which may hereafter be negotiated, and to new circumstances which may arise from time to time, by Order in Council.

Under the peculiar circumstances of the case, we see no objection to the employment of Mr. Rothery; but the draft of the proposed Bill should be submitted to us before it is introduced into either House of Parliament.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 200.

The Law Officers of the Crown to Earl Russell.—(Received August 17.)

TUNIS.

Murder of two Maltese. Promise of impunity to an accomplice giving positive evidence of the murderers.

My Lord, *Doctors' Commons, August* 16, 1861.

WE were honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 9th instant, stating that he was directed by your Lordship to transmit to us a despatch from the Acting British Agent and Consul-General at Tunis (No. 22, July 27), reporting the murder of two Maltese on the 2nd of July, and requesting to be informed whether he might promise impunity to an accomplice who might give positive evidence as to the persons who committed the murder; and requesting that we would report to your Lordship our opinion as to the answer which should be returned to Mr. Werry on this point.

In obedience to your Lordship's commands we have considered the papers submitted to us, and have the honour to report—

That, in our opinion, the proper answer to be returned to Mr. Werry on the point of a promise of impunity to a supposed accomplice in the murder, on his giving positive evidence as to the persons by whom the murder was committed, is that Mr. Werry is at liberty to exercise his own discretion on the subject, and to promise impunity, if still of opinion that, thereby, the discovery of the perpetrators of the crime is likely to be secured.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

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No. 201.

The Queen's Advocate to Earl Russell.—(Received August 17.)

UNITED STATES.

Cases of the "Monmouth" and "Hilja." Blockade of Savannah.

My Lord, *Doctors' Commons, August* 17, 1861.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 6th August instant, stating that, with reference to my Reports of the 6th,* 19th,† and 24th of June,‡ and 3rd of July ultimo,§ relative to the cases of the "Monmouth" and "Hilja," he was directed to transmit to me a despatch from Her Majesty's Minister at Washington (No. 348), forwarding copies of a correspondence with the Acting British Consul at Savannah, in which further particulars are given with regard to the blockade of that port; and to request that I would take this statement into consideration, and furnish your Lordship with any observations which I might have to offer thereupon.

In obedience to your Lordship's commands I have taken this statement into consideration, and have the honour to report—

That, with more especial reference to my Reports of June 6 and July 3, I observe that it now appears that Savannah (for which it is suggested that the "Monmouth" had an alternative destination in the event, which happened, of her being warned off Charleston) was not only not blockaded on the 12th of May (on which day the "Monmouth" was boarded off Charleston and warned off that port, and further notified of the blockade of "the whole south coast of the United States of America" by indorsement on her papers), but that the blockade of Savannah only began on *the 28th of May*. This fact strengthens the possible claim against the Government of the United States of the British subjects interested in this ship, or her cargo or freight.

I am not, however, at present aware of the actual international or official position of this claim, or of the case of the "Monmouth" generally. I do not advise Her Majesty's Government to interfere spontaneously, or to take any step, merely of its own accord, in this matter.

If any claim has been specifically made by her owners on Her Majesty's Government, or has been advanced by Her Majesty's Government on their behalf against that of the United States, I must desire further information, and request that (with the assistance of the Queen's Proctor, if needful) something in the shape of a "case" may be prepared, and my opinion required on some one or more definite questions.

I have, &c.
(Signed) J. D. HARDING.

No. 202.

The Law Officers of the Crown to Earl Russell.—(Received August 18.)

GENERAL.

Proposed draft of Convention with foreign countries for the better ascertainment of the Law of Foreign countries when pleaded in Courts within Her Majesty's dominions.

My Lord, *Doctors' Commons, August* 16, 1861.

WE were honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 26th of July last, stating that, with reference to our Report of the 16th of July last,‖ in which we stated that it would be advisable for Her Majesty's Government to take steps for negotiating Conventions with those foreign countries with which Her Majesty's subjects had most frequent dealings, in order to carry out the object of the Act 24 Vict., cap. 11, called "An Act to afford facilities for the better ascertainment of the Law of Foreign Countries when pleaded in Courts within Her Majesty's Dominions;" and suggesting that means should, in the first place, be taken to ascertain whether a favourable disposition towards such Convention was manifested on the part of the Governments of such countries, he was directed by your Lordship to state to us that it was not clear to you what were the precise objects of the contemplated Conventions, nor what was the nature of the international stipulations, by which the Act was to be carried out, in regard to the communications between the legal tribunals of this country and those of foreign countries; and to state that your Lordship wished, previously to entering into communication with any foreign Government on the subject, to have some definite statement of what stipulations it was intended to propose on the part of Her Majesty's Government: and his Lordship requested that we would furnish your Lordship with a draft of such Articles as we might think fitted to carry out the object of the Statute.

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* Page 106. † Page 127. ‡ Page 128. § Page 140. ‖ Page 148.

In obedience to your Lordship's commands we have the honour to report—

In compliance with the request contained in Lord Wodehouse's letter of the 26th of July we have prepared, and now submit, a draft of such Articles as are, in our opinion, fitted to carry out the object of the Statute 24 Vict., cap. 11.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

P.S.—We would suggest that, before any Convention is formally ratified, the opinion of able Counsel in the foreign country should be taken as to its probable effect and operation in practice.

J. D. H.

Inclosure in No. 202.

Proposed Draft Articles as to Convention with Foreign Countries, &c., in pursuance of Mr. Dunlop's Suggestion under 24 *Vict., c.* 11.

WHEREAS the Contracting Parties have reciprocally agreed to enter into a Convention for the purpose of mutually ascertaining the law of each country, when pleaded in actions or suits depending in the Courts of the other, it is hereby contracted and agreed as follows:—

ARTICLE I.

Whensoever the law of shall be pleaded in any action or suit depending in any of the Superior Courts within Her Majesty's dominions, and it shall be the opinion of such Court that it is necessary or expedient for the disposal of such action or suit to ascertain the law applicable to the facts of the case as administered in , and whenever such Court, or a Judge thereof, shall approve of a "case" setting forth the facts, and shall settle the questions of law arising out of the same, on which they desire to have the opinion of another Court, and shall make any order remitting such questions of law, together with the "case," to the Court of , and shall desire the opinion of such Court on the above questions of law, and shall request them to pronounce their opinion thereon,* the said Court of shall in due form pronounce their opinion on the questions so submitted to them, and a copy of such opinion shall be certified by an officer of the said Court of .

ARTICLE II.

Whensoever the law of England shall be pleaded in any action or suit depending in any of the Courts of , and such Court shall deem it expedient to ascertain the law applicable to the facts of the case, as administered in any part of Her Majesty's dominions, and shall remit to the Court in Her Majesty's dominions, whose opinion is desired, a case setting forth the facts and the questions of law arising out of the same, on which they desire to have the opinion of such last-mentioned Court, it shall be competent to any of the parties to the action or suit, to present a petition to such Court whose opinion is to be obtained, praying such Court to hear parties or their Counsel, and to pronounce their opinion on such questions, or to pronounce their opinion on such questions without hearing parties or counsel; and the Court to which such petition shall be presented, shall consider the same, and, if they think fit, shall appoint an early day for hearing parties or their counsel on such case, and shall pronounce their opinion upon the questions of law, as administered by them, which are submitted to them by the said Court in which such action or suit may depend;

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* More Courts than one may be mentioned, if expedient.—J. D. H. W. A. R. P.

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and upon such opinion being pronounced, a copy thereof, certified by an officer of the Court pronouncing the same, shall be given to each of the parties to the action or suit by whom the same shall be required.

J. D. H.
W. A.
R. P.

No. 203.

The Queen's Advocate to Earl Russell.—(*Received August* 27.)

FRANCE.

Right of British subjects, natives of Madras, embarking in French ships at Pondicherry for Réunion, to the same Consular protection in that island as if they had embarked at a British port in India.

My Lord, *Doctors' Commons, August* 22, 1861.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 17th August instant, stating that he was directed to transmit to me a despatch from Mr. Pakenham, who is temporarily in charge of Her Majesty's Consulate at Réunion (No. 6, July 6, 1861), requesting to be informed whether British subjects, natives of Madras, who have embarked in French ships at Pondicherry for Réunion are entitled, in that island, to the same Consular protection as if they had embarked at a British port in India; and to request that I would report to your Lordship my opinion as to the answer which should be returned to Mr. Pakenham's inquiry.

In obedience to your Lordship's commands I have taken this matter into consideration, and have the honour to report—

That I presume that this question is to be considered with reference to the Convention between this country and France of July 25, 1860, which is transmitted with the papers, althongh not mentioned in the covering letter, or the Consul's despatch.

If this be so the Ist and XXth Articles of the Convention appear to me to be decisive; and Mr. Pakenham's question should, as I understand it, be answered affirmatively.

All British subjects, including the persons specified in Article XXIV (wheresoever embarked), are entitled to British protection in Réunion.

This appears so plainly to be the meaning of Article XX, that I do not see how any question about it can have arisen; and inasmuch as the Consul does not allude to the Article or the Convention, nor state that any objection has been raised by the French authorities, I would suggest that he be requested (for fear of any misapprehension) to send a fuller explanation of his doubts or difficulties.

I have, &c.
(Signed) J. D. HARDING.

No. 204.

The Queen's Advocate to Earl Russell.—(*Received August* 27.)

FRANCE.

Complaint of Mr. Morgell relative to disposition of property left by a deceased relative.

My Lord, *Doctors' Commons, August* 23, 1861.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 19th August instant, stating that he was directed to request that I would take into my consideration the inclosed papers* relative to a complaint made by a Mr. Morgell respecting the disposition of some property left by a deceased relation in France, and that I would furnish your Lordship with my opinion as to the course which should be adopted in this matter.

In obedience to your Lordship's commands I have taken this subject into consideration, and have the honour to report—

That Mr. Morgell's letter of the 1st August is of so very vague and incoherent a character as to suggest doubts as to the state of his mind, or capacity for business.

I can only suggest that he should be informed that your Lordship sees no ground for imputing any blame to Consul Pickford or to the French authorities in the matter in question; that the Consul was justified in giving a certificate that by the Law of England a bastard has no claim on the effects of his putative father deceased; that your Lordship observes that Mr. Morgell states himself to be the natural son of the deceased Major Morgell, who appears to have died in France, but where domiciled does not appear, to have left a will, to have appointed an executor (in which will it is not stated that there was any disposition in favour of Mr. Morgell), and to have left at least one legitimate relation, a sister, Miss Morgell, surviving him, who benefited by the will; that your Lordship sees no reason or object for interfering in a matter in which Mr. Morgell has had full notice, information, and opportunity for asserting his legal rights (if any), and in which he has apparently met with no denial of justice; that your Lordship must require Mr. Morgell, in case he continues this correspondence (which is full of vague complaints, charges, and assertions against private individuals), to give his address and profession or employment, and also a reference to some persons of known respectability in England.

I have, &c.
(Signed) J. D. HARDING.

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* Mr. Morgell, August 1; Earl Cowley, No. 971.

No. 205.

The Queen's Advocate to Earl Russell.—(*Received August* 27.)

NEW GRANADA.

Claim of Pacific Steam Navigation Company arising out of tonnage duties levied at Panamá on their vessels.

My Lord, *Doctors' Commons, August* 24, 1861.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 15th August instant, stating that, with reference to my Report of the 10th July ultimo,* he was directed to state to me that, as there seems to be some doubt on the points submitted to me regarding the claim of the Pacific Steam Navigation Company, arising out of tonnage duties levied at Panamá on their vessels, your Lordship has caused the Memorandum (therewith inclosed) to be drawn up in explanation of the exact state of the question, and to request that I would take this paper into consideration, together with the previous correspondence therewith returned to me, and which has been bound up for convenience of reference, and that I would report to your Lordship my opinion how far Her Majesty's Government would be justified in claiming on behalf of the Pacific Steam Packet Company, the repayment, by New Granada, of the amount of tonnage dues paid by them under protest up to April 1860.

In obedience to your Lordship's commands I have taken this paper into consideration, and have the honour to report—

That the question appears to me to turn on what has passed between the United States and New Granada as to these tonnage dues. The recent Convention between those States throws no light on the subject.

The United States' Government has (as I understand the facts) succeeded, howsoever (by abuse of force as alleged by New Granada), in securing exemption for all its citizens from all tonnage dues in the ports of the Isthmus, either for a definite period of twenty years after the opening of the interoceanic communication, or indefinitely.

The "most favoured nation clause" in the existing Treaty between Great Britain and New Granada, therefore, entitles Her Majesty's Government, *primâ facie*, to insist on a similar exemption in favour of British subjects.

If it should turn out that the exemption obtained by the United States rested on peculiar grounds (as, for instance, the terms of a charter to a United States' Railroad Company across the Isthmus of Panamá), or if the exemption was really obtained (as suggested by New Granada) merely by the "abuse of superior force," and not upon any tenable grounds, then Her Majesty's Government may take these circumstances into consideration, and probably will not feel justified in pressing its claim.

The present condition of things seems to be, 1st, that United States' vessels are (howsoever) exempted from all tonnage dues; 2nd, that British and all other foreign vessels are liable thereto, subject only to certain peculiar exemptions as to vessels carrying mails for the Government of New Granada.

Under these circumstances, the plea that New Granada has only yielded to force appears somewhat suspicious. No force was actually used, as far as I am

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* Page 145.

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aware; and, at all events, the onus is on her to satisfy the *primâ facie* claim of Her Majesty's Government, by something more than assertion. If Her Majesty's Government could see the whole correspondence between New Granada and the United States, it would be in a position to form an opinion; as to the reimbursement of the duties already paid under protest by the Company, the same observations apply. This must depend on the result of the general question.

If the grounds upon which the United States have obtained exemption are general and not specific, or if the Government of New Granada fails to satisfy Her Majesty's Government that it has no claim under "the most favoured nation" clause, then reimbursement to the Company should be insisted on, as well as exemption for the future; otherwise not. I must observe, 1st, that all other foreign nations seem to have hitherto paid tonnage duties without objection; 2nd, that apart from the "most favoured nation" clause, and the effect thereon of the exemption obtained by the United States, I am still of opinion that, upon the general merits of the case, and particularly adverting to Article V of the existing Treaty between Great Britain and New Granada, 1825 (Columbia), Her Majesty's Government has not sufficient ground for claiming reimbursement for the Company.

I have, &c.
(Signed) J. D. HARDING.

No. 206.

The Law Officers of the Crown to Earl Russell.—(*Received August* .)

My Lord, *Doctors' Commons, August* 26, 1861.

PORTUGAL.

Claim of Mr. Gedge, Solicitor to Messrs. Yuille and Shortridge, for expenses in preparing their case for submission to arbitration of Senate of Hamburgh.

WE are honoured with your Lordship's commands, signified in Lord Wodehouse's letter of the 8th August instant, stating that he was directed to transmit to us a letter from Mr. Gedge, Messrs. Yuille and Shortridge's solicitor, requesting the payment of 315*l.* on account of the expenses incurred in preparing the case on behalf of his clients, for submission to the arbitration of the Senate of Hamburgh.

Lord Wodehouse was also pleased to inclose the papers which contain the terms on which the arbitration was to be conducted, and to request that we would furnish your Lordship with our opinion whether the whole, or any part, and, if so, how much of the amount now claimed by Mr. Gedge should be paid by Her Majesty's Government.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That, adverting to the 10th Article of the "Identic Memorandum" herewith, and assuming that the Senate of Hamburgh has made no such order as to the costs of the reference as will affect this claim, and bearing in mind paragraph 3 of your Lordship's letter to Mr. Gedge of April 25, 1860, namely, (3) Her Majesty's Government would undertake to "bring the case under consideration of the Arbiter or Arbiters, and they would do so at the public expense," we are of opinion that the whole of the amount now claimed by Mr. Gedge should (on production of proper details and vouchers) be paid by Her Majesty's Government.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 207.

The Law Officers of the Crown to Earl Russell.—(*Received August* 29.)

GENERAL.

As to Consuls allowed to trade being the proper persons to act as Presidents of Naval Courts.

My Lord, *Doctors' Commons, August* 27, 1861.

WE are honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 12th August instant, stating that he was directed to transmit to us a letter from the Board of Trade, dated the 30th of July last, in which a question is raised whether a Consul, whose official duty it may be to

preside at a Naval Court, under the terms of the "Merchant Shipping Act, 1854," is precluded, by the same Act, from performing this duty in the event of his being, as a member of a mercantile firm, consignee of the ship, whose case is brought before such Court; and to request that we would furnish your Lordship with our opinion whether Consuls who are permitted to trade may, nevertheless, be held to be the proper persons to act, in the absence of naval officers, as official Presidents of Naval Courts.

Lord Wodehouse was also pleased to add that several of Her Majesty's Consuls are permitted to trade, and that it would not be convenient for the public service that this rule should be altered.

In obedience to your Lordship's commands we have taken this subject into consideration, and have the honour to report—

That a Consul who is partner in a firm to which a ship is consigned cannot, in our opinion, consistently with the Merchant Shipping Act, sit as a member of a Naval Court exercising jurisdiction in relation to matters connected with such ship.

But, subject to this exception, there is not any objection to Consuls engaged in Trade acting on such Naval Courts. Consuls so acting, if there be no Naval officer on the Court, will be the proper persons to preside; and where both Naval and Consular officers are present, *then* the officer of the "highest rank," according to the 261st section of the Merchant Shipping Act, must preside.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 208.

The Law Officers of the Crown to Earl Russell.—(*Received September* 4.)

My Lord, *Doctors' Commons, August* 30, 1861.

UNITED STATES.

Rear-Admiral Milne's amended instructions. Protection of British subjects and commerce.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 21st August instant, stating that with reference to the Reports of Her Majesty's Advocate-General of the 31st of May,* 13th of June,† and 20th of July ultimo,‡ respecting the instructions issued by Rear-Admiral Milne for the guidance of Her Majesty's cruizers employed off the coast of North America for the protection of British commerce, and to our Report of the 11th July ultimo,§ as to the interference to be exercised on behalf of British subjects captured on board privateers, he was directed by your Lordship to transmit to us a letter from the Admiralty, dated the 19th instant, inclosing a copy of the amended instructions to cruizers issued by Rear-Admiral Milne on the 30th of May; and to request that we would take these instructions into consideration, and report to your Lordship whether we see any reason why they should not be approved.

In obedience to your Lordship's commands we have the honour to report—

That, in compliance with your Lordship's request, we have taken the amended instructions to cruizers, issued by Rear-Admiral Milne on the 30th of May, into our consideration, and having done so, we see no reason why they should not be approved.

We have, &c
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

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* Page 99. † Page 118. ‡ Page 155. § Page 147.

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Inclosure in No. 208.

Instructions for the Guidance of Cruizers employed on the Coast of America for the Protection of British Commerce.

(Confidential.) "*Nile,*" *at Halifax, May* 30, 1861.

HER Majesty having, through her Principal Secretary of State for Foreign Affairs, signified her pleasure that in the civil war raging in America her naval forces are not to indicate any partiality or preference for either party, it will be your duty to exercise the strictest neutrality between the contending parties (both of whom are recognised by Her Majesty's Government as invested with belligerent rights), and with this view you will, while preserving a firm but conciliatory demeanour, abstain in any intercourse you may have with officers or citizens of the United or Confederate States not only from acting, but from expressing sentiments contrary to Her Majesty's pleasure, and you will enjoin the same line of conduct upon all under your orders.

Article 2. While, however, it is your duty to observe the strictest neutrality between the contending parties it is equally an imperative duty to afford the greatest possible protection to lawful British commerce, which will be effected, on the one hand, by the blockades about to be, or which may have been *de facto*, established by the Northern States; and, on the other, by the letters of marque which are being issued by the Southern Confederation.

Article 3. *Blockades.*—The President of the United States, by his Proclamation of the 19th ultimo, declared his intention of blockading the ports of the States of South Carolina, Georgia, Alabama, Florida, Mississippi, Louisiana, and Texas, and by his Proclamation of the 28th of that month also those of Virginia and North Carolina, of which the blockades have been actually announced by Commodore Prendergast, commanding the United States' squadron, who states that he has sufficient force at his disposal to maintain them effectually. If such blockades are effectively established and maintained, it will be your duty to respect them; but even should the force employed be in your opinion insufficient to render the blockade effective, you will content yourself with representing your views to the Commander of the blockading squadron in courteous but precise terms, and with full particulars in writing, and forthwith report to me the full particulars, sending me copies of all communications between you and such Commander, and also sending to the Admiralty copies of such reports and communications by the earliest opportunity, so that any British sufferers whose right to claim redress might eventually be recognised by Her Majesty's Government may have the benefit of reference to your reclamations made on the spot. Should your advice in respect to such blockades be asked for by any British ship you might happen to fall in with, it would, while referring to the inclosed Queen's Proclamation of the 13th instant, which is sent herewith for your guidance, be prudent on your part simply to state that such and such places are known to be blockaded effectively, and that Her Majesty's Government had recognised each party as a belligerent, and, consequently, entitled to all the rights of war as against neutrals; avoiding as much as possible all technical points of international law, upon which you, as an observer, are not called upon to act or decide, but which if open to objection would, in the ordinary course of events, be subsequently adjusted by the respective Governments.

Article 4. *Privateers.*—The President of the Confederate States has, on the other hand, by his Proclamation of the 17th ultimo, offered letters of marque to private armed ships, which there is reason to believe will lead to the fitting out of many privateers, and as from the unscrupulousness with which privateering is generally conducted British commerce may suffer severely from lawless depredations, you will adopt every possible lawful measure to protect British ships from molestation by such privateers, not hesitating, in a clear case of piracy on British ships, to deal with the aggressor as a pirate, in accordance with the Instructions issued by the Lords Commissioners of the Admiralty on the 8th June, 1818, which are contained in Appendix 2, page 74, of the Station Order Book.

Article 5. It will be expedient that you should approach for observation, and, if necessary, communication with the blockading squadrons, within the limits assigned to you; but unless protection to British life should absolutely demand

it, you are to avoid entering into any ports in the occupation of Confederate authorities or troops, as the visit of any of Her Majesty's ships might probably be interpreted into a disposition on the part of Her Majesty's Government to give countenance and support to the Secession movement, and consequently any step calculated to convey such an impression is to be avoided. Their Lordships' letters of the 1st March and the 18th May, and their inclosures, by which you will be strictly guided, will put you in possession of the views of Her Majesty's Government in respect to vessels flying the Palmetto or other Secessionist flag.

Article 6. You are to understand that although the civil war in America confers belligerent rights on both of the contending parties, yet that the position of Great Britain remains unaltered, and consequently the instructions prohibiting the visit or search of United States' (or Secessionist) merchant-ships are not affected thereby. In the event, however, of falling in with a British merchant-vessel which you may have reason to suppose had not intentionally disregarded Her Majesty's Proclamation of the 13th instant, above referred to, and which may have been detained by a vessel carrying a letter of marque, you would be quite justified in ascertaining the authority for, as well as the cause of, such detention.

Article 7. You will furnish me with the usual monthly Return of all foreign vessels met with, including therein full particulars of all privateers and other suspicious vessels, and especially of all blockading squadrons fallen in with, and of which you will be careful to give the numbers, force, &c., as well as to state your opinion as to whether they are, in each case, adequate to maintain effectively the blockade upon which they may be engaged.

Article 8. With reference to the expressed intention of the United States to deal with Secessionist privateers as pirates, the following opinion has been given thereon by Her Majesty's Advocate-General, in respect to British subjects captured in and serving in such privateers:—

"With respect to the concluding paragraph of the Proclamation, relating to the treatment of Secession privateers as pirates, I do not consider it necessary at present to enter fully into its consideration; I will merely observe that pirates, *jure gentium*, are *hostes omnium*, common robbers upon the seas, having a general and indiscriminate *animus depredandi* against all persons in general, which cannot be properly predicated of rebels or insurgents acting under letters of marque from a *de facto* Sovereign and independent Government, only seeking to capture the property of the subjects or citizens of the particular Government to which they are themselves hostile, and (above all) carrying their prizes into port for legal adjudication. Her Majesty's Government is not concerned as to the treatment which President Lincoln may choose to inflict upon any persons captured in privateers who may not be British subjects, but British subjects who are only hostile privateersmen cannot rightfully, when captured as such on the high seas, be treated as pirates, *jure gentium*, by President Lincoln. The laws of the United States (to which he alludes) cannot rightfully make a British subject guilty of piracy on the high seas, merely for serving in a hostile privateer."

Article 9. Great caution is to be exercised in approaching the American coast, many of the lights being already removed, and it is not improbable that others may be dealt with in a like manner.

(Signed) ALEXR. MILNE,
Rear-Admiral and Commander-in-chief.

No. 209.

The Queen's Advocate to Mr. Hammond.—(Received September 4.)

Doctors' Commons, September 3, 1861.

THE Queen's Advocate presents his compliments to Mr. Hammond, and with reference to his letter of the 22nd August ultimo, relative to the question as to the precise time at which it would be competent for either of the High Contracting Parties to the Reciprocity Treaty of 1854, to give notice of its wish to terminate that Treaty, requests, with Earl Russell's permission, to have the assistance of the Attorney and Solicitor-General.

UNITED STATES.

Notice to terminate Reciprocity Treaty of 1854.

(See Report, page 215.)

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No. 210.

The Queen's Advocate to Earl Russell.—(*Received September* 4.)

My Lord, *Doctors' Commons, September* 4, 1861.

UNITED STATES.

Advice to master of the "Alliance" respecting his proceedings in connection with the blockade.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 24th August ultimo, stating that he was directed to transmit to me a letter from the Admiralty, dated the 19th of August last, inclosing papers received from Rear-Admiral Milne, reporting the advice given by him to the master of the English ship "Alliance," in regard to his proceedings in connection with the blockade; and to request that I would take these papers into consideration and furnish your Lordship with my opinion thereupon.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That the advice given by the Admiral to the master of the "Alliance" was correct and judicious under the circumstances.

I have, &c.
(Signed) J. D. HARDING.

Inclosure 1 in No. 210.

Mr. Forest to Rear-Admiral Sir A. Milne.

Dear Sir, *St. John's, New Brunswick, August* 6, 1861.

THE letter of Captain Kinnear, of the British ship "Coriolanus," published in the London "Times" of the 20th ultimo, has impressed upon me the propriety of addressing you for the purpose of obtaining your instructions or advice for my guidance should certain contingencies arise in the course of my proposed voyage from this city to Havana, Cuba. In the course of that voyage I shall necessarily have to pass along the blockaded portion of the coast of the United States for a great distance, say from Baltimore to Key West. I would therefore request you to furnish me with your instructions or advice upon the following points:—

1st. How near to the blockaded coast have I a right to approach without being subject to have my papers overhauled and endorsed (as in the case of the ship "Coriolanus") by the United States' cruizers?

2nd. Should my vessel become disabled, and incapable of reaching my port of destination, or a port beyond the limits of the blockade offering proper facilities for repairs, without serious risk of loss of vessel, cargo, and crew, should I bear away for the nearest port on the blockaded coast, or what other course should I pursue?

3rd. Would my vessel and cargo be liable to forfeiture for approaching said coast under such circumstances?

It is, perhaps, proper to mention that upon my recent voyage from Liverpool to Charleston, South Carolina, with a cargo of railway iron and coals, I was on the 27th of May boarded by an officer from the United States' cruizer "Union," and ordered off from the Southern Coast of the United States, and a notice to that effect was endorsed upon my duplicate manifest, but not upon my register. That cargo I am now discharging at this port by order of the agents of my owners; and as it has been falsely rumoured that there were cannon and other arms on board of my ship, I have applied to have her thoroughly searched by the proper Government officer at this port.

I expect to sail on or about the 14th instant for Havana, Cuba, with pig-iron for ballast, and a few tons of other cargo, all for account of British subjects; and your early reply to this communication will greatly oblige.

Very respectfully, &c.
(Signed) SAM. D. FOREST,
Master of British ship "Alliance."

Inclosure 2 in No. 210.

Rear-Admiral Sir A. Milne to Mr. Forest.

Sir, "*Nile,*" *at Halifax, August* 8, 1861.

I RECEIVED yesterday evening your letter of the 6th instant.

As it is probable that you are not in a position to obtain the opinion of any legal practitioner competent from experience to deal with the points raised in your letter, I cannot refuse to give you my advice thereon; but you must understand that the opinions I offer are in no way binding on the American cruizers, belligerent Courts interpreting their own Prize Law, and any prejudice a neutral lawfully trading may suffer becoming eventually a subject of adjustment between the respective Governments.

I take it that a belligerent cruizer has a perfect right to endorse notice of blockade on a neutral's papers, which notice is good for the voyage.

If disabled I should advise your making for a British, or, at all events, for a Northern port. Should, however, this be impracticable, you should endeavour to fall in with a United States' cruizer, from whom, as a merchant ship under a friendly flag lawfully trading, you would doubtless receive assistance and advice; taking great care, however, that the entries in your log shall be so correct as to prove that your proceedings are *bonâ fide* and above suspicion, which of course I assume they would be.

I am, &c.
(Signed) ALEX. MILNE.

No. 211.

The Law Officers of the Crown to Earl Russell.—(*Received September* 5.)

My Lord, *Doctors' Commons, September* 2, 1861.

TURKEY.

Condemnation by Turkish Criminal Court of three British subjects for forgery.

WE are honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 11th July ultimo, stating that he was directed to transmit to us a despatch from Mr. Hornby, Judge of Her Majesty's Supreme Consular Court at Constantinople (No. 54), inclosing the evidence upon which three British subjects have been condemned by the Turkish Criminal Court on a charge of forgery, to twelve years' imprisonment, and stating the circumstances under which he has hitherto abstained from assenting to the judgment of the Court, and to request that we would report to your Lordship our opinion as to the instructions which should be given to Mr. Hornby in this matter.

In obedience to your Lordship's commands we have the honour to report—

That we feel it to be our duty (in the first place) to call Earl Russell's attention to the nature of Mr. Hornby's request for instructions, as contained in his letter of the 26th of June.

Mr. Hornby, being the Judge of the Supreme Consular Court, was called upon in the ordinary course of his duty to give or withhold his assent to the judgment of a Turkish Criminal Court, pronounced on three British subjects, and finding them guilty of uttering forged money of the country. The question raised was simply whether there was evidence on which a Court of competent jurisdiction could, without an outrage on common sense and justice, convict the accused. The case did not involve any question of municipal or international law; and it appears to us, therefore, that it lay entirely within Mr. Hornby's own province as a Judge, to decide whether he should, or should not, concur in the finding of the Turkish Judges.

We have, by Lord Russell's desire, taken the observations of Mr. Hornby, and the evidence in the case, into our consideration, and we are of opinion that sufficient evidence of the guilt of the accused was adduced (such evidence being believed, as in fairness it must be assumed to have been), to warrant the conviction of the accused. It is true that the direct evidence was that of an accomplice and of a person (Ricalli), a prisoner, on charge of uttering; and that confirmation which apparently might have been afforded (if Leoncini, in particular, was speaking the truth) was not forthcoming. This, however, even in England,

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would go to the weight only, and not to the technical sufficiency, of the evidence, although Mr. Hornby appears to treat the proofs given by an accomplice, or a tainted witness, as being no evidence at all. With us it would be the duty of the presiding Judge to leave such evidence to the jury, coupled with such observations on it as he might think fit to make; and the finding of the jury could not be impugned in a Court of Law. These functions must of necessity be discharged by the Court at Constantinople without the aid of a jury; and the Court having convicted and sentenced the prisoners, we do not see how Her Majesty's Government can, on the grounds suggested by Mr. Hornby, of defective or evidence [*sic*], properly interfere.

What Mr. Hornby's own course as a Judge should be, under the circumstances, we must repeat appears to us to be matter for the decision of Mr. Hornby himself.

Regarding the evidence as detailed by the scribe in the document A, we have already commented on the nature of the direct proof of guilt. The remaining material evidence (passing over the somewhat confused story of Michali Butegich), consists of proof of two of the parties (Rocco and Ferrugia) having known Leoncini of acquaintance, and some suspicious dealings between Rocco and a very disreputable person named Meudel, himself apparently an utterer; and of the fact of the Italian, Giuseppe, or Romano, having been (as stated by Leoncini, denied by Rocco, but sworn to by Romano himself) in the service of Rocco, and called by him "Romano." The Turkish Court, in interrogating the accused, acted in conformity with its own practice, and with the practice of many Courts in Christendom; and where such a procedure prevails, it is hardly a reasonable complaint that answers of the prisoners, appearing on evidence to be untrue, should weigh with the tribunal to their prejudice on the main question.

That Rocco and Ferrugia knew Leoncini appears on the whole very probable (see as to Rocco's bribing Romano, and as to recent medical attendance on Ferrugia, both facts known to Leoncini); and, although, as against Camillieri, the acquaintance appears to rest on the testimony of Leoncini, still there stands against him the evidence to which we have already referred, of a full confession of uttering forged caimées. As to the absence of direct confirmation (observed upon by Mr. Hornby) of Ricalli's evidence relating to the chintz, the point is of less moment, if it were open to Camillieri, according to the rule of the Court, to produce the chintz in which his breakfast was wrapped, and the gown worn by his "woman," or to negative the entire statement as to wrapper and gown. Still it was the prosecutor's duty to give such corroborative proof if it really could have been afforded.

With reference to Mr. Hornby's observations at pages 13 and 14 of his Report, touching the conduct of the Court before which the prisoners were examined, in refusing to come to any decision, and referring the case upon the papers to the Grand Council, if he means that, thereby any Treaty stipulation with the Ottoman Porte for the trial of British subjects, accused of crime committed within the Turkish territories, has been violated, so as to render the proceedings illegal or irregular, he should furnish the fullest information on the subject, in order that the course to be pursued by Her Majesty's Government in the matter may be considered and determined on.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 212.

The Law Officers of the Crown to Earl Russell.—(Received September 5.)

My Lord, *Doctors' Commons, September* 2, 1861.

NEW GRANADA.

Mr. Holt's claim on New Granadian Government. Closing of ports of Carthagena and Savanilla.

WE are honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 10th August ultimo, stating that with reference to the report from Her Majesty's Advocate-General of the 21st November, 1860, he was directed to transmit to us, together with the former papers, a despatch from Her Majesty's Chargé d'Affaires in New Granada (No. 32), containing further information respecting Mr. Holt's claim upon the New Granadian Government, arising out of the closing of the ports of Carthagena and Savanilla; and to request that we would take these papers into consideration, and furnish your Lordship with our opinion as to the instructions which should be addressed to Mr. Griffith in this case.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That before proceeding to state to your Lordship our opinion on the question of international law which appears to us to be raised in this case, we think it will be convenient that we should describe the facts as, in the result, we correct them, and as we have assumed them to be. We accept the correction of Mr. Holt's statement as to "passengers," which is to be found in Consul Bernal's letter to your Lordship of the 8th of February, 1860, and we think that the same letter satisfactorily disposes of that part of Mr. Holt's complaint which rests on his version of the meaning and effect of the "permission" from the "Prefect at Colon" to undertake the voyage thence to Carthagena. The other main facts, as we understand them, are that disorders had been committed by the (so-called) Revolutionary Party at Carthagena and at Savanilla; that a Resolution was issued by the Finance Minister (a member, we presume, of and acting for the Executive) ordering the ports in question to be closed from and after the 20th October, 1859; that such Resolution was in force on the 14th and 15th November, 1859 (the days on which permission to load Mr. Holt's vessel, the "Plantagenet," was refused), and (although it is nowhere distinctly stated) that the Government of the Confederation, and not any body in insurrection against that Government, was in *de facto* possession of the quays and custom-houses of the two ports, and enabled to prevent the embarkation or discharge of cargo there at the time in question.

Under these circumstances we concur in substance in the observations of Her Majesty's Chargé d'Affaires (Mr. Griffith), contained in his despatch to your Lordship of the 30th April, 1861, with reference to the right, *inter gentes*, of the New Granadian Government to close the two ports in question, at the time and in the manner they did, and, subject to the question of "notice" (to which we will hereafter advert), to act, with reference to the vessels of friendly nations, as they acted towards Mr. Holt. The act was an act of State, the actor was the Supreme Executive Government; and whatever suspicions may be entertained it cannot be reasonably alleged that the safety of the State did not render the course which was adopted an expedient course. In this view the ordinary prerogative of a *de facto* Government warranted what was done, and the sufferers, however innocent, must put up with such consequential loss as may fall upon them.

As regards the want of notice, Mr. Holt's case is undoubtedly one of great hardship, but the more especially after the publication, in May 1860, of the Law of the 30th of April. We are of opinion that this circumstance does not confer on Mr. Holt any such title to compensation as can be made the ground of a requisition by Her Majesty's Government on the Government of New Granada. Some reasons (in the justice of which we concur) are to be found in support of this view in Mr. Griffith's despatch to which we have already referred; and as a general rule such rights as are conceded to States by the Law of Nations, for their own safety and defence, over-ride the ordinary rights of individuals, foreign as well as native, within such States.

We would submit to your Lordship that the instructions to be addressed to Mr. Griffith in this case should be in conformity with the opinions which we have above expressed.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

1861

No. 213.

The Queen's Advocate to Earl Russell.—(*Received September* 5.)

SPAIN.

Case of the coasting vessels "Lola" and "Castilla," detained under suspicion of being equipped for Slave Trade.

My Lord, *Doctors' Commons, September* 3, 1861.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 14th August ultimo, stating that he was directed to transmit to me the accompanying correspondence, as marked in the margin,* which has passed between your Lordship and M. Isturiz, the Spanish Minister at this Court, relating to the case of two Spanish coasting vessels, the "Lola" and "Castilla," which were detained by Her Majesty's ship "Barracouta," in the month of October last, and sent, in the first instance, to Jamaica for adjudication in the Vice-Admiralty Court in that island, as vessels equipped for the Slave Trade, without papers to denote their nationality.

That after seven months' detention in the Admiralty Court, the Judge decreed, that the vessels in question were not disentitled to the protection of the Spanish flag, and they were therefore sent to Havana to be dealt with by the Mixed Commission Court established at that place, under the provisions of the Treaty of the 28th of June, 1835, between this country and Spain, for the suppression of the Slave Trade, and by the decision of the Mixed Commission Court, dated the 1st of June last, the detention of the "Lola" and "Castilla" was declared to be unjustifiable.

Mr. Hammond was also pleased to transmit to me the Reports which have been received from the naval authorities in the West Indies relating to the detention of these vessels; and to request that I would take these papers into consideration, and furnish your Lordship with my opinion as to the answer which should be returned to the Spanish Minister's note of the 25th July last, respecting this case.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I would suggest that it will be desirable to delay answering the Spanish Minister's note of the 25th July, until a further communication shall be had with the Havana.

It does not appear to me to be possible, under the circumstances, for Her Majesty's Government to justify the conduct of Commander Wood in relation to the vessels in question; not only has the Vice-Admiralty Court of Jamaica, to which place they were sent by the captor, declared its incompetence to adjudicate on them, but the Mixed Commission Court at the Havana, before which they were ultimately sent, has by its sentence formally decreed their detention to be unjustifiable, and ordered the restitution of the vessels and their cargoes.

Commander Wood, as is pointed out in the papers, if he thought fit to capture them, should clearly have sent them before the Mixed Commission Court at the Havana in the first instance. They were Spanish in build and appearance; they had Spanish colours, and some Spanish papers, and no other papers; and there was no sufficient reason for doubting their being entitled to the protection of the Spanish flag, or for supposing them to have any other or different nationality, or (consequently) for sending them to Jamaica.

The only substantial international question, therefore, now remaining open, is that of the compensation to be paid to those interested; and upon this question these papers throw no light.

The Slave Trade Suppression Treaty with Spain (1835), especially Annex B, Articles V and VII, provides for the decision by the Mixed Commission Court, definitively and without appeal, of all claims for compensation on account of damages or losses occasioned to vessels and cargoes detained under the Treaty, but not condemned; and the concluding paragraph of Article VII is express on the point. I presume that some such claims have been, or will be, brought before the Court and determined by it, in both cases; if not, further information should be supplied. However this may be, Her Majesty's Consul at Havana should fully explain the actual and probable future condition of this portion of the case (*i. e.*, the compensation).

If compensation is claimed before the Court under the Treaty, the final settlement and adjudication thereof will devolve upon the Court, and will, doubtless, be proceeded with in regular course; but if, for any reason, no such claim is made, or about to be made, or if the Court should decline or omit to award anything in respect of such claim, Her Majesty's Government should be furnished with full particulars, so as to enable it to determine upon its future course in the event of any claims being brought forward, either by the parties interested or the Spanish Government, in the ordinary diplomatic manner, *dehors* the Treaty.

I have, &c.

(Signed) J. D. HARDING.

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[*] From M. Isturiz, May 11, 1861; to M. Isturiz, May 23 and June 13, 1861; from M. Isturiz, July 25, 1861.

No. 214.

The Queen's Advocate to Earl Russell.—(*Received September* 7.)

UNITED STATES.

Delay in adjudicating case of the "Hiawatha."

My Lord, *Doctors' Commons, September* 5, 1861.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 29th August ultimo, stating that with reference to my Reports of the 18th June,* 5th July,† and 2nd August ultimo,‡ respecting the case of the "Hiawatha," he was directed by your Lordship to transmit to me a letter and its inclosures from Mr. Peter M. Miller, dated the 28th ultimo, representing the delay which has taken place in adjudicating upon the case, and requesting that the matter may be brought to the notice of the Federal Government, and to request that I would take these papers into consideration, and furnish your Lordship with my opinion as to the propriety of taking the steps requested.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That considering the peculiar circumstances connected with the case of the "Hiawatha," and assuming that the only ground of complaint is (in effect) that whereas the "hearing" was concluded on the 3rd or 4th of July, no judgment had been pronounced by the Prize Court (which had taken time to consider) up to the 13th August.

I cannot say that Her Majesty's Government would be justified (as on that date) in making any official representation to the United States' Government on the subject. The parties interested should respectfully apply to the Court, and press it for judgment; and Her Majesty's Government should not intervene until this has been done without effect. If, however, on Lord Lyons' receipt of his next ensuing despatches from your Lordship (say September 20), this step should have been taken, or should then be taken without avail, he may be entrusted with a discretionary power of making a courteous and guarded communication to the United States' Government, pointing out the serious consequences of the delay to the interests of the parties (from the ship, cargo, and crew remaining so long under detention, which I take for granted is the case), and expressing a confident hope that judgment may be pronounced, or the ship restored without judgment, as an act of grace, as soon as possible. Lord Lyons may also use his discretion as to intimating (or not) that if the judgment of the Court should be "simple restitution" (without costs or damages) a lengthened detention inflicts a most serious injury upon individual interests, without conferring any advantage on the United States' Government or the captors.

I have, &c.

(Signed) J. D. HARDING.

No. 215.

The Law Officers of the Crown to Earl Russell.—(*Received September* 7.)

UNITED STATES.

Arrest and imprisonment of two British subjects, Mc Quillan and Fitzpatrick, for aiding the Southern States.

My Lord, *Doctors' Commons, September* 6, 1861.

WE were honoured with your Lordship's commands signified in Mr. Hammond's letter of the 17th of August ultimo, in which he stated that he was directed by your Lordship to transmit to us the accompanying despatches from Her Majesty's Minister at Washington respecting the arrest and imprisonment of two British subjects named Mc Quillan and Fitzpatrick, and requesting that

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[*] Page 126. † Page 142. ‡ Page 169.

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we would take the statements contained in those despatches into our consideration, and report to your Lordship our opinion as to the instructions which should be sent to Lord Lyons on the subject.

We were also favoured with a further letter from Mr. Hammond of the 19th of August last, transmitting to us three further despatches from Lord Lyons, and stating that from the last of these we should learn that orders had been issued for the release of the two British subjects Mc Quillan and Fitzpatrick. And,

We were further favoured with another letter from Mr. Hammond of the 27th August ultimo, stating that, with reference to his letter of the 19th August, he was directed by your Lordship to transmit to us a despatch from Lord Lyons, inclosing copy of despatch from Mr. Consul Bunch refuting the charges brought against him in regard to Mr. P. Mc Quillan, and, as those papers formed part of the case, Mr. Hammond was pleased to request that we would take them into our consideration, together with those now before us.

In obedience to your Lordship's commands we have taken the several despatches and papers submitted to us into consideration, and have the honour to report—

That, in each of the two cases to which our attention is called, there appears to us to have been so much of illegality, coupled with so much harsh treatment, as fairly to entitle Her Majesty's Government, should it be deemed expedient, to call on the United States' Government for a full explanation, at the outset; and we are unable at present to offer any further suggestion than that such explanation should be required.

In Mc Quillan's case the facts appears to be, in substance, as follows:—In June last Mc Quillan was arrested at Washington on the charge (though whether Mr. Secretary Seward issued, or caused to be issued, any warrant for his apprehension does not appear) of endeavouring to procure military equipments for use by the Southern Confederate forces. From the despatch of Mr. Seward to Lord Lyons of the 1st July, 1861, it is to be inferred that, soon after the arrest, a "preliminary examination" of some kind took place; though what, if any, evidence was adduced on such examination, or before whom, or in what manner it was conducted, does not appear. This should be ascertained. In a few days time he was removed, in custody, from Washington to New York for further examination in the presence of witnesses who were "in or about the city of New York," the criminal act having been charged as committed in that city. He was conveyed to New York by one T. L. Forrest, an officer, who, availing himself of the opportunities of conversation afforded by the journey, would seem to have obtained certain admissions from his prisoner of actual participation in hostilities waged by the Confederates against the forces of the United States. At New York the original charge of procuring military equipments appears to have been dropped, and an entirely fresh charge—that of high treason—substituted; such latter charge resting on a deposition of the officer Forrest, setting forth the admissions above referred to, and upon that evidence alone. We find Mc Quillan "turned over" from civil custody at the Tombs to military charge at Forts Columbus and Lafayette successively, and on orders to that effect from the General-in-chief. Through the zealous and able exertions of Mr. Edwardes, Counsel to the Consulate at New York, writs of *habeas corpus* were obtained for the bringing up of Mc Quillan before the regular tribunals, together with a statement of the charge, or charges, on which he was detained. These writs were disobeyed, avowedly on the mere order of General Scott, Commanding in-chief, and such disobedience was sanctioned and upheld by the decision of Mr. Justice Betts.

Upon these facts, it appears to us that Mc Quillan being, as we assume he is, a British subject, and never having taken the United States' Oath of Allegiance, was entitled to be dealt with, by the United States' authorities, according to the ordinary course of the law of the country, so far as it affects foreigners being for the time in the United States. Such treatment (in the absence of explanation) he does not appear to have met with. On the first charge, viz., that of procuring, or attempting to procure, equipments for the Confederate troops, he ought to have been promptly confronted with his accusers before some competent tribunal, and either discharged, held to bail, or committed for trial on the charge.

Then, with respect to the charge of high treason, it ought never to have been brought forward, McQuillan being a foreigner. It cannot be admitted, especially after the Southern Confederates have been acknowledged by Great Britain as belligerents, that a British subject serving in their armies, and afterwards happening to be within any of the non-seceding States, is liable to be there taken up and executed (for if the offence exist, the punishment may follow) for treason against the United States.

For the transfer of McQuillan from civil to military custody, we are at a loss to conjecture any ground of legality. In the State of New York the ordinary Courts of Justice were in full power and operation; there was no enemy in the field; and no justification, that we can discover, for the intervention of military authority, at all events in the particular case of McQuillan as it then stood.

These remarks apply with still greater force to the denial to McQuillan of his right, as a person residing for the time in the United States, to the benefit of *habeas corpus*. To Congress alone, we infer, belongs the power, by legislation, of suspending the "Habeas Corpus Act," which here, however, was, practically, suspended by an order of the Commander-in-chief (an order, be it observed, in the particular case), backed by the decision of a Judge. The consequences of such disregard of the laws of the country might, during the whole continuance of the war, be the imprisonment of British subjects for indefinite periods, and that on groundless charges, or without any charges at all. We do not say that reasons of State may not, having regard to the existence of civil war, be adduced to justify some, at least, of the acts complained of, but full explanation appears to be due.

In Fitzpatrick's case the facts are few and simple, and not such as it appears to us would justify a recapitulation. Our general remarks, however, as to the right of foreigners apply also in this case; and here, as in McQuillan's case, we observe the absence of a prompt or, apparently, any formal charge, and confronting of witnesses, as to the grounds of original arrest. In this case also a civil jail at Baltimore was exchanged for a military prison at New York, and equally, as appears to us, without shadow of justification.

In favour of Fitzpatrick, moreover, it is to be observed that, so far as is known, he is quite innocent of the charge of piracy that was brought against him. His innocence is, at all events, so probable that, in the absence of any formal accusation before a competent Tribunal, and after his treatment as a military prisoner, the fullest explanation seems to us to be fairly demandable. His treatment in the prison at Baltimore seems also to have been particularly harsh.

We are unable to collect the circumstances of the actual seizure of the steamer "St. Nicholas," in which it was alleged that Fitzpatrick participated; as, for instance, whether it took place within the limits of a non-seceding State, or on the high seas, or was made by officers and crew bearing commission as ship of war, or privateer, of the Southern Confederation, and the like.

The knowledge of these facts is, at the same time, important; because it might be that, even if Fitzpatrick had been the companion of Colonel Thomas and his followers, the crime of "piracy" would not have been thereby committed by him as a foreigner; for reasons similar to those we have assigned as to McQuillan, a foreigner, having borne arms in the South, and in the Southern armies, against the forces of the North. No application for a *habeas corpus* appears to have been made in the case of Fitzpatrick; nor was there any ground for supposing that such an application, in the result, would have been more successful than a like application was in McQuillan's case.

We have, &c.

(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

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No. 216.

The Queen's Advocate to Earl Russell.—*(Received September 7.)*

My Lord, *Doctors' Commons, September* 6, 1861.

UNITED STATES.

Purchase of enemies' ships by neutrals during war.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 22nd August ultimo, stating that with reference to my Report of the 4th June last, he was directed to transmit to me a despatch from Her Majesty's Minister at Washington (No. 375), referring to Sir John Crampton's despatch to the Earl of Clarendon, No 233 of the 25th September, 1854, and to his own despatches to Lord Malmesbury Nos. 67 and 73 of the 6th and 13th of June, 1859, as containing the fullest and most authoritative information he has it at present in his power to send, with regard to the legal effect and operation in the United States of the purchase of enemies' ships by neutrals during war.

Mr. Hammond was also pleased to inclose those despatches (Nos. 67 and 73), as well as the draft of an instruction which was addressed to Lord Lyons on the 9th August ultimo (No. 273), founded upon the observations contained in my letter of the 26th July last, and to request that I would take these papers into consideration, and report to your Lordship whether I am of opinion that any further and more precise instructions to send home information on this subject need, for the present, be sent to Her Majesty's Minister at Washington.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That no further instructions to send home information appear at present to be requisite. The purchase of enemies' ships by neutrals must be considered as legal in the United States. Should any further light be thrown on the general question (as by judgment of a Court in any particular case, official instructions by the United States' Government to its officers, or otherwise), Lord Lyons will, of course, keep your Lordship correctly informed from time to time; large British interests being obviously involved.

I have, &c.
(Signed) J. D. HARDING.

No. 217.

The Queen's Advocate to Earl Russell.—*(Received September 7.)*

My Lord, *Doctors' Commons, September* 6, 1861.

UNITED STATES.

Mr. T. McDonald's proposed speculation in cotton.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 27th of August ultimo, stating that he was directed to transmit to me a letter from Mr. Thomas McDonald dated the 19th ultimo, asking certain questions with reference to a proposed speculation in cotton; and to request that I would take Mr. McDonald's letter into consideration, and furnish your Lordship with my opinion as to whether his question should be answered, and if so, in what terms?

I am also honoured with Mr. Hammond's letter of the 30th of August ultimo, stating that with reference to his letter of the 27th of August ultimo, he was directed to transmit to me a letter from Mr. McDonald, stating further particulars respecting his proposed speculation in cotton; also a letter from Mr. Delafield, asking questions similar to those put by Mr. McDonald.

In obedience to your Lordship's commands I have taken these letters into consideration, and have the honour to report—

That I am of opinion that it will not be expedient for your Lordship to answer either Mr. McDonald's or Mr. Delafield's questions. I may add (confidentially) for your Lordship's guidance the following remarks:—

1. It is obviously impossible for Her Majesty's Government to guarantee beforehand protection to cotton purchased by British subjects in the Confederate States against (say) destruction, as by bombardment or otherwise, in the course of military or naval conflict, with the forces of the United States, or to pledge itself to demand, and to obtain, full compensation in the event of its destruction.

2. It is obviously unadvisable for your Lordship to discuss with the present applicants or to attempt to inform them beforehand of the various circumstances and contingencies in which Her Majesty's Government might or might not think fit to extend protection to, or withhold it from, cotton or other merchandize purchased by British subjects in the United States, and exposed to risk during the existing contest, or to press, or to abstain from pressing, on the Government of the United States, demands for compensation in respect of such property in the event of its hostile capture, damage, or destruction.

3. Mr. McDonald's scheme as explained by him in his letter of the 28th of August, however advantageous it might possibly prove to British interests, appears obviously calculated in its practical result to furnish the (Southern) Confederate Government with the command of large pecuniary resources or credit; and this by means of the intervention of Her Majesty's Government. I need not enlarge upon the serious aspect of this objection in an international point of view; I will merely repeat that in my opinion, even on this ground alone, it will be most inexpedient for your Lordship to continue this correspondence.

4. It is not desirable, with regard to British commercial interests, to make public beforehand the various objections or difficulties which will too probably prevent Her Majesty's Government from interposing any effectual protection in favour of American produce purchased and held in America, on British account, from the various casualties to which it may be exposed in the present course of hostilities; this would operate to discourage such purchases, and would be equivalent to saying to British purchasers, "You must purchase at your own risk; we can promise you no effectual protection for property so held." Any such intimation might increase commercial risk and alarm, and might call forth injurious reflections on Her Majesty's Government; but if this correspondence be continued it will be almost impossible to avoid giving this impression.

I am therefore of opinion that it will, upon the whole, be proper for your Lordship to decline (in effect) giving any answer whatever to these applications, and to discontinue this correspondence.

I have, &c.
(Signed) J. D. HARDING.

No. 218.

The Queen's Advocate to Earl Russell.—*(Received September 7.)*

My Lord, *Doctors' Commons, September* 7, 1861.

UNITED STATES.

Vessels belonging to Messrs. Fernie Brothers chartered in Brazil to take cargo to New Orleans. Inquiry respecting modification of blockade.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 30th August ultimo, stating that he was directed to transmit to me a letter from Messrs. Fernie Brothers, dated the 29th ultimo, stating that one of their vessels has been chartered in Brazil to take cargo to New Orleans, and if prevented approaching that port, then to proceed to New York, and that Messrs. Fernie apprehend that under those circumstances their vessel will not incur the risk of capture, but they deem it advisable to inquire whether the declaration as to boarding and warning off all ships as they appeared off the blockaded ports had been in any way modified.

Mr. Hammond was also pleased to request that I would take Messrs. Fernie's letter into consideration, and furnish your Lordship with my opinion as to the answer which should be returned to it.

Mr. Hammond also stated that your Lordship is not aware that the Declaration of the United States' Government, as quoted in my Report of the 16th May, has been modified.

I am also honoured with Mr. Hammond's letter of the 2nd September instant, transmitting a further letter from Messrs. Fernie and Co., relative to the question of the blockade of the Southern ports of the United States.

In obedience to your Lordship's commands I have taken this subject into consideration, and have the honour to report—

That Messrs. Fernie Brothers, who (I presume) are British subjects, and whose ship is (I presume) a British ship, may be informed that Her Majesty's Government has not received information of any modification having been made on the part of the United States' Government of the announcement contained in

President Lincoln's first Proclamation (of April 19th) on the subject of the blockade of the Southern ports, as to the special notification of such blockade therein referred to.

That your Lordship cannot of course undertake to say how far the Government of the United States will consider itself bound by the terms of this Proclamation, when the fact of a particular blockade may have become notorious; or whether the announcement as to "warning" and endorsing ships' papers would be construed to extend to cases of vessels sailing for a port which their owners or agents knew at the date of sailing to be blockaded; but that, subject to this observation, and without giving any sort of guarantee, your Lordship does not see that this ship, assuming her cargo to be entirely neutral property, and her papers to be completely regular, will, by acting as suggested, incur any serious risk of capture.

I have, &c.
(Signed) J. D. HARDING.

No. 219.

The Queen's Advocate to Earl Russell.—(Received September 7.)

Doctors' Commons, September 7, 1861.

UNITED STATES.

Claim of Mr. W. Grey for seizure of his vessel the "Perthshire" by blockading squadron.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 30th August ultimo, stating that he was directed to transmit to me a letter from Mr. W. S. Lindsay, M.P., dated the 29th ultimo, covering a letter from Mr. William Gray, the owner of the British vessel "Perthshire," claiming compensation on account of the seizure and detention of that vessel by a steamer belonging to the United States' blockading squadron, and to request that I would take this case into consideration, and furnish your Lordship with my opinion thereupon.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That assuming the entire correctness of Mr. Gray's statement of the 28th August, the case appears to me to be one deserving a request, on the part of Her Majesty's Government, for a full explanation from that of the United States. I must observe, however, that there are some points upon which, before addressing any official communication to the United States' Government it will be desirable to have full information; such as, 1st, was any, and what, portion of the cargo laden (*a*) after the commencement of the blockade, or (*b*) after knowledge on the part of the master that it had commenced? 2nd. What was the precise form and effect of a declaration made by the United States' Government (and at what date made) amounting (in substance) to a general concession that neutral vessels, lying in ports which might be blockaded by its naval force, should be allowed a period of fourteen days for egress with cargo, and without molestation? The relevancy of these questions, especially of the latter, with reference to the dates given in Mr. Gray's statement will be apparent.

I have, &c.
(Signed) J. D. HARDING.

No. 220.

The Law Officers of the Crown to Earl Russell.—(Received September 10.)

Doctors' Commons, September 9, 1861.

UNITED STATES.

Act of Congress for seizure on high seas, or in any port of United States, of any vessel or boat built or purchased for piratical purposes.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 28th August ultimo, stating that he was directed to transmit to us a despatch from Lord Lyons (No. 417), inclosing copies of an Act of Congress, directing that any vessel or boat built or purchased for piratical purposes shall be seized on the high seas, or in any port of the United States, whether the same shall have actually sailed upon any piratical expedition or not, and to request that we would take this Act into consideration, and furnish your Lordship with any observations which we might have to offer thereupon.

In obedience to your Lordship's commands we have taken this Act into consideration, and have the honour to report—

That without some intimation of the probable practical working and effect of the Act in question, more especially as regards British interests (which are not necessarily involved therein), we do not feel ourselves to be in a position to offer any very material observations thereon.

We do not see any necessity for the intervention of Her Majesty's Government in relation thereto. We observe that the Act speaks of "piracy as defined by the law of nations;" and we see nothing seriously objectionable in the Act, provided that it is construed and applied with this limitation.

The Queen's Advocate has already pointed out in the matter of the instructions issued by Admiral Milne (and the Attorney and Solicitor-General have expressed their concurrence therewith), that Confederate or Southern privateers capturing *only* the vessels of the (Northern) United States, and taking them into port for adjudication, cannot rightfully be considered or treated as pirates by the law of nations. They are not "common robbers upon the seas," or *hostes omnium*, and have no general or indiscriminate *animus depredandi*.

Apart from the technical definition of "piracy," we may observe that the Government of the United States will, in our opinion, be justified in seizing vessels "built, purchased, fitted out, or held for the purpose of *capturing or committing hostilities against its ships or citizens*, or for the service of its enemies;" this right is fully competent to any belligerent Government.

We observe, moreover, that vessels seized under this Act are "to be proceeded against, captured, and condemned," we assume by a Court of Admiralty jurisdiction.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 221.

The Queen's Proctor to Mr. Hammond.—(Received September 10.)

Doctors' Commons, September 9, 1861.

TURKEY (MOLDAVIA).

Claims of Ionians against the Moldavian Government. Imprisonment of Messrs. Barbieri, Macri, &c.

Sir,

I HAVE the honour to acknowledge the receipt of your letter of the 25th May last, stating that you were directed to transmit to me the correspondence which had passed between the Foreign Office, Her Majesty's Agent and Consul-General at Jassy, the Queen's Advocate, and various private individuals, in regard to the complaints of certain Ionian subjects against the Moldavian authorities, and that you were to request I would prepare a case for submission to the Law Officers of the Crown for their opinion as to the merits of the claims, and as to the course which should be pursued by Her Majesty's Government in the matter.

In obedience to Lord John Russell's directions I submitted a case for the opinion of the Law Officers of the Crown accordingly, and have now the honour to transmit a copy of the same, with their opinion thereon.

I have, &c.
(Signed) F. H. DYKE.

Inclosure in No. 221.

Case for the Opinion of the Law Officers of the Crown, on the Claims of Ionian Subjects against the Moldavian Government.

THE Queen's Proctor received the following letter from the Foreign Office:—

"Sir, "*Foreign Office, May* 25, 1861.

"I am directed by Lord John Russell to transmit to you a correspondence which has passed between this Office, Her Majesty's Agent and Consul-General at Jassy, the Queen's Advocate, and various private individuals, in regard to the complaints of certain Ionian subjects against the Moldavian authorities; and I am to request that you will prepare a case for submission to the Law Officers of the Crown for their opinion as to the merits of the claims, and as to the course which should be pursued by Her Majesty's Government in the matter.

"I am, &c.
(Sigded) "E. HAMMOND."

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In pursuance of the directions contained in the above letter, the Queen's Proctor has prepared the following case for the opinion of the Law Officers :—

The subject submitted for consideration relates to the arrest, imprisonment, and ill-treatment, by torture and otherwise, of a number of Ionian subjects by the Moldavian authorities at Ismail, upon a variety of charges, the particulars of which, together with the several amounts of compensation claimed, except Barbieri's, will be found at pages 5, 6, and 8 of this case [*infra*, pp. 206 and 207].

The plaintiffs claim the protection of Great Britain on the ground of their being Ionians, and request that compensation may be demanded for them from the Turkish Government.

By a Treaty of Peace concluded at the Dardanelles in 1809, certain Capitulations and Articles of Peace between Great Britain and the Ottoman Empire, as agreed upon, augmented, and altered at different periods, were finally confirmed, the 42nd Article of which is as follows, viz. :—

"That in case any Englishman, or other person navigating under their flag, should happen to commit manslaughter or any other crime, or be thereby involved in a lawsuit, the Governors in our sacred dominions shall not proceed to the cause until the Ambassador or Consul shall be present, but they shall hear and decide it together, without their presuming to give them any the least molestation by hearing it alone, contrary to the holy law and these Capitulations."

In the latter end of 1859, two Ionian subjects, Dr. Barbieri and Themistocles Macri, were arrested, tried, and sentenced by the Moldavian authorities without the presence of the British Ambassador or Consul,* and it is submitted that the proceedings of the Moldavian Government were at variance with the said Capitulations.

The following is an extract from the Firman of the Sultan dated Constantinople, the 24th April, 1819, recognizing the Protectorate of Great Britain over the Ionian Islands and Ionian subjects (*vide* Hertslet's Treaties, vol. ix, page 546) :—

"En conséquence la dite Cour d'Angleterre a amicalement requis que dorénavant Sa Majesté Britannique soit regardé comme Souverain Protecteur de ces Iles, et que leurs habitants soient considérés comme sujets protégés ; que le même traitement leur soit fait comme aux sujets Britanniques, et que lorsque les dits habitants voudraient fréquenter les pays de l'Empire Turc, et y faire le commerce, ils soient libre de tout empêchement et molestation ; que leurs affaires soient traitées d'après les mêmes Capitulations et stipulations qui sont observées en faveur des autres sujets de Sa dite Majesté et qu'eux-mêmes soient accueillis avec douceur et bonté."

The correspondence connected with the two cases was laid before the Law Officers, who reported as follows :—

"My Lord, "*Doctors' Commons, February* 18, 1860.

"We are honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 23rd January ultimo, stating that he was directed to transmit to us a despatch, and its inclosures, from Her Majesty's Agent and Consul-General at Jassy, relative to a sentence passed by the Moldavian Government on two Ionian subjects, and to the request made by that Government to Her Majesty's Consular Agents to carry the sentence into effect, together with a letter from Mr. Hornby, to whom this matter has been referred.

"Lord Wodehouse was also pleased to state that, in regard to the question of the right of the Moldavian authorities to proceed to the trial of any British or Ionian subject without the presence or assistance of a British Consul, he was directed to state to us that your Lordship proposes to instruct Mr. Churchill to maintain in the Principalities the rights conceded to Great Britain by Turkey under the 42nd Article of the Capitulations, and to insist upon the trial of any British or Ionian subject being conducted in accordance therewith ; and that your Lordship assumes that we shall concur in this course.

"Lord Wodehouse was further pleased to state, that with respect to the sentence, that the convicted Ionians should be imprisoned in the Ionian Islands,

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* *Vide* Law Officers' Report of February 18, 1860, *infra*.

which was passed by the Moldavian Court, in which no British authority was represented, and the consequent proposal on the part of the Moldavian authorities to make over the convicts to the British Consular authorities at Galätz with a view to the execution of the sentence ; and with respect, further, to the impression which Mr. Hornby seems to entertain, that if a trial had been concluded in conformity with the 42nd Article of the Capitulations, the sentence of the Court might not improperly be carried out in Her Majesty's dominions ; Lord Wodehouse requested that we would state to your Lordship our opinion on the point thus raised by Mr. Hornby.

"Lord Wodehouse was also pleased to state, that in the case out of which the present reference has originated, your Lordship apprehends that the Consul at Galatz should be instructed to decline to take charge of the prisoners ; but that your Lordship would be glad to be made acquainted with our opinion on the more general question, namely, whether, under the terms of the 42nd Article of the Capitulations, by which a joint jurisdiction is conceded to Her Majesty's Officers in criminal cases, the effect of that concession goes beyond an admission that the British Officer shall be consenting to the conviction of the criminal ; whether, in short, the British Officer is empowered to take part in determining in what way or degree the law of Turkey applies to the charge, or in pronouncing sentence according to that law ; and whether the sentence which may be pronounced, either by the Turkish Judge alone or by the Turkish Judge and British Officer concurrently, would in either case be executable in Her Majesty's dominions.

"In obedience to your Lordship's commands we have taken the subject into consideration, and have the honour to report—

"That we collect from Mr. Churchill's despatch to Mr. Hornby of the 20th December, 1859, that the trial and condemnation of the two prisoners in question, proceeded without any communication to him from the Moldavian authorities, until the fact of their condemnation was announced to him ; should this be the case, he should insist upon their unconditional release, as having been tried by an incompetent tribunal.

"We are of opinion that the criminal trial in Moldavia of British subjects, Ionians, and all others under British protection, ought to be conducted in the manner pointed out by the 42nd Article of the Capitulations ; and that no such person can be legally condemned, unless he is tried by the British Ambassador or Consul, in conjunction with the Turkish (or Moldavian) Judge.

"We think that the terms of the above Article do extend beyond an admission that the British Ambassador or Consul shall be consenting to the conviction of the criminal ; and we are of opinion that the British Ambassador or Consul is empowered to take part in determining, (1st.) The sufficiency of the evidence, not by the law of Turkey, but by the ordinary principles of justice ; (2ndly.) Whether the alleged offence comes within the true intent and meaning of the Law of Turkey ; and, (3rdly.) What ought to be the punishment pronounced on the offence ? which must be measured, not by the Turkish rule or standard, but according to reason and equity, as understood by the most civilized nations.

"Having regard to the present state of the Orders in Council, we are of opinion that the sentences passed by the Mixed Tribunal cannot be carried into effect in Her Majesty's dominions.

"We understand from Mr. Hornby that other European nations claim the delivery of their subjects when condemned as criminals by Turkish authority, and commit them to places of custody in their own dominions ; and we would suggest the expediency of considering whether, in the Draft Order in Council now preparing by Mr. Thring, a clause may not be inserted providing that British subjects or Ionians when convicted by Mixed Tribunals shall be sent to Malta or Ionia respectively.

"We concur with your Lordship's proposed instruction to Mr. Churchill to maintain in the Principalities the rights secured to Her Majesty's subjects in Turkey by the Capitulations.

"We have, &c.
(Signed) "J. D. HARDING.
"RICHARD BETHELL.
"WM. ATHERTON."

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The following appear to be the facts relating to these two cases:—

On the 3rd of October, 1859, Barbieri (a British subject) was travelling in his carriage from Bolgrad to Ismail, accompanied by Captain Alexandre Dané, who describes himself as a French-protected subject, but travels with a Turkish "teskereh," when they were met by a peasant's waggon, coming at full gallop, with four men and a woman in it; that the waggon struck their carriage in passing (but which the peasants deny), and that an altercation and high words then ensued, when the peasants got down and approached them, whereupon Dané also got down with a gun in his hand, and retreated before the peasants, presenting his gun at them and calling to them not to approach him; that the four men seized him, and tried to wrest his gun from him, which was broken in the scuffle and went off, killing one of the peasants (a Moldavian) on the spot.

The peasants, however, state that Barbieri struck them with his whip in passing, and that when one of them got down from their waggon to inquire why he had struck them, Dané shot him. As soon as this had taken place, Barbieri and Dané drove into Ismail to the British Consulate.

It seems, however, that in whichever way the unfortunate affair arose, Barbieri was not the party who shot the Moldavian peasant.

It further appears, that they were, on the next day, examined in the Prefecture, and committed to the Moldavian prison in Ismail, but the British Consular Agent was not present.

That Barbieri was afterwards declared innocent of murder by the Court (Prince's Bench) and set free, but seems to have been again arrested, in connection with Derventis' case, and charges of assassination and forgery brought against him by a Russian, in consequence of which he was kept in prison, on and off, for upwards of three months, and ill treated, beaten by soldiers, and put in chains.

Themistocles Macri, commission agent and merchant.—Plaintiff returning to town one day from the country, was arrested, imprisoned, and tortured, without trial or sentence. Authorities afterwards pretended that he, too, had assisted Crassa in reaching his place of refuge, although plaintiff was not in Ismail when that circumstance happened.

Claims 3,000*l.* indemnity. Supported by nine depositions on oath.

Mr. Consul-General Churchill, in pursuance of directions received from Lord John Russell, lost no opportunity of impressing on the Moldavian Government the importance attached to the two cases (Barbieri and Macri); whereupon it was agreed that a Commission of Inquiry should be appointed, in which Her Majesty's Government should be represented by Mr. Vice-Consul Barker. On that understanding, a programme of the points to be investigated was drawn up by Her Majesty's Consul-General, containing the allegations and assertions of the said parties.

Upon this, an objection was taken to one paragraph of the programme, relating to the presence of Mr. Barker as a component part of the Commission, and it was ultimately agreed that that paragraph should be struck out, which was accordingly done.

On the following day, a Report was brought by Mr. Consul-General Churchill, drawn up by the first Commission, which declared the conduct of the authorities irreproachable; and it was further stated that Barbieri did not appear at the Commission, but had been represented by a delegate from the British Consular Agency, whose signature and seal of office were in the "dossier."

It was further stated, that the Commission had not proved anything against the authorities whom Barbieri had accused of ill-treating him; and, moreover, that he had been warned not to appear at Ismail, because the authorities were leagued against him, and would inevitably arrest him if he did.

That, under these circumstances, he did not appear, and in consequence of the Moldavian Government having entered into direct communication with him, Her Majesty's Consul-General was precluded from the possibility of giving instructions to Mr. Vice-Consul Barker to be present at the Commission; and, moreover, the authorities accused had not been suspended during the time the Commission was sitting, a measure absolutely necessary for the free deposition of the testimony of persons who might otherwise be deterred from coming forward to give evidence.

For the aforesaid reasons, Her Majesty's Consul-General was under the necessity of demanding a fresh Commission.

In the latter end of 1860 and beginning of 1861, other Ionian subjects, under British protection, were arrested by the Moldavian authorities at Ismail, and were likewise thrown into prison without trial or sentence of any kind, and without the concurrence of the British Consular officers. They were detained in prison, some for two and others for three and four months, and were subjected to much ill-treatment, being tortured by an instrument called the "tumbrick," beaten on their naked flesh in the public streets, and violently assaulted with the butt-ends of muskets by the Moldavian authorities.

In January 1861 a second Commission was opened, at which Mr. Barker attended, and irrespective of Barbieri's case the attention of the Commission was called to the accusation of thirteen Ionians, which were equally serious with his, and most important. A detailed account of the first sitting of the Commission is given in Mr. Barker's despatch of the 17th January to Mr. Churchill,* and it appears that he was compelled to refuse attending the further sittings of the Commission in consequence of the interested and undue influence that the functionaries who had not been suspended were exercising over the Commission, with the members of which they were upon terms of the greatest intimacy.

The following are the particulars and claims of the other Ionians on the Moldavian Government, and which were likewise brought to the notice of the Commission.

Costantino Garbi, a grocer.—Had lent a public schoolmaster called Derventis (thirteen months previously) $2\frac{1}{2}$ roubles, and on his demanding payment of the same, Derventis, with assistance of others, beat plaintiff in a manner that it confined him to his bed, from where he was taken two days afterwards by the police and imprisoned. On the night of the same day Derventis beat plaintiff. Derventis was himself assaulted in the street by some person unknown. Authorities paid no attention to plaintiff's grievances against Derventis, and retained him in criminal imprisonment for about four months.

Claims 500*l.* indemnity. Supported by eleven depositions on oath.

Caralambo Garbi, tradesman.—Early one morning was taken from his lodging and imprisoned without trial or sentence; subsequently accused by authorities of having been to Derventis' house with sinister intentions. Retained in criminal prison for four months.

Claims 300*l.* indemnity. Supported by six depositions on oath.

Giovanni Cardianos (*Crassa*), commission agent in grain purchases.—Plaintiff refusing to pay a sum of money claimed under illegal pretences by Acting Policemaster Popoiret, as due to him personally, the latter placed ten gendarmes in his house to live at plaintiff's expense, and enforced payment. Subsequently plaintiff refusing to attend a summons, rejecting a second arrest, and taking refuge in the American Consular Agencies, where he was an admitted protected, was apprehended and kept in prison sixty-six days.

Claims 1,500*l.* Supported by five depositions on oath.

Gerassimo Raftopolo, a servant.—Plaintiff one night when sleeping in the same room with G. Avierino and his sailors, was pulled out of bed with the others, imprisoned and tortured without trial or sentence, and retained in prison more than three months.

Claims 50*l.* indemnity. Supported by two depositions on oath.

Gerassimo Danate, baker and vendor of bread.—Was, with his assistant Spiro Raftopolo, publicly beaten on the naked flesh twice on the same day, about fifty blows each time, and imprisoned until he paid 30 ducats to be let free; authorities pretending that plaintiff had neglected to remove from before his oven some reeds laying there, used for fuel, for which they beat him.

Claims 50*l.* indemnity (for losses only). Supported by four depositions on oath.

Dionisio Stefanizi, grocer.—Plaintiff having telegraphed to Mr. Consul Cunningham of the imprisonment of the Ionians, was apprehended, imprisoned, and tortured without trial or sentence, and retained for sixty-seven days. Afterwards authorities pretended that plaintiff assisted Crassa to reach his place of refuge; but which was proved untrue.

Claims 700*l.* indemnity. Supported by three depositions on oath.

Gerassimo Avierino, proprietor of a store and of a boat, being the chief mariner of the lighters at Sulina.—Was, with his sailors, and with G. Raftopolo,

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* It is thought unnecessary to copy this despatch into the case, but it can be produced to the Law Officers, if required.

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a servant at Ismail, who had conducted them from their open boat to a cottage for a night's shelter from the cold in the month of January, pulled out of bed, imprisoned, and tortured without trial or sentence, and retained in criminal imprisonment for about three months to say "who had been Derventes" [*sic*]. Plaintiff having arrived in his boat, with his sailors, from Sulina about twenty-four hours before he was apprehended; his boat returned to him damaged and stripped.

Claims 800*l*. indemnity. Supported by four depositions on oath.

Demetrio Spathi, mariner and speculator in petty commodities.—Shared the same fate as the above last two plaintiffs, being one of Avierino's sailors who were with him in his boat.

Claims 550*l*. indemnity. Supported by two depositions on oath.

Spiridion N. Caravias, merchant in a small way.—Was apprehended in the street, and criminally imprisoned and tortured without trial or sentence on the day he had prepared to leave Ismail for Berlad to join his brother, then British Consular Agent there. Had on his person the usual precaution adopted by travellers in this country, a pair of pocket-pistols, which were taken from him at the police station after his arrest. Authorities apprehended him because he was the Honorary Secretary of the American Agent Demetrio Macri, and in the sequel pretended that he took part in assisting Crassa to reach his place of refuge. Carrying the pistols on his person was also advanced as a proof of his culpability.

Claims 371*l*. 5*s*. indemnity. Supported by three depositions on oath.

A third Commission was appointed to meet at Jassy on the 18th of March, 1861, before which, however, the Ionians declined to present themselves, and a notice put up by Mr. Barker ordering all British subjects having complaints to bring forward against the chief functionaries of Ismail to be at Ismail on the 18th of March, was pulled down by the police by direction of Prefect Colonel Mauriki.

Mr. Vice-Consul Barker attended the first sitting of this Commission; but in consequence of the non-arrival of the President, the non-suspension of the accused functionaries, and the plaintiffs not appearing, he declined further attending the sittings of the Commission.

The following are further Reports of Her Majesty's Advocate-General on the cases of Dr. Barbieri and Macri:—

"*Doctors' Commons, October* 6, 1860.

"My Lord,

"I am honoured with your Lordship's commands signified in Mr. Hammond's letter of the 28th September ultimo, stating that he was directed to transmit to me a letter from Mr. Themistocles Macri, an Ionian, complaining that he was arrested and ill-treated by the local authorities at Ismail without any just cause, and requesting that compensation may be claimed for him from the Moldavian Government in this matter.

"Mr. Hammond was also pleased to inclose the accompanying despatches from Her Majesty's Agent and Consul-General at Jassy, and from Her Majesty's Consul at Galatz, relative to this case, and to request that I would take the inclosed papers into consideration, and to report to your Lordship my opinion as to the instructions which should be sent to Mr. Churchill with regard to Mr. Macri.

"In obedience to the directions of your Lordship I have taken these papers into consideration, and have the honour to report—

"That the instructions which I would venture to suggest as proper to be sent to Mr. Churchill with regard to Mr. Macri are, to dismiss altogether from his mind the vague and acrimonious complaints of the latter against himself, to disregard altogether the case of 'Macri *v*. Churchill,' and to report fully and distinctly upon the case of 'Macri *v*. the Moldavian Government,' more especially upon the very positive and distinct averments of Mr. Macri at pages 1, 2, and 3 of the translated copy of his letter to your Lordship of the $\frac{14}{26}$th July, 1861, to the effect more particularly—

"1st. That he was arrested and kept for fifty-six days in a 'horrible criminal prison' without ever being distinctly informed upon what charge or for what reason he was arrested.

"2. That he was tortured by the 'tumbrick,' which should be explained.

"3. That he had been long absent from Ismail, and only arrived there from Reni on the day of his arrest. The relevance of this averment is not quite clear; but I understand it to suggest an *alibi*, or that he could not when arrested have been guilty of any *recent* offence at Ismail; and that the authorities by ordinary exertion might have satisfied themselves of this.

"I infer (although this is not distinctly stated) that Mr. Macri was not formally charged with, or, at all events, brought to trial for, any definite legal offence; and that he contends that he was wrongfully and illegally treated throughout, either by error or by malice.

"Mr. Macri may also (subject to your Lordship's discretion) be applied to for further and fuller particulars of the charge (or supposed charge) made or suggested against him, which appears to have been (in effect) an assault on the police; the circumstance of the torture of the 'tumbrick;' as to the bearing of his absence from Ismail on the charge made or suggested against him; what evidence was adduced against him, and by him; and whether he was prosecuted, heard, acquitted, found guilty, and pardoned, or discharged by any, and what, judicial officer or tribunal. Mr. Churchill's attention should be directed to these points, and to the case generally, with a view to enabling Her Majesty's Government to consider the propriety of addressing, and what representation to the Moldavian Government upon Mr. Macri's case.

"The circumstances of Mr. Macri being a partizan of Consul Cunningham and an assailant of Mr. Churchill's conduct can have no bearing on the case; the principal questions upon which your Lordship requires full and precise information are:—

"1. Have Mr. Macri's complaints of the treatment he has received any substantial foundation?

"2. What are the real facts?

"3. Was he tortured?

"4. Was he imprisoned for fifty-six days, legally or illegally, and upon what charge and evidence, and with what result?

"5. And what is, or will be, the answer or defence of the Moldavian authorities to any complaint by that of Her Majesty? Whether Mr. Cunningham rather than Mr. Churchill should be applied to, is a question for your Lordship's consideration. Mr. Cunningham (who went to Ismail) must be the best informed upon this case.

"I do not understand whether Ionians in the Principalities are subject to the ordinary Tribunals in criminal matters, or whether they are responsible only to the jurisdiction of Her Majesty's Consuls, as in the Turkish dominions (proper).

"I must venture to remark that it is very unfortunate that Mr. Churchill, in his letter of the 12th of September, should not have directed his attention to the very specific complaints of Mr. Macri against the authorities of Ismail, nor have apparently considered them as of any importance as compared with the complaints against himself; and I must add that there appears in the papers good reason to suppose that Ionians are not fairly treated by the authorities of Ismail: the case of the two bakers who were arbitrarily flogged for a very trifling offence has a very serious aspect.

"The authorities of Ismail seem to be aware of the unfortunate differences between Messrs. Churchill and Cunningham, and to consider themselves at liberty to treat the Ionians at their own discretion in the absence of any efficient British protection.

"I have, &c.
(Signed) "J. D. HARDING.

"To the Right Hon. Lord J. Russell,
&c. &c. &c."

"*Doctors' Commons, October* 16, 1860.

"My Lord,

"I am honoured with your Lordship's commands signified in Mr. Hammond's letter of the 28th of September ultimo, stating that he was directed to transmit to me a letter from Dr. Barbieri, who describes himself as being of Florentine descent, but born in Malta, and who complains of having been arrested and ill-treated by the local authorities at Ismail without any just cause.

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"Mr. Hammond was also pleased to inclose the accompanying despatches from Her Majesty's Agent and Consul-General at Jassy, relative to Dr. Barbieri's case, and to request that I would take the inclosed papers into consideration, and report to your Lordship my opinion as to whether any further instructions should be sent to Mr. Churchill with regard to Dr. Barbieri.

"In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

"That this case, which appears to me to be of serious importance, has (howsoever) assumed so confused and complicated a shape that I do not feel able to say with confidence whether any or what further instructions should be sent to Consul Churchill thereon; more especially inasmuch as I have failed to discover what Mr. Churchill has already been instructed to do. The Moldavian suggestion of requiring the complainant to pay or guarantee the costs of the inquiry was simply preposterous.

"In this officer's despatch of September 11, 1860, there occurs the following passage: 'The Prince's Prime Minister, to whom I have again spoken on the subject, has informed me that the Commission is already at Ismail, but that they will defer the examination until his own arrival at that town, when the whole affair will be examined by him.' If the result of this is, that the inquiry into the conduct of the authorities at Ismail towards Dr. Barbieri will be honestly, vigorously, and promptly proceeded with before the Prime Minister on the spot, then I do not see (as the case stands) what more can be done at present; but unless some British Consul, or very competent person, on behalf of Dr. Barbieri, is allowed to be present, and to take part in the inquiry before the Commission (for which I do not observe that any provision has been made), this proceeding will probably be useless.

"As between Her Majesty's Government and the Moldavian authorities, the case will apparently turn upon the correctness of the precise and relevant statements contained in Dr. Barbieri's letter of the 26th October, 1859, especially to the effect that he was liberated by the Chief of Police on the charge of manslaughter, and subsequently re-arrested, beaten, and put in irons upon a false charge (or charges) of assassination and forgery, said to have been committed at Galatz, which charge appears not to have been persisted in.

"The substantial truth of these statements appears to me to be the most material point for investigation, and this letter of Dr. Barbieri is not improper in its tone, and contained all that Mr. Churchill could have required (in the first instance) to enable him to take up the case. Dr. Barbieri's subsequent expressions were most indiscreet, but great allowance must be made for a person treated as he was by the authorities.

"Mr. Churchill should, in my opinion, either have at once taken up and conducted the case himself officially, and have informed Dr. Barbieri that he should do so, and should have declined to forward (either with or without omissions, the Doctor's own letters to the authorities, or he should, without officially interfering, have allowed the Doctor, after due warning, and at his own risk, to conduct the case entirely for himself. Neither course was adhered to consistently, and the result is naturally very unsatisfactory.

"With reference to the concluding passage of Mr. Churchill's despatch of September 11, I must observe, that neither the Doctor's exaggerated notions, nor his irritating language towards the authorities or towards Mr. Churchill, have any bearing on the only question in which Her Majesty's Government is concerned, namely, the distinct allegations of his arbitrary and oppressive ill usage by the authorities, of which Mr. Churchill does not seem to see very clearly the importance: he should not allow his attention to be diverted from the substantial merits of a case of this complexion by the indiscretion of the sufferer. The question of the Doctor's liberation on the charge of manslaughter, and subsequent re-arrest on a different charge, which he alleges to have been admitted by the President to Mr. Cunningham, appears to have been disregarded by Mr. Churchill, who dwells on the charge of manslaughter only.

"The whole case, of which Mr. Cunningham appears to have some knowledge, must be thoroughly investigated with a view of ascertaining whether Her Majesty's Government will be justified in demanding reparation, or otherwise interfering in any manner, and what will probably be the defence set up.

"The facts which require particular attention are the personal treatment of Dr. Barbieri, the precise charge upon which he was thus treated, the character

of the accuser, the nature of the evidence adduced against him, the defence or answer made by him, the legal forms observed, the alleged admission of the President, and so forth. If the ill treatment is proved, it seems difficult to see what will be the defence or answer of the Moldavian Government.

"If the local authorities and Courts in the Principalities are legally entitled to exercise criminal jurisdiction over persons under British protection without any qualification or exception, and in all respects as would be the case in any other foreign Christian country (as to which I would request full information), *then* their conduct in this instance towards an accused person of good character and education evidently requires explanation, and both this case and that of Macri (see Report of the 6th October) contains some very startling averments which should be thoroughly sifted. The 'independence of the Tribunals' (which is alluded to in the case) may easily be made an excuse and a cover for acts of gross oppression if the Tribunals authorize or permit beating and irons without trial, on a mere preliminary proceeding, and it cannot be tolerated that persons under British protection should be thus treated under any circumstances.

"I have, &c.
(Signed) "J. D. HARDING.

"The Right Hon. the Lord John Russell,
&c. &c. &c."

"My Lord, "*Doctors' Commons, December* 20, 1860.

"I am honoured with your Lordship's commands signified in Mr. Hammond's letter of the 13th December instant, stating that with reference to my letter of the 16th of October last he was directed to transmit to me a despatch, together with its inclosures, which have been received from Her Majesty's Agent and Consul-General at Jassy respecting the proceedings of the Moldavian authorities, and the course pursued by himself, in regard to Dr. Barbieri; and to request that I would take Mr. Churchill's despatch, together with the former papers relative to this matter, into consideration, and report to your Lordship my opinion as to the answer which should be returned to Mr. Churchill's communication.

"In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

"That inasmuch as Mr. Churchill's despatch No. 66 is chiefly directed to the vindication of his official conduct in the case of Dr. Barbieri, the answer to be returned to it is entirely for your Lordship's consideration.

"I cannot, however, avoid observing that whatever official regularity and diligence Mr. Churchill may have displayed in the conduct of this voluminous correspondence (his last letter in which is apparently dated the 27th June, 1860, No. 161; Inclosure 39 in No. 66) on Dr. Barbieri's case, the fact unfortunately remains that not only is Dr. Barbieri (who was arrested and ill-treated in September 1859) at this date without any redress or answer, or any immediate prospect of obtaining either, but that Her Majesty's Government is, from its very imperfect information as to the merits of his case, quite unable to deal with it, to give any proper instructions in it, to take any material step whatever in the matter, or even to answer the Doctor's application. Why all the correspondence between Mr. Churchill and the authorities produced nothing but a promise of inquiry, or why that correspondence has wholly ceased for the last six months, I cannot conjecture.

"The object which I presume Her Majesty's Government has in view in establishing and maintaining foreign Consalates is not merely the keeping up a correct and voluminous correspondence, or keeping the papers in each case in regular order, but either to secure the speedy redress on the spot of injuries inflicted on persons under British protection, or, at least, the prompt transmission of such a clear and accurate statement of the facts of each as may enable the Secretary of State for Foreign Affairs to answer the complainant in a reasonable manner, and to determine what course to take, and thereupon to issue the requisite instructions.

"No such object has been here attained; Dr. Barbieri has received no satisfaction, and Her Majesty's Government, up to this date, is no more in a position to deal with his case than it would have been a year ago. This, of course, may not be Mr. Churchill's fault, but it is a very unsatisfactory state of things, and

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the result of it is, that Dr. Barbieri's case still, practically, remains as it was at first, and has not advanced one step, notwithstanding the formalities and extent of the official papers connected therewith. I cannot recall to memory any case of this character and importance in which, after a lapse of fifteen months, nothing has been done. The inquiry before a Commission (or whatever it may be) was a course which, as far as I am aware, was entered upon without any instructions or consent thereto by Her Majesty's Government.

"Mr. Churchill, however, in the latter portion of this despatch, calls attention to a point which appears to me urgently to require the prompt attention of Her Majesty's Government. It seems that the Moldo-Wallachian authorities ignore the Turkish Capitulations, and the peculiar and exclusive Consular jurisdiction secured thereby to Her Majesty's subjects.

"Mr. Churchill appears to have felt his position to be so unpleasant as to have contemplated retiring; but he gives no account of how matters have, as he says, 'drifted into this condition,' or of the course taken by other European Powers interested in the question, especially Russia and Austria. This is obviously a question urgently requiring a distinct and prompt settlement, not only with a view to the case of Dr. Barbieri but to that of Themistocles Macri (reported on by me on the 6th October, 1860), and to other cases which must arise hereafter.

"It is absolutely necessary, in order to secure any protection at all for British subjects or Ionians in the Moldo-Wallachian Principalities, to know under what jurisdiction and what law, both civil and criminal, they are there placed; and upon this point I have the honour to request further instructions, whensoever this case or cases of this character are again referred to me.

"I have, &c.

(Signed) "J. D. HARDING.

"The Right Hon. the Lord John Russell,
&c. &c. &c."

The attention of the Law Officers is called to the following extract from the despatch of Her Majesty's Agent and Consul-General to Lord John Russell, by which it appears that the depositions of the plaintiffs, and evidence collected by Mr. Barker, are ignored by the Local Government, who have obtained a voluminous file of documents in defence of the accused parties:—

"*Jassy, May* 20, 1861.

"My despatch of the 1st May will have apprised your Lordship that all my efforts to bring the Commission to investigate the circumstances connected with the complaints in question had, to my great regret, been frustrated as much by the equivocal dealings of the Moldavian authorities as by the refusal of the accusers to come forward and substantiate their grievances; nor can I say that Mr. Barker has exhibited much inclination to see the complaints at all investigated by the Commission sent to Ismail for that express purpose.

"Dr. Barbieri from the very first refused to present himself before the Commission, on the plea that his life was in danger, and that the depositions he had so plentifully made in writing to his own Consular authorities were sufficient in themselves to justify the condemnation of the accused parties. The other complainants have likewise refused to present themselves before the Moldavian Commission, and their reasons for so doing appear to be less objectionable, as orders had been issued by the Central Government, which have now been countermanded, to send up to the capital for trial all those who had not cleared themselves of the accusation brought against them of assault on the police of the town in the 'Crassa' case, amongst whom were many of the complainants.

"The depositions of the plaintiffs, and the evidence collected by Mr. Barker, may be trustworthy enough, but they are ignored by the Local Government, inasmuch as they have not been drawn up before the Moldavian Commission; whilst Her Majesty's Government is unacquainted with the defence of the accused parties, forming a voluminous file of documents in the Moldavian tongue, which was never communicated to me by the Moldavian Government. The Moldavian Government has, it appears to me, a right to attach as much importance on their separate investigation, as Mr. Barker does in the affidavits and depositions collected by him; and the only possible means of bringing the matter to a satisfactory conclusion appears to me to be the one that has been and still is so much opposed by the complainants, namely, to confront the adverse parties, and come to the truth of the whole affair."

The opinion of the Law Officers of the Crown is requested—

1. As to the merits of the claims; and
2. As to the course which should be pursued by Her Majesty's Government in the matter.

We are of opinion that it now appears that Dr. Barbieri, although tried in the absence of the British Consular Agent, was acquitted of the crime of murder, with which he was charged, and set free; and that Macri, though arrested and imprisoned, has not been tried at all. In the other cases, also, we understand the complaints to be of ill-treatment of various kinds, without resort to any form of trial.

It follows, that although it may be proper to call the attention of the Moldavian authorities to the violation of Treaty in the trial of Barbieri, yet the grounds of claim for compensation are, in every case, illegal arrest, imprisonment, cruelty, and the like; matters which may give rise to well-founded remonstrance, and just claims for indemnification, according to the general language of Treaties and the obligations of international law, but cannot be classed as violations of the XLIInd Article of the Treaty of 1809, providing for the trial of British subjects in Turkey, for crimes alleged to have been committed there. Barbieri's committal for trial, in the first instance, would appear, under the circumstances, to have been a perfectly just proceeding.

For the rest, it appears to us that the complainants ought to appear and support their respective cases before the Commission by evidence. Provided a Commission be appointed, and sit to inquire into the facts of each case, and to report thereon to the Government of the country, we do not think that either the complainants or Her Majesty's Government can properly insist on the depositions, which have been taken in support of the complaints, and to the use of which it appears the Moldavian authorities object, being received in evidence. But we think that the complainants, and those against whom the complaints are urged, ought, in this respect, to be on the same footing before the Commission, and that their being so should be made a *sine quâ non* of the attendance of Mr. Barker, and of the complainants, before the Commissioners. *Vivâ voce* proofs on each side, or written depositions of the same character on each side, ought to be admitted, and we should think oral testimony much the preferable of the two.

Should such an inquiry as we have described be refused, then the *ex parte* statements of the complainants, so far as they may appear to be probable and entitled to belief, ought, in our opinion, to be adopted by Her Majesty's Government as being true in fact; and their demands on the Turkish Government might, it appears to us, under those circumstances, be justly founded on such assumption.

The conduct and event of an inquiry, should it take place, will (of course) have to be fully considered, with reference to the course which, in the end, it may be right for Her Majesty's Government to adopt.

(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

Doctors' Commons, September 6, 1861.

No. 222.

The Law Officers of the Crown to Earl Russell.—(Received September 10.)

UNITED STATES.

Interference with British vessels on the "high seas."

My Lord, *Doctors' Commons, September* 10, 1861.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 29th August ultimo, stating that he was directed to transmit to us a despatch, and its inclosure, from Her Majesty's Minister at

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Washington (No. 423), requesting, with reference to a sentence in a despatch from Earl Russell, stating that Her Majesty's Government would not submit to measures taken on the high seas, in pursuance of a Decree closing the Southern ports, to be informed to what extent the term "high seas" limits the refusal of Her Majesty's Government to allow British vessels to be interfered with; and to request that we would take this matter into consideration, and furnish your Lordship with our opinion as to the answer which should be returned to Her Majesty's Minister.

In obedience to your Lordship's commands we have taken this matter into consideration and have the honour to report—

That Lord Lyons may, on the abstract question of international law, be referred to Kent's "Commentaries," vol. i, page 29:—"According to the current of modern authority, the general territorial jurisdiction extends into the sea as far as cannon shot will reach, and no farther; and this is generally calculated to be a marine league, and the Congress of the United States have recognized this limitation by authorizing the District Courts to take cognizance of all captures made within a marine league of the American shores."

Certain gulfs, channels, and arms of the sea, wholly encompassed or bounded by the national territory, occasionally present instances of a limited extension of this rule; subject, however, to certain geographical considerations, into which it is not practicable to enter (in the abstract) with any sufficient precision.

But in the application of the recent Act of the Congress of the United States for closing the Southern ports, it will be perceived from our Report thereon that it is not to be assumed that *in the absence of an effective blockade,* Her Majesty's Government would be disposed to acquiesce in the capture, or confiscation, *even within the territorial waters of the United States,* of British vessels bound to or from Confederate or Southern ports.

The United States' Government is not entitled to treat acts of trading by British vessels, bound to or from British or foreign ports, with such Southern ports, under existing circumstances, simply as acts of smuggling, or to punish them as such, merely by virtue of the Act.

Lord Lyons may be, therefore, generally instructed to this effect; he should not, without further instructions, acquiesce in any captures of British vessels, bound to or from Southern ports, by United States' ships or officers, excepting such as purport to be made under the authority of the *Law of Nations, as* for breach of blockade, carrying contraband of war, and so forth.

We are not aware of any other captures of British vessels having been as yet made.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 223.

The Law Officers of the Crown to Earl Russell.—(*Received September* 10.)

My Lord, *Doctors' Commons, September* 10, 1861.

UNITED STATES.

Intention of Mr. Hayman to trade with New Orleans and other ports. Inquiry respecting British protection.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 30th August ultimo, stating that he was directed to transmit to us a copy of a letter from Mr. Henry Hayman, stating that he has it in contemplation to fit out a number of ships for the purpose of trading with New Orleans and other ports of the United States, and requesting to be informed whether Her Majesty's cruizers will protect the ships of this intended expedition.

Mr. Hammond was also pleased to state that Mr. Hayman adds, that if, for any diplomatic or other reasons, it is not deemed expedient to order any direct action on the part of Her Majesty's vessels in such matter, the parties interested will be prepared to defend themselves; and to request that we would take Mr. Hayman's letter into consideration, and furnish your Lordship, at our earliest convenience, with our opinion—first, as to the bearing, internationally, of

the step which Mr. Hayman states to be in contemplation; and secondly, as to the answer which it would be advisable to return to him.

In obedience to your Lordship's commands we have taken this letter into consideration, and have the honour to report—

That New Orleans is, as we have reason to suppose, blockaded by the naval forces of the United States, and that others of the Southern (or Confederate) ports are in the same condition; and we assume that it is with these (blockaded) ports that Mr. Hayman proposes to fit out ships to trade; which ships, he states, are to be "prepared to defend themselves, as best they may, in pursuit of their legitimate trade;" and he adds that "all parties hindering them will become responsible for the consequences."

The United States and the Confederate States are engaged in a civil war, which state of things is recognized by Her Majesty's Government, which is strictly neutral between them. If any British (neutral) ship knowingly attempts to break an effective blockade, she is liable to capture and condemnation. If she defends herself by force against a national vessel enforcing such blockade, such defence is a breach of the law of nations, exposing the ship and cargo to condemnation as prize, and those persons committing it to personal responsibility, and to severe treatment, according to the laws of war; and constituting an act of unjustifiable hostility on their part, by the law and usage of nations. Internationally, therefore, the contemplated proceeding (being such as we presume it to be) is obviously calculated not only to entail the most serious consequences upon those who may engage therein, but also to expose Her Majesty's Government, as well as British national character and interests in general, to the most obvious risk of serious embarrassment, and of grave international complications. The general rule as to trading by neutrals, in time of war, with belligerents, is that they may freely trade, respecting, however, every effective blockade; and carrying contraband of war to either belligerent at the risk of capture and condemnation by the other, if discovered.

The nature and precise terms of the answer which it will be advisable for your Lordship to return to Mr. Hayman, are, to a certain extent, a question for Her Majesty's Government under the peculiar circumstances of the case; we can only suggest that he should be warned of the serious consequences which the measures contemplated will entail on all concerned therein, and informed that Her Majesty's Government will not afford the slightest protection or countenance to the projected enterprise.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 224.

The Law Officers of the Crown to Earl Russell.—(*Received September* 12.)

My Lord, *Doctors' Commons, September* 11, 1861.

UNITED STATES.

As to notification in "Gazette" of efficient blockade of Southern ports; and notice to Mr. Hayman of blockade of New Orleans.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 4th September instant, stating that, with reference to his letter of the 30th August ultimo, inclosing a copy of a letter from Mr. Hayman respecting the blockade of the Southern ports of North America, he was directed to request that, in taking this letter into consideration, we would report to your Lordship our opinion whether, in the event of notice of the establishment of an efficient blockade of the Southern ports being received from Her Majesty's Consuls or Rear-Admiral Milne, Her Majesty's Government should cause such notice to be inserted in the London Gazette; and, specifically, whether it would be right to give Mr. Hayman notice of the blockade of the port of New Orleans, supposing the fact of that port being blockaded should be conclusively established.*

We are also honoured with Mr. Hammond's letter of the 4th September instant, transmitting a despatch and its inclosures from Her Majesty's Minister

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* See Page 214.

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at Washington (No. 269, June 11), and two despatches from Her Majesty's Consul at New Orleans (No. 23, June 6, and No. 38, August 29), containing the information received from those officers respecting the blockade of the Mississippi, together with a letter and its inclosures from the Admiralty dated the 29th August; and requesting that we would take these papers into consideration, with reference to the propriety of informing British shipmasters of such blockade, either by notice in the "Gazette" or otherwise.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That, so far as we are aware, the Government of the United States has never either published or transmitted to Her Majesty's Government any official notification of the actual establishment of any blockade of any one or more ports (a step which the Government of Her Majesty and other Governments are usually in the habit of taking), and there is reason to suppose that the blockade of several Southern ports commenced at different dates, and has not been always, or in every case, uninterrupted. It is, moreover, strongly rumoured, and is not improbable, that some such ports have never been, and were not, effectually blockaded at the date of the latest intelligence therefrom.

We must also advert to the passage in President Lincoln's Proclamation of the 19th April, in which he announces that, "if, with a view to violate such blockade, a vessel shall approach, or shall attempt to leave, any of the said ports, she will *be duly warned by the Commander of one of the blockading vessels,* who will indorse on her register the fact and date of such warning; and if the said vessel shall *again* attempt to enter or leave the blockaded port, she will be captured, and sent to the next convenient port for such proceedings against her and her cargo, as prize, as may be deemed advisable."

As matters, therefore, actually stand, it is obviously competent to British vessels which may be captured for breach of blockade to contend before a Prize Court that, under this Proclamation, they are justified in sailing for New Orleans, or any Southern port, even although known to be blockaded, and taking their chance of entering it without being actually warned by a United States' ship of war; and that they are not liable to capture until they have, *after* such warning, "again attempted to enter."

The official publication in the "London Gazette" of any notification of blockade by Her Majesty's Government might seriously prejudice any such attempted resistance to condemnation on the part of British captured vessels, as well as operate, in general, injuriously to British interests in the actual state of the question.

It is, moreover, very difficult, if not impossible, for Her Majesty's Government to publish any accurate or reliable notice of the state and efficiency of so extensive a blockade as that under consideration; and such notification, if once issued, would most probably require continual modifications, and would be likely to lead to much difficulty and embarrassment.

Moreover, no such step is incumbent on Her Majesty's Government by the law or usage of nations; and, upon the whole, we do not consider it to be advisable.

We do not, however, see any objection to your Lordship informing Mr. Hayman, with reference to his recent communication, that, up to the date of the last advices, Her Majesty's Government was informed that New Orleans was, in common with other neighbouring ports, effectively blockaded by the naval forces of the United States' Government.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 225.

TURKEY.

Proceedings of local authorities at Smyrna against a Turkish subject for forging bills of exchange with intent to defraud English firms.

The Law Officers of the Crown to Earl Russell.—(Received September 12.)

My Lord, *Doctors' Commons, September* 12, 1861.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 29th August ultimo, stating that he was directed to transmit to us a despatch from Mr. Hornby, the Judge of the Supreme Consular Court

at Constantinople (No. 72), inclosing a report (with other papers) from Legal Vice-Consul Logie, relative to the proceedings of the local authorities at Smyrna in the case of a Turkish subject named Dedian, who had been arrested on a charge of forging bills of exchange, with the intent to defraud certain English firms.

Mr. Hammond was also pleased to inclose some previous papers on the same subject, and to request that we would take Mr. Logie's report and its inclosures into our consideration, and furnish your Lordship with our opinion as to whether it is advisable or practicable to send any instructions to Her Majesty's Ambassador at the Porte with regard to the sentence passed on Dedian by the Turkish Court at Smyrna.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we are of opinion that your Lordship's question must be answered in the negative. The case in question is that of a Turkish subject tried before a Turkish tribunal, competent by the law of the country to conduct the trial, the charge being one of a violation of Turkish law committed in Turkey.

It is true that British subjects were the sufferers by the frauds imputed to the accused, but the utmost right of interference on the part of Her Majesty's Government in the matter, to which this circumstance could, by any possibility, give rise, would be the right to see that the ordinary criminal law of Turkey was put in motion for the purposes of investigation, and of the punishment of the guilty in the event of a conviction. All this has, however, been done, and not only so, but an amount of interference in the course of the trial was permitted by the Court on the part of Mr. Logie, a British subject and judge, which might well have been refused, and from which it would, in our opinion, have been better if that gentleman had refrained. Mr. Logie bears about with him always the character of a judge; he may at any time be called upon in his judicial capacity to sit with Turkish magistrates on the trial of British subjects, and his appearing before those magistrates (as he did in this case) as the advocate of one of the parties upon an accusation of crime, must tend to impair his influence and efficiency when the occasion arises for presenting himself in his other character.

The conclusion at which the Turkish Court arrived, is not such as an English Court would have formed under the circumstances, and the light sentence appears to be justifiable, even according to Turkish law, only on the ground of the graver crime of "forgery" not having been established to the satisfaction of the Court. But it was for the Court to determine the question. This they seem to have done in an orderly manner, and with deliberation; and it is not to be wondered at, if they were perplexed, to account for the prisoner's having, of his own criminal mind, and without the instigation of others, committed so many frauds, by which another could alone benefit. The conduct of Mr. Whittall, a British subject, was, on his own showing, very discreditable, and even lays him open to suspicion. If the Turkish Court thought the clerk a tool in the hands of his master, their verdict and sentence would be likely to be much influenced by the consideration; and we think that, at all events, Her Majesty's Government would not be justified, internationally, in interfering in any way, either by remonstrance, or with the view of obtaining a rehearing, or a reconsideration of the finding, or of the sentence.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 226.

VENEZUELA.

Income tax exacted from foreigners.

The Queen's Advocate to Earl Russell.—(Received September 17.)

My Lord, *Doctors' Commons, September* 13, 1861.

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 24th August ultimo, stating that he was directed to transmit to me a despatch from Her Majesty's Chargé d'Affaires at Caracas (No. 59), relative to a tax upon incomes which is enacted in Venezuela from foreigners.

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Mr. Layard was also pleased to inclose the previous papers connected with this case, and to request that I would take them into consideration, and report to your Lordship my opinion whether Her Majesty's Government would be justified in instructing Mr. Orme to remonstrate with the Government of Venezuela against the levy of such a tax upon foreigners.

I am also honoured with Mr. Layard's letter of the 30th August ultimo, transmitting a letter from Mr. Nevett dated the 22nd of July, in relation to this case.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That, as far as friendly remonstrances will go, I am of opinion that the severe and capricious operation of the tax will justify them; and that Mr. Orme may persist in endeavouring (amicably) to obtain some exemption or mitigation for Her Majesty's subjects. I cannot, however, see how it can be fairly contended that this tax is "a forced loan, military exaction, or requisition," within the terms or spirit of Article IX of the Treaty of 1825 (Colombia) accepted by Venezuela by Treaty of 1834; nor will the circumstances of the case, in my opinion, justify a demand for the refunding by the Venezuelan Government of what has been actually levied.

The most important point for consideration in these papers, however, appears to me to be the statement in Mr. Nevett's letter of the 22nd July, 1861, to the effect that the French subjects having resisted the payment of this tax, and protested in their Legation, the Minister of Finance gave a verbal order to the Commissioners to suspend the proceedings.

Her Majesty's Government will be *primâ facie* justified in insisting upon British subjects being treated as leniently in this matter by Venezuela as French subjects, and upon this ground some satisfactory arrangement may be possibly arrived at.

I have, &c.
(Signed) J. D. HARDING.

No. 227.

The Law Officers of the Crown to Earl Russell.—(*Received September* 17.)

My Lord, *Doctors' Commons, September* 16, 1861.

GENERAL—(COLONIES).

The Confederate vessel "Sumter" at Trinidad. As to exclusion of United States' and Confederate vessels of war or privateers from British Colonial ports.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 5th September instant, stating that he was directed to transmit to us a letter from the Colonial Office, dated the 29th of August last, inclosing a despatch from the Governor of Trinidad reporting the arrival of the Confederate vessel "Sumter" in that Colony, and what passed during her stay there; and to request that we would take this despatch into consideration and furnish your Lordship with our opinion with regard to the propriety of the course pursued on that occasion by Governor Keate and by the Commander of Her Majesty's ship "Cadmus."

Mr. Hammond was also pleased to state that your Lordship would also be glad to have our opinion as to whether vessels of war or privateers belonging either to the United States or to the so-styled Confederate States can properly be required to leave British ports in the West Indies and British North America, if the state of the weather will admit of their doing so.

The papers referred to in the Colonial Office letter, together with a copy of the letter to the Admiralty, and other offices, which has been laid before Parliament, were inclosed for reference.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we do not precisely understand what was the course pursued towards the "Sumter" by the Commander of Her Majesty's ship "Cadmus:" there is nothing from this officer; and Governor Keate's despatch of August 7 only states that "Captain Hillyar has verified the character of the 'Sumter' and the Commissions of her officers, and recognized her as a man-of-war."

Governor Keate appears to have carefully avoided any such recognition whatever.

We know not upon what instructions either of these officers may have acted, but, as at present advised, we see no reason to disapprove of the conduct of either. The "Sumter" certainly appears not to be a privateer, and is (we presume) a vessel of war commissioned by a *de facto* belligerent Government.

Your Lordship's second question must in our opinion be at present answered in the negative.

Although it is competent, by the Law and usage of Nations, to Her Majesty, in common with all neutrals, to place certain restrictions upon the access of the ships of war or privateers of belligerent Governments to British ports, yet Her Majesty has not (as far as we are aware) done so during the present contest, excepting only in case of their being accompanied by prizes in the (printed) instructions of June 1st herewith. At the present time, therefore, "expressio unius est exclusio alterius;" and Her Majesty's Government should determine upon and make public some other general instructions on the point, if this should be considered expedient on grounds of Imperial and international policy; unless, or until this is done, the ships of war or privateers of either party unaccompanied by prizes should not, in our opinion, be required to leave British ports by the local authorities.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 228.

The Law Officers of the Crown to Earl Russell.—(*Received September* 17.)

My Lord, *Doctors' Commons, September* 16, 1861.

UNITED STATES.

Application for removal of Consul Bunch from Charleston. Arrest of Mr. Mure, and seizure and detention of bag of despatches of which he was the bearer.

WE are honoured by your Lordship's commands signified in Mr. Hammond's letter of the 7th September instant, stating that he was directed to transmit to us copies of two notes from Mr. Adams, United States' Minister at this Court, dated the 3rd September instant: in one of which an application is made for the removal of Mr. Bunch, Her Majesty's Consul at Charleston; and in the other Mr. Adams, by order of his Government, enters into explanations with regard to the seizure and detention of a bag of despatches which Her Majesty's Consul at Charleston had entrusted to Mr. Mure for delivery.

Mr. Hammond was also pleased to inclose a copy of a note from Mr. Consul Bunch, stating the character of the letters for private individuals which he had placed inside the bag, and which, together with despatches from Her Majesty's Government, were found in the bag on its being opened at the Foreign Office.

Mr. Hammond was also pleased to state that Mr. Mure, who is a British subject by birth, but established for some years in the United States, and is stated to be a naturalized citizen, was arrested by the United States' authorities on suspicion of being also the bearer of despatches addressed to parties in this country in correspondence with the *de facto* Government of the so-styled Confederate States; and to request that we would take these papers into consideration, and furnish your Lordship at our earliest convenience with our opinion upon the step taken by the United States' authorities in seizing and detaining, under the circumstances therein set forth, a bag of despatches addressed to Her Majesty's Secretary of State.

Mr. Hammond was also pleased to inclose a copy of a despatch from Her Majesty's Minister at Washington (No. 433) on this subject.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That in answering your Lordship's question, we must assume (in the absence of anything to the contrary), that all the statements made by Mr. Adams are entirely and accurately correct.

From these statements it results that Robert Mure, the bearer of the bag in question, although a natural-born British subject, is a naturalized citizen of the United States; that he has resided in the United States for thirty years; that he holds a commission as Colonel in what Mr. Adams calls "the insurgent forces of South Carolina;" that, together with this bag, he carried with him

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separately, and on his private account, what Mr. Adams calls "treasonable correspondence between persons acting in open arms against the Government of the United States and their friends and emissaries in Great Britain;" that he had a passport, issued by Consul Bunch, in contravention of the Regulations of the United States, not countersigned by the Secretary of State and the commanding officer of the United States' army, nor having the visa or sanction of any United States' authority; that, under these circumstances, he went from Charleston, on the Southern (or Confederate) territory to New York, and was there arrested when on the point of embarking for England.

Under these circumstances, the United States' Government appears to us to have been justified in arresting him, and in taking possession of all the papers and property in his possession, including the bag in question. They could not be expected to allow one who had voluntarily become a citizen, and who owed them allegiance, to pass out of their jurisdiction unmolested, under such circumstances, merely by reason of his carrying a bag of despatches to your Lordship from Consul Bunch, who is not such a public Minister as to be entitled to the privileges appertaining to that character under the Law of Nations.

With respect to the detention of the bag in question, we are unable to see why it was not at once delivered either to Lord Lyons, or to the British Consul at New York, for transmission, instead of being transmitted to your Lordship (unopened) by the Secretary to the United States' Legation here; but this we are disposed to view rather as a question of form than one of substance.

We observe that Mr. Adams states that "he is directed to express the regret which his Government feels that such a measure had become imperative, and to assure Her Majesty's Government of its earnest desire to make any suitable amends which may justly be required;" and this being so, we submit to your Lordship's judgment that this apology may, under the very peculiar circumstances of the case, and bearing in mind the unfortunate selection of the bearer of the bag of despatches, be accepted as a sufficient reparation, and that no further formal demand of redress need be made upon the Government of the United States.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 229.

The Queen's Advocate to Earl Russell.—(Received September 17.)

PORTUGAL.

Legal proceedings against Mr. Donnet. Interference in his favour.

My Lord, *Doctors' Commons, September* 17, 1861.

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 31st August ultimo, stating that he was directed to transmit to me two despatches from Her Majesty's Minister at Lisbon (Nos. 113 and 120), respecting certain legal proceedings in Portugal in which Mr. Donnet is concerned, and regarding which he has requested the intervention of Her Majesty's Legation.

Mr. Layard was also pleased to state that your Lordship would be glad to learn my opinion whether there are any grounds for the interference of Her Majesty's Legation in this matter.

In obedience to your Lordship's commands I have taken this matter into consideration, and have the honour to report—

That there are no grounds whatsoever for any interference on the part of Her Majesty's Legation in this matter.

I have, &c.
(Signed) J. D. HARDING.

Inclosure in No. 229.

Sir A. Magenis to Lord J. Russell.

(Extract.) *Lisbon, August* 5, 1861.

THOUGH the whole details of this question have been already transmitted home by my predecessor, I will recall them in a few words to your Lordship's recollection.

Mr. Donnet occupies—I conclude as proprietor—a house in a street leading to the western suburb of this city, with a back yard formerly washed by the Tagus. He obtained permission from the Captain of the Port to build a small wharf at the end of his yard, on the river, for his own convenience, and the ground occupied by what was formerly the wharf is the subject of the present dispute. I have had this ground measured, and it is 9½ yards deep by rather less that 11 yards wide.

The river at the rear of Mr. Donnet's house has since 1857 been embanked, and the yard which was formerly washed by the river is now removed from it at some distance. A road has been laid out on the new embankment leading to the western suburb and to the Palace, avoiding a hill, and is a great improvement: the ground in dispute projects into this road. If expropriated for public utility, no jury would, I believe, assess its value at more than the merest trifle, for it can be of no value now to Mr. Donnet.

I must observe also, that his Portuguese neighbour, who had received 300*l.* for his ground, to whom Mr. Donnet refers, had, I am told, erected large stores on it, whereas there is no building on Mr. Donnet's ground.

The Municipal Chamber, under whose directions improvements are carried out in this city, however, disputed Mr. Donnet's right to the ground in question, on the ground that the Captain of the Port had not the power to grant him the authority to erect the original wharf, and instead of dispossessing him by legal proceedings, pulled down, "illegally and arbitrarily," as the sentences declare, his palings, and removed, without any insult, as I am informed, but on the contrary, with care, the British flag, which I conceive Mr. Donnet had no right to hoist there.

On the sentence being given in Mr. Donnet's favour, he replaced the paling, which, as I said, projects into the unfinished road, where it now remains.

Mr. Donnet, by his voluntary act, has resided in this country about fifty years, and he knows, or ought to know, that he thereby subjects himself to the laws of the country. Those laws have hitherto decided in his favour, and against the Municipal Chamber of Lisbon; and I conceive, and am still of the same opinion, that it was not a case in which I could interfere, nor one in which he could demand my official "protection and assistance."

It is, I believe, an undisputed fact in international law, that a foreigner is subject to the law of the country in which he resides, unless there be any Treaty between the country to which he owes allegiance and that in which he resides to the contrary—as formerly between Great Britain and Portugal—and that the Minister of such foreigner has only the right to interfere when he is treated less favourably than a native subject would, under like circumstances, be treated.

I have hardly a doubt that your Lordship will also concur in my feeling that, by interfering officially when I have no good grounds for doing so, I should materially diminish the weight of such interference, and the consequent protection which I could afford to Her Majesty's subjects resident here, when I felt I had sufficient reason and a just cause to interfere officially with this Government.

P.S.—The Portuguese Government, moreover, are no more responsible for the acts of the Municipal Chamber of Lisbon than Her Majesty's Government would be for those of the Corporation of London.

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No. 230.

The Queen's Advocate to Earl Russell.—(*Received September* 20.)

Doctors' Commons, September 19, 1861.

My Lord,

Turkey—(Principalities).

Communication to father of Mrs. Meade of despatches from Secretary of State to Consul at Bucharest for legal purposes.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 3rd September instant, stating that he was directed to transmit to me a despatch from Her Majesty's Consul at Bucharest (No. 25), requesting to be informed whether he is at liberty to communicate copies of the accompanying two despatches with their inclosures from the Foreign Office (Nos. 5 and 7) to the father of Mrs. Meade, an American lady, who was married at Constantinople in 1856 to a Captain John Meade, by whom she was deserted soon after their marriage, and from whom her family are anxious she should now obtain a divorce, and Mr. Hammond was pleased to request that I would take the accompanying papers into consideration, and report to your Lordship my opinion as to whether the application of Mrs. Meade's father may be complied with.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That, as at present advised, I am of opinion that this question must be answered in the negative.

It does not appear that any legal proceedings have been instituted by Mrs. Meade or her family against her husband (even supposing him to be the person alluded to in the despatches in question, of which there is no proof), and it is not stated that copies of the despatches in question are actually required by her father in the interests of justice, or that their being furnished to him would secure the attainment of any distinct object, such as would warrant Her Majesty's Government in acceding to this request. As the matter therefore stands at present, I see no sufficient reason for giving copies of these despatches to Mrs. Meade's father.

I have, &c.
(Signed) J. D. HARDING.

No. 231.

The Queen's Advocate to Earl Russell.—(*Received September* 21.)

Doctors' Commons, September 19, 1861.

My Lord,

Turkey.

Refusal of the Porte to allow Mrs. Abbott to open a calico manufactory at Smyrna.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 30th August ultimo, stating that, with reference to my Report of the 26th June last,* respecting the refusal of the Porte to allow Mrs. Abbott to carry on a calico manufactory at Smyrna, he was directed to transmit to me the accompanying despatch (No. 569) and its inclosures, from Her Majesty's Ambassador at Constantinople, containing further particulars on that subject, and to request that I would take these, together with the former papers, into consideration, and report to your Lordship my opinion thereupon.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I do not consider that the refusal of the Turkish Government to grant the permission in question to Mrs. Abbott can, under the circumstances, be considered as a violation of any Treaty stipulation; or that it can properly form the subject of a formal international demand. The subject is one of serious importance not only to British interests, but to those of all commercial Powers having much intercourse with Turkey; but it is rather a question of policy than of international law. I can only suggest that it should be kept in view, and that possibly a joint representation on the part of the principal Powers interested might be addressed to the Turkish Government on the necessity of laying down and enforcing some general and reasonable regulations favourable to the introduction and carrying on of foreign trades and manufactures in Turkey, by which Turkish interests would be greatly benefited, instead of this important matter being left (as it now is) to the arbitrary or interested caprice of the various local authorities. I believe that it will be found that in some portions of the Turkish dominions, as in Egypt and the Principalities, this subject is on a more satisfactory footing than it would seem to be at Smyrna.

I have, &c.
(Signed) J. D. HARDING.

* Page 131.

No. 232.

The Queen's Advocate to Earl Russell.—(*Received September* 21.)

Doctors' Commons, September 20, 1861.

My Lord,

United States.

Instructions in the cases of the "Hiawatha" and "Perthshire." Cases of Messrs. Quillan and Fitzpatrick, and question of purchase of enemies' ships by neutrals.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 16th September instant, stating that he was directed to transmit to me the accompanying drafts of instructions which it is proposed to address to Lord Lyons, founded upon my several Reports of the 5th,* 6th,† and 7th September instant,‡ respecting the cases of the "Hiawatha" and "Perthshire," the cases of Messrs. Quillan and Fitzpatrick, and the question of the purchase in the United States of enemies' ships by neutrals.

Mr. Hammond was also pleased to inclose the draft of a letter which, in conformity with my other Report of the 6th instant,§ it is proposed to send to Mr. McDonald and Mr. Delafield, declining to answer the questions put by them upon the subject of a proposed speculation in cotton.

Mr. Hammond was also pleased to state that your Lordship is desirous of ascertaining, before they are sent off, whether these instructions to Lord Lyons and the answer to Mr. McDonald and Mr. Delafield are entirely in accordance with the views stated in my above-mentioned Reports; and to request that I would take them into consideration, and report to your Lordship whether, in my opinion, they are right and proper.

In obedience to your Lordship's commands I have taken these drafts into consideration, and have the honour to report—

That, subject to some very slight verbal alterations which I have introduced into these drafts, they are, in my opinion, right and proper.

I have, &c.
(Signed) J. D. HARDING.

No. 233.

The Queen's Advocate to Earl Russell.—(*Received September* 21.)

Doctors' Commons, September 21, 1861.

My Lord,

United States.

Capture of the "Sarah Starr" for alleged violation of the blockade of Wilmington.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 10th September instant, stating that he was directed to transmit to me a despatch and its inclosures, from Her Majesty's Minister at Washington (No. 436), respecting the capture at sea, by the United States' ship of "Wabash," of the British brig "Sarah Starr," for an alleged violation of a blockade of the port of Wilmington, in North Carolina.

Mr. Hammond was also pleased to transmit to me, as bearing upon this question, three despatches and their inclosures, from Her Majesty's Consul at Charleston (Nos. 89, 94, and 95), respecting the alleged inefficiency of the blockade of North and South Carolina; and to request that I would take these papers into consideration, and furnish your Lordship with such observations as I might have to offer thereupon.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That the capture of the "Sarah Starr" appears to me to have been a very harsh measure, if not entirely unjustifiable; regard being had to the circumstances of the case.

I observe that Mr. Secretary Seward, in his letter to Lord Lyons of the 16th August, states that instructions have been given for the release of this vessel, in the event of there being no probable cause to suspect her nationality. I presume that there is no such cause.

With respect to the despatch of Consul Bunch, No. 94, and its inclosures, I have only to observe that these seem to show that there has been so much laxity

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* Page 197. † Pages 197 and 200. ‡ Page 202. § Page 200.

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in the maintenance of the blockades of the ports of Charleston and Wilmington, as to leave the validity of any such blockades (at all events previously to the arrival off Charleston of Flag Officer Prendergast, in the United States' ship "Roanoke," and to the publication of his Notification of July 13) open to serious question.

I am not, however, aware that, with the exception of the "Sarah Starr," any British vessels have been recently captured for breach of the above-mentioned blockades.

I have, &c.
(Signed) J. D. HARDING.

No. 234.

The Queen's Advocate to Earl Russell.—(Received September 23.)

FRANCE.

Detention of an Englishman at Cayenne after the expiration of his sentence.

My Lord, *Doctors' Commons, September 23, 1861.*

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 3rd September instant, stating that on the receipt of my letter of the 12th June last, your Lordship requested Her Majesty's Secretary of State for the Colonies to furnish the information I desired, respecting the circumstances under which an Englishman was detained at Cayenne after the period to which he was condemned had expired, but as the Duke of Newcastle was unable to supply that information, your Lordship instructed Her Majesty's Ambassador at Paris to endeavour to procure it from the French Government.

Mr. Hammond was also pleased to state that he was directed to forward to me a despatch from Earl Cowley (No. 1,046), showing the result of his application to the French Government, together with the other papers relative to the case; and to request that I would take the same into consideration, and furnish your Lordship with my opinion as to whether any, and if any, what, steps should be taken by Her Majesty's Government in the matter.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I do not see how, under the circumstances stated in M. Thouvenel's note to Earl Cowley of August 20, 1861 (which contains the only information forthcoming of either the facts or the law of the case), any further steps can be taken in this matter.

I have, &c.
(Signed) J. D. HARDING.

No. 235.

The Queen's Advocate to Earl Russell.—(Received September 24.)

TURKEY.

Claim of Messrs. Aitken and Grace for expenses in making tender for supply of cloth for Turkish army.

My Lord, *Doctors' Commons, September 23, 1861.*

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 6th September instant, stating that he was directed to transmit to me the correspondence which has passed between the Foreign Office and Her Majesty's Ambassador at Constantinople, which would put me in possession of the circumstances connected with an alleged breach of faith on the part of the late Seraskier towards Messrs. Aitken and Grace, an English firm established at Constantinople, in not accepting a tender made by them for supplying cloth for the use of the Turkish army.

Mr. Hammond was also pleased to transmit a further despatch from Sir H. Bulwer (No. 590), inclosing an application from Messrs. Aitken and Grace for the support of Her Majesty's Government to obtain for them repayment from the Turkish Government of the expense which their firm had incurred in order to make the tender in question; and to request that I would take these papers into consideration and report my opinion as to the answer which should be returned to this application.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That Sir H. Bulwer may be instructed to inform Messrs. Aitken and Grace, in courteous terms, that he regrets to find himself unable to comply with their request.

I do not find in these papers a specific statement of the particular question or questions referred to the decision of the Mixed Commission; nor have I been able to discover what was the formal decision of that Commission, against which "the European Commissioners" protested. I find, however, in Messrs. Aitken and Grace's letter to Sir H. Bulwer of August 17, an admission that the practical result of the Commission was that they were offered the contract. However prudently they may have acted in declining the offer under the peculiar circumstances of the case, or whatever may have been the hardship of the previous portion of their case, I consider that Her Majesty's Government cannot properly support their claim for expenses incurred in relation to a contract which they refused to execute when ultimately offered to them on their own terms.

I have, &c.
(Signed) J. D. HARDING.

No. 236.

The Queen's Advocate to Earl Russell.—(Received September 25.)

UNITED STATES.

Capture at sea of the "Herald" for alleged breach of blockade of port of Beaufort.

My Lord, *Doctors' Commons, September 24, 1861.*

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 10th September instant, stating that he was directed to transmit to me four despatches, and their inclosures, from Her Majesty's Minister at Washington (No. 376, July 29; No. 387, August 1; No. 428, August 15; No. 437, August 12), respecting the British ship "Herald," captured at sea for an alleged breach of a blockade of the port of Beaufort, in North Carolina; and to request that I would take this case into consideration and report to your Lordship my opinion thereupon.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I can only recommend that Lord Lyons should continue his attention to this case. It is impossible, as yet, to discover the real ground upon which the United States' Government is proceeding (advisedly) to impugn the apparently strong *primâ facie* proof of the "Herald" being wholly British-owned, and the charge of breaking blockade has been virtually abandoned.

I have, &c.
(Signed) J. D. HARDING.

No. 237.

The Queen's Advocate to Earl Russell.—(Received September 25.)

UNITED STATES.

Detention of Mr. J. G. Robinson's yacht "Gipsey" at New Orleans, and oath administered to her crew not to serve against United States during the war.

My Lord, *Doctors' Commons, September 24, 1861.*

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 10th September instant, stating that he was directed to transmit to me a despatch and its inclosures from Her Majesty's Minister at Washington (No. 435, August 17), reporting the circumstances under which the yacht "Gipsey," the property of Mr. John G. Robinson, a British subject, residing at New Orleans, was detained for some days by the United States' blockading vessel "Brooklyn," and that the crew of the "Gipsey" were required by the commander of the "Brooklyn" to take an oath not to serve against the United States during the war; and Mr. Hammond was pleased to request that I would take this case into consideration, and report to your Lordship my opinion thereupon.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I see no reason for the interference of Her Majesty's Government in this matter. The national character of the "Gipsey," as between the belligerents in America, was by no means free from doubt when she was detained; and she appears (especially from an expression in Mr. Robinson's letter of August 1 to Lord Lyons) almost to have invited detention. Her owner (Mr. Robinson), a British subject, appears to be domiciled at New Orleans, and nothing is stated

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as to his intention to return to this country, or his having any *bond fide* intention of completing her registry in a British port.

Under these circumstances, the Consul should be directed to forward full particulars of the circumstances under which he issued a provisional certificate of registry to the "Gipsey," together with a copy of that instrument, and a reference to the instructions (either from the Board of Trade or otherwise) under which he acted in so doing.

He should also state to what British port he was informed, or believed, on issuing the provisional certificate, that she intended to proceed to complete her registry, and at what date she was to proceed thither; and he should fully explain this statement in his despatch of June 26th:—"When Mr. Robinson applied to me to grant this certificate, he informed me that his object was merely to go out on a pleasure cruise, with the object of fishing among the islands which divide the Gulf of Mexico from Lake Borgne," adding "that he cautioned Mr. Robinson against going near the blockading squadron; to which he replied, that he had no intention of going there at all;" from which expressions (without explanation) it would appear that the Consul had irregularly issued a provisional certificate of registry to a pleasure yacht, whose owner was domiciled in a blockaded port during a war, and who never meant to complete her registry.

I have, &c.
(Signed) J. D. HARDING.

No. 238.

The Law Officers of the Crown to Earl Russell.—(*Received September* 25.)

My Lord,
Doctors' Commons, September 25, 1861.

UNITED STATES.

Time at which notice should be given to terminate Reciprocity Treaty of 1854.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 22nd August ultimo, stating that he was directed to transmit to me a despatch, and its inclosure, from Her Majesty's Minister at Washington (No. 340, July 15), and a correspondence between the Foreign Office and the Colonial Office, on the question as to the precise time at which it would be competent for either of the High Contracting Parties to the Reciprocity Treaty of 1854 to give notice of its wish to terminate that Treaty; and to request that I would take this matter into consideration, and report to your Lordship my opinion thereupon.

In obedience to your Lordship's commands I have taken this matter into consideration, and have the honour to report—

That, in our opinion, the Treaty in question first "came into operation" on the 16th March, 1855, within its terms and reasonable interpretation; assuming, as we do, that the President's Proclamation of that date was earlier than any of the British Colonial Proclamations. The Treaty "took effect" (that is, became binding, according to its terms, on each of the High Contracting Parties) so soon as the laws requisite for insuring its operation were passed by each of the two Contracting States and by the Provincial Parliaments of the British Colonies which were to be affected by the Treaty. All this was accomplished by the 13th December, 1854, when the Nova Scotian Act (the latest of the series) was passed.

The Treaty having thus become effective and binding, at what date did it "come into operation?" And we think the answer must be sought for in the provisions of the laws which, in the words of the Vth Article, were "required to carry it into operation." By one of these laws (the law of the United States) the President was empowered to issue a Proclamation declaring, in substance, that the Treaty had taken effect; whereupon its various provisions were to "go into effect, and be observed on the part of the United States." Such a Proclamation was actually issued on the 16th March, 1855; and upon that day it is clear that, in the United States, the Treaty "came into operation;" and should the United States' Government select the 16th March, 1865, for determining the Treaty by notice, we are of opinion, under the circumstances, that no objection can be taken to their adopting that course. Should it happen that the British, and not the American Government, should first wish to bring the Treaty to an end, then we should recommend, as a matter of propriety and prudence, that the "ten years" mentioned in the Treaty should be reckoned as ending on the latest day on which, according to the terms of any of the British Colonial Proclamations, it came into actual operation within any Colony; *that* being, of course, the earliest day on which the Treaty would be in universal operation in favour of the United States.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 239.

The Law Officers of the Crown to Earl Russell.—(*Received September* 25.)

My Lord,
Doctors' Commons, September 25, 1861.

TURKEY.

Consular procedure in Moldo-Wallachian Provinces.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 24th August ultimo, stating that he was directed to transmit to us the papers noted in the margin relative to Consular procedure in the Moldo-Wallachian Provinces, and to explain to us the position in which that question now stands.

That Mr. Green, Her Majesty's Agent and Consul-General at Bucharest, having called the attention of Her Majesty's Government to the resistance offered by the Wallachian authorities to the Capitulations with the Porte in favour of British subjects, was directed, both by the Secretary of State and also by Her Majesty's Ambassador at Constantinople, to offer his suggestions as to the best mode of placing the whole question of Consular procedure in the Principalities upon a satisfactory footing.

Mr. Hammond was also pleased to state that these suggestions, having been considered by Sir Henry Bulwer in concert with Mr. Hornby, the result of their deliberations is stated in the marginal remarks on the inclosure of Sir Henry Bulwer's despatch No. 438 of the 22nd June last.

Mr. Hammond was also pleased to state that your Lordship desired him to request us to report to your Lordship our opinion in regard to Mr. Green's suggestions, and the observations of Sir Henry Bulwer and Mr. Hornby thereupon, and to inform us that it is the intention of the Secretary of State, if we should be of opinion that the matter ought to be proceeded with, to instruct Sir Henry Bulwer to submit to his colleagues the proposed scheme, as finally approved by us, in order that, if the Representatives of the European Powers at Constantinople concur in it, an identic course may be adopted in the Principalities by all the Powers.

The Capitulations, and the Order in Council concerning Consular jurisdiction, were inclosed.

We are also honoured with Mr. Hammond's letter of the 16th September instant, transmitting a despatch and its inclosures from Her Majesty's Agent and Consul-General at Bucharest (No. 75), containing further particulars relative to the question of Consular procedure in the Moldo-Wallachian provinces.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That before we are in a position to advise your Lordship as to the propriety of adopting the course which is suggested, we must request to be distinctly informed whether Her Majesty's Government is or is not prepared to contend for, and enforce the observance of the existing Capitulations and Treaties with Turkey, on the part of the authorities of the Principalities.

We must observe that the existing Order in Council (August 27, 1860) treats Her Majesty as fully entitled to exercise, and to regulate, and deal with, the peculiar Consular jurisdiction and privileges secured to this country and its subjects by the Capitulations and Treaties "in the dominions of the Sublime Ottoman Porte," of which we conceive that the Principalities internationally and legally form a portion. By international law, then, the Capitulations and Treaties *are* actually in force in the Principalities, whilst in English legal contemplation this Order in Council is also actually in force therein; any British subject therein may appeal to its provisions, and all British subjects therein are bound to carry

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it out (see our recent Report on the case of Dr. Barbieri and others, and the papers therewith).

The consent of the Sultan will be requisite to any material modification of the existing international compact between Great Britain and Turkey, and the Order in Council would have to be partially revoked, and a new Order issued. It is a subject, therefore, of serious consideration whether (as suggested by Mr. Hornby) these Capitulations and Treaties should not either be enforced in the Principalities generally, and without modification, or at least taken as the common rule relating to Her Majesty's subjects, and as the "basis" and principle of all arrangements or negotiations on this matter with the local authorities, subject only, if necessary, to certain *specific* modifications, which should be suggested by the authorities of the Principalities, and duly considered.

We are disposed to agree with Mr. Hornby's remarks on this point, and it appears to be obvious that if no great concessions are absolutely necessary on the part of Her Majesty's Government, the present Order in Council (which was carefully prepared and, on the whole, works well) should be either absolutely carried out, or be adapted to the requirements of the Principalities; and that a new and distinct arrangement (such as that prepared by Mr. Green) should only be entered upon, first, in case of absolute necessity, and secondly, in case of there being a strong probability of the cordial assent thereto of the authorities of the Principalities. The arrangement prepared by Mr. Green strikes us as equivalent, in effect, to a new and separate Treaty with the Principalities, on the subject of international jurisdiction; if the authorities are, in effect, in a position to repudiate the Capitulations and Treaties, there seems to be no reason for supposing they will accede to any new arrangement, or carry out the details *bonâ fide*. If, on the other hand, they are not in such a position, then we see no sufficient reason for entering upon any discussion or consideration of the new arrangement. Your Lordship will not fail to observe in M. Arsaki's note to Mr. Green of August $\frac{10}{22}$, 1861, the inconsistency with which a positive assertion of jurisdiction over Ionians is followed by a request for the modification of the "Capitulations."

Subject to these observations, and if we are, in effect, to sanction a new "Code" for the governance of Her Majesty's subjects in the Principalities, to be followed by the legal machinery necessary for carrying it out in practice, *then* we concur generally in the scheme as modified by Mr. Hornby; but we respectfully beg leave to reserve for more detailed examination, on further information, its details and phraseology.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 240.

The Queen's Advocate to Earl Russell.—(Received September 27.)

UNITED STATES.

Proclamation of President of United States prohibiting commercial intercourse with Seceded States.

My Lord, *Doctors' Commons, September* 27, 1861.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 10th September instant, stating that he was directed to transmit to me a despatch from Her Majesty's Minister at Washington (No. 440, August 19), inclosing a copy of a Proclamation issued by the President of the United States, prohibiting commercial intercourse with the Seceded States.

Mr. Hammond was also pleased to inclose, for reference, a copy of the Act of Congress under which it is stated that this Proclamation has been issued; and to request that I would take the Proclamation into consideration, and furnish your Lordship with such observations as I might have to offer thereupon.

In obedience to your Lordship's commands I have taken this Proclamation into consideration, and have the honour to report—

That this Proclamation appears to me to be within the competence of the President, and in conformity with the law and usage of nations. The existence of a war between two Governments implies and involves, in theory and contemplation of international law, the existence of a war between all the individuals voluntarily domiciled within the territory of either Government, which is

supposed to represent and act for all such persons; and one of the immediate consequences of war is the entire interdiction of all commercial dealing between the subjects, citizens, or domiciled inhabitants of the belligerents, excepting by the formal and special license or permission of their Government. With this exception, "war" places every individual living within the territory of either Government, as well as the Governments themselves, in a state of hostility, legally and internationally; and trading with the inhabitants of the enemy's territory, is "trading with the enemy." These principles have been constantly applied *inter gentes*, by this country, and other foreign Powers, when belligerents.

The fact that the war now existing in North America may, in a certain sense, be viewed as a civil war, and that the President speaks of "the insurrection" of the particular States named in the Proclamation, does not appear to me to make any very material or practical difference; more especially as Her Majesty's Government, and all other Governments, have treated both parties as *belligerentes inter se in justo bello*, and consider themselves as "neutrals" internationally. It does not appear to me, therefore, that the issuing of this Proclamation requires any international notice on the part of Her Majesty's Government.

It remains to be seen how the "forfeiture to the United States" (imposed by the Proclamation) is to be enforced, and carried out in practice—whether by legal proceedings in Court, or otherwise; upon which point Lord Lyons will, doubtless, send further information.

I have, &c.
(Signed) J. D. HARDING.

No. 241.

The Queen's Advocate to Earl Russell.—(Received September 27.)

UNITED STATES.

Inefficiency of blockade of North and South Carolina.

My Lord, *Doctors' Commons, September* 27, 1861.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 18th September instant, stating that with reference to his letter of the 10th September instant, respecting the alleged inefficiency of the blockade of North and South Carolina, he was directed by your Lordship to transmit to me a despatch (No. 83) from Her Majesty's Consul at New York, reporting upon the blockade of the Southern ports, and a letter from the Admiralty inclosing (together with a further Report from Commander Hickley on this subject) a copy of a letter which that officer had addressed to Flag Officer Stringham, observing upon the open state of the inlet and ports in North Carolina specified by him, and to request that I would take these papers into consideration, and furnish your Lordship with any observations I might have to offer thereupon.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I can offer no useful observations on these papers. The material question for Her Majesty's Government is, "Are British vessels captured for breaking blockades which are not effectively maintained, and, if so, of what ports, and at what dates can this be proved?" With the exception of the "Herald" (already brought under my notice), the only British vessel mentioned in these papers as so treated is the "Prince Leopold," apparently seized at New York on the 22nd August, but for violation of what blockade is not stated (see Consul Archibald's No. 93): no representations as to this case have as yet come under my notice.

With reference to Commander Hickley's (of the "Gladiator") note to Flag Officer Stringham of August 15, on what he calls "the open state of the blockade" of the ports of North Carolina therein mentioned, I am unable to see the object or expediency of such communications, or how British interests are thereby promoted. Unless or until British vessels are illegally or harshly treated by the United States' cruizers, Her Majesty's Government has no interest (that I can see) in thus officially calling the attention of the United States' naval officers to the imperfect state of the alleged blockades, and thereby increasing

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their vigilance, by the want of which British and other neutral interests profit (see Consul Archibald's No. 83).

If, however, Her Majesty's Government, for reasons of which I am not informed, and which do not occur to me, considers it proper to order such communications to be made by naval officers, then I would suggest that they should at least therein set forth accurately and specifically, the material facts and dates within their own knowledge or observation.

I have, &c.
(Signed) J. D. HARDING.

No. 242.

The Law Officers of the Crown to Earl Russell.—(Received September 28.)

BRAZIL.

Instructions as to termination of Mixed Commission at Rio.

My Lord, *Doctors' Commons, September* 26, 1861.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 5th September instant, stating that with reference to our Report of the 24th June last,* he was directed to transmit to us the draft of an instruction which your Lordship has addressed to Her Majesty's Minister at Rio (No. 48), instructing him as to the nature of the communication which should be made to the Brazilian Government as to the termination of the Mixed Commission at Rio.

Mr. Layard was also pleased to inclose a letter from Mr. Youle, dated June 22, 1861, transmitting copy of a decision of the Commission, awarding to him the amount of his claim, and requesting that steps may be taken to obtain its payment, and to request that we would take Mr. Youle's letter into consideration, with reference to the terms of the Convention of the 2nd of June, 1858, and to our Report of the 14th of December, 1860, and report to your Lordship our opinion as to the course which should be pursued with respect to Mr. Youle's application.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we presume that the decision of the Mixed Commission in favour of Mr. Youle's claim, dated 20th December, 1859, was made before the suspension of the proceedings of the Commission: if so, it was in time, as having been arrived at within two years assigned by Article III of the Convention for the conclusion of the Commissioners' labours, in the absence of an agreed-on extension of time. Such being the case, we are of opinion that, notwithstanding the absence of a "certificate" in Mr. Youle's favour (as mentioned and explained in Mr. Morgan's letter to Mr. Hill of the 21st September, 1860), the sum adjudged to Mr. Youle ought to have been paid within twelve months after the date of the decision, without interest, and without deductions, save as mentioned in Articles IV and VI of the Convention. Under existing circumstances, we think interest ought to be paid on the same, adjudged from the 20th December, 1860, down to the period of actual payment; and Article VI expressly provides that all amounts decreed by the Commission to be paid to claimants "shall be paid by the one Government to the other." It is competent, therefore, in our opinion, for Her Majesty's Government to demand from that of His Brazilian Majesty, payment of the principal and interest, and subject only to the deduction we have above pointed out; and indeed the case, so far, appears to be a hard one on Mr. Youle. It was, beyond question, a case within the competence of the Commission to decide upon; and, in like cases, in which the decision has been in favour of Brazilian claimants, it has been the Law Officers' duty to advise Her Majesty's Government to submit to the decisions. (See Report of 14th December, 1860.)

We observe that the copy of the Commissioners' decision, which has been laid before us, is not "signed by them respectively," as required under Article II of the Convention. This may not improbably be a mere clerical omission; and even if the signatures were omitted (but such omission was accidental only), and the decision was really a final decision, advantage cannot, in equity or honour, be taken of the circumstance. The wanting certificates, we also think, may be dispensed with, on the Brazilian Government being satisfied as to the authenticity of the decision presented to them as that of the Commissioners.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

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[*] Page 130.

No. 243.

The Queen's Advocate to Earl Russell.—(Received September 28.)

FRANCE.

Claim of Captain Tindle for damage to his brig "Addison," run down in River Plate by the "Don Quichette," of Havre.

My Lord, *Doctors' Commons, September* 26, 1861.

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 9th September instant, stating that he was directed to transmit to me a letter from Mr. Richard Brown (dated the 4th September instant), inclosing a statement drawn up by Captain Tindle, of the circumstances under which the British brig "Addison" met with serious injury by being run into by the "Don Quichette," of Havre, in the River Plate, and of the steps which were subsequently taken by Captain Tindle to obtain an adjustment of his claim for damages, and to request that I would take these papers into consideration, and report to your Lordship my opinion whether Her Majesty's Government would be justified in instructing Her Majesty's Minister to bring this matter before the Government of the Argentine Confederation.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That it will not be proper for Her Majesty's Government to interfere in this case, at all events until full information has been received from Consul Parish, who is stated by Mr. Tindle to have acted with zeal and energy for those interested, and who holds Mr. Tindle's power of attorney.

I have, &c.
(Signed) J. D. HARDING.

No. 244.

The Law Officers of the Crown to Earl Russell.—(Received October 1.)

UNITED STATES.

Liability of British subjects to perform military service in the United States.

My Lord, *Doctors' Commons, September* 30, 1861.

WE were honoured with your Lordship's commands signified in Mr. Hammond's letter of the 10th instant, stating that with reference to the Law Officers' Report of the 31st July, 1860, and to the Report of Her Majesty's Advocate-General of the 18th of March last,* respecting the question of the liability of British subjects to perform military service in the United States, he was directed by your Lordship to transmit to us a despatch from Her Majesty's Consul at Charleston, again calling the attention of Her Majesty's Government to this question; and to request that we would take the Consul's despatch into our consideration, and favour your Lordship with such observations as we might have to offer thereupon.

Mr. Hammond was pleased to inclose, as bearing upon this subject, a despatch from Her Majesty's Minister at Washington, transmitting copies of a correspondence with Her Majesty's Consul at Galveston, respecting the liability of aliens to perform military service in Texas; together with the draft of an instruction which had been addressed to Her Majesty's Minister, approving his proceedings as therein reported.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That the question which has now practically arisen under very peculiar circumstances, is one not admitting of a satisfactory solution by being left to the determination of the ordinary municipal laws and Courts of the several States heretofore forming the "Republic of the United States of America," as might be the case under ordinary circumstances.

Whilst Her Majesty's Government might well be content to leave British subjects, voluntarily domiciled in a foreign country, liable to all the obligations ordinarily incident to such foreign domicile (including, where imposed by the municipal law of such country, service in the Militia, or National Guard, or Local Police, for the maintenance of internal peace and order, or even, to a limited extent, for the defence of the territory from foreign invasion), it is not reasonable to expect that Her Majesty's Government should remain entirely passive under the treatment to which we understand British subjects are actually exposed in various States of the former Union; such, for instance, as being embodied and compelled to serve in regiments, perhaps nominally of "Militia," but really exposed not only to the ordinary accidents and chances of war, but to be treated as rebels or traitors in a civil war, involving many questions in which they, as aliens, cannot, simply by reason of their domicile, be supposed to take interest; as to which they may be incompetent to form an opinion; and in the determination of which they are precluded from freedom of choice and action. No State can justly frame laws to compel aliens, resident within its territories, to serve, against their will, in armies ranged against each other in a civil war. *A fortiori*, in the absence of any such law, they cannot justly enforce the service.

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[*] Page 52.

We observe in Lord Lyons' despatch to Consul Lynn, 4th July, 1861 (Inclosure 3 in No. 379), that his Lordship states that in no case, either in the Northern or Southern States, has the discharge of a British subject enlisted against his will been refused or delayed, on proper representations being made by one of Her Majesty's Consuls or by himself; and we, therefore, conclude that the desired exemption is practically conceded. Should this not be the case, we can only suggest that Her Majesty's Government, in common with other foreign Governments interested in this question, should address such communications to the contending parties as may be likely to lead to the securing to aliens the exemptions which would be now so highly desirable. We assume that there is no hope of securing in practice, especially in South Carolina, any legal decision of a competent Court favourable to the exemption as a matter of right.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 245.

The Queen's Advocate to Earl Russell.—(Received October 3.)

UNITED STATES.

Proclamation of United States' Government, prohibiting all intercourse with Southern States. Suggestion for keeping up a communication with Charleston by means of Her Majesty's ships.

My Lord, *Doctors' Commons, October* 1, 1861.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 25th September ultimo, stating that he was directed to transmit to me a despatch and its inclosures, from Her Majesty's Minister at Washington (No. 467), reporting that in consequence of the recent Proclamation issued by the United States' Government, prohibiting all intercourse with the Southern States through the ordinary channels, he has, at the suggestion of Mr. Bunch, proposed to Rear-Admiral Sir A. Milne an arrangement by which Her Majesty's ships might be made the means of keeping up a communication with Charleston.

Mr. Hammond was also pleased to state that your Lordship considers that, for ordinary communications, this plan is open to objection on political grounds; but that your Lordship would be glad to be furnished with my opinion as to the proposed arrangement.

In obedience to your Lordship's commands I have taken this matter into consideration, and have the honour to report—

That the proposed arrangement does not seem to me to be desirable; its successful action must depend upon the view which the United States' Government may take of it (which is not stated), and the port of Charleston being blockaded, that Government may well object to its being periodically visited by British ships of war, merely for the purpose of carrying on the British Consul's correspondence with Lord Lyons.

I observe from Consul Bunch's despatch to Lord Lyons, of August 9:

1st. That the French and Spanish Consuls intend to address their respective Governments on the question, which is clearly one in which the joint action of the principal neutral Powers represented at Washington is desirable.

2ndly. That Consul Bunch states that "should the Government of the

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GREECE.

No. 263 x

Queen's Advocate to Earl Russell.—(Received October 1.)

Greek Bill concerning mixed marriages.

My Lord, *Doctors' Commons, September* 28, 1861.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 18th September instant, stating that he was directed to transmit to me two despatches from Her Majesty's Minister at Athens,* relative to a Bill concerning mixed marriages which has recently passed through the Greek Chambers.

Mr. Hammond was also pleased to state that the Protocol having reference to the position of Roman Catholics in Greece, alluded to in Sir Thomas Wyse's second despatch, was signed in the year 1830, and is to be found in the "State Papers," vol. xvii, p. 202, and a further Protocol bearing upon the same subject is to be found in vol. xviii, p. 605; and to request that I would take these papers into consideration, and furnish your Lordship with my opinion thereupon.

In obedience to your Lordship's commands, I have taken these papers into consideration, and have the honour to report—

That I do not find in these papers any statement or explanation of the state of the Greek law as to "mixed marriages," before the passing of the recent Law on the subject, or of the changes (if any) thereby introduced affecting the legal position in Greece of persons not members of the Greek Church who may desire to contract marriage with members of that Church.

I am not, therefore, in a position to offer any material observations on these papers.

No grounds for interference of Her Majesty's Government.

1. I will only add that, generally speaking, it is competent to every country to legislate for, and to alter and regulate, its own matrimonial law, at its own discretion, and to apply such law within its territories by its Tribunals, when their action is duly involved, to all marriages contracted within its territory, by whomsoever, or by its subjects, *wheresoever*. Great Britain has frequently acted on this principle. On general grounds, therefore, I cannot at present see any reason for the interference of Her Majesty's Government in this matter, and Sir T. Wyse does not suggest any.

2. With reference to the peculiar position occupied by France in this matter, especially under the Protocols of the 3rd February and the 1st July, 1830, I do not perceive what is the French ground of objection to this Law, or how it is at variance with those Protocols. Sir T. Wyse does not point this out, and, therefore, until it is clearly explained, I can form no opinion with reference thereto. Her Majesty's Government is certainly not bound to anticipate the possible action of France under the Protocols. When the intervention of Her Majesty's Government is required by France, the whole case must be fully considered.

3. I cannot at present see the expediency of Her Majesty's Government taking any step in the matter. A similar Law obtains (I believe) in certain Roman Catholic countries, in which the education of the children as Roman Catholics is made a condition precedent to the religious celebration of any marriage between a Roman Catholic and one who is not a member of that Church; however this may be, the Law has been enacted and promulgated, and is in actual operation. Sir Thomas Wyse does not suggest that its repeal should be required, or that, if required, it would be conceded, nor does he suggest what (if any) amendment would be desirable. I cannot, therefore, see to what object or purpose the interference of Her Majesty's Government can properly be directed.

I have, &c.
(Signed) J. D. HARDING.

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* Nos. 103 and 107.

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United States be disposed to allow the passage of a cruizer at stated times, it would not be difficult to have the correspondence of the various Consulates in the Southern States sent to this city (as being the most central) and transmitted hence by me to your Lordship."

This seems to me to be so reasonable and convenient a mode of getting over the existing difficulty, that I can scarcely conceive the United States' Government refusing to allow it's adoption. It might be arranged, I should conceive, without difficulty, that one special messenger, carefully chosen, not a citizen of the United States, and recognized by the United States' authorities, should convey to and fro all the foreign Consular correspondence, at stated times, with proper passports, and previous notice.

The restrictions pointed out by Lord Lyons in his letter to Admiral Milne of August 31, should be strictly adhered to; and every precaution should be taken to insure the observance of the strictest good faith, and the avoiding of all suspicion of any clandestine or private communication being carried on under cover of the official communications, or by means of the messenger.

Should the Government of the United States refuse or hesitate to sanction such an arrangement, it will then be open to Her Majesty's Government, in common with other foreign Powers, to consider the propriety of insisting on the right of communicating with their respective Consuls by means of ships of war, or even of recognizing the Confederate Government as a *de facto* Sovereign Government, and communicating with it, or *through* it, so as to correspond with all Consulates in its territory, as may be necessary.

Considering, however, the peculiar local and political circumstances now existing, the Government of the United States should, in my opinion, be, in the first place, required to permit the plain and obvious method of periodical communication by a foreign special messenger, exclusively conveying foreign official correspondence, to be resorted to between the foreign Legations at Washington and their respective Consulates in the Confederate States; and that Government should be required forthwith to give a distinct affirmative or negative answer to this requisition. Should the answer be negative the best course to be adopted may be further considered.

I have, &c.
(Signed) J. D. HARDING.

No. 246.

The Queen's Advocate to Earl Russell.—(Received October 3.)

SPAIN.

Capture and condemnation of the British vessel "Criticado" by Spanish guarda costa on suspicion of smuggling.

My Lord, *Doctors' Commons, October* 2, 1861.

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 18th September ultimo, stating that he was directed to transmit to me the correspondence marked in the margin,* relating to the capture by a Spanish guarda costa, in July 1860, of a British vessel, the "Criticado," on suspicion that she was engaged in smuggling.

Mr. Layard was also pleased to state that I should perceive from Sir John Crampton's despatch No. 75 of the 8th September instant, that the capture has been condemned by the local Judge at Cadiz,† on the ground of its illegality, and that he has ordered the restitution of the "Criticado" and her cargo to the owners; and to request that I would furnish your Lordship with my opinion whether Her Majesty's Government should, under these circumstances, support any claim to indemnity that may be advanced on behalf of the owners of the "Criticado" against the Spanish Government.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I observe from Consul Brackenbury's despatch to Sir J. Crampton, of August 31, that it is still competent to the Superior Tribunal at Seville to confirm, alter, or annul the sentence pronounced by the Judge of Finance of Cadiz, which reversed the decision of the Administrative Board, and revoked the confiscation pronounced by that Board. This sentence cannot, it seems, be

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* Mr. Edwardes, Nos 87 and 94; War Office, August 11; to Mr. Edwardes, No. 49; Sir A. Buchanan, Nos. 71 and 80; Sir J. Crampton, No. 75.

† *Sic in orig.*—J. D. H.

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carried into effect without the sanction of the Superior Tribunal of Seville. Until, therefore, the legal proceedings have completely terminated, and the sentence is final and definitive, the international question of a demand of indemnity cannot be properly considered.

Assuming that the sentence already pronounced will be finally affirmed (which Consul Brackenbury anticipates), then, if Her Majesty's Government should be satisfied that the vessel was *bonâ fide* engaged in a lawful voyage, a demand for indemnity to her owners should be made and supported; but I own that my present impression is against the expediency of supporting any claim of indemnity on the part of her owners.

1st. According to the best opinion which I can at present form, the vessel was engaged in a contraband transaction. The master made at least one deliberately false statement as to the date of his departure; he admitted this to the Consul; the position of the vessel when captured (bearing in mind the previous state of the wind), and the very scanty particulars furnished in the owner's Memorial, July 24, 1860 (in which the day of sailing is not mentioned, and the *bona fides* of the voyage is not alleged), together with the nature of the cargo, and the alleged destination from Gibraltar to Bayonne, confirm my suspicions on this point, which is noticed in the sentence.

2nd. If the case is again to be submitted to me, I must desire a full explanation as to the real nature and design of the voyage, whether contraband or not, together with an explanation of the precise effect of the sentence as to both costs and damages; as whether they were demanded by, or on behalf of, the owners, in either Court, and on what grounds the demand was supported and opposed; whether it was competent to either Court to have awarded them; and so forth.

3rd. As regards the policy and probable result of any such demand, the notoriety and extent of the contraband trade with Spain, habitually carried on from Gibraltar, and the constant differences arising therefrom, must be borne in mind; and Her Majesty's Government would, I apprehend, be somewhat reluctant to insist on indemnity being paid to smugglers who had succeeded in obtaining restoration of their property by a sentence of the Captor's Court (a demand which would scarcely be favourably entertained by Spain).

The important case of the "Ferry Boat," and that of the "Julian," seem, from Sir A. Buchanan's No. 71, to be still pending between the two Governments; and it is possible that the course which Her Majesty's Government may feel disposed to take as to supporting any demand for indemnity in this case, which may be made by the owners (but which has not as yet been made), may in some degree depend on the course taken by the Spanish Government in the above two cases, more especially in that of the "Ferry Boat."

I have, &c.
(Signed) J. D. HARDING.

No. 247.

The Queen's Advocate to Earl Russell.—(Received October 3.)

My Lord, *Doctors' Commons, October* 2, 1861.

NEW GRANADA.

Decrees of General Mosquera annulling contracts of Central Government of New Granada, and disavowing agreement concluded by Señor Martin with Spanish-American bondholders.

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 19th September ultimo, stating that with reference to my Report of the 8th June,* on the various questions arising out of the revolution in New Granada, he was directed to transmit to me the correspondence marked in the margin† respecting General Mosquera's Decrees of the 31st of December and 15th of March last, by which all contracts of a certain class made with the then Central Government of New Granada are annulled, and the agreement recently concluded by Señor Martin with the Committee of Spanish American bondholders is disavowed.

Mr. Layard was also pleased to state that at the time when the first Decree was issued the Diplomatic Corps at Bogotá protested against it, but no further action was taken by Her Majesty's Government in the matter, as it was doubtful what might be the issue of the civil war.

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* Page 113.

† Mr. Griffith, Nos. 11, 19, 28, 33, and 63; to Mr. Griffith, Nos. 31 and 36.

Mr. Layard was also pleased to state that since that time, however, General Mosquera, the head of the "United States of New Granada," has overthrown the late Federal Government, taken possession of Bogotá, and is in official relations with Mr. Griffith, who has recognized his Government as the *de facto* Government of the Republic; and to request that I would take the inclosed correspondence into consideration, and furnish your Lordship with my opinion as to what steps can be taken by Her Majesty's Government for the bondholders and other British subjects, whose interests are seriously compromised by the Decrees in question.

In obedience to your Lordship's commands I have taken this correspondence into consideration, and have the honour to report—

That I observe that the protest originally made (howsoever) to General Mosquera against his Decree of December 31, 1860, in the shape of a letter of January 31, 1861, from the French Vice-Consul in Honda to Señor Ceron, purported to be made on behalf of France, England, the United States, Peru, and Denmark, jointly; the joint action, therefore, of these Powers should be (if practicable) continued, and if any serious doubt should still exist as to General Mosquera's recognition of that protest, owing to the form and manner in which it was made at the time, Mr. Griffith should, in conjunction with the other Representatives of the protesting Powers, cause such protest to be formally repeated and renewed in the most official manner. As to the application of the Decree in question, I must repeat that some particular facts and circumstances must be either stated or assumed before I can offer more specific advice. It is of little use to discuss abstract principles of international law or justice with General Mosquera; joint action should be adopted as far as practicable, and the particular case or circumstances should be more dwelt upon than the words or spirit of the Decree taken as a whole.

With respect to the arrangement concluded with the British bondholders by Señor Martin, recognized by Decree of December 30, 1860, and disavowed by General Mosquera by Decree of March 15, 1861; this seems to me a matter for settlement between Her Majesty's Government alone and General Mosquera, although the protest above alluded to may be referred to, and invoked in reference thereto; and the formal and complete recognition of General Mosquera as President of the Republic by Her Majesty's Government may be to a certain extent made dependent on his not repudiating the arrangement. His objection, however, seems to be rather one of form than of substance, for I observe (from Mr. Griffith's No. 36) that General Mosquera "offers to make the same concessions as those contained in the arrangement, and will even grant more advantageous terms, if the bondholders will address themselves to his Government."

Inasmuch as the complete success of the General seems nearly approaching, and as Her Majesty's Government has recognized his Government as the *de facto* Government of the Republic, the adoption of this course seems to me desirable; for it is highly for the interest of the bondholders to avoid a rupture or misunderstanding with him, especially on the subject of his right or "title" to be President, which Her Majesty's Government has recognized *de facto*.

I observe that the arrangement with the bondholders is stated (in Article 17) not to need the approbation of the Congress, and that it was carried into effect by the simple Decree of the President Ospina; it was not, as far as I am aware, negotiated or concluded through the medium of Her Majesty's Legation or Government.

Adverting to these circumstances, to its peculiar nature, to the fact of its dealing with the national lands and Custom-houses, and consequently depending for its practical working and result upon the actual Government for the time to come, it does not appear to me to be unreasonable that General Mosquera should require it to be renewed directly with and ratified by himself; and Mr. Griffith states no objection to the adoption of this course.

I have, &c.
(Signed) J. D. HARDING.

No. 248.

The Queen's Advocate to Earl Russell.—(Received October 5.)

UNITED STATES.

Seizure of the "William Arthur" (*alias* the "Sarah Anne Roe") by authorities at Portland for alleged violation of the laws of the United States.

My Lord, *Doctors' Commons, October* 3, 1861.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 24th September ultimo, stating that he was directed to transmit to me the accompanying correspondence from Lord Lyons and Her Majesty's Consul at Portland,* relative to the seizure by the authorities of that port, for an alleged violation of the laws of the United States, of the British schooner "William Arthur;" and to request that I would take this case into consideration, and report to your Lordship my opinion thereupon.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That there is no reason for the intervention of Her Majesty's Government in this case.

The "William Arthur" was originally the United States' schooner the "Sarah Anne Roe." She was purchased, apparently, at Portland (I presume), in Maine or one of the Northern States, and under the United States' Government, on the 8th August last, by John Douglas Merrilees, a British subject, but resident at Wilmington, North Carolina, who thereupon changed her name, and procured a provisional certificate of registry from the British Consulate, and cleared her from Portland for St. Thomas, West Indies, "and a market," with a cargo of salt fish, grindstones, and matches. She was seized by the Custom-house authorities as she was leaving the port.

Under such peculiar circumstances, this seizure seems not to have been made without "probable cause." Her owner seems to be domiciled in the Confederate States. He purchased her *flagrante bello*, in a Northern State, and changed her name. The mere fact of his having procured a British provisional certificate of registry will not, under such circumstances, of itself protect the vessel from detention in order to an investigation, in legal form, on the part of the United States' Government, into the facts and the legal position of the case.

I have, &c.
(Signed) J. D. HARDING.

No. 249.

The Queen's Advocate to Earl Russell.—(Received October 5.)

UNITED STATES.

Seizure of the "Adelso" for alleged violation of the blockade of the port of Wilmington.

My Lord, *Doctors' Commons, October* 3, 1861.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 24th September ultimo, stating that he was directed to transmit to me a despatch from Her Majesty's Minister at Washington, No. 460, relative to the seizure at Newport of the British schooner "Adelso," for an alleged violation of the blockade of the port of Wilmington, North Carolina; and to request that I would take this case into consideration, and report to your Lordship my opinion thereupon.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That Lord Lyons appears to me to have taken a correct view of this case in his despatch to Consul Lousada, of August 29; and that adverting to the contents of the Consul's despatch to Lord Lyons of August 24, the case must, at present, be left to be legally dealt with by the Prize Court. It is not as yet apparent upon what precise ground condemnation will be asked; but if any effective blockade of Wilmington existed at the date of the "Adelso's" entering or leaving the port, and if she had notice thereof, she broke it on each occasion, and the facts of there not being any such blockade at either period, or of her having no notice thereof (assuming its existence to be proved), are for the consideration of the Court, upon the evidence which may be adduced.

I presume that the parties interested are represented before the Court; and, if so, the Consul should not officially interfere; if this is not the case the Consul's intervention should be limited to obtaining time to enable them to appear. Every facility should be afforded by the Consul to the British parties interested for establishing the facts as to the inefficiency of the blockade, stated in various despatches mentioned in Lord Lyons' No. 460, inasmuch as the "onus" of proving this inefficiency will probably be cast upon them. The absence of any such "warning" by a cruizer of the United States, as is mentioned in the President's Proclamation, will, doubtless, be duly insisted on as relating to the breach by "ingress," if *that* should be urged; and the questions both of the existence of the blockade, and of the vessel having due notice thereof, should be raised before the Court. The master and crew should be leniently treated, and only detained in safe custody as long as may be necessary to take their evidence.

I have, &c.
(Signed) J. D. HARDING.

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* Lord Lyons, Nos. 449 and 461; Consul Murray, No. 39.

No. 250.

The Law Officers of the Crown to Earl Russell.—(Received October 5.)

GENERAL.

Proposed Convention with foreign Governments respecting law of foreign countries when pleaded in British Courts of Justice.

My Lord, *Doctors' Commons, October* 4, 1861.

WE were honoured with your Lordship's commands signified in Mr. Hammond's letter of the 18th September last, stating that, with reference to our Report of the 16th August ultimo,* transmitting a draft of Articles fitted to be proposed to foreign Governments in order to carry out the objects of the statute 24 Vict., cap. 11, for the ascertainment of the law of foreign countries when pleaded in Courts in Her Majesty's dominions, he was directed by your Lordship to send us the draft of a circular intended to be addressed to Her Majesty's Ministers at the Courts of those countries with which British subjects have extensive commercial intercourse.

Mr. Hammond was also pleased to inclose the draft of Articles, and stated that a few verbal alterations had been introduced into it, and that there were some remarks in the margin to which our attention was requested, and requesting that we would take these papers into consideration, and report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That (subject to certain verbal alterations which we have introduced) we approve of the draft Articles and draft circular.

We have directed our attention to the questions in the margin of the draft mentioned in Mr. Hammond's letter.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

Inclosure in No. 250.

Draft of Convention.

[N.B. The alterations suggested by the Law Officers are printed in brackets.]

HER Majesty the Queen of the United Kingdom of Great Britain and Ireland, and *His Majesty the Emperor of the French*, deeming it expedient to afford facilities for ascertaining the law as administered in the dominions of the one party when pleaded in actions or suits depending in the Courts within the dominions of the other, their said Majesties have resolved to conclude a Convention for that purpose, and have named as their Plenipotentiaries, that is to say:—

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* Page 184.

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Her Majesty the Queen of the United Kingdom of Great Britain and Ireland,

And

Who, after having communicated to each other their respective full powers, found to be in good and due form, have agreed upon the following Articles :—

ARTICLE I.

Whensoever the law of *France* shall be pleaded in any action or suit depending in any of the Superior Courts within Her Majesty's dominions, and it shall be the opinion of such Court that it is necessary or expedient for the disposal of such action or suit to ascertain the law applicable to the facts of the case as administered in *France*, and whenever such Court, or a Judge thereof, shall approve of a case setting forth the facts, and shall settle the questions of law arising out of the same, on which they desire to have the opinion of a *French* Court, and shall make any order remitting such questions of law, together with the case, to the Court of

N.B.—More Courts than one may be mentioned, if expedient.

in *France*, and shall desire the opinion of such Court on such questions of law, and shall request such Court to pronounce its opinion thereon, then the said Court of
shall in due form pronounce its opinion on the questions so submitted to it, and a copy of such opinion shall be certified by an officer of the said Court.

ARTICLE II.

Whensoever the law of England shall be pleaded in any action or suit depending in any of the Courts of *France* [hereinafter mentioned], and the Court shall deem it expedient to ascertain the law applicable to the facts of the case, as administered in any part of Her Majesty's dominions, and shall remit to the Court in Her Majesty's dominions, whose opinion is desired, a case setting forth the facts and the questions of law arising out of the same, on which they desire to have the opinion of such Court in Her Majesty's dominions, it shall be competent to any of the parties to the action or suit to present a petition to such Court whose opinion is to be obtained, praying such Court to hear parties or their counsel, or to pronounce its opinion on such questions without hearing parties or counsel, and the Court to which such petition shall be presented shall consider the same, and, if it think fit, shall appoint an early day for hearing parties or their counsel on such case, and shall pronounce its opinion upon the questions of law as administered by it, which are submitted to it by the said Court of *France* in which such action or suit may depend; and, upon such opinion being pronounced, a copy thereof, certified by an officer of the Court pronouncing the same, shall be given to each of the parties to the action or suit by whom the same shall be required.

N.B.—In Article I the phrase is "in any of the *Superior* Courts" in Her Majesty's dominions. Is it intended that *any* Court, however petty, in a foreign country, may send a case for the opinion of our Courts?

Query. Again. Is this intended to apply to any Court whatsoever, *e.g.*, a County Court or a Police Court?

[ARTICLE III.

The power given by the preceding Article may be exercised by any of the following Courts, viz. :—R. P.]

ARTICLE III [IV].

The present Convention shall be ratified, &c.

J. D. H.
W. A.
R. P.

No. 251.

The Law Officers of the Crown to Earl Russell.—(*Received October* 8.)

UNITED STATES.

Course to be taken by British authorities in regard to privateers carrying the flag of the Confederate States.

My Lord, *Doctors' Commons, October* 5, 1861.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 17th September ultimo, in which he stated that he was

directed by your Lordship to transmit to us a letter from the Colonial Office dated the 10th September ultimo, inclosing a copy of a letter from the Governor of the Windward Islands, reporting a conversation with the United States' Consul respecting the course which would be taken by the British authorities in regard to privateers carrying the flag of the Confederate States.

Mr. Hammond was also pleased to state that your Lordship presumed that the Governor should be informed, in reply, that Southern privateers visiting colonial ports could not be treated as pirates merely because they sailed under the Confederate flag, inasmuch as Her Majesty's Government acknowledged the belligerent rights of the Southern States.

2. That privateers were subject to the same laws as ships of war sailing under commission; but if they plundered vessels under the British flag, instead of taking them into a port, whether belonging to the Confederate States or to some other country, and bringing them before a Prize Court, they must be treated as pirates.

3. That as regards the illegal or fraudulent use of the British flag, vessels of the so-called Confederate States and of the United States must be treated in the same manner; and that if any question were laid before a Prize Court touching the assumption of the British flag, that Court would, it must be presumed, decide according to the Law of Nations.

4. That if plunder were resorted to by the captors, the capturing vessels, if privateers, must be treated as pirates; if regular vessels of war, the Government by which they were commissioned must be appealed to.

Mr. Hammond was further pleased to state that your Lordship would be glad to be informed by us whether the foregoing statements might properly be communicated to the Governor of the Windward Islands for his information and guidance on the points adverted to in his letter, and whether they might also be communicated, through the Board of Admiralty, to the Admiral on the North American station, for his information and guidance.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we are of opinion that the Governor of the Windward Islands, and the Admiral on the North American station, may (if your Lordship thinks it requisite) be instructed—

1. That privateers, duly commissioned as such by the Government of the Confederate States, acting under the authority and using the flag of that Government, and capturing and taking into port, for adjudication as "prize of war," vessels either sailing under the flag of the United States, or even British or other neutral vessels, having goods on board belonging to citizens of the United States, or to persons (of whatever origin) domiciled in those States, or strongly suspected of having such, cannot be considered or treated as pirates, either in British waters or elsewhere, by British colonial authorities or naval officers; nor will their being so considered by the United States' Government or laws make any difference in this respect.

A pirate by the law of nations is a "common robber on the seas," acting without any commission from any established authority, but with a general design of indiscriminate plunder, without having recourse to any Court whatsoever; and a privateer capturing, for the purpose of taking in for adjudication by a competent Court, the ships or goods of those enemies of his belligerent Government exclusively, or those reasonably suspected of being such (against which he is commissioned and ordered to act), cannot be treated as a pirate by neutrals, agreeably to the principles of international law, even in the event of his committing certain irregularities in so doing.

In order to justify British Colonial or naval officers in treating as "pirates by the law of nations" vessels commissioned as privateers of the Confederate States, and claiming to act as such, such officers must have either positive proof, or the strongest ground of suspicion, founded on adequate evidence, that those on board of such vessels have not merely been guilty of irregular conduct (for which redress may be required from their Government, or its Prize Courts, such irregularities being too often incidental to the employment of privateers), but of conduct clearly amounting to "piracy" "by the law of nations," as above explained, as (for instance) deliberate plunder, appropriation, or destruction of property, which they well knew was not enemy's property, and which they did not attempt or intend to take before any Prize Court for adjudication.

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With respect to the assumption or use of the British flag, it is to be borne in mind:—

1st. That the mere use of a neutral flag cannot, of itself, protect a vessel from capture, if she has enemy's property on board, or is suspected with probable cause of belonging wholly, or in part, to enemies.

2ndly. It must be presumed that a Prize Court will correctly administer the law of nations, and will do right and justice between all parties in such cases, awarding costs and damages where they may be due.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 252.

The Law Officers of the Crown to Earl Russell.—(Received October 8.)

UNITED STATES.

Right of a British subject who has declared his intention to become a citizen of the United States to receive protection, and consequently a Passport from Her Majesty's Government.

My Lord, *Doctors' Commons, October 7*, 1861.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 20th September ultimo, in which he stated that he was directed by your Lordship to transmit to us a despatch and its inclosures from Her Majesty's Minister at Washington (No. 448, August 26, 1861), on the question of the right of a British subject who has declared his intention to become a citizen of the United States to receive protection, and consequently a passport, from Her Majesty's Government, together with the previous correspondence referred to by Lord Lyons, and the Report of Her Majesty's Advocate-General, on which the instruction to Lord Lyons, No. 49 of the 1st of March, was founded; and also a correspondence which had lately passed between Messrs. Brown, Shipley and Co., of Liverpool, and your Lordship's Department on the subject.

Mr. Hammond was further pleased to state that he was directed by your Lordship to request that we would take these papers into our consideration, and furnish your Lordship with our opinion as to the instructions which it would be advisable to send to Lord Lyons for his guidance.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we observe that Mr. Hunter officially informs Lord Lyons, in answer to his Lordship's inquiry, that "until the final act of naturalization, such a person is to all intents and purposes a subject or citizen of his native country;" and he also states that "foreigners who may purpose leaving the United States, whether they have declared their intention to become citizens or otherwise, must obtain passports from the proper authorities of their own country." (Inclosure 6 in Lord Lyons' No. 448.)

We also observe that Mr. Carlisle, the legal adviser of Her Majesty's Legation at Washington, states, in Inclosure 1 in the above despatch, that such persons remain aliens until the complete final act, owing none of the duties, and entitled to none of the peculiar protections, of allegiance.

Under these circumstances, we are of opinion that Lord Lyons should be instructed to grant passports to the persons in question, as a general rule. It is, of course, understood that the granting of a passport is a matter for the discretion of his Lordship, not one of strict legal right.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 253.

The Queen's Advocate to Earl Russell.—(Received October 8.)

UNITED STATES.

Cases of alleged violation of blockade, and the question of proper tribunal for trying such cases.
Cases of the "Sarah Starr" and "Prince Leopold."

My Lord, *Doctors' Commons, October 8*, 1861.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 26th September ultimo, stating that with reference to my Report of the 21st September ultimo,* he was directed to transmit to me, together with the previous despatch on the same subject (No. 436), a further despatch (No. 450) and its inclosures from Lord Lyons, respecting the case of the British brig "Sarah Starr," from which it appears that the trial of that vessel for an alleged violation of a blockade of the port of Wilmington is about to be proceeded with, the District Attorney at New York having, on the ground of her suspected nationality, declined to act upon the order of the United States' Secretary of State for her release.

Mr. Hammond was also pleased to transmit the accompanying correspondence from Lord Lyons (Nos. 459 and 470), respecting the seizure at New York of the British schooner "Prince Leopold," for an alleged violation of the blockade of the port of New Berne, in North Carolina, and to request that I would take these papers into consideration, and furnish your Lordship with my opinion as to the proper tribunal for trying such cases as those of the "Sarah Starr" and "Prince Leopold," and whether the District Courts can be considered to have authority in questions of international law.

Mr. Hammond was also pleased to state that your Lordship would wish to be informed whether, in cases of manifest hardship, Her Majesty's Minister should be instructed to employ Counsel to watch over the interests of British owners.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That with such information as I at present possess on the subject, I am of opinion that the District Courts of the United States are the proper tribunals for trying this class of cases; and that they are to be considered as having authority in such questions of international law as are incidental to, or connected with, their jurisdiction as Prize Courts. They are not Courts of the several States, nor do they derive their jurisdiction from the Government or Constitution of any separate State. They are Federal Courts, subordinate to the "Supreme Court of the United States," and deriving their jurisdiction from the Federal Government, through the President and Congress; they possess all the powers of Courts of Admiralty (whether considered as "Instance" or as "Prize" Courts), and they have exclusive original jurisdiction of all seizures upon the high seas or waters within their jurisdiction; and also of all other seizures and suits for penalties and forfeitures incurred under laws of the United States (see "Kent's Commentaries," vol. i, pages 304, 354, 357). They have (as far as I am aware) always exercised prize jurisdiction, subject (I believe) to appeal to the Supreme Court of the United States. Mr. Carlisle, the able Counsel to Her Majesty's Legation at Washington, can doubtless give your Lordship full information on this question. He has never (as far as I am aware) suggested any doubt on this subject.

Your Lordship's last question (although one of discretion and policy rather than of law) must, in my opinion, be answered generally in the negative; subject, however, to certain qualifications. For instance, if in any case the British interests involved are adequately "represented" before the tribunals (as, for instance, by consignees or agents, or other parties in precisely the same position, and having the same interest as Her Majesty's subjects), there is no reason why the British Legation should employ Counsel.

If, on the other hand, the British interests concerned are not represented, but time is required to communicate with them, such applications for "time" may, in pressing cases, be made by the authority, and at the cost of, Her Majesty's Consulate.

Again, if any very practically important question of principle or of international law is involved in a case in which British interests are inadequately represented, or if the non-appearance of Counsel may lead to a plain failure or defeat of justice, the same course may be taken. As a general rule, however, Her Majesty's Legation should, for obvious reasons, be very cautious in employing Counsel to watch over the interests of owners; this should not be done excepting in the absence of notice to the owners, and when they are unrepresented, and in danger of being deprived of their property without a hearing; when it *is* done, the Consulate only should act, and the Legation should not directly retain or instruct Counsel, or in any way mix itself up in the case, whilst it is pending before the Courts.

I have, &c.
(Signed) J. D. HARDING.

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* Page 223.

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No. 254.

The Law Officers of the Crown to Earl Russell.—(Received October 12.)

PERU.

Captain Carvell's proceedings at Lima.

My Lord, *Doctors' Commons, October* 9, 1861.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 21st September ultimo, in which he stated that he was directed by your Lordship to transmit to us the further correspondence marked in the margin of his letter,* from which we should learn the circumstances under which Captain Carvell had been forced to take refuge at the French Legation at Lima, in order to avoid being thrown into prison.

Mr. Layard was further pleased to state that your Lordship requested that we would take this correspondence, together with the former papers which were returned therewith, into our consideration, and furnish your Lordship with our opinion on the present state of the case, and whether any, and if so what, additional instructions to those contained in Lord Russell's despatch No. 31 to Mr. Jerningham, should be sent to Mr. Barton, the Acting British Chargé d'Affaires, in the matter.

We are further honoured by your Lordship's commands signified in Mr. Layard's letter of the 1st October instant, in which he stated that he was directed by your Lordship to transmit to us, with reference to his letter of the 20th ultimo, three further despatches from the Acting British Chargé d'Affaires at Lima,† respecting Mr. Carvell's position at Lima.

Mr. Layard was also pleased to state that he was directed by your Lordship to request that we would take these papers into our consideration, together with those already before us on the subject, and furnish your Lordship with our opinion thereupon.

Mr. Layard was further pleased to add that your Lordship would be glad to receive our opinion in time to send instructions to Mr Barton by the mail of the 16th instant.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That the only new fact of any importance stated in the additional papers now transmitted is, that Captain Carvell, on being threatened with imprisonment for disobedience to an order of the Peruvian Court (whose jurisdiction and authority he still refuses to acknowledge), took refuge in the French Consulate, by the invitation or with the consent of the French Consul and Chargé d'Affaires, where he would seem to be at present secure from molestation.

We cannot say that this fact necessitates any further instructions to Mr. Barton, or alters the view we have taken in our former Reports, especially in that of the 29th May.

We have already stated that Captain Carvell is not exempt from the jurisdiction of the Peruvian Courts in these proceedings; and we consequently could not have advised Mr. Barton originally to give him an asylum in the British Legation, so as to enable him to evade obedience to the Courts, and to risk a serious international dispute on a question in which, whatever may be the conduct of certain parties in Peru, Her Majesty's Government has not in our opinion a legal right to interfere.

We observe that he was, at the date of the last despatches, still at the French Legation, and there is nothing in these papers to alter or affect the view which we have hitherto taken of the legal portion of the case.

It is evident from all Captain Carvell's letters that his own position has never been correctly understood by him. He mistakes the nature of a British probate, and erroneously imagines himself to be exempted by it from Peruvian jurisdiction, as "the delegate of Her Majesty's Courts;" and, while he takes up ground so entirely untenable, it is not easy to disengage any real ground of complaint which he may have, on the score of official malversation by the Peruvian authorities, from the obvious difficulties in which he has placed himself by denying a legal jurisdiction. The opinions said to have been expressed by some of the Diplomatic Body in Peru are evidently founded upon a confusion between the question of jurisdiction and the question of the law by which the moveable succession of a British subject dying possessed of moveable property abroad ought

to be regulated. The latter question ought to be determined *according to* the law of the deceased person's domicil; but it must be determined, as to all moveable property situate and brought into litigation in Peru, *by* the Peruvian Courts.

We consider that Mr. Barton was quite right in not acceding to Captain Carvell's proposal to re-deposit any of the property in litigation at the British Consulate.

Bearing in mind the observations on the conduct of the authorities and of Judge Ponce, contained in our Report of the 26th July,* Mr. Barton should continue carefully to watch the case.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 255.

The Law Officers of the Crown to Earl Russell.—(Received October 12.)

TURKEY.

Request of Mr. T. Parry that an action, in which he is plaintiff in the Consular Court at Constantinople, may be tried by a jury.

My Lord, *Doctors' Commons, October* 10, 1861.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 18th ultimo, in which he stated that he was directed by your Lordship to transmit to us a letter from Mr. Thomas Parry dated the 4th of September last, requesting that a certain action in which he was plaintiff, and which was about to be brought into the Consular Court at Constantinople, might be tried by a jury.

Mr. Hammond was further pleased to state that he was directed by your Lordship to request that we would take Mr. Parry's application into our consideration, and furnish your Lordship with our opinion as to the answer which should be returned to it.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That, as far as our information extends, your Lordship has no power, either under the Order in Council of August 1860, or otherwise, to comply with Mr. Parry's request: and we conceive that it would be proper to inform Mr. Parry that his action must be tried according to the ordinary course of law, as administered in the Consular Court of Constantinople, and that your Lordship cannot interfere therewith.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 256.

The Queen's Advocate to Earl Russell.—(Received October 12.)

UNITED STATES.

Claim of Messrs. Whitworth for losses sustained by their vessel the "Boyne" being warned off the whole Southern coast of the United States.

My Lord, *Doctors' Commons, October* 11, 1861.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 2nd October instant, stating that he was directed to transmit to me a letter and its inclosures from Messrs. Whitworth, dated the 26th ultimo, stating the circumstances under which their vessel, the "Boyne," had been warned off the whole Southern coast of the United States, in consequence of which they have incurred large losses for loss of freight and for the non-sale of the cargo; and that Messrs. Whitworth request that their claim for compensation on this account may be brought to the notice of the United States' Government. And Mr. Hammond was pleased to request that I would take this case into consideration, and report to your Lordship my opinion thereupon.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That the "Boyne," a British vessel, bound from Fleetwood to Savannah, was "warned off" that port on the 11th May last by the United States' frigate "Niagara," and informed that "the whole coast of the South" was blockaded. She thereupon proceeded to New York (at some date not stated), where she sold her cargo (coal), and shipped another cargo, with which she has, I presume, arrived in England. If this is the first complaint on the part of her owners, the lapse of time is somewhat remarkable, considering the rapid communications with the United States. I find no allusion to any previous statement, and the particulars of the case are very scantily given. I can only suggest that the papers should be sent to Her Majesty's Legation at Washington, and to the Consulate at New York, in order to ascertain—

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* From Mr. Barton, No. 3; from Mr. Carvell, August 14.

† Mr. Barton's Nos. 8, 9, and 10.

* Page 182.

1st. What report to the Consulate, or what protest, or other formal statement, was made by the master originally, on his arrival at New York, *recenti facto?*

2nd. What was the fact as to the existence of an effective blockade of Savannah on the 11th May, bearing in mind the warning from the "Niagara," alleged to have been given "seventy miles from the port?"

3rd. If there was no such blockade, what proof of that fact can Her Majesty's Government now bring forward?

Until these points are cleared up, Her Majesty's Government is not in a condition to decide upon the proper course to adopt.

I have, &c.
(Signed) J. D. HARDING.

No. 257.

The Queen's Advocate to Earl Russell.—(*Received October* 12.)

My Lord, *Doctors' Commons, October* 12, 1861.

UNITED STATES.

Claim of Messrs. Laurie, Sons, and Co. for restitution of their property seized on board the American schooner "Crenshaw," by United States' blockading squadron.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 2nd October instant, stating that he was directed to transmit to me a letter from Messrs. Laurie, Sons, and Co., dated the 16th ultimo, stating the nature of their interest in the cargo of the American schooner "Crenshaw," which has been seized by the United States' blockading squadron and sent to New York for adjudication, and requesting that steps may be taken for the release of their property on board that vessel.

Mr. Hammond was also pleased to inclose the accompanying despatches from Lord Lyons (No. 321), and from Her Majesty's Consul at New York (No. 76), which contain the latest information on this case; and with reference to my Report of the 18th June last on a similar claim made by Messrs. Gilliat, Mr. Hammond was pleased to request that I would take Messrs. Laurie's letter into consideration, and report to your Lordship my opinion as to the instructions which should be addressed to Lord Lyons thereupon.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That, having regard to the facts stated in Consul Archibald's despatch to Lord Lyons of the 20th June, I do not see what more can be done by the Consul in this case.

I observe, however, that the Consul states (under date of the 23rd July) that "Judge Betts is preparing his decisions in these cases," which are therefore, by this time, probably decided.

The fact alleged by Messrs. Laurie, that in the case of the "Haxall," under similar circumstances, a concession was made by the United States' Government, at the instance of the Bremen Minister, should be brought to the notice of Lord Lyons, for his guidance.

I have, &c.
(Signed) J. D. HARDING.

No. 258.

The Queen's Advocate to Earl Russell.—(*Received October* 15.)

My Lord, *Doctors' Commons, October* 14, 1861.

FRANCE.

No reason to interfere in Mr. Morgell's case. Disposition of property left to him by a deceased relative.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 8th of October instant, stating that with reference to my letter of the 23rd of August last,* he was directed to transmit to me the accompanying further letter dated the 28th of September last, which has been received from Mr. Morgell, respecting the complaint made by him in regard to the disposition of some property left by a deceased relation in France, and to request that I would take this paper, together with the former papers, into consideration, and furnish your Lordship with my opinion as to the answer which should be returned to Mr. Morgell.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That Mr. Morgell may be informed that your Lordship sees no reason to interfere in his case.

I have, &c.
(Signed) J. D. HARDING.

No. 259.

The Queen's Advocate to Earl Russell.—(*Received October* 16.)

My Lord, *Doctors' Commons, October* 15, 1861.

BELGIUM.

Case of the "Antagonist," run down at sea by the Belgian mail-packet "Rubis."

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 4th October instant, stating that he was directed to transmit to me the accompanying correspondence respecting the case of the British vessel "Antagonist," which was run down at sea by the Belgian mail-packet "Rubis," and to state that as I am acquainted with the early facts of this case, it was sufficient to refer me for its subsequent history to his letter to the Admiralty of the 11th September ultimo.

Mr. Layard was also pleased to transmit to me a letter dated the 27th of September, which has been received in reply from that Board, inclosing a copy of the opinion of the Registrar of the Admiralty Court upon this case, and as to the course which Her Majesty's Government should pursue in the matter, and to request that I would inform your Lordship whether I concur in that opinion, and whether I think it would be advisable that Her Majesty's Government should bring the case before the Belgian Tribunal, or leave the owners to seek their own remedy.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I am of opinion that the owners should *primâ facie* be left to seek their own remedy; if they should satisfy Her Majesty's Government that from their poverty or other special circumstances this course would, in effect, prevent their obtaining a fair legal "hearing" in Belgium, it will be open to Her Majesty's Government to reconsider its determination in this respect. It will be observed (from the conclusion of the Report of the Registrar of the Court of Admiralty of the 26th September) that on the 7th August the British sloop "Lily" was run down and sunk by the "Rubis." The owners of the "Lily" were, like those of the "Antagonist," prevented from arresting the "Rubis," owing to the latter being a Belgian ship of war.

I have, &c.
(Signed) J. D. HARDING.

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* Page 186.

No. 260.

The Law Officers of the Crown to Earl Russell.—(Received October 19.)

TURKEY.

As to amount of commuted punishment to be imposed on Giuseppe Camilleri, a Maltese. found guilty of murder by the Supreme Consular Court at Constantinople.

My Lord, *Doctors' Commons, October* 17, 1861.

WE were honoured with your Lordship's commands signified in Mr. Hammond's letter of the 14th September last, stating that he was directed by your Lordship to transmit to us a despatch from Mr. Hornby, Judge of the Supreme Consular Court at Constantinople (No. 76, September 4, 1861), inclosing a copy of the minutes of proceedings and notes of evidence in the case of the trial of Giuseppe Camilleri, a Maltese, found guilty of the crime of murder, and requesting to be furnished with instructions, under the 37th section of the Order in Council of the 27th of August, 1860, as to the amount and nature of the punishment to be actually imposed by way of commuted punishment, and requesting that we would take Mr. Hornby's despatch into our consideration, and report to your Lordship our opinion as to the instructions to be given to Mr. Hornby in this case.

In obedience to your Lordship's commands we have considered these papers, and have the honour to report—

That it appears to us that, as a general rule, the nature and amount of punishment to be inflicted on persons convicted of crime, before the Supreme Consular Court at Constantinople, is entirely a matter for the Judge who presides at the trial; and to be determined by him on his own knowledge and discretion.

With reference to the present case, treated as exceptional, we have to observe, that it is not one which, in our opinion, ought to be visited with the extreme punishment sanctioned by the new Order, namely, twenty years' imprisonment with hard labour, the more especially as the jury added to their verdict a recommendation to mercy, which we think ought not to be disregarded. The probability is that the jury, though well (and reasonably) satisfied that the deceased was killed by the accused person, and that without any approach to legal excuse, or any such provocation as would reduce the crime to manslaughter, yet may have thought that the abusive language of an intoxicated man (as there is reason for supposing the deceased to have been) was not wholly unconnected with the fate he met. Moreover, it must, we should suppose, be desirable to conciliate the juries, through whose instrumentality the law must be administered in such cases; and for this purpose, their suggestions, when neither unjust nor unreasonable, may well receive attention on the part of the Judge. At the same time, we concur in the remark of Mr. Hornby, in his despatch to your Lordship,to the effect that the sentence should be sufficiently severe to prove to persons on the spot, and to whom the Order in Council applies, that such crimes as murder will be promptly and adequately punished. But, bearing this in mind, and also taking into consideration the facts of this particular case, we would respectfully suggest, for your Lordship's consideration and approval, that a sentence of seven years' imprisonment with hard labour would meet the justice of the case; and that instructions to that effect may properly be given to Mr. Hornby.

The terms of Mr. Hornby's "charge," in passing sentence in open Court, should be left, it appears to us, to that gentleman himself; and we do not understand that your Lordship desires from us any suggestion on the subject.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 261.

The Law Officers of the Crown to Earl Russell.—(Received October 23.)

UNITED STATES.

Question of compensation to British subjects for losses, or destruction of property, during the civil war.

My Lord, *Doctors' Commons, October* 21, 1861.

WE were honoured with your Lordship's commands signified in Mr. Hammond's letter of the 5th instant, stating that he was directed by your Lordship to transmit to us a despatch and its inclosures from Lord Lyons, Her Majesty's Minister at Washington (No. 480, September 9), relative to the position of British subjects in the State of Missouri, and requested that we would take these papers into our consideration, and report to your Lordship our opinion as to the instructions which should be addressed to Lord Lyons on the several points adverted to in his despatch.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That Lord Lyons appears to us to have taken a correct view of the points adverted to in his despatch.

The first point, viz., the sufferings to which the poorer British subjects are likely to be exposed in the winter, and the probability of their being compelled by want to enlist in the military forces of one or the other of the parties to the civil war, is one not requiring any legal opinion from us.

On the second point, viz., the extent to which Her Majesty's Government will claim for British residents compensation for losses or destruction of property occasioned by the civil war, Lord Lyons may be instructed that, as a general principle, when British subjects become voluntarily domiciled in a foreign country in which a civil war occurs, the *de facto* Government is not to be held responsible to that of Her Majesty for losses or destruction of property caused by those who are in arms against it, and whose actions it has not the power of controlling. Should the party by whose officers or troops, or under whose authority, such losses or destruction have been inflicted, ultimately succeed in acquiring or retaining sovereign power, and be recognized by Her Majesty's Government as the sovereign Government, it may be open to Her Majesty to insist upon compensation in respect of such losses and injuries; but it is scarcely possible to lay down beforehand, and without regard to the particular circumstances of the case, the principles by which the conduct of Her Majesty's Government would be, in effect, guided, as to the compelling payment of such compensation.

With regard to losses or destruction of property caused to British subjects, exclusively by the officers or troops, or by those acting by the authority or on behalf of the Government under whose authority such British subjects are living at the time, we can only say that, as a general principle, such Government is responsible for them; and that the fact of their having been committed during the existence of a civil war, although it may sometimes palliate or extenuate the conduct of those concerned, will not exonerate the Government from its general responsibility. Our observations on this head are, of course, confined to loss or destruction of property, not caused by accident, or by persons unknown; they do not extend to such losses, as, although consequent upon and indirectly caused by the existence of the civil war, are yet not the result of illegal violence on the part of the authorities, military or civil. Extra taxation, interruption of commerce, legal burdens and restraints, will not afford sufficient ground for a demand of compensation, provided that British subjects are treated with the same consideration as natives. The liability of the Government, arising from the illegal acts of its officers, must be clearly brought home to them, in order to fix the Government with responsibility *quoad* compensation in respect thereof.

We entirely concur with Lord Lyons in the inexpediency of attempting to take an inventory of British property under the circumstances.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 262.

The Queen's Advocate to Earl Russell.—(Received October 23.)

UNITED STATES.

Capture of the British schooner "Aigburth," belonging to Mr. C. Graveley, a British subject residing at Charleston.

My Lord, *Doctors' Commons, October* 22, 1861.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 17th October instant, stating that he was directed to

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transmit to me therewith the accompanying despatches from Lord Lyons (Nos. 501 and 522), and from Her Majesty's Consul at New York (No. 94), stating the circumstances under which the British schooner "Aigburth" has been seized and sent to New York in charge of a prize crew from the United States' ship of war "Jamestown;" and to request that I would take these papers into consideration, and furnish your Lordship with my opinion thereupon.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That the precise grounds of the capture of this vessel are not forthcoming; but inasmuch as it is stated by Consul Archibald in No. 128 that "she belongs to a Mr. Colin Graveley, a British subject resident at Charleston," I cannot see that her capture was "vexatious and unjustifiable," as Lord Lyons considers it to have been, or that Her Majesty's Government can justly require her release without adjudication.

Charleston is an "enemy's port" to the Government of the United States; and if the "Aigburth" is owned (howsoever) by any person commercially domiciled there, the fact of her owner being a British subject by birth will not, of itself, prevent her condemnation as prize to a United States' cruizer. The principle that a belligerent has a right to treat as enemies all persons resident or maintaining commercial establishments in a hostile country, without regard to their origin, or nationality *by birth*, is familiar to English Prize Courts, and has been constantly enforced by them.

I cannot, therefore, advise any further interference in this case on the part of Her Majesty's Government.

I have, &c.
(Signed) J. D. HARDING.

No. 263.

The Law Officers of the Crown to Earl Russell.—(*Received October* 23.)

PERU.

Captain Carvell's case.

My Lord, *Doctors' Commons, October* 23, 1861.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 17th October instant, stating that with reference to our Report of the 9th October instant,* he was directed to transmit to us two despatches from the Acting British Chargé d'Affaires at Lima (Nos. 11 and 14), containing further information with respect to Mr. Carvell's case and his position at Lima, together with the draft of the instructions that were sent to Mr. Barton on this case; and to request that we would again take this case into consideration, and furnish your Lordship with any further observations we may have to offer thereupon.

The previous papers were annexed for convenience of reference.

In obedience to your Lordship's commands we have again taken this case into consideration, and have the honour to report—

That we have nothing to add to the opinion upon the legal character and position of this case, which we have already on more than one occasion expressed; and we can only refer and adhere to our former Reports, especially those of May 29 and October 9.

We must repeat that we do not consider that Captain Carvell is exempt from the jurisdiction of the Peruvian Courts, or that Her Majesty's Chargé d'Affaires at Lima is, in point of strict legality, justified in affording him an asylum in his official residence, for the purpose of enabling him to evade or avoid complying with the orders of the Peruvian Courts, legally made, in a cause pending before them, and over which they have jurisdiction.

At the same time it must be admitted that the circumstances of the case are peculiar; and inasmuch as your Lordship has, in consideration thereof, officially approved of Mr. Barton's conduct, we have only to suggest that he should be instructed to avoid a collision with the Peruvian judicature in relation to Captain Carvell, and to content himself with securing this gentleman from rigorous treatment, involving imminent danger to his health, as far as this may be practicable, and on this object being secured, he should no longer keep him in his house.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

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* Page 242.

No. 264.

The Queen's Advocate to Earl Russell.—(*Received October* 25.)

SPAIN.

Compensation claimed by the "San José" and "Celia," for damage done by the British vessel "Caroline" at Santa Cruz de Teneriffe.

My Lord, *Doctors' Commons, October* 23, 1861.

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 10th October instant, stating that he was directed to transmit to me the inclosed correspondence* relative to a claim preferred by the Spanish Minister at this Court to be paid a sum of money for damage done by the British vessel "Caroline" to the "San José" and "Celia," in the harbour of Santa Cruz de Teneriffe.

Mr. Layard was also pleased to state that it seems that the Captain of the "Caroline" was condemned in the amount of such damage by the Court at Santa Cruz, but that he left the harbour without paying the money, or giving any security for its payment, and that I should find among the accompanying papers an explanation of the occurrence, in which both he and his employer repudiate any liability in the matter.

Mr. Layard was also pleased to request that I would take this case into consideration, and furnish your Lordship with my opinion thereupon, and as to the answer which should be returned to M. Isturiz.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That before any answer is returned to Señor Isturiz, a copy of his note, and of the inclosure, should be sent to the Consul at Santa Cruz with instructions to send a full explanation of all the circumstances, and copies of all the papers.

The only papers forwarded by Señor Isturiz are (apparently) some declarations taken by the Harbour-Master's authority, unaccompanied by any adjudication, or order for the payment of damages.

It does not appear that there were any proceedings in, or judgment by, a legal tribunal, or that any legal steps were taken to enforce payment of the alleged amount of damage against the vessel, or her master or owners, by arrest or process of any kind. *Non constat* why this was not done; nor is there anything forthcoming from the Consul, who is stated by Señor Isturiz to have requested that the "Caroline" might not be detained, and whose attention should be directed to these points, and especially to his application to the Naval Commandant in support of a claim for damages on the part of the master of the "Caroline" dated 10th May, 1861.

From the version of the collision given by Mr. Goodyear (the managing owner of the "Caroline"), in his letter to the Board of Trade of the 30th of September, and from the fact stated therein that she was first anchored, and that the "San José," or "Casimiro," anchored too near her, of which complaint was made, but not attended to, it would appear that she was not to blame, and, as at present advised, I can see no reason for complying with Señor Isturiz's request; but the Consul's reply is requisite to the full understanding of the case.

I have, &c.
(Signed) J. D. HARDING.

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* M. Isturiz, September 9; Board of Trade, October 8.

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No. 265.

The Queen's Advocate to Earl Russell.—(Received October 25.)

My Lord, *Doctors' Commons, October* 25, 1861.

UNITED STATES.

Request of Mr. J. P. Allen that his vessel the "Palinurus," going from Calcutta to Charleston, may be secured from seizure or detention by United States' cruizers.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 23rd October instant, stating that he was directed to transmit to me a letter from Mr. James P. Allen of Belfast, dated the 21st October instant, requesting that with a view to secure his vessel, the "Palinurus," from seizure or detention by United States' cruizers, Her Majesty's Minister at Washington may be instructed to explain to the United States' Government the circumstances under which that vessel has sailed from Calcutta with orders to call off Charleston; and to request that I would take this case into consideration, and furnish your Lordship, at my earliest convenience, with my opinion as to any instructions which it will be proper or expedient to address to Lord Lyons on this subject.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That a copy of Mr. J. P. Allen's letter of the 11th October instant, may be forwarded to Lord Lyons with instructions to communicate it to the United States' Government, and to express a hope that under the peculiar circumstances of the case, such instructions may be given as will prevent the "Palinurus" being captured.

I have, &c.
(Signed) J. D. HARDING.

No. 266.

The Queen's Advocate to Earl Russell.—(Received October 26.)

My Lord, *Doctors' Commons, October* 24, 1861.

UNITED STATES.

Proceedings against British vessels for breach of blockade.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 12th October instant, stating that he was directed to transmit to me therewith a despatch from Her Majesty's Consul at Philadelphia (No. 34), inclosing papers relative to the cases of the British vessels "Albion" and "Herald," which have been captured by the United States' blockading squadron, together with the Report of the District Judge on the American ship "General Parkhill;" and to request that I would take these papers into consideration, and furnish your Lordship with such observations as I may have to make thereupon.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

Case of the "Albion."

First. As regards the "Albion:" this British vessel was apparently captured by a United States' squadron, twelve miles from Wilmington, North Carolina, to which port she was bound, on the 16th of August, for violation of blockade of that port; she has been proceeded against in a Prize Court, and the Consul gives no other particulars. *Non constat* whether her owners are represented before the Court; what was the nature or ownership of her cargo; whether the case will be contested, or on what grounds; or whether there is, in fact, any legal or substantial defence whatsoever. These omissions should be pointed out to the Consul, the substantial merits (if any) of the case being more important to Her Majesty's Government than the mere legal proceedings and dates.

Under these circumstances I can offer no observations, and I see no reason for the interference of Her Majesty's Government.

Case of the "Herald."

Second. The "Herald," a British ship, also under trial in an Admiralty Court: her release was promised by the United States' Government, but she has nevertheless been proceeded against "on some doubts as to her nationality." No further particulars are forthcoming, and I can therefore offer no observations.

Case of the "General Parkhill."

Thirdly. The printed Judgment pronounced by Mr. Justice Cadwallader in the District Court of the United States for the Eastern District of Pennsylvania, condemning as prize the ship "General Parkhill," captured for breach of blockade, and claimed on behalf of persons resident at Charleston; this being the only prize case as yet tried in that Court. No British interests were involved in this case, and I will therefore only observe that the general principles laid down in that Judgment do not appear to me to be inconsistent with the law of nations.

I have, &c.
(Signed) J. D. HARDING.

No. 267.

The Queen's Advocate to Earl Russell.—(Received October 26.)

My Lord, *Doctors' Commons, October* 24, 1861.

AFRICA (WEST).

Outrage on property of Mr. Lilley, a British subject, trading in the Cameroons river.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 19th instant, stating that he was directed to transmit to me the inclosed letter from Commander Bedingfeld, of Her Majesty's ship "Prometheus," reporting, in the absence of Her Majesty's Consul, the particulars of an outrage committed on the property of Mr. Lilley, a British subject trading in the Cameroons River.

Mr. Hammond was also pleased to inclose a letter from Mr. Hawker, of Liverpool, who states that he is acting as agent for Mr. Lilley, under a power of attorney, in an action to be brought against certain parties in Liverpool, who are suspected of being connected with the outrage in question, and requesting to be furnished with copies of the documents in the possession of Her Majesty's Government bearing upon this question.

Mr. Hammond was also pleased to request that I would take this matter into consideration, and report to your Lordship whether, in my opinion, it would be expedient to comply with Mr. Hawker's request.

Mr. Hammond was also pleased to add that copies of Commander Bedingfeld's Report have been communicated to the Board of Trade and Admiralty.

In obedience to your Lordship's commands I have taken this matter into consideration, and have the honour to report—

That it will not, in my opinion, be expedient to comply with Mr. Hawker's request.

The inexpediency of giving copies of official papers to private persons is obvious as a general principle; and I see no such special circumstances in this case as would justify my advising your Lordship in a contrary sense.

I may observe that Mr. Lilley appears to have been on the spot at the time of the inquiry which forms the subject of these papers, and to have attended it, and been perfectly aware of all that passed; he himself makes no application, and does not appear to have authorized, or to be cognizant of, Mr. Hawker's application for these papers; and no legal proceedings in connection with these papers are actually pending.

I have, &c.
(Signed) J. D. HARDING.

No. 268.

The Queen's Advocate to Earl Russell.—(Received October 30.)

My Lord, *Doctors' Commons, October* 28, 1861.

UNITED STATES.

Consul at Charleston prevented by United States' authorities from communicating with his colleagues and Her Majesty's Legation at Washington.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 23rd October instant, stating that he was directed to transmit to me the accompanying despatch from Mr. Consul Bunch at Charleston (No. 109), calling your Lordship's attention to the circumstance that the authorities of the United States at Louisville had returned his despatches, and that all communication with his colleagues and Her Majesty's Legation in the Northern States has ceased; and to request that I would take this despatch into consideration, and furnish your Lordship with my opinion thereupon.

In obedience to your Lordship's commands I have taken this despatch into consideration, and have the honour to report—

That I assume that Consul Bunch's despatch to Consul Archibald was transmitted either by post or by some ordinary and public mode of conveyance, but I am not aware of the precise state of the facts on this point.

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Inconvenient and prejudicial to British interests as the interruption of all ordinary means of communication between Her Majesty's Consulates in the Confederate States with their colleagues, and especially with the British Legation at Washington, may be, I cannot say that Her Majesty's Consuls in the Confederate States are entitled formally to insist upon the transmission of their correspondence with their colleagues in the United States, either by the Post-office communications (which have, I believe, ceased by orders of the Government), or by any ordinary and public conveyance.

The carrying on of such correspondence can only be provided for by special arrangement with the United States' Government, such as its periodical transmission by a special messenger, as suggested by Mr. Bunch, and noticed in my Report of the 1st October instant.

I have, &c
(Signed) J. D. HARDING.

No. 269.

The Queen's Advocate to Earl Russell.—(*Received October* 30.)

My Lord, *Doctors' Commons, October* 29, 1861.

BELGIUM, &c.

Proposed redemption of duties paid by Belgium to Holland for vessels navigating the Scheldt.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 23rd October instant, stating that he was directed to transmit to me the Treaties and Conventions of April 19, 1839, touching the separation of Holland and Belgium, concluded between Holland and Belgium, and between Great Britain, Austria, France, Prussia, and Russia, on the one part, and Holland and Belgium on the other, together with various Acts which, since the conclusion of those Treaties, have passed between Holland and Belgium, for carrying into effect the provisions of the 3rd section of Article IX of the Treaty of 1839, touching the duties to be paid by Belgium to Holland in regard to vessels navigating the Scheldt.

Mr. Hammond was also pleased to state that the Belgian Government have recently made a proposal to some of the Contracting Powers, as well as to other Powers not parties to the Treaties referred to, to relieve Belgium from the payment of the duties levied in the Scheldt on the ships of those Powers, and to enter into an arrangement whereby, for a certain sum to be paid once for all, the navigation of the Scheldt should be exempted from the burthen under which it now labours, of paying a duty to Holland for each vessel passing up and down the Scheldt between the sea and Antwerp.

That the Belgian Government appear to assume that the engagement into which it entered with Holland in 1839, was not merely an engagement peculiar to Belgium, but was one undertaken by Belgium on behalf of other Powers, and from which Belgium may at any time seek to be relieved, by throwing upon those Powers the portion of the burthen resulting from the vessels frequenting the Scheldt under their flag; and that, in virtue of this pretension, the Belgian Government propose that the Powers interested should enter into arrangements for redeeming the Scheldt dues.

Mr. Hammond was also pleased to request that I would report to your Lordship my opinion whether this pretension is borne out by the Treaties now referred to me.

Mr. Hammond was also pleased to state that the point to be ascertained is, whether the Belgian Government can refuse to bear the burthen of the Scheldt dues, and that the subsequent question of the redemption is, of course, a matter of policy.

I am also honoured with Mr. Hammond's letter of the 24th October instant, inclosing all the papers in the possession of the Foreign Office, relating to the proposal for the redemption of the Scheldt dues.

I am also honoured with Mr. Hammond's letter of the 28th October instant, inclosing a further despatch relative to the Scheldt dues.

In obedience to your Lordship's commands I have taken this matter into consideration, and have the honour to report—

That I am not in possession of any information as to the origin of the duty or toll in question, or as to the right or "title" thereto (if any) on the part of

the Netherlands, previously to the separation of Belgium and the Treaty of 1839, or the object and intention of the parties to that Treaty of 1839, as to the future position of these tolls; and this information is important to the proper consideration of the question which has now arisen, and may, when forthcoming hereafter, modify my present opinion.

I assume that certain Scheldt duties were received by the Netherlands from all foreign vessels previously to 1839. If this was not so, I must request further information. If this was so, the intention of the parties to the Treaty was to preserve to the Netherlands (notwithstanding the separation of Belgium, including both banks of the Scheldt at Antwerp) the duty in question; and I am unable to find in the Treaty itself, or in the "Réglement Provisoire," for the execution of Article IX (approved by Royal Decree, December 12, 1839), any such stipulation as, either by express words or necessary implication, would wholly exonerate the ships of all Powers from the payment thereof to the Netherlands, or as would render such payment to the Netherlands thenceforth an exclusively Belgian obligation.

The right of the Netherlands to receive the duties was secured by the Treaty; and I see nothing in the Treaty which imposed the obligation of defraying them thenceforth on Belgium exclusively, or which exonerated all other nations from their obligations to the Netherlands in this matter.

The Treaty was signed on the 19th of April, 1839: I am not aware of the date of its ratification. On the 5th of June, 1839, a law was passed in Belgium, to the effect that the toll ("péage") to be received by the Government of the Netherlands on the navigation of the Scheldt should be reimbursed by Belgium to the ships of all nations. *Primâ facie*, and in the absence of anything to the contrary, this reimbursement would therefore appear to have been a spontaneous and voluntary act on the part of Belgium. The word "reimbursement" is not unimportant. as inferring that the tolls were levied by the Netherlands on each foreign ship in the first instance. The law makes no reference to the Treaty; and the Treaty did not expressly bind Belgium to pass any such law. Whether there was (in effect) any understanding or agreement on the part of Belgium, at the date of the Treaty, that such a law should be passed, I am not aware.

Under this law Belgium has, I presume, hitherto (in effect) "reimbursed," or possibly defrayed in the first instance, to the Netherlands, the amount of the Scheldt duty or toll, as regulated by the Treaty, in respect of all vessels, of whatever origin, bound to and from Belgian ports. It does not distinctly appear whether she has paid the duty exclusively and in the first instance, or whether she has only "reimbursed" to each foreign vessel what each has previously paid.

It would thus appear that the obligation now resting on Belgium to pay this duty does not expressly arise under the Treaty, but only under the Belgian Law of June 5, 1839, which law Belgium is about to repeal. Apart from any documents not now before me, and from any considerations of national good faith or equity as to the repeal of a law which has been in operation for twenty years, and on the faith of the permanence of which various international arrangements may have been made, I am unable to discover in the terms of the Treaty, or in the contents of these papers, anything sufficient to prevent Belgium from repealing this law, and thus in effect leaving each foreign nation separately liable to pay the Scheldt duty to the Netherlands.

The Government of the Netherlands does not hold Belgium exclusively liable to the duty under the Treaty of 1839, but considers itself entitled, in default of payment by Belgium, to levy it upon all foreign vessels (see Sir A. Buchanan's No. 62, reporting Baron de Zuylen's statement to this effect).

The near coincidence between the date of the Law and the Treaty of 1839, and the fact that Belgium has for upwards of twenty years paid the duty, in exoneration of all foreign ships, point to the necessity of further inquiry as to what passed on the subject at that date (see especially a reference by Baron de Zuylen de Nyevelt to a Protocol, contained in Sir A. Buchanan's No. 62, August 8, 1861).

If, indeed, according to the view suggested by Count Manderström, in his despatch to Baron Beck-Friis, October 9, 1861, these duties had not any existence before the Treaty of 1839, and were first imposed by and under that Treaty as a charge on Belgium, this may affect my opinion. This view does not, however, seem to be adopted by the Netherlands.

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Subject, therefore, to anything which may hereafter be adduced, and as at present advised, I am of opinion that your Lordship's question must be answered affirmatively; and that Belgium, by repealing the Law of 1839, can (in effect) "refuse to bear the burden of the Scheldt dues."

I have, &c.
(Signed) J. D. HARDING.

No. 270.

The Queen's Advocate to Earl Russell.—(Received October 31.)

NETHERLANDS.

As to Acting Vice-Consul Du Puy, at Samarang, being permitted to act as attorney for Mr. J. H. Summers, who claims property left at that place by Mr. H.V. Summers.

My Lord, *Doctors' Commons, October* 29, 1861.

I AM honoured with Mr. Hammond's letter of the 24th October instant, stating that he was directed to transmit to me a despatch from Her Majesty's Consul in Batavia (No. 10, August 31, 1861), inclosing a copy of one from Mr. Peter du Puy, Acting British Vice-Consul at Samarang, who suggests, with reference to a claim made by Mr. H. V. Summers to certain property left by Mr. James Hervey Summers, and now deposited in the Orphan Chamber of Samarang, that the necessary documents should be sent out to him in support of this claim, and that he should at the same time be furnished with a power of attorney to enable him to proceed in the matter in due form.

Mr. Hammond was also pleased to inclose the previous papers relating to Mr. Summers' claim, and to request that I would take Mr. Acting Vice-Consul du Puy's despatch into consideration, and report to your Lordship my opinion as to whether there is any objection to communicating to Mr. Summers the suggestions contained in it with reference to the temporary character of the appointment held by Mr. du Puy as Acting British Vice-Consul at Samarang.

In obedience to your Lordship's commands I have taken this despatch into consideration, and have the honour to report—

That, assuming that there is no permanent Consular officer on the spot able to transact this business, and that Her Majesty's Government has no reason to doubt the solvency or the respectability of Mr. du Puy, the Acting Vice-Consul at Samarang, I see no objection to the course suggested.

Having regard to Mr. Summers' statement as to his poverty, it will be desirable for Mr. du Puy to obtain and transmit to Mr. Summers the principal sum which seems to be admitted to be due, without waiting to discuss and settle the question of the amount of interest due thereon, which may be subsequently ascertained.

I have, &c.
(Signed) J. D. HARDING.

No. 271.

The Law Officers of the Crown to Earl Russell.—(Received October 31.)

TURKEY.

Request of Nicolo Antippo, that Wallachian Government be required to carry out a Decree of the Supreme Consular Court at Constantinople respecting the succession of his late uncle.

My Lord, *Doctors' Commons, October* 30, 1861.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 19th October instant, in which he stated that he was directed by your Lordship to transmit to us a letter, with a translation, from Nicolo Antippo, requesting that the Wallachian Government might be required to carry out a Decree of the Supreme Consular Court at Constantinople respecting the succession of his late uncle, together with a Report from Her Majesty's Agent and Consul-General at Bucharest on this matter.

Mr. Hammond was also pleased to inclose the previous correspondence referred to in Mr. Green's Report, and to state that he was directed by your Lordship to request that we would take these papers into our consideration, and furnish your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That these papers, as they stand, do not enable us to dispose satisfactorily of the case.

Nationality of Madame Foca.

1. We do not find with them any copy of the Decree of the Supreme Consular Court which the petitioner seeks to enforce; and it is necessary for us to be more accurately informed than we are at present as to the means of executing that Decree, which Mr. Green might have had at Bucharest, if Madame Foca (or Phocas) had not become naturalized in Wallachia, or if his jurisdiction over her had not been afterwards contested. If we rightly understand Mr. Green's Report of the 28th September last, no better result could have been obtained if he had been left free to act in the matter; and, if this be so, it is not easy to perceive what claim can be made against the Wallachian Government.

2. We do not find any sufficient explanation of the grounds on which Madame Foca changed her nationality, and obtained Wallachian naturalization, *pendente lite*, and in spite of the protest of Mr. Green; nor of the effect, if any, which that change had upon the legal proceedings between her and Nicolo Antippo. We observe that Signor Antippo, in his Memorial of the 10th August last, says that the opposition of Mr. Green to Madame Foca's naturalization was met, at the Wallachian Ministry, by a declaration on her part "that, as far as concerned this suit, she did not intend to appeal to the laws of the country, but would leave the matter to be settled by the English authorities where it began, having other reasons of her own for becoming a naturalized Wallachian;" and the Decree of the Consular Court at Constantinople seems to have been afterwards acknowledged, and treated as binding upon her, by the Wallachian authorities. We are not aware of any reason why an Ionian subject should not be naturalized in Wallachia, unless such naturalization be made a pretext for any violation of the rights secured by Treaty to British subjects; and it is important to ascertain whether it was, in fact, made a pretext for any such violation in the present case.

The case of the petitioner seems very hard. He has obtained a Decree which he is practically unable to enforce. We can only suggest that the papers should be referred to Mr. Hornby, who should be requested to forward a copy of his Decree, and to suggest the best mode of enforcing it, assuming Madame Foca to be subject to British Consular jurisdiction.

Mr. Green should be requested to forward a full explanation of the grounds on which Madame Foca changed her nationality and acquired Wallachian protection, and of the effect of that change, if any, upon the pending litigation.

The case may prove to be of importance in point of principle, and it is certainly one of extreme individual hardship; and every proper effort should be made to obtain execution of the Decree, and to give the petitioner the full benefit thereof.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 272.

The Law Officers of the Crown to Earl Russell.—(Received October 31.)

TURKEY.

Claim of Mr. Price for a sum of money deposited by him on receiving the concession of a railway between Samsoon and Sivas, and forfeited for non-fulfilment of contract.

My Lord, *Doctors' Commons, October* 30, 1861.

WE were honoured with your Lordship's commands, signified in Mr. Hammond's letter of the 19th instant, stating that he was directed by your Lordship to transmit to us a copy of an "instruction" which your Lordship addressed to Her Majesty's Ambassador at Constantinople, on the receipt of our Report of the 28th of November last, respecting Mr. Price's claim on the Turkish Government, in regard to a sum of money which he had deposited with the Porte, on receiving the concession of a line of railway from Samsoon to Sivas; and also transmitting to us, together with the previous papers, Sir Henry Bulwer's reply, and a letter which had since been received from Mr. Napier, applying, on Mr. Price's behalf, for the further assistance of Her Majesty's Government; and requesting that we would take these papers into our consideration, and report to your Lordship our opinion as to the further steps which it might be proper for Her Majesty's Government to take in this matter.

1861

In obedience to your Lordship's commands we have considered these papers, and have the honour to report—

That we cannot advise Her Majesty's Government to take any further steps in this matter.

Mr. Price entered into a foreign contract with a foreign Government, which contract he failed to fulfil, whereby, according to its terms, his deposit was forfeited. The Turkish Government may have acted harshly towards him, but has not acted illegally, or in violation either of the terms of the contract or of the principles of reason or justice; and inasmuch as it is in possession of some opinion of the present Lord Chancellor that the forfeiture was not illegal, we see no prospect of success in any further diplomatic representations. The case was one which justified Her Majesty's Government in making representations in the first instance, with a view, if possible, to induce the Turkish Government to deal with it in a more liberal spirit; but we do not understand either the former advice of the Law Officers of the Crown, or the course taken by Her Majesty's Government in accordance with that advice, to have been founded upon any view of the construction and legal effect of Mr. Price's contract with the Turkish Government, different from that which is insisted on by the Turkish Government themselves.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 273.

The Law Officers of the Crown to Earl Russell.—(Received October 31.)

My Lord, *Doctors' Commons, October* 30, 1861.

TURKEY.

Consular procedure in Danubian Principalities.

WE are honoured with your Lordship's commands as signified in Mr. Hammond's letter of the 14th October instant, stating that with reference to our letter of the 25th September ultimo,* respecting Consular procedure in the Danubian Principalities, he was directed to transmit to us, together with the previous papers, the draft of a despatch which your Lordship proposes to address to Sir Henry Bulwer on this subject, and to request that we would furnish your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken this draft into consideration, and have the honour to report—

That we have made some slight additions to the draft, with a view of more fully expressing its meaning, subject to which we approve of it.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

Inclosure in No. 273.

Proposed Despatch to Sir H. Bulwer.

[The additions suggested by the Law Officers are printed in brackets.]

Sir, *Foreign Office, November* , 1861.

I HAVE had under consideration, in communication with the Law Officers of the Crown, Mr. Green's suggestion with reference to British Consular jurisdiction in the Principalities, with Mr. Hornby's observations thereupon, inclosed in your Excellency's despatch No. 438 of the 22nd of June last.

The first observation to be made on this matter is, that the proposal amounts substantially to a new Capitulation, the effect of which would, equally with that of the existing Capitulation, restrict, to a certain extent, the jurisdiction of the territorial Tribunals over British subjects. [The basis of the Capitulations, and of the peculiar Consular jurisdiction connected therewith, is the exemption of Her Majesty's subjects from the jurisdiction of the Turkish Courts, more especially in civil causes *inter se;* the authorities in the Principalities, on the other hand, contend for the application of the contrary principle, as carried out amongst Christian nations. It will be obvious that were Her Majesty's Government to concede this principle, it would amount to making a new and separate Treaty arrangement with the Principalities, to which the consent of the Turkish Government would be necessary; and] if any such restriction as now enforced is objected to by the local authorities, there would be no greater assurance that they would acquiesce in the modified restriction which, under Mr. Green's plan, would continue to exist.

* Page 227.

I think it, therefore, more advisable to adhere to the concessions of privileges of jurisdiction as conferred by existing Capitulations, and to endeavour to adapt our procedure so as to meet the difficulties raised by the local authorities, without attempting to obtain a new basis for a modified procedure.

It would be very desirable to ascertain what course other Powers, whose privileges of jurisdiction in the Principalities are, under their Capitulations with the Porte, identical with our own, are prepared to follow; for it is obvious that the attempt of the Government of the Principalities to set aside those privileges may be more effectually resisted, if necessary, by combined than by isolated action.

But assuming that it may be found expedient to comply with the demands of the Principalities, at all events to a certain extent, the question will arise, so far at least as Her Majesty's Consuls are concerned, whether any, and in that case what, modifications should be made in the Order in Council of the 27th of August, 1860, and in the Rules of Procedure issued under that Order, leaving the existing Capitulations untouched.

For this purpose it would be necessary to consider the [precise] nature [and extent] of the alterations which the authorities in the Principalities desire [in the Consular jurisdiction and practice, as now regulated by Order in Council], and then to determine whether our system can be so far modified as to admit of their wishes being met without prejudice to the principles on which our jurisdiction now rests. [The Governments of the Principalities should specify their objections to the present system, with reasons, and should set forth distinctly what they propose to substitute for it in each case.]

I should wish, therefore, that Mr. Hornby, in whose hands your Excellency will place a copy of this despatch, should communicate confidentially with Mr. Green and with Mr. Churchill; and, having obtained their opinions, report to me, through your Excellency, his own as to the manner in which the difficulties which the authorities in the Principalities now raise to the British Consular jurisdiction, and I presume to that also of other foreign Powers, may best be obviated [without assuming any new basis, or, in effect, setting aside the Capitulations]; but I need not tell your Excellency that it would not be desirable to discuss any points with the authorities of the Principalities, or to lead them to suppose that Her Majesty's Government entertain any doubt whatever as to the validity of the rights secured by the existing Capitulations to Her Majesty, or as to the obligation of the Principalities to abide, in this as in all other respects, by the Treaties between Her Majesty and the Porte.

Your Excellency will, on your part, report to me what you can ascertain as to the views and intentions of foreign Powers on this matter.

[J. D. H.
W. A.
R. P.]

No. 274.

The Queen's Advocate to Earl Russell.—(Received October 31.)

My Lord, *Doctors' Commons, October* 31, 1861.

BELGIUM.

M. Rogier's Memorandum on the Scheldt toll.

I AM honoured with Mr. Hammond's letter of the 29th of October instant, transmitting a further despatch from Lord Howard de Walden, inclosing a Memorandum on the subject of the Scheldt tolls.

These further papers I have taken into consideration, and have the honour to report—

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That M. Rogier's Memorandum makes, for the first time, a distinct proposal on the part of Belgium that Great Britain should pay to the Netherlands 27,031,797 francs (upwards of 1,000,000*l.* sterling) to redeem the Scheldt toll, in respect of which toll the ships of this country have never yet paid one shilling, Belgium having, from 1839 (the date of her independent national existence), defrayed the whole. The Memorandum is, under these circumstances, both in form and substance, a document of a very singular character.

M. Rogier gives no notice or intimation, either of the intention of Belgium to cease from paying the toll, or of her reasons for taking this course. Moreover, if Belgium should adopt this course, Great Britain, in common with other Powers, would be *primâ facie* liable to pay the Scheldt duties to the Netherlands (a liability which the Memorandum takes for granted); in which event it would be from the Netherlands direct, and not from or through Belgium, that any proposal for their redemption would naturally and properly proceed.

The note assumes the non-liability of Belgium, either under the Treaty of 1839, the Law of that date, or on any ground whatsoever, and also assumes the immediate and direct liability of Her Majesty's Government to the Netherlands; on behalf (as it were) of which Power, and not of his own Government, this proposal seems to be made by M. Rogier.

He remarks that "one of the effects of the French conquest of Belgium was to restore to Belgium its natural outlet to the sea." This is, in effect, an admission that the freedom of the Scheldt toll was in fact only consequent upon the conquest and incorporation of Belgium with France; and it may be inferred that when Belgium subsequently, in 1815, ceased to form part of France and became a portion of the Netherlands, she again became, as such, legally and justly liable to these duties. M. Rogier, however, observes that, "in 1839, after that the principle of the free navigation of rivers had received a solemn consecration at the Congress of Vienna, the Scheldt was placed in a state of demi-servitude." I do not see how this statement is consistent with the real facts and dates; nor did the Congress of Vienna abolish all tolls on rivers, but, on the contrary, it preserved and regulated them.

Neither the "honour nor the interest" of Great Britain appears to me to be in any degree involved in this question (as is suggested by M. Rogier) nor do the "liberal principles, of which the cause is, so to speak, become her own" (*i. e.*, England's), alluded to by him, appear to me to have any bearing on the matter, which, in effect, seems to be rather a question of rival charges and interests between Antwerp and the Netherland ports, than one relating to the honour, the interests, or the liberal principles of Great Britain.

If Belgium is now about to revoke the Law of 1839, and by that means, for the first time, to raise the whole question of her right to do so, and of the right of the Netherlands to receive this duty, and the consequent liability of other foreign Powers in respect thereof (including those who were not parties to the Treaty of 1839), she should do so in regular form and with due notice, and should explain her motives, and her view of her position in respect to this matter. She cannot be permitted to ignore or evade noticing the fact that, ever since 1839, she has taken upon herself the payment of this duty, which she is now, for the first time, and without notice, or any reason assigned, apparently about to discontinue, and, as it were, "in the same breath," to propose, on behalf of the Netherlands, its commutation or redemption by fixed payment.

I can only suggest that M. Rogier's Memorandum should be answered to this effect, subject to my Report of the 29th October instant on this question.

I have, &c.
(Signed) J. D. HARDING.

No. 275.

The Law Officers of the Crown to Earl Russell.—(Received November 1.)

GENERAL.

Remonstrances of United States' Consuls in Barbados and the Bahamas against treatment of vessels bearing the flag of the Secession States.

My Lord, *Doctors' Commons, October 29, 1861.*

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 9th October instant, stating that he was directed to transmit to us three letters from the Colonial Office, dated August 19, October 3, and October 4, 1861, inclosing copies of despatches from the Governor of

Barbados and the Lieutenant-Governor of the Bahamas respecting the remonstrances which have been addressed to them by the United States' Consuls in regard to the treatment which vessels bearing the flag of the Secession States met with in those Colonies; and to request that we would take the same into consideration, and furnish your Lordship with our opinion as to the instructions which should be addressed to the Governors of those Colonies.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That the Governor of Barbados and the Lieutenant-Governor of the Bahamas appear to us to have taken a correct view of their position and duty in this matter; and that they may be instructed that no foreign Consul has any jurisdiction or power to seize any vessel (under whatever flag) within British territorial waters; and that the British authorities ought not to take any steps adverse to merchant-vessels of the Confederate States, or to interfere with their free resort to British ports.

With respect to supplies, even of articles clearly "contraband of war" (such as arms and ammunition), to the vessels of either Party, we think that the Colonial authorities cannot interfere, unless anything should be done in violation of the Foreign Enlistment Act (59 Geo. III, cap. 69), which prohibits the equipping, furnishing, fitting out, and arming of ships or vessels for the service of foreign belligerent Powers, and also the supply of guns or equipments for war, so as to increase the warlike force of vessels of war; but does not render illegal the mere supply of arms or ammunition, &c., to private ships or vessels.

If it should be necessary for the Colonial authorities to act in any such case, it should only be done when the law is regularly put in force, and under the advice of the Law Officers of the Crown.

With respect to the supplying, in British jurisdiction, of articles *ancipitis usûs* (such, for instance, as *coal*), there is no ground for any interference whatever on their part.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 276.

The Law Officers of the Crown to Earl Russell.—(Received November 1.)

BRAZIL.

Proposed settlement of Mr. Youle's claim under award of Mixed Commission.

My Lord, *Doctors' Commons, October 29, 1861.*

WE were honoured with your Lordship's commands signified in Mr. Hammond's letter of the 3rd instant, stating that as there seemed to be a discrepancy between the course which, in our Report of the 26th ultimo,* we had advised Her Majesty's Government to pursue with regard to the claim of Mr. Youle, who had obtained a favourable award from the Mixed Commission in Brazil, and that pursued last year in the parallel case of Mr. Cox's claim, he was directed by your Lordship to return our Report, and to transmit to us the correspondence marked A, B, C, D, E, F, in the accompanying volumes.

That from the papers marked A, B, C, we should learn the terms of an arrangement which was made in December 1859, between Mr. Stuart, then Her Majesty's Chargé d'Affaires in Brazil, and the Brazilian Government, as to the mode in which such adjudicated claims should be paid; and that the letter to Mr. Cox (marked F), based on the arrangement in question, would show us the discrepancy to which he referred, and he requested that we would take these papers into our consideration, and favour your Lordship with our opinion how far Mr. Stuart's arrangement could be considered as limiting the absolute provisions of Article IV of the Convention, with regard to the payment of such claims, and whether the further papers would induce us to alter or modify the advice contained in our Report of the 26th ultimo.

That with reference to our remark that the sentence of the Mixed Commission on Mr. Youle's claim was not signed as directed by the Convention, he was directed by your Lordship to transmit to us, for any observations we might have to make thereupon, a translation (marked D) of that sentence, as originally

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* Page 230.

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sent home by Mr. Morgan, the British Commissioner, which appears to have been properly signed.

In obedience to your Lordship's commands we have considered these papers, and have the honour to report—

That in our Report of September 26, we expressed our opinion that Mr. Youle's claim should be paid under Article IV of the Convention.

We were not at that time aware of the arrangement now brought under our notice, and made between the two Governments by the note of Mr. Stuart, December 2, 1859, answered by the Brazilian Foreign Minister, December 4th.

This arrangement naturally contemplated the carrying out of the Convention, and did not contemplate its premature termination, which has, nevertheless, taken place.

It was proposed by Her Majesty's Government, and accepted by Brazil, as a mode of carrying into effect Article IV.

We consider that this arrangement should be carried out in good faith by each Government, as far as may now be practicable, under the state of things now existing.

It does not appear to us to be absolutely inconsistent and irreconcileable with Article IV; and, in our opinion, it cannot now be equitably repudiated or "ignored," especially by Her Majesty's Government, upon any such ground. We assume that the carrying out this arrangement will not prejudicially affect Mr. Youle individually.

With respect, however, to the payment of interest on the amount awarded to Mr. Youle, we may observe, that our former Report proceeded on the supposition (naturally made by us while in ignorance of the arrangement of the 2nd December, 1859), that the Brazilian Government were in default for non-payment by the time stipulated in Article IV of the Convention. If (as now appears) there was no such default, we see no ground on which Mr. Youle can claim interest.

We observe that the want of signatures to the sentence or decision appears to have been a clerical omission in the copy transmitted to us.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 277.

The Queen's Advocate to Earl Russell.—(*Received November* 1.)

My Lord,
Doctors' Commons, October 30, 1861.

UNITED STATES.

Right of British vessels to depart unmolested from ports of North and South Carolina, nominally blockaded.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 23rd October instant, stating that he was directed to transmit to me a despatch from Mr. Bunch, Her Majesty's Consul at Charleston (No. 108), reporting the inefficiency of the blockade of North and South Carolina, and requesting, with reference to the case of vessels which may have entered a nominally blockaded, but really unblockaded port, to be instructed as to the advice which he should give to the parties interested, with regard to the right of such vessels to depart unmolested, and especially as to their right to leave with cargo; and Mr. Hammond was pleased to request that I would take Mr. Bunch's despatch into consideration, and furnish your Lordship with my opinion as to the answer which should be returned to it.

In obedience to your Lordship's commands I have taken this despatch into consideration, and have the honour to report—

That it does not appear to me to be the duty of, or to be incumbent on, Her Majesty's Consuls to advise Her Majesty's subjects upon such delicate questions of international law, as "how far neutrals are justified in disregarding or violating blockades which have been formally notified, and, at least to some extent, established by a Power which Her Majesty recognizes as a belligerent;" at all events Her Majesty's Government cannot lay down *à priori*, and without reference to facts and dates, any rules for such cases, and must leave those of her subjects who incline to meddle with such matters to act for themselves, and on their own responsibility.

Unless British vessels or goods are actually captured, no international question arises; if they escape capture (whether the blockade exists or not), they cannot complain, and even when captured, applications for their release are sometimes successful, and the decisions of Prize Courts may be in their favour, and, at all events, cannot be anticipated. Her Majesty's Government cannot, in necessary ignorance of a continually changing state of facts, undertake to say (as it were by the mouth of its Consuls), "*Now* you may leave this port, or enter that port with impunity, notwithstanding its blockade is notified." It is obviously impossible to deal with such speculations as those of Consul Bunch (paragraph 2) as to Her Majesty's naval forces interfering to break an effective and existing blockade, merely because British vessels are in the port blockaded.

With regard to the right of a vessel which has entered a nominally blockaded, but really unblockaded port, to depart with cargo, the legal answer will be, that, unless the port is effectively blockaded, she has a right so to depart; she ought not to be captured for breaking a mere paper blockade. Neutral ships are also entitled, even in case of blockade, to sail from a blockaded port in ballast, if they entered it before the blockade.

These are the abstract principles of the law of nations, of the violation of which by the United States I have as yet no official information; but it is for your Lordship to consider how far it may be expedient to instruct Consul Bunch so to inform British subjects in North and South Carolina—a course which I do not advise.

Doubtless the uncertain and imperfect maintenance of the very extensive blockade of "all Southern ports," announced by the United States, may be very injurious to British interests, and may form a proper subject for international remonstrance; and it would be very desirable to establish by evidence in any prize case the inefficiency of any nominal blockade: but, practically, British interests profit, to some extent, by the imperfect manner in which the blockade is maintained, and I do not see how they would be advanced by calling the attention of the United States' Government to the inefficiency of any particular blockade. The propriety of addressing any communication on the point to the United States' Government, or of issuing general instructions to be given to Her Majesty's subjects through the Consuls of the blockaded ports, are questions of policy for the consideration of Her Majesty's Government; but I cannot advise the issuing of any such instructions, which will, if issued, probably be misconstrued or misapplied, so as to involve Her Majesty's Government unnecessarily.

I may add that the mere fact that several vessels have succeeded in evading a blockade will not, of itself, establish its invalidity; and that a port may often be effectually blockaded, although the blockading force is altogether out of sight, or is even supposed by those at the port to be absent.

Subject to these observations, I can only suggest that Consul Bunch must be informed that British subjects in attempting to break or evade any blockade which has been notified or established by a belligerent must act for themselves, and that Her Majesty's Government will not issue any instructions or directions in such cases.

I have, &c.
(Signed) J. D. HARDING.

No. 278.

The Law Officers of the Crown to Earl Russell.—(*Received November* 1.)

My Lord,
Doctors' Commons, October 31, 1861.

UNITED STATES.

Claim of British subjects to be exempt from military service. Position of British subjects in Missouri.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 22nd October instant, stating that he was directed by your Lordship to transmit to us a further despatch (No. 536) and its inclosures from Her Majesty's Minister at Washington, respecting the position of British subjects in Missouri, and to request that we would take these papers into our consideration, together with those sent to us on the 5th instant (No. 480), and furnish your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

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That we can only refer to our Report of September 30,[*] on the subject of the liability of British subjects to military service in the United States.

We observe, however, that Consul Wilkins (par. 9) thus expresses himself: "Should Mr. Young claim and prove his right to exemption from military service as a British subject?" implying that such an exemption exists, and may be established by law. This should be explained. Those British subjects who, although not naturalized, have exercised the political privileges of citizens of the United States, and own landed property, cannot reasonably complain if they are, under the operation of a general law, treated as liable to contribute to providing substitutes for military service in reasonable proportion to the amount and nature of their property; but until the actual legal position and rights of British subjects in respect of military service, especially as to the obligation to personal service, are defined and stated, it is impossible for us to advise Her Majesty's Government how to act upon this subject.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 279.

The Law Officers of the Crown to Earl Russell.—(Received November 1.)

UNITED STATES.

Claim of Mr. Rahming for compensation on account of his arrest and imprisonment in Fort Lafayatte.

My Lord, *Doctors' Commons, October* 31, 1861.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 22nd October instant, stating that he was directed by your Lordship to transmit to us despatches from Her Majesty's Minister at Washington,[†] and also a despatch from Her Majesty's Consul at New York,[‡] respecting the imprisonment in Fort Lafayette, and subsequent release, of Mr. John Christopher Rahming, a British subject.

Mr. Hammond was also pleased to state that we should observe, from Lord Lyons' despatch No. 530 of the 3rd instant, and its inclosures, that Mr. Rahming considered that he had a good claim to be compensated by the United States' Government on account of his arrest and imprisonment.

Mr. Hammond was further pleased to state that he was directed by your Lordship to request that we would take this case into our consideration, and furnish your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That the arrest and imprisonment of Mr. Rahming appear to us to have been illegal and unjustifiable; and unless a satisfactory explanation should be offered by the United States' Government he will, in our opinion, be fairly entitled to compensation. We would suggest that a full statement of the facts and dates, and a request for a full explanation, should be forthwith addressed to the United States' Government.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 280.

The Queen's Advocate to Earl Russell.—(Received November 1.)

UNITED STATES.

Condemnation of the "Hiawatha" and the "Tropic Wind" for breach of blockade.

My Lord, *Doctors' Commons, October* 31, 1861.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 19th October instant, stating that, with reference to my Reports of the 18th June,[§] 5th and 6th of July,[‖] and 5th September,[¶] upon the case of the "Hiawatha," he was directed to transmit to me the following papers, namely, despatches from Lord Lyons (No. 521) and Her Majesty's Consul at New York (No. 92), reporting the condemnation of that vessel; a copy of a note from Lord Lyons to Mr. Seward, applying for her release; the sentence of condemnation pronounced by Judge Betts in the New York District Prize Court; and the Judgment of Judge Dunlop in the case of the "Tropic Wind."

Mr. Hammond was also pleased to request that I would take these papers into consideration, and furnish your Lordship with such observations as I may have to offer thereupon.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That the Judgment of Judge Betts contains three principal points:—

1. That the blockade was legally and constitutionally valid.

2. That the "Hiawatha" knew of that blockade, and broke it by egress, with cargo laden after the blockade was established, and had come to the knowledge of the parties interested, especially the master.

3. That it was not established to his satisfaction that the United States' Government had permitted or licensed those concerned to act as they did in the case.

As regards the first point (which relates to the constitutional and legal power of the President to establish and enforce the blockade in question by his own authority, and without the action of the Congress), I can only say that this is a question arising under, and to be determined by reference to, the Constitution and law of the United States exclusively; it is peculiarly proper for the decision of the Supreme Court of the United States, to which, I presume, the ultimate appeal in this case lies. I cannot say that the Judgment appears to me to be conclusive on this point; but I do not consider the point to be one on which, under actual circumstances, the Government of Her Majesty, or other foreign Governments, can properly rely in support of the claims of their subjects in respect of vessels captured for breach of any effective blockade.

Foreign Governments are not, as far as I am aware, in a position to adduce any express provision of the Constitution of the United States, or any other clear and decisive authority, explicitly denying this power to the President; they have, at all events by silent acquiescence, and in some cases by express and official communications, in effect, recognized the validity by international law of the blockades in question, where effective; and they have in so many modern instances, especially in cases occurring in South America, recognized the validity of blockades imposed by personages whose strict legal and constitutional authority to impose them was more questionable than that of President Lincoln, that I cannot advise Her Majesty's Government to open this question, and consequently I do not see any reason for offering any further remarks upon this portion of the Judgment.

With reference to the second point, and to the particular circumstances connected with the case of the "Hiawatha" (which are dealt with by Judge Betts at page 47 and following pages of this copy), it is impossible for me to form any decided opinion, in the absence of the evidence and of the arguments adduced to him.

There seems no question that, in point of fact, the cargo was laden after the blockade was established, and that the blockade was, in fact, broken by egress, under the impression that this was permitted to be done by the United States' Government.

With respect to the knowledge of the blockade by the parties concerned, and to its "notoriety," there are some pertinent remarks at pages 52 and 53: they seem to have denied such knowledge; but as far as I can understand the facts, it must have reached them in fact, and certainly did so "in contemplation of law."

The parties concerned seem to me to have been misled as to their right to load cargo after and notwithstanding the blockade; but I am under the impression that they had in fact a knowledge of the existence of the blockade before the ship sailed; or that, at least, they were, in point of law "affected with notice" thereof. However this may have been, I can see nothing to object to in this portion of the Judgment.

With respect to that portion of the Judgment in which the Judge decided, in effect, that the ship did not sail within fifteen days from the commencement of the blockade, I observe that he refers (page 49) to a notification from

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[*] Page 224.

[†] Lord Lyons, Nos. 473, 489, 490, 502, and 530.

[‡] Mr. Archibald, No. 88.

[§] Page 126.

[‖] Pages 142 and 145.

[¶] Page 197.

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Commodore Prendergast, dated April 30th (to which I also referred in my Report on this case of July 5th), and he remarks (at page 51) that the Consul "supposed that the time to be allowed for the despatch of vessels would begin from the 2nd May, but he does not assert any authority for naming that as the true day when the period of limitation was to commence." I had also in my Report of June 5, pointed out that the Consul had not suggested any other date than the 30th April, on which day the Judge apparently considers the blockade to have commenced.

The ship commenced her voyage, as the Judge appears to think, on the 16th, and was captured on the 20th May. It was with reference to the blockade having apparently commenced on the 30th April that I made in my Report of June 5, the remark (from which Lord Lyons in No. 521 dissents), that "the case was not within the letter or spirit of the fifteen days' concession." I can only say that Judge Betts appears to have adopted the same view of this point as that which I took of it on the 5th June, and I am unable to see that he is in error. My supposition that the voyage commenced on the 17th May will not affect the conclusion. If the blockade commenced on the 30th April, she did not sail within fifteen days from its commencement.

With reference to the third point (namely, the permission supposed to have been given by the United States' Government, not only for neutral ships to depart within fifteen days after the institution of a blockade, but also for them to load cargo during that period), although I do not, having regard to the contents of Lord Lyons' No. 521, concur with the conclusion at which the Judge has arrived, yet I cannot say that his judgment was erroneous on this point, inasmuch as I do not know precisely what documents he had legally before him. He also, in my opinion, properly suggests (at page 58), with reference to this point, that "her relief is to be pursued, as it was commenced, through equitable considerations addressed to the Government, and not upon a legal defence against the suit in the Prize Court." The effect of this part of the Judgment appears to me to be as follows:—"You suggest that the Government gave you permission to load cargo after blockade, and to sail within a period of fifteen days; I am of opinion you did not sail within such period of fifteen days, and I cannot say that the Government gave you leave to load cargo after blockade; but upon this point you can apply to the Government:" and I cannot say that this part of the Judgment is erroneous.

With respect to Lord Lyons' letter to Mr. Seward of September 28th, I am of opinion that upon the correspondence therein referred to, and more particularly from the fact of his Lordship having (apparently on May 11th) informed Mr. Seward that he had instructed Her Majesty's Consuls to advise masters of British vessels that they were at liberty to take cargo on board as well before as after the blockade, and from his never having received any intimation whatever that he was mistaken in issuing such instructions, he is perfectly justified in again insisting on the release of the "Hiawatha," a concession which appears to me to be incumbent on the United States' Government in point of good faith.

The release, after condemnation, of the ship "Tropic Wind" (a case of the same character therein mentioned), and the suggestion on this point which came from Judge Betts, are also deserving of consideration in favour of Lord Lyons' request, and the "Hiawatha" seems to be the only case in which the same question arises.

I observe from Consul Archibald's letter to Lord Lyons of September 22, that an appeal from the Judgment was in contemplation.

I have, &c.
(Signed) J. D. HARDING.

No. 281.

The Law Officers of the Crown to Earl Russell.—(Received November 1.)

My Lord, *Doctors' Commons, October* 31, 1861.

CHILI.

Claim of Mr. Walford for rent of a farm, called Agua Mgra, let by him to the brothers Lacourt.

WE were honoured with your Lordship's commands signified in Mr. Hammond's letter of the 21st instant, stating that he was directed by your Lordship to transmit to us a letter from Mr. Walford, dated the 18th October instant, recapitulating the circumstances under which he had been unable to obtain the rent of a farm in Chili, called Agua Mgra, let by him in 1845 to two brothers named Lacourt.

He also inclosed the previous correspondence on this subject, which had passed between your office, Mr. Walford, and Her Majesty's Chargé d'Affaires in Chili; and requested that we would take the inclosed papers into our consideration, and favour your Lordship with our opinion as to the steps, if any, which Her Majesty's Government should take in the matter.

Mr. Hammond was also pleased on the 26th instant to send us a further letter from Mr. Walford, dated the 22nd October, relative to his suit against the brothers Lacourt for the recovery of the rent of a farm in the Province of Concepcion.

In obedience to your Lordship's commands we have considered these papers, and have the honour to report—

That we do not see how Her Majesty's Government can properly take any steps in this matter, which is a question entirely between private persons, in which the Government of Chili does not appear to have any interest, or to have taken any part.

We observe, moreover, that in Mr. Thomson's No. 24, June 8 (which is apparently the last despatch on this subject from Chili), he states that "Mr. Budge (Mr. Walford's agent) had placed the suit in a proper train, and considered Mr. Thomson's interference unnecessary."

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 282.

The Queen's Proctor to Mr. Hammond.—(Received November 1.)

Sir, *Doctors' Commons, November* 1, 1861.

UNITED STATES.

Case for opinion of Law Officers on claim of Messrs. Byrne and Co., for losses sustained by their vessel the "Monmouth" being warned off the Southern coast of the United States.

I HAVE the honour to acknowledge the receipt of your letter of the 21st of September last, stating that you were directed by Earl Russell to transmit to me the papers specified in the accompanying list respecting a claim preferred by Messrs. Byrne and Co., of Liverpool, to be compensated by the United States' Government for losses sustained by them in consequence of their vessel, the "Monmouth," having, on the 12th of May last, been warned off the "whole Southern coast of the United States, it being blockaded," whereby that vessel was not only debarred access to the port of Charleston, which seems to have been blockaded at that date, but was also prevented entering the port of Savannah (for which the "Monmouth" had an alternative destination), although, as the papers seem to prove, Savannah was not only not blockaded on the 12th of May, but there was actually no blockade of that port until the 28th of May.

That I would observe from Messrs. Byrne and Co.'s letter of June 3, that they estimate their loss by freight at 8,872*l.* 10*s.*, and on the sale of the cargo of salt at 1,700*l.*; and that they request that Lord Russell will take such steps as may be deemed proper, in order that the heavy pecuniary loss which they have sustained may be made good to them.

That in accordance with the suggestion of the Queen's Advocate, contained in his Report of the 17th of August, you were to request that I would put myself in communication with the Law Officers of the Crown, and prepare a case to be submitted to them, with a view of enabling those officers to advise Her Majesty's Government with confidence and certainty as to the demands, if any, which should be made upon the Government of the United States on behalf of the owners of the "Monmouth."

In obedience to Earl Russell's directions I submitted a case to the Law Officers of the Crown for their opinion accordingly, and have the honour to transmit the same herewith, with their opinion thereon.

I have, &c.
(Signed) F. H. DYKE.

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Inclosure in No. 282.

Case for Opinion of the Law Officers of the Crown on the Claim of Messrs. Byrne and Co. for Losses arising from the Blockade of the Southern Coast of the United States.

THE Queen's Proctor received the following letter from the Foreign Office:—

Sir,

Foreign Office, September 21, 1861.

I AM directed by Earl Russell to transmit to you the papers specified in the accompanying list, respecting a claim preferred by Messrs. Byrne and Co., of Liverpool to be compensated by the United States' Government for losses sustained by them in consequence of their vessel, the "Monmouth," having on the 12th May last been warned off the "whole Southern Coast of the United States, it being blockaded," whereby that vessel was not only debarred access to the port of Charleston, which seems to have been blockaded at that date, but was also prevented entering the port of Savannah (for which the "Monmouth" had an alternative destination), although as the papers seem to prove, Savannah was not only not blockaded on the 12th of May, but there was actually no blockade of that port until the 28th of May.

You will observe from Messrs. Byrne and Co.'s letter of June 3, that they estimate their loss by freight at 8,872*l.* 10*s.*, and on the sale of the cargo of salt 1,700*l.*, and that they request that Lord Russell will take such steps as may be deemed proper in order that the heavy pecuniary loss which they have sustained may be made good to them.

In accordance, therefore, with the suggestion of the Queen's Advocate, contained in his Report of the 17th ultimo, I am to request that you will put yourself in communication with the Law Officers of the Crown, and will prepare a case to be submitted to them, with a view of enabling those officers to advise Her Majesty's Government with confidence and certainty as to the demands, if any, which should be made upon the Government of the United States on behalf of the owners of the "Monmouth."

I am, &c.

F. H. Dyke, Esq. (Signed) E. HAMMOND.

The facts in connection with Messrs. Byrne's claim appear to be as follows:—

On the 24th of March, 1861, the British ship "Monmouth," of which Messrs. Byrne and Co. are part owners, sailed from Liverpool for Charleston in South Carolina, the Captain having orders to proceed to Savannah if Charleston was blockaded.

On the 19th day of April, 1861, the President of the United States of America issued the following Proclamation, viz.:—

A Proclamation.

Whereas an insurrection against the Government of the United States has broken out in the States of South Carolina, Georgia, Alabama, Florida, Mississippi, Louisiana, and Texas, and the laws of the United States for the collection of the revenue cannot be effectually executed therein conformably to that provision of the Constitution which requires duties to be uniform throughout the United States:

And whereas a combination of persons, engaged in such insurrection, have threatened to grant pretended Letters of Marque to authorize the bearers thereof to commit assaults on the lives, vessels, and property of good citizens of the country, lawfully engaged in commerce on the high seas, and in waters of the United States:

And whereas an Executive Proclamation has been already issued, requiring the persons engaged in these disorderly proceedings to desist therefrom, calling out a militia force for the purpose of repressing the same, and convening Congress in Extraordinary Session to deliberate and determine thereon:

Now therefore I, Abraham Lincoln, President of the United States, with a view to the same purposes before mentioned, and to the protection of the public peace, and the lives and property of quiet and orderly citizens pursuing their lawful occupations, until Congress shall have assembled and deliberated on the said unlawful proceedings, or until the same shall have ceased, have further deemed it advisable to set on foot a blockade of the ports within the States aforesaid, in pursuance of the laws of the United States and of the law of nations in such case provided. For this purpose a competent force will be posted so as to prevent entrance and exit of vessels from the ports aforesaid. If, therefore, with a view to violate such blockade, a vessel shall approach or shall attempt to leave any of the said ports, she will be duly warned by the Commander of one of the blockading vessels, who will indorse on her register the fact and date of such warning; and if the same vessel shall again attempt to enter or leave the blockaded port she will be captured and sent to the nearest convenient port, for such proceedings against her and her cargo as prize as may be deemed advisable.

And I hereby proclaim and declare that if any person, under the pretended authority of the said States, or under any other pretence, shall molest a vessel of the United States, or the persons or cargo on board of her, such person will be held amenable to the laws of the United States for the prevention and punishment of piracy.

In witness whereof I have hereunto set my hand, and caused the seal of the United States to be affixed.

Done at the city of Washington, this 19th day of April, in the year of Our Lord 1861, and of the Independence of the United States the eighty-fifth.

(Signed) ABRAHAM LINCOLN.

By the President,
(Signed) WILLIAM H. SEWARD, *Secretary of State.*

On the 12th of May, 1861, the "Monmouth" arrived off Charleston, and was then boarded by an officer from the United States' ship "Niagara," who indorsed upon the ship's papers the following:—

"Boarded May 12, and ordered off the whole Southern coast of the United States of America, it being blockaded."

(Signed) R. L. MAY, *Lieutenant,*
United States' Steam-ship "Niagara."

That in consequence of this notification the Captain of the "Monmouth" considered himself debarred from going to Savannah, and, therefore, proceeded to British North America.

It is stated by Messrs. Byrne and Co., in a letter addressed to Her Majesty's Principal Secretary of State for Foreign Affairs, dated Liverpool, 3rd June, 1861, that the above notification was wrong in fact, Savannah never having been blockaded, ships up to the 23rd of May going in unmolested.

That at Charleston the blockade had not been effective, as ships on three separate occasions, subsequent to the 12th May, went in, and received full cargoes at high freights, viz., 1½*d.* per lb. for cotton; that the "Monmouth" could have had the same rate, and her freight thereat would have amounted to 8,872*l.* 10*s*, and in addition she would have received for her outward cargo of 4,000 sacks of salt, 1,700*l.*

Under these circumstances Messrs. Byrne and Co. consider they have a legal and equitable claim upon the United States' Government for the above sums upon the grounds that the notice was wrong in fact, save as regards Charleston; that in addition the officer of the "Niagara" had only jurisdiction at Charleston, and was, therefore, not warranted in warning off from other ports: and, lastly, that the blockade at Charleston was not an effective one, as is evidenced by subsequent arrivals there.

On the 8th of June, 1861, Earl Russell desired Lord Lyons to obtain all the information he could procure respecting the forces actually blockading Savannah at the time when the "Monmouth" was warned off the whole Southern coast including Savannah.

Lord Lyons accordingly, on the 27th of June, 1861, called upon Her Majesty's Acting Consul at Savannah to report to him with "scrupulous precision" whether any United States' force was actually blockading Savannah on the said 12th of May, or shortly afterwards, and, if so, of what vessels such

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force was composed, where it was stationed, and whether it was of such amount and so placed as to be able to enforce an effective blockade; and also, whether any notice of a blockade of Savannah was given on or before the 12th of May, or shortly afterwards, and received the following reply from Her Majesty's Acting Consul:—

"That no United States' force was blockading Savannah on the 12th May last; in fact no blockade whatever of this port (Savannah) existed previously to the 28th of that month, on which day the vessels composing the United States' squadron at present (6th July) blockading Savannah made their appearance for the first time."

On the 29th I visited one of these vessels, and was distinctly informed by her Commander that the blockade of Savannah did not commence until the 28th of May. No other notice of blockade has ever been given, and I gathered in the course of conversation that the Commander of the squadron did not deem it to be his duty to give any such notice either to the local authorities of this city, or to the Consular Representatives of foreign Governments resident here; and Her Majesty's Consul adds, "that one of the best proofs that no blockade existed previously to the 28th of May lies in the fact that five British vessels arrived in this port on various days between the 12th and 28th May, the masters of which vessels reported to me that they met with no United States' force off the port."

The several despatches and inclosures relating to the subject were from time to time referred to Her Majesty's Advocate-General, and the following are his Reports thereon:—

[Reports dated June 6, 1861, see *ante*, p. 106; June 19, p. 127; June 24, p. 128; July 3, p. 140; August 17, p. 184.]

It will be observed that Messrs. Byrne's claim is based upon the prices current at Charleston at the time the port was under blockade, and there is an entire omission of the prices prevalent at Savannah, and the amount realized in British North America; but a claim is made for the whole amount of what it is said the sale of the cargo would have fetched, and a homeward freight obtained from a blockaded port.

Under the aforegoing circumstances the opinion of the Law Officers is requested—

As to the demands, if any, which should be made upon the Government of the United States on behalf of the owners of the "Monmouth."

Opinion of the Law Officers of the Crown.

The facts, after the full and careful inquiry that has taken place, appear to be these, viz.:—That on the 12th of May, the date of the endorsement by the officer of the United States' steam-ship "Niagara" on the ship's papers of the "Monmouth," the port of Charleston was blockaded; but that the port of Savannah was not blockaded in fact, or by any naval force whatsoever, earlier than the 28th May. Under these circumstances, we think that the master of the "Monmouth" was justified in believing that the officer who made the endorsement did so by the authority of his Government; and if the master gave faith to the representations as to the extent of the blockade, contained in the endorsement, and therefore desisted from going to Savannah, it appears to us that the case of the owners is a fair case for representation of the facts by Her Majesty's Government to the Government of the United States, with the view of obtaining, if practicable, a reasonable compensation for any actual loss that may, in consequence, have been occasioned to the owners.

As to the amount of any ultimate demand, the information supplied does not enable us to advise, with any certainty; and, should the justice of the claim be admitted by the United States' Government, the quantum can be afterwards ascertained without much practical difficulty. The representations, in the first instance, should be general, and not a claim for any specific sum. And even if

the representations should fail of any beneficial result to the owners of the "Monmouth," they may not be without their use in inducing greater regularity and correctness for the future.

This also, we must add, is on the assumption that the master of the "Monmouth," after he found himself precluded from going to Savannah, acted *bonâ fide*. We have assumed (but of this the claimants ought to furnish satisfactory proof to Her Majesty's Government), that, as suggested, the "Monmouth" had an alternative port of destination—Savannah.

(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

Doctors' Commons, October 30, 1861.

No. 283.

The Queen's Advocate to Mr. Hammond.—(Received November 1.)

Doctors' Commons, November 1, 1861.

PERU.

Captain Carvell's case.

THE Queen's Advocate presents his compliments to Mr. Hammond, and with reference to his letter of the 31st October ultimo, stating that Colonel the O'Gorman Mahon, M.P., who has recently returned from Peru, where he interested himself on behalf of Captain Carvell, is anxious to have an interview with the Law Officers of the Crown upon that gentleman's case, begs to name Monday next, November 4th, 1861, at 4 o'clock, at the Attorney-General's Chambers, 1, Paper Buildings, Temple, for such interview.

No. 284.

The Law Officers of the Crown to Earl Russell.—(Received November 5.)

My Lord,

Doctors' Commons, November 4, 1861.

UNITED STATES.

Right of minors residing in the United States to British protection, they having been born in the British dominions, but their fathers having become naturalized citizens of the United States.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 12th October ultimo, stating that he was directed to transmit to us a despatch and its inclosures from Lord Lyons (No. 505), from which we should learn that a question has been raised by the United States' Government as to the right to British protection of three persons, named Thomas Daily, O'Connor, and Patrick Crohan, who have been arrested by the authorities at Baltimore.

Mr. Hammond was also pleased to state that it appears that these persons, who are minors, were born in Her Majesty's dominions, but their fathers became naturalized citizens; and the United States' Government assert that such minors are held, by the laws of the United States, to be American citizens: and to request that we would take this question into consideration, and furnish your Lordship with our opinion thereupon.

Right of Mr. J. Hoy, a merchant of New York, to British protection.

Mr. Hammond was also pleased to transmit to us, as having reference to the same question, the accompanying letter from Mr. Cassell, dated the 2nd October ultimo, respecting the case of Mr. James Hoy, a merchant of New York; and to request that we would furnish your Lordship with our opinion whether, under the circumstances mentioned in Mr. Cassell's letter, Mr. Hoy is entitled to the protection of the British Crown.

We are also honoured with Mr. Hammond's letter of the 14th October ultimo, transmitting a copy of a further despatch from Her Majesty's Minister at Washington, inclosing a copy of the Opinion which he has obtained from the Legal Adviser of Her Majesty's Legation in regard to the question of the nationality, during their minority, of natural-born British subjects dwelling in the United States, whose parents had, subsequent to their birth, become naturalized American citizens.

In obedience to your Lordship's commands we have taken this question into consideration, and have the honour to report—

That, in our opinion, minors who were born in Her Majesty's dominions, but whose fathers have become naturalized American citizens, ought, during

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their minority, to be considered and treated as between the two Governments, not as British subjects, but as American citizens.

We learn from the opinion of Mr. Carlisle, the American Counsel to the Legation at Washington, that by the Statute Law of the United States minors in this position are regarded as American citizens; and that, in fact, as well as according to the letter of the law, they obtain and enjoy, in the United States, all the rights and benefits incident to that character.

The rule we have propounded is in accordance with that which generally obtains in the somewhat analogous case of domicil; and one which we cannot doubt it will be wise to observe, in the exercise of that discretion which, after all, must govern the interference of one State with the acts of another, bearing on individuals being within the territory of such other State.

As to the case of Mr. James Hoy (whose age is not stated), we take for granted that he is of full age, and has been so for a sufficiently long period of time to enable him, if he had thought fit, to disclaim and renounce the citizenship which, according to the opinion we have above expressed, attached to him during his minority in the United States after the naturalization of his father.

We also infer that no such disclaimer or renunciation took place, and that Mr. Hoy, since he came of age, has carried on his business of a merchant in the United States, and has exercised therein all the ordinary rights of a citizen.

Under these circumstances, we are of opinion that Mr. Hoy is not, in justice or fairness, entitled to the protection of the British Crown against the acts or interference of the Government of the United States.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 285.

The Queen's Advocate to Earl Russell.—(Received November 7.)

TURKEY.

Mr. Glover's claim against Ismail Pasha, for breach of contract for hire of the steamer "Enchantress."

My Lord, *Doctors' Commons, November 5*, 1861.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 22nd October ultimo, stating that he was directed to transmit to me a copy of the despatch which your Lordship addressed to Her Majesty's Ambassador at Constantinople (No. 4, January 6, 1860), on the receipt of my Report of the 30th December, 1859, respecting Mr. Glover's claim against Ismail Pasha, for the breach of an alleged contract for the hire of Mr. Glover's steam-vessel "Enchantress."

Mr. Hammond was also pleased to transmit to me the accompanying despatches which have been received since that date from Sir Henry Bulwer, and the accompanying letters from Mr. Glover, showing the subsequent proceedings in this case, and to request that I would take these, and the previous papers which were also inclosed, into consideration, and report to your Lordship my opinion as to the further course which Her Majesty's Government should pursue in this matter.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That. considering all that has passed in this matter, it seems to me that Her Majesty's Government is justified in peremptorily insisting on the prompt payment of 4,000*l* to Mr. Glover.

Your Lordship's despatch (No. 4) of January 6, 1860, to Sir H. Bulwer, was of a most definite character; and I can see nothing of any weight in the last answer on behalf of the Porte (September 25, 1861); whilst the reply of Sir H. Bulwer (October 2, 1861), appears to me effectually to dispose of that answer.

I cannot see any sufficient reason for the distinction taken by the Porte between its liability as to the sum of 3,000*l*. due to Mr. Glover under the contract (which it has paid notwithstanding the insolvency or default of Ismail Pasha), and its liability as to the sum of 4,000*l*. claimed as damages by Mr. Glover, which it now declines to pay for what appears to me the obviously insufficient reason that Mr. Glover may sue Ismail Pasha for that amount.

The final decision of the case was left to a Board of Turkish official personages, and their award ("bouyourdli"), dated October 3, 1860, does not distinguish between the two claims for 3,000*l*. and for 4,000*l*.; the whole claim is thereby dealt with as being one and the same, against the Turkish Government: it is ordered to "be arranged" or "made smooth;" and the Mushir of the Zaptieh is thereby "requested to make the necessary arrangements for regularizing (literally, making smooth) the same."

On the proposition of Aali Pasha, the question as to the amount due for damages was subsequently referred to Mr. Hornby, and his decision is in favour of Mr. Glover to the full amount claimed.

Sir H. Bulwer now suggests that Mr. Hornby's reasons as stated in his Memorandum, dated the 21st May, 1861, for thus deciding, are not conclusive, but however this may be, the Turkish Government does not insist on this point, on which Mr. Hornby's decision is final; and I see nothing in reason or equity to prevent Her Majesty's Government from insisting that the Turkish Government must forthwith pay this amount. Mr. Glover is entitled to the benefit of Mr. Hornby's decision in his favour, especially as Mr. Hornby was not selected by him, but by Aali Pasha.

The principle involved is important, and the case of Mr. Glover is a very hard one. As to the policy of not pressing it to extremity, for fear of the possible consequences to Turkey as regards other claims, or of accepting a less sum (upon which Sir H. Bulwer remarks), I do not feel competent to give an opinion; but Her Majesty's Government cannot on any account be advised to admit that the claim of Mr. Glover is only valid as against Ismail Pasha. The Porte is, in my opinion, clearly liable; and as to the amount (which is the only question remaining open), I consider that Her Majesty's Government is perfectly entitled to insist on prompt payment of 4,000*l*., the amount decided by Mr. Hornby to be due to Mr. Glover.

I have, &c.
(Signed) J. D. HARDING.

No. 286.

The Queen's Advocate to Earl Russell.—(Received November 7.)

ARGENTINE CONFEDERATION.

Claim of Mr. Smith for return freight or demurrage in cases of the "Caledonia" and "Cestus."

Claim arising out of General Rosa's Decree of February 13, 1845.

My Lord, *Doctors' Commons, November 5*, 1861.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 22nd October ultimo, stating that with reference to my Report of the 18th July,* respecting the claims of the owners of the "Caledonia" and "Cestus," arising out of General Rosa's Decree of the 13th February, 1845, he was directed to transmit to me the papers marked in the margin,† containing further information respecting these cases, and the Commission by which they are being tried; and to request that I would take these papers into consideration, and furnish your Lordship with my opinion on the points submitted by Mr. Thornton.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I cannot advise your Lordship to instruct Mr. Thornton as suggested; namely, to state to the Argentine Commissioners that he is instructed by Her Majesty's Government to support Mr. Smith's claim for return freight or demurrage in the cases of the "Caledonia" and the "Cestus," notwithstanding the decision of the other Commissioners, with the view of ultimately enforcing this claim against the Argentine Government, in case the Commissioners should persist in their refusal to decide in favour of the claim.

The Commissioners have decided in favour of the claim in point of principle—the claimant is to receive compensation; and the only question is the amount of such compensation.

Mr. Thornton states in No. 43 that the Commissioners have positively refused to allow homeward freight or demurrage in either case. I must assume that the claim has been fully stated, argued, and considered; and that the

* Page 153.

† Convention, August 21, 1858; to Mr. Fagan, No. 6, 1859; Messrs. Smith & Co., October 16, 1861; Mr. Thornton, No. 81, 1861.

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decision is unanimous on the part of all the Commissioners excepting Mr. Thornton.

With respect to demurrage, I am of opinion that the Commissioners have rightly decided; the ships were not, in fact, detained at, or prevented from leaving, Buenos Ayres, or from going elsewhere as they thought fit; they were only forbidden to discharge their cargoes at Buenos Ayres; and I can see no sufficient ground for claiming demurrage.

With respect to the claim for return freight, I observe that the ships were not actually chartered or engaged to carry cargo on any return voyage; they suffered no positive and actual loss; their chance of earning such freight was a matter proper for the consideration of the Commissioners, and they having rejected the claim, I cannot say that such decision is so contrary to reason and justice as to justify the special intervention of Her Majesty's Government.

I have, &c.
(Signed) J. D. HARDING.

No. 287.

The Queen's Advocate to Earl Russell.—(Received November 7.)

UNITED STATES.

Imprisonment at Baltimore, and subsequent release, of Dennis Kelly, a British subject.

My Lord, *Doctors' Commons, November* 6, 1861.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 17th October ultimo, stating that he was directed to transmit to me two despatches, and their inclosures, from Her Majesty's Minister at Washington (Nos. 524 and 525 of the 28th and 30th September ultimo), respecting the case of Dennis Kelly, a British subject, who was arrested at Baltimore, and imprisoned for twenty-one days without any explanation being given as to the cause of his imprisonment.

Mr. Hammond was also pleased to state that Kelly was eventually released from Fort Columbus, in New York harbour, whither he had been conveyed by the police; and that Her Majesty's Consul at New York advanced him six or seven dollars to enable him to return to Baltimore; and to request that I would take this case into consideration, and furnish your Lordship with any observations which I may have to offer thereupon, and also whether I would advise that the United States' Government should be called upon (as suggested by Her Majesty's Consul at Baltimore) to repay the six or seven dollars advanced by Consul Archibald to Kelly on his being released from Fort Columbus.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That in my opinion it will not be expedient, nor consistent with the dignity of Her Majesty's Government, to call upon the Government of the United States to repay the sum of six dollars, advanced by Consul Archibald to Kelly, by way of travelling expenses, to enable him to return to Baltimore, on his release from confinement at New York.

Although my opinion is only requested on this particular point, I may perhaps be permitted to add, that having regard to what is stated by Lord Lyons in No. 525, and especially to his Lordship's statement "that he has hitherto succeeded in procuring the release of every British subject arrested in this way, whose case has been brought to his knowledge;" I entirely concur with his Lordship that it will not be expedient to pursue this case any further at present, or to raise the general question of the right of the United States' Government to arrest foreigners on suspicion, without legal process; more especially seeing that at Baltimore (where Kelly was arrested) the operation of the ordinary law, and of the regular legal Tribunals of the United States, has been (howsoever) deliberately superseded or set aside by the authority of the Executive Government, under the plea of an existing insurrection or civil war, and that martial law appears to prevail there.

I would also observe that it does not appear that Kelly has made any demand for pecuniary compensation.

I have, &c.
(Signed) J. D. HARDING.

No. 288.

The Queen's Advocate to Lord J. Russell.—(Received November 7.)

UNITED STATES.

Claim of Messrs. Piers for compensation for losses occasioned by their vessel the "Susan" having been warned by a United States' cruizer not to enter Hampton Roads.

My Lord, *Doctors' Commons, November* 6, 1861.

I AM honoured with your Lordship's commands signified in Mr. Hammand's letter of the 28th October ultimo, stating that he was directed to transmit to me a letter from the Colonial Office, dated the 15th October ultimo, inclosing a copy of a despatch from the Lieutenant-Governor of Nova Scotia, together with a letter from Messrs. L. E. and George Piers, of Halifax, Nova Scotia, in which they claim compensation on account of their vessel the "Susan," which sailed from that port about the 19th of April, bound for Norfolk, with a cargo of herrings, having been warned by a United States' cruizer, on or about the 14th May, not to enter Hampton Roads, whereby the voyage was rendered impracticable, and the "Susan" had to return to Halifax.

Mr. Hammond was also pleased to state that the grounds upon which Messrs. Piers make their claim are, first, the want of any previous notice as to the blockade, and the consequent absence of any knowledge on their part of the particulars relative thereto; and secondly, the asserted abrogation, on the part of the United States' Government, of the Reciprocity Treaty with this country of the 5th June, 1854 (Hertslet, vol. ix, page 998), by which the United States' Government stipulated that certain articles, including fish, with which the "Susan" was laden, should be admitted into all the ports of the United States duty free.

And Mr. Hammond was pleased to request that I would take this claim into consideration, and report to your Lordship my opinion thereupon.

In obedience to your Lordship's commands I have taken this claim into consideration, and have the honour to report—

That I cannot advise Her Majesty's Government to make any demand upon the Government of the United States in this case.

It is not suggested that the port of Norfolk, Virginia, was not effectually blockaded "on or about the 14th May" last, when the "Susan" was, on arriving off Hampton Roads, boarded by a United States' ship of war, and warned, by indorsement on her papers, not to enter Hampton Roads, within which the port of Norfolk is situated.

I presume that the blockade was, in fact, effective; and if so, the notice and indorsement were justifiable.

The other circumstances alluded to in the Memorial are not material.

I have, &c.
(Signed) J. D. HARDING.

No. 289.

The Queen's Advocate to Earl Russell.—(Received November 8.)

SICILY.

Protection to be afforded by British Vice-Consul at Messina to an Ionian subject, P. Galeani.

My Lord, *Doctors' Commons, November* 7, 1861.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 5th November instant, stating that he was directed to transmit to me two letters from Dr. Galeani, dated the 2nd and 29th October last, stating the grounds on which he requests that his son, who has been employed by him as his agent in regard to some property of his in Sicily, may be protected by the British Vice-Consul at Messina; and to request that I would take Dr. Galeani's application into consideration, and report to your Lordship my opinion as to the instructions which may properly be sent to the British Vice-Consul on the subject.

In obedience to your Lordship's commands I have taken this application into consideration, and have the honour to report—

That inasmuch as Dr. Galeani states that his son was born in the Island of Cephalonia, the Consul at Messina may be instructed that Pancrazio Galeani (the son) is to be considered as an Ionian, and protected accordingly; and he should be desired to state the facts relating to that gentleman, and his alleged ill-treatment in Sicily.

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Dr. Galeani should be requested to state the nationality of his father; the place of his own birth; the date of his son's birth; and the date of his own naturalization; and to forward a copy of his certificate of naturalization.

I have, &c.
(Signed) J. D. HARDING.

No. 290.

The Law Officers of the Crown to Earl Russell.—(Received November 9.)

My Lord, *Doctors' Commons, November* 8, 1861.

PERU.

Captain Carvell's case.

Interview with Colonel the O'Gorman Mahon, M.P.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 31st ultimo, stating that he was directed by your Lordship to acquaint us that Colonel the O'Gorman Mahon, M.P., who had recently returned from Peru, where he interested himself on behalf of Captain Carvell, was anxious to have an interview with us upon that gentleman's case.

Mr. Hammond was also pleased to state that the O'Gorman Mahon had been allowed to read all the despatches from Her Majesty's Chargé d'Affaires at Lima relating to this case, and that he was directed by your Lordship to request that we would have the goodness to name the earliest day when it would be convenient for us to receive the O'Gorman Mahon.

Mr. Hammond was also pleased to observe that the correspondence relative to the case was annexed for our information.

Mr. Hammond was further pleased, in a letter to Her Majesty's Attorney-General of the 4th instant, to state that he begged to place in his hands an additional paper connected with Captain Carvell's case, respecting which Colonel the O'Gorman Mahon had been appointed to wait on the Law Officers that afternoon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That Colonel the O'Gorman Mahon had an interview with us on the 4th instant, and fully discussed the circumstances of Captain Carvell's case; he did not succeed in altering our opinion as expressed in our previous Reports, and did not state any facts of importance with which we were previously unacquainted, excepting that (as we understood him) there are at least nine different suits or proceedings pending in Peru in relation to the effects of Mr. Winder, deceased, in eight of which Captain Carvell does not deny the jurisdiction of the Peruvian Courts; the ninth appears to us to stand on the same footing in this respect, and this agrees with the former Reports.

The papers forwarded to the Attorney-General with Mr. Hammond's note of the 4th November instant are herewith returned.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 291.

The Queen's Advocate to Earl Russell.—(Received November 12.)

My Lord, *Doctors' Commons, November* 11, 1861.

BELGIUM, &c.

Proposed redemption of the Scheldt duties.

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 8th November instant, stating that with reference to my Reports of the 29th October ultimo* and the 4th instant [31st October ?†], respecting the Belgian proposal for the capitalization of the Scheldt duties, he was directed to transmit to me three Memoranda on the Scheldt duties which have been drawn up in the Foreign Office, and to request that I would take these papers into my early consideration, and report to your Lordship such further observations as I may now have to make upon the question.

The previous correspondence on the case was inclosed for reference.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That the contents of these three Memoranda (No. 1 October 30th, No. 2 November 1st, No. 3 November 4th), especially of that of November 1st, which I have marked No. 2, in pencil, tend strongly to confirm the view which I have taken of this question in my Report of the 29th October.

It appears from these Memoranda, that the subject of these duties was frequently discussed between the different Powers interested, and various modes of settlement were suggested, always without success, in 1831-32, and again in 1838-39. During these discussions the Netherlands always insisted on its right to receive the duty; Belgium contended *contra* that no duty was due to the Netherlands, the Scheldt being free; and the question was thoroughly sifted. I cannot discover any proof of its having been always assumed or admitted by all the Powers that Belgium was to be held exclusively liable to pay the duty, nor was there any definite compact to that effect.

On the other hand, the right of the Netherlands to receive the duty was generally admitted: it does not seem to have been seriously questioned by any Power but Belgium.

Lord Palmerston appears, on the 24th September, 1832, to have proposed that Belgium should pay this duty on behalf of all nations without distinction (see Draft Treaty, Annex B (1) to Protocol of the 30th September, 1832, State Papers, vol. xix, page 160); but it is stated in Memorandum No. 1, page 9, that these negotiations led "to no final issue."

By the Treaty of May 21, 1833 (Article III), the navigation of the Scheldt was to remain entirely free until the relations between Holland and Belgium were regulated by a definitive Treaty. The question of duties, therefore, was reserved for such Definitive Treaty.

In 1838, during the negotiations for the Definitive Treaty, it appears from Memorandum No. 1, page 13, "that a desire was expressed by the Belgian Plenipotentiaries that Belgium might be allowed to redeem these duties by an annual payment of 150,000 florins to the Netherlands, secured by an Article of the Treaty. The Conference, however, replied that they did not consider the question was one which was susceptible of being treated by them, but that it ought more properly to form a subject for future negotiation between the two countries" (Memorandum No. 3, page 16), and the result of the whole was Article IX of Definitive Treaty of 1839).

It would thus seem that the casting on Belgium exclusively the obligation to pay these duties was a point which had been fully considered: it had been suggested in 1832 by Lord Palmerston, and Belgium had been ready to entertain it as late as 1839; but it was not adopted by the Conference; and, consistently with this state of things, was not stipulated in the Definitive Treaty of 1839.

Thus it results from the history of the negotiations on this subject from 1831 to 1839, that the Powers interested—

First. Admitted and confirmed the right of the Netherlands to receive the duty.

Secondly. Considered and rejected the plan of making Belgium exclusively responsible for the payment.

Thirdly. Settled and signed the Definitive Treaty of 1839, which made the right of Holland to receive the duty clear, but did not make Belgium exclusively liable to pay it.

There remains only for consideration the Belgian Law of June 5, 1839; and on this point there is not only an entire absence of any evidence that this law was enacted in pursuance of any undertaking or arrangement between Belgium and other Powers, but it would appear from Memorandum No. 2, page 8, that the law was a purely spontaneous measure on the part of Belgium, adopted by her, not in consequence of any Treaty obligation or international compact whatsoever, but for her own national objects, namely, the benefit of Antwerp and Ghent.

I have, &c.
(Signed) J. D. HARDING.

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* Page 252. † Page 257.

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No. 292.

The Law Officers of the Crown to Earl Russell.—(*Received November* 12.)

PORTUGAL.

As to legality of mixed marriages at the British Consulate at Oporto, without the parties having been previously married in a Portuguese church, according to the law of the land.

My Lord, *Doctors' Commons, November* 11, 1861.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 28th October ultimo, stating that he was directed by your Lordship to transmit to us a letter from the Rev. E. Whiteley, British Consular Chaplain at Oporto, dated the 26th October last, requesting instructions with reference to the question of mixed marriages contracted at the British Consulate at Oporto, when the contracting parties had not been previously married in a Portuguese church according to the law of the land.

Mr. Hammond was also pleased to inclose the papers bearing on this question which were referred to by Mr. Whiteley, and to state that he was directed by your Lordship to request that we would take this question into our consideration, and furnish your Lordship with our opinion thereon.

We are also honoured with your Lordship's commands signified in Mr. Hammond's letter of the 4th instant, stating with reference to his letter of the 28th ultimo, submitting to the Law Officers a letter dated the 26th October, from the Rev. Edward Whiteley, respecting the question of mixed marriages contracted at the British Consulate at Oporto, he was directed by your Lordship to transmit therewith a further letter from Mr. Whiteley on the same subject, and to request that it might be taken into our consideration with the papers then before us.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That it would seem from the Rev. Mr. Whiteley's letter that whilst mixed marriages of British and Portuguese subjects are only permitted to be solemnized by the Consul under the Consular Marriage Act at Lisbon, when the parties either have been or are about to be married according to the Roman Catholic form, consistently with the law of Portugal, yet that at Oporto no such restriction is enforced, and such mixed marriages are there solemnized at the Consulate, although they may not be preceded or followed by the Roman Catholic ecclesiastical form of solemnization, and are, consequently, invalid by the law of Portugal. It is obvious that the Consular practice throughout Portugal in this matter should be uniform; and it may be desirable, before finally deciding the question, to procure from that country precise information on this point. As regards the general question, the serious inconveniences consequent upon marriages celebrated under the Consular Marriage Act being considered as invalid by the *lex loci* have been frequently considered and pointed out by the Law Officers; and in those countries in which, as in France, there is no impediment to marriage on the ground of religious belief, and a civil form of marriage is valid, the forbidding the celebration of any Consular marriage, except where the parties have been previously married *secundum legem loci*, appears proper. In Roman Catholic countries, however, in which mixed marriages are absolutely invalid (*i.e.*, where no Protestant can contract a valid marriage with a Roman Catholic), the forbidding Consular marriages under the statute, excepting in cases where the Roman Catholic ecclesiastical form has been, or is about to be followed, has been considered as attended with serious hardship to British subjects, more especially to those domiciled in the country. This was (according to the Queen's Advocate's recollection, for the documents are not among those inclosed with Mr. Hammond's letter) the view taken by the Earl of Malmesbury, Secretary of State for Foreign Affairs, in his despatch to Lord Howden, and the circular to Her Majesty's Consuls in Spain of June 1852; and unless your Lordship should think fit, on receiving further information, to adopt a different principle in Portugal, and to place Oporto in the same condition in this respect as Lisbon is stated to be, we do not see how anything more can be done than to direct the Consul to warn the parties, and to leave them to act according to their own discretion, and at their own risk of possibly resulting inconveniences to themselves or their offspring.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 293.

The Law Officers of the Crown to Earl Russell.—(*Received November* 12.)

UNITED STATES.

On the right of a Federal steamer of war to board a West India mail-packet, and remove therefrom and carry off as prisoners Messrs. Mason and Slidell, accredited to the English and French Governments by Confederate States of North America.

My Lord, *Doctors' Commons, November* 12, 1861.

WE were honoured with your Lordship's commands signified in Mr. Hammond's letter of the 9th instant, stating that he was directed by your Lordship to request our immediate attention to the following case:—

"The Confederate States of North America have recently appointed two gentlemen, Messrs. Mason and Slidell, to proceed to Europe accredited to the English and French Governments respectively.

"These gentlemen embarked on board the steamer 'Nashville,' which vessel appears from accounts in the daily papers successfully to have run the blockade of Charleston, and to have conveyed the two gentlemen to Cardenas, in Cuba.

"It appears also from accounts published in the daily papers that the Federal Government immediately on hearing of the escape of the 'Nashville,' despatched three vessels of war to intercept her.

"Within these few days a duly commissioned Federal steamer of war, mounting eight guns of heavy calibre, made her appearance at Falmouth, and she has since arrived at Southampton, where she has coaled, and is now ready for sea at a moment's notice.

"Private information has been received that the object of this vessel is to capture the two Envoys before they arrive in Europe.

"It is not improbable that Messrs. Mason and Slidell will have embarked at the Havana on board the West India mail-steamer now on her passage to Southampton.

"That steamer is one of those under contract with Her Majesty's Government for the conveyance of Her Majesty's mails, which mails are exclusively under the charge of a commissioned officer of Her Majesty's navy, acting on behalf of the Postmaster-General. In other respects the steamer is a mere merchant steamer, and is not authorized to display a pennant as a ship of war.

"Assuming, therefore, that the United States' man-of-war steamer now lying at Southampton, or any other similar steamer of the United States, should attempt to intercept the West Indian mail-steamer, with the view of getting possession of the persons of Messrs. Mason and Slidell, or of their credentials or instructions."—your Lordship wished to be informed "to what extent, under the Law of Nations, a man-of-war steamer of the United States would be entitled to interfere with the mail-steamer if fallen in with beyond the territorial limits of the United Kingdom, that is, beyond three miles from the British coast.

"Whether, for instance, she might cause the West Indian mail-steamer to bring-to, might board her, examine her papers, open the mail-bags, and examine the contents thereof, examine the luggage of passengers, seize and carry away Messrs. Mason and Slidell in person, or seize their credentials and instructions and despatches, or even put a prize-crew on board the West Indian steamer, and carry her off to a port of the United States. In other words, what would be the rights of the American cruizer with regard to the passengers and crew and lawful papers and correspondence on board our packet, on the assumption that the said packet was liable to capture and confiscation on the ground of carrying enemies' despatches: would the cruizer be entitled to carry the packet, and all and everything in her, back to America, or would she be obliged to land in this country, or in some near port, all the people and all the unseizable goods?"

Mr. Hammond was further to inquire, "whether supposing one of Her Majesty's ships of war should be sent to follow the movements of the United States' steamer of war, or should have been ordered to meet the West Indian steamer, and escort her into port, such ship of war of Her Majesty would be justified, and to what extent, in preventing the United States' steamer of war from interfering with the West Indian mail-steamer?"

In obedience to your Lordship's commands we have the honour to report—

That your Lordship's first question may, in our opinion, be answered to the effect that the United States' man-of-war falling in with the British mail-steamer beyond the territorial limits of the United Kingdom might cause her to bring-to,

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might board her, examine her papers, open the general mail-bags, and examine the contents thereof, without, however, opening any bag or packet addressed to any officer or Department of Her Majesty's Government.

The United States' ship of war may put a prize-crew on board the West India steamer, and carry her off to a port of the United States for adjudication by a Prize Court there. But she would have no right to remove Messrs. Mason and Slidell, and carry them off as prisoners, leaving the ship to pursue her voyage.

On the assumption that the West India packet is liable to capture and confiscation, on the ground of carrying enemies' despatches, the cruizer would, in strictness, be entitled to carry her, and all and everything in her, to America; she might, however, and in our opinion ought, under the circumstances, to put on shore, at some convenient port, passengers and their baggage, not being contraband of war.

We cannot say that any of Her Majesty's ships of war would be justified in preventing the United States' man-of-war from interfering with the West India mail-steamer on the high seas. The case is not one of such a character as to justify resistance by force *in limine*, even assuming that the condemnation of the vessel would not be justified. The questions whether any of the documents on board the mail-vessel are despatches contraband of war, and, if so, whether they are protected either by the nature of the conveyance, or by the character of the persons to whom they are addressed, or otherwise, are all questions which may admit of doubt and controversy, and do not appear to us to be concluded by authority;* but we think that the decision of them, in the first instance at all events, belongs to the Prize Court of the captors.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 294.

The Law Officers of the Crown to Earl Russell.—(*Received November* 13.)

My Lord, *Doctors' Commons, November* 12, 1861.

SWITZERLAND.

Complaint of Mr. Behrens. Action brought against him by a Swiss firm, and sequestration of his property at Lausanne. His claim to be tried by an English tribunal in a question arising out of a contract made in England.

WE were honoured with your Lordship's commands signified in Mr. Hammond's letter of the 4th instant, stating that he was directed by your Lordship to transmit to us the accompanying despatches and inclosures received from Her Majesty's Minister at Berne (Nos. 90 and 92), respecting the complaint of Mr. Behrens, a merchant of Bradford, that in a suit brought against him by a Swiss commercial firm at Lausanne, respecting a contract made in England, property belonging to Mr. Behrens had been sequestrated at Lausanne with the object of forcing him before the Cantonal Tribunal, whereas Mr. Behrens claimed, under the Treaty between this country and the Swiss Confederation, of which a copy was inclosed, to be tried before an English tribunal.

Mr. Hammond was pleased to request that we would take these papers into our consideration, and favour your Lordship, at our earliest convenience, with our opinion upon this question, as it at present stands, and with information as to how British law would deal with the converse of the question now raised.

In obedience to your Lordship's commands we have considered these papers, and have the honour to report—

That in our opinion there is no stipulation in the Treaty of 1855 between Great Britain and Switzerland applicable to the case of Mr. Behrens.

We understand the view suggested on the part of Mr. Behrens to be that, under Article III of the Treaty, British subjects generally are entitled to be placed on the same footing in Switzerland, with respect to all civil actions and suits, as Swiss citizens under the 50th Article of the Federal Constitution. But it appears to us that the IIIrd Article of the Treaty applies, in this respect, only to British subjects in Switzerland, *i.e.*, residing in Switzerland for the time being, in conformity with the provisions of the Ist Article. The words of that part of the IIIrd Article are, "The subjects and citizens of either of the two Contracting Parties *in the territories of the other*." Mr. Behrens being resident in England does not come within this description; and the 50th Article of the Federal Constitution seems itself to require, by the words "ayant domicile" and "hors du Canton où il est domicilié," that the person who claims the benefit of it should be resident in some part of Switzerland.

There is nothing in the Treaty of 1855 which can entitle British subjects to claim as extensive immunities from local jurisdiction in Switzerland as may have been conceded by the Confederation to France or any other nation. The case, therefore, of Mr. Behrens received no aid from the Treaty of 1828, between France and Switzerland.

We must add, however, that, according to the practice of the English Courts, a Swiss citizen, in the converse case, could not be proceeded against in an English Court unless he should happen, at some time, to be present within English terrritory, and to be there served with process of an English Court. For breach of contract (which is the case set up against Mr. Behrens) a foreigner abroad can be sued in the English Courts in those cases only in which the contract was made in England. According to the same practice, moreover, debts due to a defendant cannot be seized or sequestered for the purpose of compelling an appearance or submission to the tribunals of this country, but only in satisfaction after the suit has been decided against the defendant. These, however, are mere differences of opinion between the practice of the Courts of the two countries: and the practice of the Cantonal Court is not objectionable as being opposed to common justice; nor does the Treaty contain any stipulation for uniformity of law or practice.

Mr. Behrens must, in our opinion, therefore, be left to defend himself upon the merits of his case, before the Swiss Courts in the ordinary course of the law administered by them, unless the interposition of the Federal Council should render this unnecessary. The case is not one in which we can advise Her Majesty's Government to interfere.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 295.

The Law Officers of the Crown to Earl Russell.—(*Received November* 13.)

My Lord, *Doctors' Commons, November* 12, 1861.

PERU.

Imprisonment of Captain Melville White at Lima.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 28th October last, stating with reference to our Reports of the 25th of June* and 15th of July,† he was directed by your Lordship to transmit to us the despatches marked in the margin,‡ containing further information respecting the imprisonment at Lima of Captain Melville White, and to request that we would take these papers into our consideration, and favour your Lordship with any further observations which they might suggest to us respecting this case.

In obedience to your Lordship's commands we have considered these papers, and have the honour to report—

That we regret to observe that this case has made no progress; and that Mr. Barton's despatches throw but little new light upon its true character and legal position.

Mr. White appears from the papers to have been in prison ever since the 23rd March last, without ever having been brought to trial, confronted with any witness, made acquainted with the precise acts charged against him, or (as we understand) receiving a copy of the order for his arrest. He states that he has repeatedly applied for a copy of this order, but always in vain; and it seems to be clear that either his arrest without a written order from competent authority, or the refusal of a copy of that order, whenever asked for, would be a direct viola-

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* See the "Atalanta," 6 C. Robinson's Admiralty Reports, 440. The "Carolina," ibid., 461. Hautefeuille, "Des Droits et des Devoirs des Nations Neutres en temps de Guerre Maritime," vol. ii, pp. 462, 470. Wheaton's "Elements," 6th Edition, p. 567, note *a*.

* Page 133. † Page 148.

‡ Mr. Jerningham, No. 37; Mr. Barton, Nos. 5 and 13.

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tion of the 18th Article of the Peruvian Constitution of 1856. Moreover, according to his own statements, he seems to have been treated with wanton and most disgraceful cruelty during his detention in prison.

It would even appear that he was on one occasion put in irons without reason, by order of Judge Ponce.

It is observable that Judge Ponce (upon whose conduct to Captain Carvell it has already been our duty to remark) should apparently have the sole conduct of this case. Captain White's expressions with respect to this Judge are unfortunately very indiscreet; but the Judge's expressions and conduct appear to us to be very improper, and to show that he is not entirely impartial in relation to Captain White.

The case is, in our judgment, one of great gravity and seriousness; but at present we can only suggest that Mr. Barton should be instructed to use every exertion to carry out the instructions which he received in No. 30, more especially that Captain White's public and legal trial be expeditiously and duly proceeded with; and to send home such particulars as he can collect with reference to the real facts and merits of the case, and to Captain White's guilt or innocence of the charge upon which he has been imprisoned; or as to the existence of any probable grounds for the accusation; and also as to the legal right of the Peruvian Government, according to the law as generally administered and acknowledged in Peru, to treat Captain White as they have done by imprisoning him so long, and apparently for an indefinite period, without trial, and without even communicating to him the particulars of the charge made against him, or bringing the case to a hearing.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 296.

The Queen's Advocate to Earl Russell.—(*Received November* 13.)

My Lord, *Doctors' Commons, November* 13, 1861.

NEW GRANADA.

Refusal of New Granadian authorities to grant a passport to Mr. Wills.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 1st November instant, stating that he was directed to transmit to me the correspondence noted in the margin,* respecting the refusal of the New Granadian authorities to grant a passport to Mr. Wills, and the steps taken by that gentleman to obtain the support of Her Majesty's Chargé d'Affaires in the matter; and to request that I would take these papers into consideration, and report to your Lordship such observations as I may have to offer on the case.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That the authorities of New Granada appear to me to have been justified in refusing, under the special circumstances of the case, and during a civil war, to grant a passport to Mr. Wills.

It appears that Mr. Wills' house was in that portion of the country occupied by, or under the control of, General Mosquera, who was in arms against the Government, and was expected to march on the capital. The existence of a truce for a few days is unimportant. There was apparently a General Order not to grant passports for that part of the country, under which a passport was refused to Mr. Wills.

No serious imputation appears to be made against Mr. Wills' character or conduct by Mr. Griffith, or any other person, and there is no necessity for Her Majesty† to interfere in the case, or to enter into Mr. Wills' differences with Mr. Griffith.

I have, &c.
(Signed) J. D. HARDING.

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* Mr. Griffith, No. 20; to Mr. Griffith, No. 30; Mr. Griffith, No. 74; Mr. Wills, April 17, May 3, June 4, 1861.

† *Sic in orig.*

No. 297.

The Queen's Advocate to Earl Russell.—(*Received November* 13.)

My Lord, *Doctors' Commons, November* 13, 1861.

NEW GRANADA.

Imprisonment and subsequent liberation of Mr. Bonitto, for furnishing arms to opponents of Government of New Granada. As to Mr. Bonitto thereby having forfeited claim to British protection.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 1st November instant, stating that he was directed to transmit to me the two despatches from Her Majesty's Chargé d'Affaires in New Granada (Nos. 72 and 82), respecting the imprisonment and subsequent liberation, by the New Granadian authorities, of Mr. Bonitto.

Mr. Hammond was also pleased to state that Mr. Griffith requests instructions whether, under the circumstances of the case, Mr. Bonitto is entitled to be considered as a British subject; and to request that I would take this subject into consideration, and report to your Lordship my opinion as to the answer which should be returned to Mr. Griffith on this point.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That Mr. Bonitto, having apparently furnished arms by contract to the opponents of the present Government of New Granada during a civil war, was imprisoned, and in danger of being tried by that Government. He has been liberated upon his own petition, or memorial, dated September 4, 1861 (Inclosure No. 1 in Mr. Griffith's No. 82), in which he states "that he had compromised himself, politically, against the cause upheld by the United States of New Granada," and he has thereby entered into an engagement "of refraining in future from acting, either directly or indirectly, in opposition to the Government of the New Granadian Union, to which he submits, inasmuch as the same emanates from the popular will." He also engages "not to institute any claims of any nature whatever against the Government for losses or damages which may have accrued to him on account of his imprisonment."

A certain Señor Otero thereby binds himself to pay 4,000 dollars into the Government Treasury, in the event of Mr. Bonitto violating his engagement. All claims against the Government of New Granada on the part of Señor Bonitto are consequently at an end, and the only question on which Mr. Griffith now requests an answer is, whether he is any longer to consider Mr. Bonitto as entitled to British protection.

In answer to this question I can only say, that Mr. Bonitto has certainly not lost all right to British protection for all future time; he has behaved with great imprudence, and has placed himself, to a great extent, in the power of the existing Government, and Mr. Griffith should be very cautious in interfering, if he should again come into collision with that Government; but he has not "forfeited his right to British protection," and I know not on what grounds General Mosquera's Government maintains this position, or suggests that he must return to England in order to recover this position.

I have, &c.
(Signed) J. D. HARDING.

No. 298.

The Queen's Advocate to Earl Russell.—(*Received November* 13.)

My Lord, *Doctors' Commons, November* 13, 1861.

NEW GRANADA.

As to Mr. Bransby being entitled to British protection, he having accepted an appointment in the civil service of New Granada.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 1st November instant, stating that he was directed to transmit to me the correspondence noted in the margin* respecting the proceedings of Mr. Bransby, a British subject resident in New Granada, and from which I should perceive that that gentleman has finally accepted an appointment in the civil service of New Granada; and to request that I would take these papers into consideration, and report to your Lordship my opinion as to the answer which should be returned to the question put by Mr. Griffith, whether Mr. Bransby is now entitled to be treated as a British subject.

* Mr. Griffith, No. 24; to Mr. Griffith, No. 33; Mr. Griffith, Nos. 61 and 80.

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In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I observe that Mr. Bransby in his postscript to his letter of July 17 to Mr. Griffith, thus expresses himself: "I have only to add, that whatever claim I might consider myself entitled to urge against the fallen Government, I pretend to none against the patriot one which has replaced it." He admits that "he pretends to no claim against the existing Government;" this therefore disposes of his previous claims and the correspondence thereon.

With respect to the question of Mr. Griffith, "if at any future time he is to consider Mr. Bransby as a British subject," and to his suggestion "that as long as he is in the New Granadian service (as interpreter in the employment of the Foreign Office) he has forfeited his British allegiance," Mr. Griffith may be informed that Mr. Bransby has not by accepting such an employment forfeited his allegiance, or ceased to be a British subject; it is not suggested that he has formally renounced his British allegiance, or taken any oath of allegiance to the Republic of New Granada.

His rights to protection as a British subject in all matters not immediately connected with his employment as interpreter are unimpaired, and excepting as to such matters, he is as much entitled to British protection as he was before he accepted that employment.

I do not understand on what grounds General Mosquera maintains the doctrine, "that in order again to obtain British protection, he must previously return to his native country." No Treaty of stipulation, or Law of New Granada, or any other authority, is cited or alluded to in support of this doctrine.

I do not, however, see any pressing necessity for raising, at present, any discussion with New Granada on this (so-called) "doctrine" at present.

I have, &c.
(Signed) J. D. HARDING.

No. 299.

The Law Officers of the Crown to Earl Russell.—(Received November 13.)

UNITED STATES.

Right of Confederate States to confiscate, by Act of Congress, the property and debts of alien enemies; subjects of Great Britain and other neutral Powers domiciled in Northern States being comprised in that designation.

My Lord, *Doctors' Commons, November* 13, 1861.

WE were honoured with your Lordship's commands signified in Mr. Hammond's letter of the 7th instant, stating that he was directed by your Lordship to transmit to us a correspondence with Messrs. Copestake, Moore, and Co., and a despatch and its inclosures from Her Majesty's Consul at New York, respecting an Act of Congress of the so-styled Confederate States, confiscating the property and debts of alien enemies.

That to this Act was appended a letter of instructions issued by Mr. Benjamin, the Attorney-General of the Confederate Government, from which it would appear that the subjects of Her Majesty, and of other neutral Powers, having their domicile in the Northern States, were comprised in that designation.

That it was your Lordship's intention to have deferred consulting us upon the subject until it had been ascertained whether the Act of the Confederate Government had been put into active operation, but as that measure had produced some excitement among British subjects owning property in the South, and Mr. Dennistoun, of Glasgow, having requested an interview with your Lordship in regard to it, your Lordship was pleased to request that we would at once take these papers into our consideration, and favour your Lordship with such observations as we might have to offer thereupon.

In obedience to your Lordship's commands we have considered these papers, and have the honour to report—

That we understand your Lordship's question to refer to the confiscation, in the Confederate States, of property and debts belonging and due to British subjects resident, or having a commercial domicile, in the United States. In our opinion, no distinction can, in strictness of international law, be taken, for the purposes of this question, between such British subjects and citizens of the United States. The general question, whether belligerents may, by the law of nations, confiscate the property of, and debts owing to, private persons, subjects of the enemy, within its territory, has been the subject of controversy, and a decision of the Court of Queen's Bench, in the time of Lord Ellenborough, is adverse to the existence of this right.* It appears to us, however, that this decision is outweighed by a considerable preponderance of authority among the writers on international law; and that the power of confiscating such property and debts is, in the abstract, recognized by the law of nations. The instances, however, of its exercise, in modern and civilized times, are so rare, and have been so generally condemned, that it may almost be said to have become obsolete. The conclusion of Wheaton ("Elements," 6th edition, p. 369) is thus expressed:—

"It appears, then, to be the modern rule of international usage, that property of the enemy found within the territory of the belligerent State, or debts due to his subjects by the Government or individuals at the commencement of hostilities, are not liable to be seized and confiscated as prize of war. This rule is frequently enforced by Treaty stipulations, but, unless it be thus enforced, it cannot be considered as inflexible, though an established rule."

The rule, as it has been beautifully observed,† "like other precepts of morality, of humanity, and even of wisdom, is addressed to the judgment of the Sovereign. It is a guide which he follows or abandons at his will, and although it cannot be disregarded by him without obloquy, yet it may be disregarded. It is not an immutable rule of law, but depends on political considerations, which may continually vary."

These observations assume the existence of an ordinary state of war between two independent and foreign nations. The present case is infinitely stronger against the exercise of the right in question, being one of civil war between the different parts of one Confederation, during whose union the citizens of foreign States were invited and induced to settle indiscriminately in its various States, without the possibility of their contemplating such a disruption as has occurred. No notice has been given to them, or time allowed, which would enable them to prepare for such an emergency, or to separate their affairs from those of the citizens of either belligerent; and though liable, technically, to be deemed enemies, it is impossible to treat them as such, in this respect, without gross injustice, and a breach of that faith to which every State of the American Union was originally a party.

We think, under these circumstances, that the case is one for urgent remonstrances, in which it would be, of course, desirable to secure the concurrence of the other Great Powers, who, in common with Great Britain, are deeply interested in the question.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 300.

The Queen's Advocate to Mr. Layard.—(Received November 14.)

PORTUGAL.

Messrs. Yuille and Shortridge's claim.

Questions raised by Mr. Gedge.

My Lord, *Doctors' Commons, November* 13, 1861.

WITH reference to your letter of the 8th November instant, in the matter of Mr. Gedge's letter of the 4th November, in relation to Messrs. Yuille and Shortridge's claim against Portugal (the papers in which are returned), I must request to be favoured with a copy of the identic note submitting the claim to the arbitration of the Senate of Hamburgh; and also with a memorandum showing how Mr. Gedge's last question (as to "the property at Madeira being declared free from the judgment registered against it") now arises, together with references to that portion of the voluminous papers dealing with this particular point.

Mr. Gedge can probably furnish the necessary information; or if some gentleman in the Foreign Office, who is acquainted with this portion of the case,

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* Wolff *v.* Oxholm, 6 M. & S., 92 (1817).

† Mr. Chief Justice Marshall, in Brown *v.* the United States, Cranch's Reports, vol. viii, p. 110.

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would favour me with a visit, he might be able to refer me to the papers which bear on this particular question.

From the complication and bulk of the papers in the case, and for want of some assistance of this kind, the Law Officers are at present unable to deal with the last question raised in Mr. Gedge's letter of the 4th November instant.

I have, &c.
(Signed) J. D. HARDING.

No. 301.

The Queen's Advocate to Earl Russell.—(Received November 14.)

My Lord, *Doctors' Commons, November* 14, 1861.

NEW GRANADA.

As to instructions to be given to British Post Office Agent at Panamá with reference to payments under the Postal Convention, in the event of Panamá ceasing to be a member of the New Granadian Confederation.

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 12th November instant, stating that he was directed to transmit to me a letter from the Post Office dated the 11th instant, in which the Postmaster-General has requested your Lordship's opinion as to the instructions which should be addressed to the British Post Office Agent at Panamá, as to the course which he should pursue with reference to payments under the Postal Convention, should Panamá cease to be a member of the New Granadian Confederation.

Mr. Layard was also pleased to state that, under the present uncertain and distracted state of affairs in New Granada, Her Majesty's Government have, as yet, abstained from any formal act of recognition of the Government of General Mosquera, who appears to have succeeded in establishing his authority at Bogotá, and to have been named Provisional President of "The United States of New Granada."

Mr. Layard was also pleased to state that, under these circumstances, your Lordship would be glad to learn my opinion, at my earliest convenience, as to the answer which should be returned to the question put by the Postmaster-General, in order that Mr. Henderson's instructions may be sent out by the mail of the 17th instant.

In obedience to your Lordship's commands, I have taken this subject into consideration, and have the honour to report—

That in the event alluded to as approaching by Mr. Henderson, namely, of the State of Panamá formally and actually "ceasing to be a State of the Confederation of New Granada," and of "the Postmaster at Panamá, named under the Constitution, ceasing to hold office in virtue of it," it will not be proper for Mr. Henderson, without the assent of the Government of the Republic of New Granada, to pay to such Postmaster the transit duty under Article XX of the Postal Convention of May 24, 1847.

In the event of such Postmaster ceasing to be an officer in the service of the "Republic of New Granada," and of the Post Office at Panamá ceasing to be a Post Office of the Republic, it would be, in my opinion, inconsistent with the text, spirit, and intention of the Convention, for Her Majesty's Government to pay (in effect) to the State of Panamá the transit duty which is accruing, and payable under the Treaty to the (Federal) Republic of New Granada, and not to any separate State.

The Convention being one between Her Majesty's Government and the Government of the "Republic of New Granada," the payment should be made, *not* to any separate State, but to that Government which Her Majesty recognizes as being, *de facto*, the Government of the Republic; I presume that the Government of General Mosquera, who has established his authority at Bogotá as Provisional President, is entitled to be so considered. If this be so, and if his Government assents to the payment being made to the Post Office at Panamá, this will justify Mr. Henderson in continuing the payment.

In the event, however, of the State of Panamá formally separating herself from the Republic, and of there being no Government which Her Majesty's Government is prepared at present to recognize as the Government of the Republic, I can only suggest, in the last resort, that the payment should be withheld until such a Government exists; and that it should then be made to the officer at Panamá appointed to receive it by that Government.

I have, &c.
(Signed) J. D. HARDING.

No. 302.

The Queen's Advocate to Earl Russell.—(Received November 16.)

My Lord, *Doctors' Commons, November* 14, 1861.

ARGENTINE CONFEDERATION.

As to sons of British subjects born in one part of the Argentine Confederation being exempt from military service in the other during war against the territory in which they were born.

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 6th November instant, stating that he was directed to transmit to me a despatch from Her Majesty's Minister to the Argentine Confederation (No. 88), in which he requests instructions whether under present circumstances in the River Plate, where two sections of the same nominal Confederation are actually at war with each other, the sons of British subjects born in the one part are entitled to exemption from military service in the other during a war against the territory in which they were born; and to request that I would report to your Lordship my opinion as to the answer which should be returned to the question put by Mr. Thornton.

In obedience to your Lordship's commands I have taken this matter into consideration, and have the honour to report—

That no copy of the Law of the Confederation of 1857 is with the papers, and that this may be very material for the decision of the question, inasmuch as it would seem that this Law allows to the sons of British fathers born in the Argentine Provinces, the option of choosing their nationality between that of their actual birth and that of their parentage. If this be so, the sons of British fathers born in the Argentine Confederation should, in order to entitle themselves to British protection, exercise this option in the manner required by the Law.

If both the contending Parties are looked upon by Her Majesty's Government as belligerents, and one is not considered as in revolt against the other, Mr. Thornton may be instructed to urge upon the Government of the Confederation the argument which he suggests for the exemption of the class of persons in question, it being very desirable that the sons of British fathers born in the territory of the Confederation, although not internationally British subjects, excepting under the Law in question, should, if possible, be exempted from military service; but the actual state of this question, which has formed the subject of many previous Reports (see especially my Report of December 15, 1857, and Law Officer's Report, February 26, 1858), is left in some obscurity by Mr. Thornton's letter, and I cannot, therefore, frame any more distinct instructions to him.

I fear that if the local law affords to the sons of Englishmen born in the Argentine territory the means of choosing their nationality, they can only be entitled to the protection or intervention of Her Majesty's Government on their duly resorting to those means.

I have, &c.
(Signed) J. D. HARDING.

No. 303.

The Law Officers of the Crown to Earl Russell.—(Received November 16.)

My Lord, *Doctors' Commons, November* 15, 1861.

GREECE.

Succession to the Throne of Greece.

WE are honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 9th February, 1860, stating that he was directed to transmit to us the accompanying papers respecting the succession to the Throne of Greece, together with a Memorandum which has been prepared in the Foreign

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Office showing the past history and present position of this question; and to request that we would take these papers into consideration, and furnish your Lordship with our opinion (1) whether Prince Luitpold of Bavaria must be considered to have irrevocably renounced for himself and his children his and their right of succeeding to the Throne of Greece next after King Otho and his descendants, so that Prince Adalbert of Bavaria and his descendants are the next successors; or (2) whether (as Sir John Milbanke suggests in his despatch No. 101 of the 2nd January, 1860) Prince Luitpold could not legally prejudice the rights of his children, so that the question of succession must remain open until his Royal Highness' youngest child shall have attained his majority.

Lord Wodehouse was also pleased to draw our particular attention to the question (3) whether the succession is to take place from male to male, so that females should succeed only in the event of the entire failure of male heirs, or whether the succession of females is to take place indiscriminately with that of males in the order of primogeniture.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

1. That there is nothing to show that Prince Luitpold's renunciation (which is not before us, and of which we know not the precise tenour or form) is irrevocable even as to himself, or that it had any effect or operation whatever as to his children. Sir J. Milbanke's information would rather lead us to a contrary conclusion.

2. As at present advised, we are of opinion that there are no sufficient grounds for considering that this renunciation was binding and irrevocable, even as to Prince Luitpold himself, and we think that it could not prejudice the rights of his children.

Until the death of the present King of Greece the question, as it seems to us, must unavoidably remain open; and when that event happens we think that the right of succession will belong either to Prince Luitpold himself, or to the eldest of his sons then living, who may then be willing to accept it upon the terms of professing the Greek religion, as prescribed by the Constitution.

If any person who under the Convention and Treaty would at the time have a preferable right to the succession (if of the Greek religion), should decline to accept the vacant Throne upon these terms, we think that the effect of his non-acceptance and disqualification will be the same as if he were naturally dead, and that the next of the male line in the order of primogeniture who is duly qualified will be called to the succession.

In the meantime, and during any interval of absence or minority, the rights of the lawful succession would be protected, and the Kingdom governed by the Queen as Regent, or by another Regency duly appointed under the Greek Constitution; we think, therefore, that Prince Adalbert of Bavaria and his descendants cannot, in the present state of circumstances, during King Otho's lifetime be assumed to be the next successors.

3. As to the succession of females, we do not see how, under the circumstances stated, the Kingdom of Greece can be considered bound by the explanatory and supplementary Article of 1833; this Article was never formally communicated by any of the Powers parties to it to the Ministers of Greece, then an independent Kingdom, although governed by a Bavarian Regency. This Regency appears to have purposely concealed the Article from the Greek Ministry; this Article, moreover, has been formally repudiated (at what date we know not) and rejected by the Greek National Assembly, and apparently so treated with the acquiescence of the Powers parties to it.

It was designedly, and with the knowledge of the British and French Ministers at Athens, not only disregarded but expressly contravened by the Greek Constitution of 1844, and this without protest or objection on the part of these Powers; and it was not cited, mentioned, alluded to, or incorporated in the Treaty of 1852, although it would seem (from the Protocol of November 20, 1852), to have been at that time brought forward on the part of Bavaria, under protest on the part of Greece.

Under these circumstances the Crown will, in our opinion, descend to females as "descendants and heirs in order of primogeniture," though not until all the descendants and heirs of the male line of the common ancestor shall have been first exhausted.

If therefore King Otho should leave a daughter, and no male issue, such daughter would succeed in preference to Prince Luitpold or Prince Adalbert, or any of their issue.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 304.

The Queen's Advocate to Earl Russell.—(*Received November* 16.)

My Lord, *Doctors' Commons, November* 15, 1861.

DENMARK.

Permission to the Thames Shipbuilding Company to build two steam-vessels of war for Danish Government.

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 8th November instant, stating that he was directed to transmit to me a letter from the Home Office (dated the 1st November instant), forwarding a petition which has been addressed to Sir George Grey by the "Thames Iron Works and Shipbuilding Company," praying for the leave and license of Her Majesty to build two steam-vessels of war for the Danish Government, and to request that I would furnish your Lordship at my earliest convenience with my opinion as to the answer which should be returned to this petition.

In obedience to your Lordship's commands I have taken this subject into consideration, and have the honour to report—

That section 7 of the statute 59 Geo. III, sec. 69, only (in effect) forbids the equipping, &c., of vessels for the service of foreign Princes or States "in order that they may be employed in the service of such Princes or States as transports or store-ships, *or with intent* to cruise or commit hostilities against foreign Princes," States, Governments, subjects, or citizens, with whom Her Majesty shall not then be at war.

The object of the enactment is not to prevent Her Majesty's subjects from building or equipping vessels for foreign Governments generally, but only to prevent their doing so when the ships are intended to be employed in hostilities against other foreign Governments with which Her Majesty is at peace.

I am not aware that Denmark designs to commit hostilities against any other Power; and I do not therefore see that, in the case suggested, any license is requisite. I believe that vessels of war are not unfrequently built for foreign Governments, without any license, and without any interference on the part of Her Majesty's Government.

If it should hereafter turn out that the ships are in fact intended to be employed by the Danish Government, or by any other Government or person, in contravention of the Statute, Her Majesty's Government will doubtless revoke any license which might now be granted.

I observe that there has been no application from the Danish Government, and I would therefore suggest that, under the circumstances, no license should be issued in the case.

I have, &c.
(Signed) J. D. HARDING.

No. 305.

The Queen's Advocate to Earl Russell.—(*Received November* 16.)

My Lord, *Doctors' Commons, November* 15, 1861.

CHINA.

Request of Mr. A. Parsons to be furnished with two copies of the "Rules of Practice" for the British Consular Courts in China.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 12th November instant, stating that he was directed to transmit to me a letter from Mr. Ambrose Parsons, dated the 7th instant, requesting to be furnished with two copies of the "Rules of Practice" for the British Consular Courts in China; that your Lordship presumes that the Rules referred to are those forming Inclosure No. 1 in Mr. Bruce's despatch No. 19 of the 5th April last; and to request that I would take Mr. Parsons' letter into consideration, and report to your Lordship my opinion whether, under the circumstances stated by him, his request ought to be complied with.

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In obedience to your Lordship's commands, I have taken this letter into consideration, and have the honour to report—

That the application ought, in my opinion, to be complied with, if this can be done.

The applicant appears to be acting as the legal agent of a Chinese named King Kee, who is stated to have been an unsuccessful plaintiff in a suit against the executors of the late S. C. Beale, recently decided in the British Consular Court at Shanghae (the date of the decision is not given). He states that the Rules of Practice for the British Consular Courts in China are referred to in the record of the proceedings, that the Consul's "reading" of them is a material point, and that he is advised by Counsel whom he desires to consult on the case, that a perusal of them is essential to the fair consideration of the case. He has no means of procuring them excepting through the Foreign Office.

Under these circumstances, if the Foreign Office can furnish him with two copies of the "Rules of Practice" recently in force in the Consular Court at Shanghae, this should, in my opinion, be done.

If there are no copies of these particular Rules in the possession of the Foreign Office, this should be stated to the applicant, and the Consul should be forthwith required to forward several copies of them.

The establishment of such Rules of Practice is provided for in Section 37 of the Order in Council of June 13, 1853, and there can be no doubt but that, under the circumstances stated, some such Rules are in force at Shanghae, and that copies of them may be of material importance to the interest of the applicant's client, and of other parties in future cases.

I cannot recall to mind the contents of Inclosure 1 in Mr. Bruce's despatch No. 19 of the 5th April last.

I have frequently invited attention to the necessity of procuring copies of all such Rules from Consuls in Pagan and Mahometan countries.

I have, &c.
(Signed) J. D. HARDING.

No. 306.

The Law Officers of the Crown to Earl Russell.—(Received November 19.)

My Lord, *Doctors' Commons, November* 18, 1861.

UNITED STATES.

Permissive powers to subdue, seize, &c., to be granted under Act of Congress to the propeller "Pembroke," a private steamer about to proceed to China.

WE were honoured with your Lordship's commands signified in Mr. Hammond's letter of the 2nd instant, stating that he was directed by your Lordship to transmit to us a despatch and its inclosure from Her Majesty's Minister at Washington (No. 563, October 17), respecting certain permissive powers to subdue, seize, &c. (in the nature of, but differing from, ordinary letters of marque), which it was in contemplation to grant, under an Act passed in the last session of Congress, to the propeller "Pembroke," a private steamer about to proceed to China; and requested that we would take this matter into our consideration, and favour your Lordship with such observations as we might have to offer with regard to it.

Mr. Hammond was pleased to inclose the volume of Statutes at large containing the Act of Congress.

In obedience to your Lordship's commands we have considered these papers, and have the honour to report—

That the letter of October the 1st from Mr. Gideon Welles, Secretary of the Navy of the United States, to Mr. Secretary Seward, alludes to certain communications from "R. B. Forbes, Esq.," and from "Messrs. J. and R. Forbes and Co.," and others, stated "to be therewith transmitted" (of which no copies are forthcoming).

We observe that Mr. Secretary Welles states that, under the second section of the Act of Congress of August 5, 1861, "Letters permissive, under proper restrictions and guards against abuse, might be granted to the propeller 'Pembroke' to meet the views expressed by Mr. Forbes;" but inasmuch as it does not appear what, in fact, were the views expressed by "Mr. Forbes," the real object and purpose of the "letters permissive" to be granted to the "Pembroke" is not apparent, nor is it apparent whether any and what authority to capture any vessels whatsoever has been or is about to be granted to her Mr. Secretary Welles adds, "This would seem to be lawful, and perhaps not liable to the objections," &c.; so that the legality of the President's issuing any instructions as to captures to the "Pembroke" seems open to question in Mr. Secretary Welles' opinion.

Subject to these observations, and in the somewhat imperfect shape in which the case is thus presented to us, we may observe that the Act of Congress of August 5, 1861 (37th Congress, section 1, chapter 48), is, in terms of section 1, expressly limited to the seizure of vessels built, purchased, fitted out in whole or in part, or held for the purpose of being employed in the commission of any piratical aggression, search, restraint, depredation, or seizure, or in the commission of any other act of piracy *as defined by the Law of Nations.* And the 2nd section only authorises the President to instruct public armed vessels, vessels sailing under the authority of any letters of marque and reprisal granted by the Congress of the United States, or the commanders of any other suitable vessels, to subdue, seize, and take, and if on the high seas to send into any port of the United States, any vessel or boat built, purchased, fitted out, or held as in the 1st section of the Act mentioned.

From this it appears to us that the "Pembroke" can only be authorized to make captures of vessels intending to commit, or actually guilty of, piracy, as "defined by the law of nations;" and we have already expressed our opinion that Confederate privateers cannot rightly be so considered: but whatever may be the construction which the Courts of the United States (especially the Supreme Court) may put upon this act, there is nothing in it to authorize or justify the President to instruct commanders of private vessels, not having letters of marque and reprisal granted by Congress, to make captures of neutral vessels, or even of merchant-vessels the property of citizens of the Southern or Confederate States, or of merchant-vessels the property of citizens of the United States, not intending to commit, or being guilty of, acts of piracy as defined by the law of nations. *Non constat* that the President entertains any such intention; and it is probable that it is only his intention to instruct the "Pembroke" to capture (Southern) Confederate privateers—a design with which Her Majesty's Government will not probably be disposed to interfere.

It is observable that the first paragraph of Mr. Welles' letter contains a statement that he is not aware that Congress, which has the exclusive power of granting letters of marque and reprisal, has authorized such letters to be issued against the insurgents.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 307.

The Law Officers of the Crown to Earl Russell.—(Received November 19.)

My Lord, *Doctors' Commons, November* 19, 1861.

FRANCE.

Draft of Convention between Great Britain and France, for the mutual extradition of convicts escaping from British and French Guiana.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 5th November instant, stating that the Ordinance passed by the Legislature of British Guiana for the extradition of criminals convicted of certain crimes, who may escape from Cayenne into that colony, which formed the subject of our Report of the 22nd May last,* having been confirmed by the Queen, your Lordship instructed Her Majesty's Ambassador at Paris to communicate it to the French Government, with a request that they would cause reciprocal arrangements to be made in their colony; that your Lordship has received from his Excellency a despatch in reply, in which he incloses a copy of a note from the French Minister for Foreign Affairs, submitting, for the approval of Her Majesty's Government, a draft of Convention between the Queen and the Emperor of the French, for the mutual extradition of convicts escaping from their colonies in Guiana.

Mr. Hammond was also pleased to transmit to us Earl Cowley's despatch

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No. 1,248, and the correspondence which has taken place on this subject since our Report, and to request that we would state to your Lordship our opinion as to the answer which should be returned to the proposal of the French Government.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That throughout the former correspondence on this subject the Law Officers' Reports and the Colonial Ordinance, February 18, 1861, the passing of a similar French Colonial Ordinance, and not the negotiation of an international Convention, has been contemplated and provided for, as the best mode of securing the common object (see section 7 of the above Ordinance), for which no Convention appears to us to be necessary or expedient.

On the passing of a Colonial Law in French Guiana, such as is contemplated by that section, the British Colonial Ordinance will at once come into operation and effect the object in view; and no Convention will dispense with the necessity for such a law.

We must observe, moreover, that Article 4 of the "Projet de Convention" is not in conformity with section 2 of the Ordinance, under which the conviction of a named individual can alone be proved by the production of a document, namely, a certified copy of the "arrêt de condamnation."

The other requisite facts, such as the identity of the person charged before the Magistrate with the person named in the "arrêt de condamnation," and the fact of his escape from French Guiana after conviction, must be proved by extrinsic evidence.

We would suggest that an explanatory statement to this effect should be returned to the proposal of the French Government.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER

No. 308.

The Law Officers of the Crown to Earl Russell.—(Received November 20.)

TURKEY.

Claim of Dutch Consul at Jerusalem for the delivery to him of a Jew named Eliakim, sentenced to imprisonment by the British Consular Court whilst under British protection.

My Lord, *Doctors' Commons, November* 19, 1861.

WE were honoured with your Lordship's commands signified in Mr. Hammond's letter of the 12th instant, stating that he was directed by your Lordship to transmit to us the accompanying two despatches from Mr. Finn, Her Majesty's Consul at Jerusalem (No. 33, June 21, and No. 47, September 30, 1861), relative to the demand made by the Consul of the Netherlands in that city, for the delivery to him of a Jew named Eliakim, a Dutch subject, but who had hitherto been under the protection of the British Consulate, and who had been sentenced to imprisonment by the British Consular Court; and to request that we would take these papers into our consideration, and report to your Lordship our opinion as to the instructions which should be given to the Consul in regard to this matter.

In obedience to your Lordship's commands we have considered these papers, and have the honour to report—

That Eliakim, the person who has been imprisoned by Consul Finn, is admitted by the Consul, in his despatch No. 47, to be a Dutch subject, and he is claimed as such, and his release demanded by the Netherlands Consul.

Under these circumstances, the fact of his having apparently, in the absence of any Netherlands Consulate at Jerusalem, enjoyed (howsoever) British protection for many years, and of his not having disputed the jurisdiction of the Consul, or claimed exemption from it on the ground of his national character, will not operate so as to justify the Consul in detaining him in custody, and he should, in our opinion, be forthwith liberated, and should no longer be considered as subject to British jurisdiction or entitled to British protection.

We do not find in the papers any very clear statement of the circumstances of the case, or of the precise terms or grounds of the sentence or order of the Consul under which Eliakim has been imprisoned. Although the Consul uses the words "prisoner," "sentence," "offence," prosecutor," and so forth, yet we

collect that it was, in fact, an order made in a civil suit, and not in a criminal prosecution, and that the imprisonment was in the nature of a committal for contempt for not producing certain accounts. Under these circumstances, we cannot express any opinion upon the merits of the case, or the propriety or legality of the Consul's proceedings, and we do not understand that our opinion is desired on the subject of the Consul's proceedings as to the Jews in general, in connection with their system of excommunication. (See his despatch No. 33 and inclosures.)

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 309.

The Queen's Advocate to Earl Russell.—(Received November 20.)

UNITED STATES.

Refusal to permit the "Alliance" and "Gondar" to leave the port of Beaufort, although these vessels sought to leave the port within fifteen days from the commencement of the blockade of that port.

My Lord, *Doctors' Commons, November* 20, 1861.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 11th November instant, stating that he was directed to transmit to me a despatch from Her Majesty's Minister at Washington (No. 560, October 17th), inclosing, with other papers, a note which he had addressed to the United States' Secretary of State, requesting that orders might be issued to permit the British vessels "Alliance" and "Gondar" to leave the port of Beaufort, in North Carolina, on the ground that the time at which these two vessels sought to put to sea was within fifteen days from the commencement of the effective blockade of that port.

Mr. Hammond was also pleased to inclose a despatch from Lord Lyons, inclosing a copy of a note from Mr. Seward, declining to comply with his Lordship's application; and to request that I would take these papers into consideration, and furnish your Lordship with any observations I might have to offer thereupon.

Mr. Hammond was also pleased to add, for my information, a letter and its inclosure from the Admiralty, showing that the "Alliance" is the vessel, the master of which applied to Rear-Admiral Milne for advice in regard to the blockade under the circumstances stated in the Admiralty letter of the 19th of August. This letter, as well as my Report thereon, were also sent therewith.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I regret to say that I cannot see what more can be done in either of these cases with any prospect of success.

The United States' Government refuses to give leave for the unmolested egress of these vessels, not admitting that the blockade of Beaufort only commenced, as suggested, on the 6th September. If it be true that this port was never, in fact, blockaded at any time previously to the 6th September last, such refusal is at variance with the official announcement of the United States (which, however, I have not before me), to the effect that vessels would be allowed to leave blockaded ports unmolested for fifteen days after the commencement of the blockade.

But Mr. Seward, in his letter to Lord Lyons of October 18th, in effect, suggests that the blockade of Beaufort commenced at some previous period—at what date he does not state; and he suggests that it may have been "accidentally interrupted" at the time when they entered it.

If the fact was as suggested by Mr. Seward, I consider that his refusal is justifiable.

With respect to the "Alliance," it unfortunately appears that on the 13th August she cleared out from St. John's, New Brunswick, for Havana (see the Controller's certificate, Inclosure 12 in Lord Lyons' No. 560), but she entered Beaufort on September 22nd (Forest, the master's, affidavit, Inclosure 7 in Lord Lyons' No. 560). Her master had, on the 6th August, applied to Admiral Milne for advice, representing that he was bound to the Havana (Inclosure in Admiralty letter of August 19th); and it also appears that she had been, on the 27th May, boarded by the United States' steamer "Union," and "informed of

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the existing blockade of all the coast of the United States south of Maryland," which notice was indorsed on the ship's manifest.

This notice would not have justified her capture, if bound to Beaufort when no blockade of that port existed; but inasmuch as, after such notice, her master appears to have misrepresented her destination, both to the British Admiral and to the British Custom-house authorities, there is a presumption that he designed to break some blockade, and as she is now (howsoever) in the port of Beaufort, which is actually blockaded, I do not consider that Her Majesty's Government can properly take any further steps in her behalf.

I have, &c.
(Signed) J. D. HARDING.

No. 310.

The Law Officers of the Crown to Earl Russell.—(Received November 22.)

UNITED STATES.

Condemnation of the "William Arthur," *alias* "Sarah Ann Roe," and cargo, belonging to a British subject, Mr. D. Merrilees.

My Lord, *Doctors' Commons, November* 21, 1861.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 11th November instant, stating that he was directed to transmit to us three despatches and their inclosures, from Her Majesty's Consul at Portland (Nos. 46, 48, and 49), respecting the sentence of condemnation pronounced by Judge Ware, in the United States' District Court, upon the British schooner "William Arthur" and her cargo; and to request that we would take these papers into consideration, and furnish your Lordship with any observations we may have to offer thereupon.

We are also honoured with Mr. Hammond's letter of the 14th November instant, transmitting the previous papers in the case of the "William Arthur."

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That John Douglas Merrilees, who appears to have been the owner of the "William Arthur," and was the claimant before the Court, although a natural-born British subject, and never having renounced his allegiance, appears to have been long domiciled in the United States, and to have been resident at Wilmington, North Carolina, in the Confederate States; when, on the 7th August, he purchased at Portland, in Maine, the vessel then called the "Sarah Ann Roe" (a United States' vessel), and procured from the British Consul a provisional certificate of registry for her; he partially loaded her at Portland with cargo; she was cleared for the Danish island of St. Thomas in the West Indies; and she was seized by the Customs' Collector at Portland on the 23rd August, as she was leaving that harbour. Her owner was domiciled in the United States, and every material fact, down to, and including, the seizure of the vessel, took place within the territorial limits of the United States; and we do not consider that, under the circumstances, the mere fact of her having a provisional certificate of British registry will entitle her to be considered (internationally) a British ship, whatever the effect of her being so considered might be.

She was proceeded against *not* as a prize, but for confiscation under the Municipal Law, as contained in two Acts of the Congress of the United States: one of August 6, 1861, cap. 60, apparently called the "Confiscation Act;" another of July 13, 1861, cap. 3, prohibiting all commercial intercourse between the United States and the Confederate States; and on the ground that her destination for St. Thomas was only colourable and false, and that she was really destined for Wilmington, North Carolina.

The Judge appears, from Consul Murray's No. 49, to have ultimately condemned her on both grounds; in other words, for violating both the Acts of Congress referred to. His printed Judgment refers only to the Act of August 6, 1861.

Not having these Acts at the present time before us, it is impossible for us to offer any remarks upon the Judgment, so far as it relates to the construction of the Act of August 6, 1861; and the terms and reasons of the Judgment relating to the Act of July 13, 1861, are not before us.

There appears, however, to have been evidence before the Court to warrant the conclusion that the real destination was not St. Thomas but Wilmington; and we are of opinion that it is competent to the Legislature of the United States to forbid, under penalty of confiscation, all trade and intercourse between ports in its own possession and under its own actual dominion and the Confederate States; and for the Municipal Courts, upon adequate proof, legally to enforce this penalty against ships seized within their territorial limits, and owned by persons resident, or commercially domiciled, in the Confederate States. The prohibition of "aiding, abetting, and promoting" the insurrection, so far as such acts should, or might, be committed within such actual possession and dominion, and by persons so resident or domiciled, was also within the competence of the United States' Legislature, and equally, therefore, enforceable by the Court. We therefore see no sufficient ground in this case for any intervention by Her Majesty's Government.

If the Judge has misconstrued the Municipal Law of the United States, or if he has misapprehended the facts, we conceive that an appeal is open to the claimants. The Consul makes no communication to this effect.

There are some observations of the Judge—more especially as to neutrality and insurgents—which are open to criticism, but we see no practical object to be gained by offering any remarks thereon under the circumstances.

In the above observations we have confined ourselves to the actual case and circumstances; and we have not felt ourselves called upon to express any opinion as to what the position and right of Mr. Merrilees would have been if he, being a British subject, had not been resident in the (originally) United States, or commercially domiciled there.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 311.

The Law Officers of the Crown to Earl Russell.—(Received November 22.)

FRANCE.

Application for Government Grant towards erecting a Scotch Church at Paris.

My Lord, *Doctors' Commons, November* 21, 1861.

WE were honoured with your Lordship's commands signified in Mr. Hammond's letter of the 12th instant, stating that with reference to our Report of the 14th of May, 1860, approving, with certain amendments, the accompanying draft of an instruction which your Lordship proposed to give to Her Majesty's Consuls at ports and places where Church establishments were formed and maintained under the Act 6 Geo. IV, cap. 87, he was directed by your Lordship to transmit to us a letter from the Convener of the General Assembly of the Church of Scotland, inquiring whether subscriptions of British subjects who neither resided at nor resorted to Paris could be taken into account in determining the amount of the contribution which Her Majesty's Government might by law be enabled to grant towards the erection of a Scotch Church in that capital; and to request that we would favour your Lordship with our opinion whether, under the 10th and 11th sections of the Act, such subscriptions could be so taken into account.

In obedience to your Lordship's commands we have considered these papers, and have the honour to report—

GENERAL.

Subscriptions of British subjects who neither reside at nor resort to Paris cannot be taken into account.

That in our opinion the subscriptions of British subjects who neither reside at nor resort to Paris cannot be taken into account in determining the amount of the contribution which Her Majesty's Government may by law be enabled to grant towards the erection of a Scotch Church in that capital. The question arises under the 11th section of the 6 Geo. IV, cap. 87; and although the words "resorting to or residing at such foreign port or place," occurring in the 10th, are not to be found in the 11th section, it appears to us that the intention with reference to the classes of private subscribers was the same, both as regards the current expenses of supporting Chaplains and the like, and the cost of erecting or hiring churches and other buildings and premises, within the scope of the Act of Parliament. In principle, and in point of convenience, there is no apparent difference between the two cases; and the provision in section 11, that the annual accounts to be transmitted to the Consul under that clause are to be of such sums of money only as are "actually raised at any such port or place as

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aforesaid" appear to us to place the meaning of the section, in this respect, beyond the reach of any reasonable doubt.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 312.

The Law Officers of the Crown to Earl Russell.—(*Received November* 22.)

My Lord, *Doctors' Commons, November* 22, 1861.

UNITED STATES.

Arrival at Southampton of the Confederate steamer "Nashville," having on board the crew of a vessel destroyed at sea.

WE were honoured with your Lordship's commands signified in Mr. Hammond's letter of the 21st instant, stating that he was directed by your Lordship to transmit to us, therewith, the inclosed letter to the Admiralty covering telegrams received from Southampton, by which it appeared that the Confederate steamer "Nashville" had arrived at that port, having captured two days before, and destroyed at sea, an American vessel bound to Havre, and having on board her, at that time, the crew of the said steamer; and to request that we would take the matter into our immediate consideration, and report to your Lordship what instructions should be given to the naval or other authorities on the subject.

In obedience to your Lordship's commands we have the honour to report—

That we infer from the expressions used by Captain Patey, R.N.,—"Confederate war-steamer 'Nashville,' of two guns and eighty men, just arrived from Bermuda: she is commanded by Captain Pegram,"—that the "Nashville" is a regularly commissioned war-steamer, in the service of the Confederate Governuent, and that Captain Pegram is a commissioned officer in their service. Unless, on further inquiry, this should not appear to be the case, we see no necessity for any instructions being given to the naval or other authorities on the subject. Her Majesty's Government has recognized the Confederate States as a belligerent Power; and the official letter to the Admiralty and other Departments, reported on by the Law Officers June 1st ultimo, only prohibits the ships of war of either belligerent from carrying prizes into British ports.

If any attempt should be made, in contravention of the Foreign Enlistment Act, to increase her warlike force within British jurisdiction, it should be prevented.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 313.

The Law Officers of the Crown to Earl Russell.—(*Received November* 25.)

My Lord, *Doctors' Commons, November* 25, 1861.

UNITED STATES.

Case of the "Nashville."

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 23rd November instant, stating that, with reference to our Report of the 22nd November instant,* upon the case of the "Nashville," he was directed to transmit to us the following papers, viz.:—

Not to be allowed to equip more completely as a vessel of war in a British port.

1. The draft of a letter which was addressed, on the 22nd of November instant, to the Admiralty and Home Office, requesting that directions might be given that the "Nashville" should not be allowed to equip herself more completely as a vessel of war, or to take in guns or munitions of war.

Destruction of the "Harvey Birch" by the "Nashville."

2. A note from Mr. Adams, the United States' Minister at this Court, inclosing papers received from the United States' Consul in London, respecting the destruction by the "Nashville" of the American vessel "Harvey Birch," and requesting that Her Majesty's Government will cause an inquiry to be made into the circumstances attending that proceeding, and will adopt such measures as the case, upon investigation, may seem to demand.

3. The draft of the note in which your Lordship has acknowledged the receipt of that communication; and

4. Letters received from the Admiralty giving particulars respecting the "Nashville" and her officers and crew.

Proceedings in 1793–94 with regard to privateering. Case of the "Maury."

Mr. Layard was also pleased to state to us, with reference to the observations in the concluding portion of Mr. Adams' note, that your Lordship has given directions for the preparation of a Memorandum respecting the case of the barque "Maury," referred to by him; and that your Lordship directed Mr. Layard to call our attention to the proceedings as to privateers, which occurred in the United States in 1793-94; and to request that we would take Mr. Adams' note into consideration, and furnish your Lordship with our opinion as to any proceedings which it is incumbent upon Her Majesty's Govenment to take in compliance therewith, and generally with our advice as to the course to be pursued by Her Majesty's Government in this matter.

Mr. Layard was also pleased to inclose the correspondence respecting the case of the "Bermuda," referred to by Mr. Adams.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That, subject to any questions of Imperial policy which are beyond our province, we are unable to point out any steps which it is incumbent on Her Majesty's Government to take in compliance with Mr. Adams' letter, other than those which it has already taken, namely, to satisfy itself as to the character of the "Nashville," and of her officers and crew; and to give directions to prevent her from being fitted or equipped, or from augmenting or increasing her force within Her Majesty's jurisdiction, in contravention of the Foreign Enlistment Act.

The "Nashville" appears to be a Confederate vessel of war; her commander and officers have Commissions in the Confederate navy; some of them have written orders from the Navy Department, Richmond, to report to Lieutenant Pegram "for duty" on board the "Nashville;" and her crew have signed articles to "ship in the Confederate navy;" her having captured and burnt a United States' merchant-vessel on the high seas cannot, under these circumstances, be considered (to adopt Mr. Adams' words) as "voluntarily undertaken by individuals not vested with powers generally acknowledged to be necessary to justify aggressive warfare;" nor does it at all "approximate within the definition of piracy;" nor is it "an unauthorized act of violence;" and if (as Mr. Adams suggests) Her Majesty's Government is called on in this case, "either to recognize a belligerent, or to denounce a wrong doer," Her Majesty's Government must, upon the facts and documents now appearing, adopt the former course.

With reference to the allegation that some of her officers are to be put in command of vessels now fitting out in British ports for hostile purposes against the United States, we can only say that if reasonable evidence can be procured that such vessels are being so fitted out in contravention of the Foreign Enlistment Act, all parties concerned therein should be legally proceeded against, with the view to their being personally punished, and to the forfeiture of the vessels.

We may add (generally) that it will be competent to Her Majesty, as a neutral Power, either to designate the particular ports to which alone the national ships of the belligerents are permitted to resort, to limit the time for which, or to define the circumstances under which, they may so resort thereto; or to make and publish such general regulations with reference thereto as she may think proper: but, subject to such limitations, Her Majesty cannot interfere with the national ships of one party resorting to her ports in respect of hostile acts done on the high seas to the ships of the opposite party.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

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* See above, No. 312.

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No. 314.

The Queen's Advocate to Earl Russell.—(*Received November* 26.)

Italy.

Italian Government not responsible for damage done to Mr. W. Taylor's property by the "Orwell."
No further steps should be taken in proceedings and sentences against Mr. and Mrs. Taylor.

My Lord, *Doctors' Commons, November* 23, 1861.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 9th November instant, stating that with reference to former correspondence upon the subject of Mr. Watson Taylor's claim against the Italian Government, he was directed to transmit to me two despatches from Her Majesty's Minister at Turin upon this matter (Nos. 401 and 402), and to request that I would furnish your Lordship with any observations I might have to offer thereupon.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That, as this case now stands, Her Majesty's Government is not called upon to take any further steps therein. It appears to me to be clearly established that the Italian Government is not responsible for the damage done to Mr. Taylor's property by the persons on board the "Orwell." With respect to the institution of the proceedings against Mr. and Mrs. Taylor, and the sentences passed on them, although I adhere to the view which I have hitherto taken of the character of such proceedings and sentences, yet, considering the opinion of the Advocate Chiapusso, October 10, 1861, the despatch of Sir J. Hudson, No. 401, and the statements of Baron Ricasoli upon the case, reported in Sir J. Hudson's No. 402, I cannot advise Her Majesty's Government to take any further steps as to such proceedings and sentences.

I have, &c.
(Signed) J. D. HARDING.

No. 315.

The Law Officers of the Crown to Earl Russell.—(*Received November* 26.)

United States.

Request of Messrs. Oliverson and Co. that a warrant may be served on Captain Peagrim, of the "Nashville," to deliver up the property taken from the "Harvey Birch."

My Lord, *Doctors' Commons, November* 26, 1861.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 25th November instant, stating that he was directed to transmit to us a letter from Messrs. Oliverson, Lavie, and Peachey, of the same date, acting on behalf of Captain Nelson, the Commander of the American vessel "Harvey Birch," requesting that the Magistrates at Southampton may be authorized by Her Majesty's Government to issue a warrant or summons, for service upon Captain Peagrim, commanding the ship of war "Nashville," under the flag of the so-called Confederate States, calling upon him, by production of the authority under which he acts, to show cause why he should not deliver up to Captain Nelson the property belonging to his owners, which is alleged to be detained on board the "Nashville;" and to request that we would furnish your Lordship with our opinion upon the answer which it may be proper to return to Messrs. Oliverson and Co.

In obedience to your Lordship's commands we have taken this subject into consideration, and have the honour to report—

That we observe that this application comes from the attorneys of the party proceeding (Captain Nelson), who do not state that the Magistrates have directed them to address your Lordship.

Messrs. Oliverson may be informed that your Lordship has no jurisdiction or power to give any authority to the Magistrates either to issue any summons or warrant, or to do or abstain from doing anything in relation to the matter in question; and that your Lordship accordingly declines to interfere therein.

The law having been appealed to, it must take its course in the ordinary way; though (for your Lordship's guidance) it may be proper for us to add that, by law, no English Magistrate has jurisdiction over the Commander or crew of the "Nashville" in respect of acts done or property taken by her at sea, as a ship of war of a belligerent Power, acknowledged as such by Her Majesty, which character, from her papers (which have been produced), the "Nashville" appears undoubtedly to possess.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 316.

The Law Officers of the Crown to Earl Russell.—(*Received November* 28.)

United States.

Communications between Great Britain and United States in 1793–94, respecting privateers. Case of the "Maury."

My Lord, *Doctors' Commons, November* 27, 1861.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 25th November instant, stating that with reference to his letter of the 23rd November instant, he was directed to transmit to us two Memoranda, the one giving an account of what passed between the British and United States' Governments in 1793–94, in regard to privateers; and the other relating to the case of the "Maury," to which reference is made in Mr. Adams' note; and to request that we would take these Memoranda into consideration, and report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands we have taken these Memoranda into consideration, and have the honour to report—

That we have perused these papers, which do not in any manner alter or affect our Report of November 25.*

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 317.

The Law Officers of the Crown to Earl Russell.—(*Received November* 28.)

United States.

Forcible seizure of Messrs. Mason, Slidell, Mc Farland, and Eustis, from on board the Royal mail-steamer "Trent," by United States' screw-steamer "San Jacinto."

My Lord, *Doctors' Commons, November* 28, 1861.

WE were honoured with your Lordship's commands signified in Mr. Layard's letter of the 27th instant, stating that with reference to our report of the 12th instant,† giving our opinion upon certain questions put to us on the subject of the supposed intention of an United States' cruizer to intercept the West India mail-steamer with the view of getting possession of the persons of Messrs. Mason and Slidell, he was directed by your Lordship to transmit to us a letter from the Admiralty, inclosing a Report from the Admiralty Agent on board the Royal mail steam-packet "Trent," of the circumstances under which Messrs. Mason and Slidell, together with their Secretaries, Messrs. Mc Farland and Eustis, were forcibly taken on the 8th instant from out of that steamer by an armed force from the United States' screw steamer "San Jacinto;" and to request that we would take this matter into our immediate consideration, and favour your Lordship with such observations as we might have to make thereupon.

In obedience to your Lordship's commands we have considered this matter, and have the honour to report—

That we are of opinion that the conduct of the United States' officer commanding the "San Jacinto," as set forth in Commander Williams' letter, was illegal and unjustifiable by international law.

The "San Jacinto" assumed to act as a belligerent, but the "Trent" was not captured or carried into a port of the United States for adjudication as prize; and under these circumstances cannot be considered as having acted in breach of international law. It follows, that from on board a merchant-ship of a neutral Power, pursuing a lawful and innocent voyage, certain individuals have been taken by force. They were not, apparently, officers in the military or naval service of the Confederate Government. It does not appear that any papers whatsoever were demanded or taken by the captors, nor upon what charge or

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* Page 294.

† Page 277.

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imputed offence (if any) the delivery of the prisoners was enforced. Her Majesty's Government will, therefore, in our opinion, be justified in requiring reparation for the international wrong which has been on this occasion committed.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 318.

The Queen's Advocate to Earl Russell.—(Received December 4.)

UNITED STATES.

Imprisonment, in irons, of nine British seamen in Fort Lafayette, found on board vessels captured for breaking blockade.

My Lord, *Doctors' Commons, December* 2, 1861.

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 25th November ultimo, stating that he was directed to transmit to me the accompanying papers,* respecting the case of nine British seamen who were confined for several days in Fort Lafayette, in irons, on the ground of their having been found on board of vessels captured for attempting to run the blockade.

Mr. Layard was also pleased to state that Lord Lyons was instructed to make a representation against the treatment to which those seamen were subjected, and to express the hope of Her Majesty's Government that due compensation would be awarded to them, but that the United States' Secretary of State maintains that that treatment was under the circumstances justifiable, and declines to award the compensation asked for; and to request that I would take this case into consideration, and furnish your Lordship with my opinion as to how far international law justifies the proceeding complained of, either on the ground that those seamen were prisoners of war, or on any other ground.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That although the seamen in question appear to me to have been treated with most unjustifiable severity during their confinement, more especially by being put in irons, yet I observe that they have been set at liberty on the application of Lord Lyons, and I regret to say that I cannot, under the circumstances, advise Her Majesty's Government to take any further steps in the case.

They appear to have shipped and served voluntarily on board Confederate merchant-vessels, which were captured by United States' ships of war; and I am of opinion that the United States' Government was, under these circumstances, entitled, by strict international law, to treat them as prisoners of war. This abstract right was maintained by the Admiralty during the late war with Russia, even when relaxations were allowed in practice, on special applications from neutral Powers, whose seamen had been captured in Russian prizes.

In the first instance, and until the British Minister interfered on their behalf as being British subjects, the United States' Government only acted in accordance with international law and usage in treating them as prisoners of war; upon such intervention they were promptly set at liberty. I do not consider that, under these circumstances, the United States' Government has been guilty of any violation of international law or usage, or that any demand for compensation can be properly maintained by Her Majesty's Government.

I have, &c.
(Signed) J. D. HARDING.

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[*] Lord Lyons, Nos. 503, 528, 609, and 618; to Lord Lyons, Nos. 354 and 415; Consul Archibald, No. 91.

No. 319.

The Queen's Advocate to Earl Russell.—(Received December 4.)

UNITED STATES.

Claim of D. Charlton (*alias* John Bull) for interference of British Government to obtain release of his wife and children from slavery, as British subjects.

My Lord, *Doctors' Commons, December* 3, 1861.

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 28th November ultimo, stating that, with reference to my Report of the 22nd January, 1858, in which I stated that Dimmock Charlton (*alias* John Bull), who was sold into slavery, and claimed compensation from the United States' Government, was not entitled to the interference of Her Majesty's Government in his behalf, owing to his not being a British subject, he was directed to transmit to me a correspondence which has passed between the Colonial Office and the Foreign Office,* by which it will be seen that Charlton now claims the interference of the British Government to procure the release of his wife and children, who are stated to be British subjects, and detained in slavery in the United States.

Mr. Layard was also pleased to request that I would take these papers into consideration, and furnish your Lordship with my opinion whether Her Majesty's Government would be justified in interfering to procure the release of Charlton's wife and children.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That, assuming the facts to be as suggested (that is to say, that the wife of Dimmock Charlton, otherwise John Bull, is the daughter of Francis and Mary Cox, who were free people of colour, natives of Nassau, Bahamas, and natural-born British subjects), I am of opinion that your Lordship's question must be answered in the affirmative.

These papers do not contain sufficient proofs to establish these facts; but the case appears to me to require, and deserve, a thorough investigation, which I would suggest should be undertaken, in the first place, by the Attorney-General at Nassau. With the assistance of Charlton, and the printed "Narrative" (with the papers), this officer might prepare a specific and intelligible statement for the guidance of Her Majesty's Government, and of the British Consuls at Savannah, New York, and Philadelphia, in their ulterior proceedings; more especially with regard to the proof of the necessary facts which can now be adduced.

Although this "Narrative" is, from want of specification of dates, places, and so forth, not such as will enable me to make use of it with effect, yet there are many persons and facts alluded to therein, by which it may, with Charlton's assistance, be rendered available for the purposes in view. (See, for instance, the statements at pages 12 and 13 of the liberation of Charlton's grand-daughter Ellen from slavery, by judicial proceedings before the Hon. Wm. Robertson, Judge of the county of Westchester, which were instituted and conducted by Mr. John Jay, District Attorney, apparently in 1859.) Charlton may be able to refer to other persons at Savannah, or elsewhere in the United States, and to suggest some measures which can be taken there to attain the object in view.

The Consul at Savannah (where the persons in question are apparently in slavery) should receive a copy of the papers and of the Attorney-General's statement, when it is prepared, and should be required to report fully on the case, taking a legal opinion if needful.

The suggestion (at page 6 of the "Narrative," which is also noticed by the Colonial Office, in Mr. Elliot's letter of October 16) to the effect that Consul Molyneux, of Savannah, himself holds slaves, requires serious attention.

Upon the whole I would observe, that although the case is at present presented in a very imperfect shape, and although there has been an extraordinary lapse of time and long acquiescence or silence on the part of the persons in questions, yet these circumstances are, to a great degree, explained by the very peculiar state of facts now disclosed. Charlton's extraordinary story is apparently credited both in the United States and by the Governor of the Bahamas, and is not without corroboration; he has recovered his freedom, and is within British jurisdiction; he states a *primâ facie* case on which he has long insisted, to the effect that his wife is a natural-born British subject, who is, together with her descendants, now unjustly held in slavery; and if this should turn out on investigation to be the fact, no effort should be spared to secure their liberation.

I have, &c.
(Signed) J. D. HARDING.

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[*] Colonial Office, October 12; to Colonial Office, November 8; Colonial Office, November 22, 1861.

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No. 320.

The Law Officers of the Crown to Earl Russell.—(Received December 4.)

My Lord, *Doctors' Commons, December* 3, 1861.

PORTUGAL.

Messrs. Yuille and Shortridge's claim.

Decision of the Senate of Hamburgh.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 8th November ultimo, stating that he was directed to transmit to us a despatch from Her Majesty's Chargé d'Affaires, inclosing a copy of the award of the Senate of Hamburgh, to whom the case of Messrs. Yuille and Shortridge was referred for arbitration by the Government of this country and of Portugal.

That this award has been communicated, by your Lordship's orders, to Mr. Gedge, the agent of Messrs. Yuille and Shortridge.

Mr. Layard was also pleased to inclose a letter from him dated the 4th November ultimo, from the last paragraph in which it will be perceived Mr. Gedge has requested Her Majesty's Government "to require that the property in Madeira shall be forthwith authoritatively declared free from the Judgment registered against it;" and to request that we would take these papers into consideration, together with the previous correspondence, and report to your Lordship whether Her Majesty's Government are called upon to take the step requested by Mr. Gedge.

We are also honoured with Mr. Layard's letter of the 26th November ultimo, transmitting therewith a copy of the "Identic Memorandum" upon this claim presented to the Senate of Hamburgh on the 8th March last, and also a letter from Mr. Gedge, supplying further particulars regarding the points raised by Mr. Gedge in his letter of the 4th November ultimo.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we are of opinion that your Lordship's question must receive an affirmative answer.

By the "Identic Memorandum" (dated March 8, 1861), "*the whole case, including the question as to the amount of damages,*" was referred by the British and Portuguese Governments to the arbitration of the Government of the free city of Hamburgh; and by the first Article of that Memorandum, "the decision of the Senate on the matters submitted shall be considered absolutely final and conclusive, and shall be fulfilled without any objection, evasion, or delay whatever."

The "Judgment" (or decision) of the Senate, 21st October, 1861, in its first paragraph "recognises as law that the Portuguese Government is obliged to satisfy the British Government" that the sentence "given in the case of Senhor José d'Oliveira against Murdock, Shortridge, and Co., on the 1st of December, 1838, by the Tribunal of Commerce of the Second Instance in Lisbon, shall be treated as a legal and final judgment, and also to pay within the time fixed by the agreement of arbitration the damages which arose to the said British subjects in consequence of that sentence *not having been hitherto treated as such a final judgment* (that is to say, 20,296*l.* 0*s.* 2*d.*)

The Senate has, therefore, decided:—

1st. That the Portuguese Government shall treat the sentence of the 1st December, 1838, as a legal and final judgment.

2nd. That it shall pay the above amount of damages which arose in consequence of that sentence not having been hitherto treated as such.

The Portuguese Government is bound to "fulfil" this decision on each point "without any objection, evasion, or delay whatever;" and it is as much bound so to do *quoad* the judgment as *quoad* the payment of the damages.

Under these circumstances we consider that Mr. Gedge's contention, in his letter of November 20th, is substantially well founded; and that any subsequent judgment to a contrary effect (or rather assuming to reverse the Judgment of 1838), such as that of November 10, 1848, must be treated as of no effect; and that the Portuguese Government may be properly called upon to take all such formal and legal steps as are necessary to "fulfil without any objection, evasion, or delay whatsoever," the decision of the Senate of Hamburgh; and as will, in accordance therewith, render the judgment of 1838 "legal and final" as regards all the property and rights of the claimants in Portugal.

The precise form of doing this is a matter for the consideration of the Portuguese Government; if (as suggested by Mr. Gedge) the removal of the former Judgment of 1848 from the register is competent to the Government, and if this step is also legally essential to the object in view, *then* such removal should be required by Her Majesty's Government.

It is obvious that unless and until the Judgment of 1838 is practically made legal and final in its operation so far as the claimants are concerned, the "decision" of the Senate will not be "fulfilled" within the terms or spirit of Article 1 of the "Identic Memorandum."

We have, &c.

(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 321.

The Queen's Advocate to Earl Russell.—(Received December 6.)

My Lord, *Doctors' Commons, December* 5, 1861.

SWEDEN.

Case of Walter Foreman, a British subject, called upon to serve in the Norwegian army.

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 26th November ultimo, stating that he was directed to transmit to me two despatches from Her Majesty's Consul-General in Norway (Nos. 48 and 49 of November 2, 1861), respecting the case of Walter Foreman, a British subject, who has been called upon to serve in the Norwegian army, and to request that I would report to your Lordship my opinion upon the steps to be taken by Her Majesty's Government in this matter.

In obedience to your Lordship's commands I have taken this matter into consideration, and have the honour to report—

That I presume there exists no Treaty stipulation on this subject, none being alluded to by the Consul.

No dates or facts are given as to the Norwegian domicil of Walter Foreman (the son), the person in question; it is not stated when he first came to Norway; whether he came *animo manendi*, or what he is doing there; it would seem that he is employed, in what capacity does not appear, in some factories belonging to Messrs. Sewell and Godman, British subjects, of which his father is foreman.

I cannot, in the present state of the facts, express any definite opinion on the legal operation of the Norwegian Military Service Law of 1857, or on the precise effect on this case of the words "foreigners who have acquired a fast domicilium in the country," therein. I can only suggest that the case should be referred to Her Majesty's Legation at Stockholm, with instructions to obtain the necessary information as to the facts and dates, and to take the best professional advice on the question of the probable decision of the Supreme Court as to the legal liability of Mr. Walter Foreman to military service under the particular law in question.

If such opinion should be adverse to his liability, the question may, in the first instance, be raised before the Supreme Court, in accordance with the provision to that effect in the Law of 1857. If otherwise, the case can only be represented to the Swedish Government on the ground that, inasmuch as all foreigners in England are practically exempt from compulsory service in the army (which service is voluntary in this country), the principle of reciprocity would seem to require that a similar exemption should be accorded to British subjects in Sweden and Norway.

If a Convention existed, British subjects would be exempt by the express terms of the Law of 1857; but, inasmuch as Norwegians in England in fact enjoy the exemption without a Convention, the principles of international comity and equity ought to secure to British subjects in Norway a similar exemption.

If this argument should fail, the exemption in question can only be secured by the negotiation of a Convention.

It will be desirable for Her Majesty's Government, in discussing this case, to know what course other foreign Governments, whose subjects are placed under the same liability by the Law of 1857, have taken, or are disposed to take, on this subject.

I have, &c.

(Signed) J. D. HARDING.

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No. 322.

The Queen's Advocate to Earl Russell.—(*Received December* 6.)

France.

British Consul at Havre cannot withhold a clearance to the British ship "Bermuda" for a British port, although she may have violated Proclamation of Neutrality in American war.

My Lord, *Doctors' Commons, December* 5, 1861.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 4th December instant, stating that he was directed to transmit to me a despatch from Her Majesty's Consul at Havre (No. 74, December 2), inquiring what course he is to pursue in regard to a request made to him by the master of the British ship "Bermuda," for a clearance to enable him to leave that port; and with reference to the circumstances detailed by Mr. Featherstonhaugh respecting the previous voyage of the "Bermuda," and to her having, as stated, violated Her Majesty's Proclamation of the 13th May last, relative to the hostilities in the United States, Mr. Hammond was pleased to request that I would furnish your Lordship, at my earliest convenience, with my opinion as to the instructions to be given to the Consul in this matter.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I cannot see any sufficient reason stated in the Consul's letter for his refusing to grant a clearance to the "Bermuda" from Havre to "a British port."

He does not state whether she intends to sail with cargo, or, if so, with what cargo, or to what port; nor does he state any other ground for refusing her a clearance than the fact that she sailed from West Hartlepool to Savannah, in August last, with arms and military stores, having cleared thence for "the Havana, the West Indies, and a final port of discharge in the United Kingdom or the continent."

This fact will not, in my opinion, of itself justify the Consul in now refusing her a clearance from Havre to a British port, and for thus detaining her (I presume indefinitely) at Havre.

I assume that she cannot leave Havre without a Consular clearance; if this be so (which should be explained), the Consul should, in my opinion, grant her a clearance for any British port, unless he has strong and specific grounds for suspecting that she is not, in fact, destined for any British port; in which event, he should state the grounds on which he relies, and again apply for instructions.

I have, &c.
(Signed) J. D. HARDING.

No. 323.

The Queen's Advocate to Earl Russell.—(*Received December* 7.)

Sandwich Islands. (General.)

Memorial of Archbishop of Canterbury to the Queen to grant the Royal Licence for the consecration of the Rev. T. N. Staley as Bishop of the Hawaiian or Sandwich Islands.

My Lord, *Doctors' Commons, December* 6, 1861.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 4th December instant, stating that he was directed to transmit to me a Memorial from the Archbishop of Canterbury to the Queen, praying that Her Majesty would be pleased to grant her licence, under Her Royal Signet and Sign-Manual, authorizing and empowering his Grace to consecrate the Rev. Thomas Nettleship Staley, M.A., a British subject, whose sufficiency in good learning, soundness of faith, and purity of manners he has fully ascertained, to be Bishop of the United Church of England and Ireland in the Hawaiian or Sandwich Islands, and all the other dominions of His Majesty the King of Hawaii; and further praying that Her Majesty will be graciously pleased to assign the Hawaiian or Sandwich Islands, and all other the dominions of His Majesty the King of Hawaii, as the limit within which the said Rev. Thomas Nettleship Staley may exercise spiritual jurisdiction over the Ministers of British congregations of the United Church of England and Ireland, and over such other Protestant congregations as may be desirous of placing themselves under his authority, subject to such alterations in respect of the limits of the jurisdiction so to be exercised as may hereafter be made by Her Majesty's authority.

Mr. Hammond was also pleased to inclose the draft of a licence to the effect prayed for by the Archbishop; and to request that I would take the Memorial of the Archbishop, as well as the draft of licence, into consideration, with reference to the Act 5 Vict., cap. 6, and furnish your Lordship with my opinion, at my earliest convenience, whether Her Majesty can properly be advised to issue the Royal licence, as prayed for by the Archbishop, in the terms of the proposed draft.

In obedience to your Lordship's commands I have taken this matter into consideration, and have the honour to report—

That with respect to the expediency or propriety, in point of ecclesiastical or national policy, of Her Majesty being advised to issue a Royal licence for the consecration of a Bishop in the Sandwich Islands, I am not in a position to express any opinion; no particulars respecting this particular case being stated in his Grace's Memorial of the 23rd November, or being otherwise within my knowledge. I am not aware of any instance in which such a licence has been granted, excepting in the case of Jerusalem, hereafter mentioned.

Assuming that Her Majesty's Government is of opinion that it is proper to sanction the consecration in question upon general considerations of expediency, then Her Majesty may, in my opinion, be advised to issue the Royal licence, as prayed for by the Archbishop, in the terms of the inclosed draft, which appears to be legally in accordance with the statute 5 Vict., cap. 6 (referred to therein), empowering Her Majesty to issue such licences, and which, with the exception of two slight verbal alterations which I have noted in the copy herewith returned, appears to follow the precedent of a similar licence, dated the 6th November, 1841, for the consecration of Dr. Alexander as Bishop of the United Church of England and Ireland in Jerusalem, an instrument which was, I believe, settled by the then Law Officers of the Crown (see their Report of the 4th November, 1841).

I have, &c.
(Signed) J. D. HARDING.

No. 324.

The Queen's Advocate to Earl Russell.—(*Received December* 7.)

United States.

Exemption of English mail-steamers, under Postal Convention of 1848 between Great Britain and the United States, from liability to seizure for six weeks after declaration of war.

My Lord, *Doctors' Commons, December* 7, 1861.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 5th December instant, stating that he was directed to transmit to me the accompanying letter from Lloyd's, dated December 5, 1861, requesting information whether, under the Postal Convention between Great Britain and the United States of America, signed in December 1848, mail-steamers are especially exempted from liability to seizure for six weeks after a declaration of war; and to request that I would take this paper into consideration and report to your Lordship, at my earliest convenience, my opinion thereupon.

A copy of the Postal Convention was also inclosed for my information.

In obedience to your Lordship's commands I have taken this matter into consideration, and have the honour to report—

That the XXth Article of the Convention applies, in my opinion, to the ships themselves, and to the mails on board them; but I do not consider that it extends to the exemption of their cargoes or passengers, in case of war, from "impediment or molestation," absolutely, and without regard to their nature or character.

The mail-packets, for instance, could not rightfully claim to carry articles or persons "contraband of war," by virtue of this Article, without "impediment or molestation" *flagrante bello;* and inasmuch as all "trade with the enemy" in war, without the Royal license, is illegal in England, and in all probability will be considered illegal in the United States also, I do not see how the mail-packets could rightfully claim to carry any cargo between the belligerent countries in that event.

The operation of the XXth Article of the Convention appears to me to be limited to the specific object which was immediately in contemplation by its framers, namely, the conveyance of the mails by the mail-packets "without

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impediment or molestation," for the period specified, and the safe return of the vessels at the determination of that period; and it cannot be considered as having introduced any specific stipulations, so far as regards cargoes or passengers on board such vessels, in case of war.

I have, &c.
(Signed) J. D. HARDING.

No. 325.

The Queen's Advocate to Earl Russell.—(*Received December* 9.)

My Lord, *Doctors' Commons, December* 7, 1861.

NEW GRANADA.

Fundamental law of New Granada affecting the rights of foreigners, and more particularly their right to acquire real property.

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 3rd December instant, stating that he was directed to transmit to me a despatch from Her Majesty's Chargé d'Affaires in New Granada (No. 93), inclosing copy of a "Pact of Union," or Fundamental Law, issued by the Congress of State Plenipotentiaries sitting at Bogotá, and calling attention to the manner in which the rights of foreigners resident in New Granada may be affected by the articles of this law; and to request that I would take this despatch into consideration, and report to your Lordship such observations as I might have to make thereupon, and more especially as to the question regarding the right of foreigners in New Granada to acquire real property.

In obedience to your Lordship's commands I have taken this matter into consideration, and have the honour to report—

That there is no stipulation in the Treaty of Bogotá (1825) (which I assume to be the Treaty now in operation with New Granada) in favour of the acquisition of real property by British subjects; and the "most favoured nation clause" in Article IX does not extend to this subject. I do not, therefore, see how Her Majesty's Government can insist upon any alteration in favour of British subjects of the 9th Article of the "Pact of Union" of the 20th September, 1861, on the ground suggested by Mr. Griffith, namely, that by a Treaty between New Granada and France the right to acquire landed property is secured to Frenchmen.

Internationally speaking, and independently of Treaties, New Granada appears to me to be entitled to alter her own law in this respect; but if by such law, antecedently to the "Pact of Union" of the 20th September, 1861, foreigners possessed the right in question (which is not distinctly stated), the sudden abrogation of this right might give foreign Governments a just ground of remonstrance.

In this event, however, the combined action of the principal foreign Governments represented at Bogotá would be desirable, and the probability of success should also be considered.

Unless there is some prospect of securing such combination, and obtaining such success (as to which nothing is said by Mr. Griffith), and in the absence of any statement to the effect that British interests are seriously prejudiced by the 9th Article of the "Pact," I cannot advise Her Majesty's Government to interfere, more especially considering that aliens are, by the law of England, subject to certain serious disabilities in respect to the acquisition and holding of real estate.

I have, &c.
(Signed) J. D. HARDING.

No. 326.

The Law Officers of the Crown to Earl Russell.—(*Received December* 11.)

My Lord, *Doctors' Commons, December* 9, 1861.

TURKEY.

Threat of Dr. Barbieri to assassinate Prince Couza, unless his claims on the Moldavian Government were satisfied.

WE were honoured with your Lordship's commands signified in Mr. Hammond's letter of the 4th instant, stating that with reference to our opinion of the 6th [9th] of September last,* on the case submitted to us by the Queen's Proctor, in regard to the complaint of Dr. Barbieri and others against the Moldavian authorities, he was directed by your Lordship to transmit to us a despatch from Her Majesty's Agent and Consul-General at Jassy, inclosing a copy of a letter from Dr. Barbieri, who threatened to assassinate Prince Couza unless his claims on the Moldavian Government were satisfied; and requested that we would take Mr. Churchill's despatch and its inclosure into our consideration, and report to your Lordship our opinion as to the instructions which should be given to the Consul-General in regard to this matter.

In obedience to your Lordship's commands we have considered these papers, and have the honour to report—

That, although it is possible that Consul-General Churchill has been mistaken in treating the expressions used by Dr. Barbieri, in his letter of the 8th November, 1861, as evidence of a serious purpose of assassination, yet we cannot say that Mr. Churchill was not fully justified in communicating to Prince Couza the parts of the letter relating to him. Nor, under these circumstances, as it appears to us, can the conduct of the Moldo-Wallachian Government, in taking precautions against Dr. Barbieri's entering the Roumain provinces, be made matter of international complaint, or, indeed, of any fair exception.

We understand that Dr. Barbieri and others refused to present themselves at Ismail, on occasion of a proposed investigation of their grievances; and we further collect that, under existing circumstances, Dr. Barbieri would be absolutely debarred from admission to Ismail.

In the event of Dr. Barbieri changing his mind, and desiring to appear at Ismail in support of his claims for compensation for alleged grievances, we would suggest the propriety of Her Majesty's Consul-General at Jassy using his best efforts with the Moldo-Wallachian Government for the purpose of obtaining permission, under proper precautions, to Dr. Barbieri to appear at Ismail, to remain there during the prosecution of his demands, and, after that, to retire, in safety, beyond the frontiers. Further than this, it does not appear to us that Her Majesty's Government can be fairly called upon to interfere.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 327.

The Law Officers of the Crown to Earl Russell.—(*Received December* 11.)

My Lord, *Doctors' Commons, December* 10, 1861.

TURKEY.

Claim of Mr. D. Gangardi against the Turkish Government for value of jewels, plate, &c., supplied to widow of late Sultan Mahmoud.

WE were honoured with your Lordship's commands signified in Mr. Hammond's letter of the 30th November last, stating that he was directed by your Lordship to transmit to us the accompanying letter from Mr. D. Gangardi, dated the 9th October last, calling upon Her Majesty's Government to interfere with the Porte in order to obtain the settlement of his claim for the value of jewels, plate, and other articles, supplied to a widow of the late Sultan Mahmoud.

Mr. Hammond likewise transmitted to us a despatch which had been received from Her Majesty's Ambassador at Constantinople on the subject of this claim, and requested that we would take the inclosed papers into our consideration, and report our opinion to your Lordship as to the manner in which Her Majesty's Government should deal with Mr. Gangardi's case.

In obedience to your Lordship's commands we have considered these papers, and have the honour to report—

That Sir Henry Bulwer, at page 7 and following pages of his despatch No. 730, states reasons which appear to us very forcible for acting upon the general principle of leaving tradesmen, who supply goods to the Sultanas, to do so at their own risk, without officially interfering in their favour; and it appears from Mr. Grech's letter to Sir Henry Bulwer, February 27, 1861 (P.), paragraph 5, that in August 1858, and in December 1859, his Excellency (very properly, in our opinion), issued warnings to British subjects against giving credit to the ladies of the Imperial harems without the sanction of the Comp-

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* Page 203.

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troller of the Sultan's household. Yet, in this particular case, it is urged (and not denied by Sir Henry Bulwer), that these goods were supplied previously to those dates (in 1856 and 1857), at a time when the Sultana's credit had not been questioned or controlled; and it appears that the Sultana, to whom these jewels were supplied (Hussum Melek), gave bonds for the amount of the debt, the validity of which bonds is not disputed; the Consular Court appears to have no jurisdiction; the Turkish Government has omitted either to restore any of the jewels, as suggested by Mr. Gangardi, or to enforce the debt against the separate property of the Sultana.

Lastly, we observe that Sir Henry Bulwer has formally taken up the claimant's case; that the Turkish Government has never disputed the amount, or formally contested its own liability in respect thereof; and that the Grand Vizier (page 5 of Sir Henry Bulwer's No. 730) in September last is stated to have "admitted the validity of the claim;" Mr. Gangardi is brought to the verge of insolvency by the long delay which has occurred, in a case formally taken up by Her Majesty's Legation.

Under these peculiar circumstances, we see no sufficient reason why the Turkish Government should not be pressed to settle this claim, against its liability in respect of which it has shown no ground whatsoever; which the Grand Vizier has admitted to be valid; and which cannot, apparently, be enforced by any legal proceedings.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 328.

The Law Officers of the Crown to Earl Russell.—(*Received December* 13.)

My Lord, *Doctors' Commons, December* 11, 1861.

TURKEY.

Draft Order in Council conferring Consular jurisdiction on Her Majesty's Consul in the Delta of the Danube.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 18th November ultimo, stating that with reference to our Report of the 21st November, 1860, he was directed to transmit to us for our consideration, together with the former papers, a letter from the Treasury dated the 18th November last, inclosing a draft of an Order in Council for conferring Consular jurisdiction on Her Majesty's Consuls in the Delta of the Danube.

Mr. Hammond was also pleased to inclose the accompanying despatches from the British Member of the European Commission for the Danube (Nos. 25 and 26 of 1861, Nos. 14 and 18 of 1860, and No. 3 of 1861), showing how the power of jurisdiction over British subjects on the part of the Commission has, in a recent case, been repudiated by the Consular Court at Sulina, and to request that we would report to your Lordship our opinion regarding the accompanying draft Order in Council, and advise your Lordship as to the further steps which it may be proper to take for the purpose of carrying out the object in view.

In obedience to your Lordship's commands we have taken this draft Order into consideration, and have the honour to report—

That Mr. Welsby, having attended us in conference, has, in accordance with our instructions, amended the draft Order in Council in question so as to carry out the object in view.

We approve of the Order as thus amended, which we herewith transmit.

We would suggest the expediency of the present Commissioner, and his successor for the time being, receiving an appointment as Vice-Consul, with jurisdiction over a district embracing the Delta of the Danube, for the purpose of enforcing, against British subjects and Ionians, the regulations of the Commission in accordance with the provisions of this Order in Council.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 329.

The Queen's Advocate to Earl Russell.—(*Received December* 16.)

My Lord, *Doctors' Commons, December* 13, 1861.

GENERAL.

Refusal of Governor of Sierra Leone to allow a French merchant-vessel to proceed up the Sierra Leone River beyond Freetown.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 6th December instant, stating that he was directed to inform me that upon the receipt of my letter of the 14th June last, your Lordship requested Her Majesty's Secretary of State for the Colonies to give the necessary directions, in order that the Governor of Sierra Leone might furnish information on the several points referred to in regard to his refusal to accede to the application of the French Vice-Consul at that place for permission for a French merchant-vessel to proceed up the Sierra Leone River beyond the harbour of Freetown.

Mr. Hammond was also pleased to transmit to me a letter from the Colonial Office, inclosing a copy of the Governor's further report on this subject; and to request that I would again take this case into consideration, and furnish your Lordship with my further opinion thereupon.

The previous correspondence was inclosed for convenience of reference.

In obedience to your Lordship's commands I have again taken this case into consideration, and have the honour to report—

That these papers (although they afford but very little additional information) tend rather to confirm than to alter the opinion which I have already expressed upon this case.

There appear to be no "regulations in force" (such as are alluded to by the French Consul), permitting foreign vessels to proceed up the river; only one French vessel (the "Messager de Sénégal") appears hitherto to have done this, but at what date or under what circumstances she did so does not appear.

Freetown is the only recognized port of import and export in the colony; and foreign vessels seem to be legally excluded from the coasting trade (if the vessel in question designed to engage in that trade, which is not clear). There is nothing additional forthcoming from the French Consul or Government in support of the application, and *non constat* that France intends to make any claim of right in the matter.

Under these circumstances, the Governor's refusal of the "preliminary authorisation" sought for by the French Consul, "in accordance" (as he alleged) "with the regulations in force," for the French ship "Aréquipa" to take cargo up the Sierra Leone River, appears to me to have been proper; and I would suggest that he should be instructed to pursue the same course with respect to all foreign vessels until he receives further instructions.

I have, &c.
(Signed) J. D. HARDING.

No. 330.

The Attorney-General to Mr. Layard.—(*Received December* 18.)

Sir, *Temple, December* 17, 1861.

UNITED STATES.

Bequest of Miss Rebecca Hussy for the redemption of slaves.

BY direction of Earl Russell you, on the 10th December, addressed a note to the Solicitor-General and myself, accompanied by a copy of a note from Mr. Fearon to you of the 15th November, and relating to a bequest by Miss Rebecca Hussy for the redemption of slaves; the money so originally bequeathed, with accumulations, now amounting to upwards of 21,000*l*. You desired that the Solicitor-General and I would favour Lord Russell with our opinion upon the point raised in your letter. I have to request that Lord Russell will excuse my expressing any formal opinion in the matter; seeing that Mr. Fearon was, in his own words, "acting for the Attorney-General" in addressing to you his note of the 15th November. Mr. Fearon is the Solicitor employed by the Attorney-General for the time being, with reference to all charities; and, in applying to you as he did, he was, in fact, seeking for information by the possession of which he might be the better enabled to make suggestions to me as to the adoption of a proper "scheme." Of the fitness of any such scheme, as a matter to be proposed to the Court of Chancery, I must,

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in the end, of necessity judge. Under these circumstances, I trust Lord Russell will accept my excuse for non-compliance with the letter of your request.

I have, &c.
(Signed) WM. ATHERTON.

No. 331.

The Law Officers of the Crown to Earl Russell.—(Received December 18.)

TURKEY.

Liability of a British female to the jurisdiction of the Consular Court in the case of her husband's bankruptcy.

My Lord, *Doctors' Commons, December* 18, 1861.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 7th December instant, stating that he was directed by your Lordship to transmit to us the correspondence inclosed respecting questions which had been in discussion between Her Majesty's Ambassador at Constantinople and the Judge of the Consular Court touching the liability of a British female to the jurisdiction of the Consular Court in the case of her husband's bankruptcy, in respect to her interest in landed property, which, as a female, she was allowed, by a fiction of the Turkish law, to hold, but which her husband could not hold; and (touching) the further question, incidentally raised in the discussion, as to the rights of British subjects to have recourse to a Turkish Tribunal in the first instance, thereby setting aside the jurisdiction of the Consular Court. On the latter point, Mr. Hammond was pleased to state that he was directed by your Lordship to refer us to the 15th and 16th Articles of the Capitulations; and, on the former point, to observe that there did not appear to be any recorded agreement between this country and Turkey, but that the marked passage of the Hatti-Humayoun of 1856 (inclosed therewith) would throw some light on the principles by which the tenure of land by foreigners in Turkey is regulated.

Mr. Hammond was also pleased to state that he was directed by your Lordship to request that we would take these papers into consideration, and report to your Lordship our opinion on the points raised in them, and on the instructions which should be sent to Sir Henry Bulwer and Mr. Hornby respectively.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That, in our opinion, the Consular Court cannot act directly *in rem*, or give possession of the land to any person against the title recognized by the Turkish law, nor can the Turkish authorities be required to do so, because their law treats all British subjects as incapable of holding land in Turkey. For this reason, Mr. Logie's demand upon the Governor of Smyrna seems to us to be untenable. And although, as against a person capable of contract, the Consular Court might, in accordance with the English law, enforce, *in personam*, the performance of all competent acts necessary for the purposes of justice, even as to Turkish land, yet an insuperable difficulty appears to arise in a case between husband and wife, from the circumstance that, by English law, a married woman is incapable of binding herself by any personal contract, and cannot be compelled to execute any conveyance or do any act as if she were so bound.

According to the strict construction of the 16th Article of the Capitulation (2 Hertslet, 350), it appears to us that the British Government would be entitled to object to any Turkish Judge, or Governor, intermeddling with any difference or dispute between British subjects, whether relating to land in Turkey or to any other matter whatsoever; and thus it is, accordingly, incompetent for the Governor of Smyrna to entertain such an application, by one British subject against another, as that which has been made to him on behalf of Mr. Crampton, as Mrs. Whittall's mortgagee. But whether it would be expedient for Her Majesty's Government, in such cases as the present, to insist on the strict letter of the Capitulation, having regard to the fiction under which alone English subjects can hold land in Turkey, and to the inability of the Consular Court to exercise jurisdiction with reference to such land, is a question of public policy which it is not for us to decide.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 332.

The Queen's Advocate to Earl Russell.—(Received December 19.)

UNITED STATES.

Seizure and confiscation of vessels in time of war.

My Lord, *Doctors' Commons, December* 18, 1861.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 12th December instant, stating that he was directed to transmit to me therewith a despatch from Her Majesty's Minister at Washington (No. 688), inclosing copies of a circular issued on the 12th ultimo by the United States' Secretary of the Treasury, with regard to the seizure and confiscation of vessels under the 6th section of the Act of Congress of the 13th July last; and to request that I would take the same into consideration, and furnish your Lordship with any observations I may have to offer thereupon.

Mr. Hammond was also pleased to inclose, for my information, the further documents referred to by Lord Lyons (Nos. 477 and 507); and to state that the Act of Congress alluded to would be found at page 255 of the volume of Statutes at Large which forms an inclosure in Lord Lyons' despatch No. 477 of the 9th September last.

In obedience to your Lordship's commands I have taken this matter into consideration, and have the honour to report—

That as regards the general principle involved in this case, the practice of confiscating in time of war (as *res hostium*) all enemy's interest in merchant-vessels is in accordance with the law and usage of nations.

Her Majesty's Government acted upon this principle during the last war with Russia.

Persons having commercial domicil in enemy's territory considered and treated as enemies.

All persons having commercial domicil in the enemy's territory are legally considered and treated as "enemies," so far as regards their property or interest in enemy's ships, whatever may be their nationality by birth or descent.

This principle is, by the 6th section of the Act of Congress of July 13, 1861, applied to "any ship or vessel belonging, in whole or in part, to any citizen or inhabitant of any State or part of a State whose inhabitants are declared by the President's Proclamation to be in a state of insurrection." Her Majesty's Government has, in effect, admitted the right of the United States' Government to act towards the Confederate States as its enemies in war.

The circular in question is founded on, and in accordance with, this section of the Act in question; it contains directions as to legal proceedings against such vessels, it provides for their discharge on bail "according to the course of Admiralty proceedings," their release before the commencement of proceedings on bond, and so forth, under certain circumstances. These instructions do not appear to me illegal or unreasonable. Lord Lyons does not suggest that any particular difficulties or objections to the working of the Act, or to the effect of the circular, are likely to arise, or that any special injury to British interests is to be apprehended; and, under these circumstances, I see no reason for the interference of Her Majesty's Government in this matter.

I have, &c.
(Signed) J. D. HARDING.

No. 333.

The Queen's Advocate to Earl Russell.—(Received December 19.)

UNITED STATES.

Illegal arrest of a British subject, Mr. W. B. Forwood, at New York.

My Lord, *Doctors' Commons, December* 19, 1861.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 12th December instant, stating that he was directed to transmit to me the accompanying despatch from Her Majesty's Minister at Washington (No. 694), reporting the circumstances attending the arrest of Mr. W. B. Forwood, a British subject, at New York; and to request that I would take this case into consideration, and furnish your Lordship with my opinion thereupon.

The previous correspondence which has taken place on this subject was inclosed for my information.*

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* To Lord Lyons, Nos. 389 and 438; Mr. Forwood, October 25; to Mr. Forwood, November 4; Mr. Forwood, November 6; to Mr. Forwood, November 11; Mr. Forwood, November 16; to Mr. Forwood, November 29, 1861.

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In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That the arrest of Mr. W. B. Forwood was, in my opinion, illegal and unjustifiable; yet, under existing circumstances, I cannot advise your Lordship to make any formal demand for reparation on the United States' Government.

Mr. Forwood was arrested on landing at New York from England, on the morning of the 9th October, apparently without any warrant, and on no definite charge. His person was searched, and he was kept in confinement at the police station until the evening of that day, when he was spontaneously discharged by the Superintendent, without any application having been made on his behalf.

On the 12th October he wrote to the Consul stating the facts, and saying that he "did not look for any redress."

On the 13th November he again wrote to the Consul, as follows:—

"I am sorry to see, by the papers, that my father has taken the subject of my arrest up very warmly; but however, as he has done so, I shall be happy to do anything I can that you may think will be of service to you in the matter."

Lord Lyons did not hear of the case until three weeks after it had occurred, and his Lordship and Consul Archibald have, in my opinion, rightly abstained, under these, circumstances, from making any official application to the United States' authorities on the subject of Mr. Forwood's arrest.

Mr. Forwood himself did not at the time, and has not as yet made any distinct request that his case should be taken up by Her Majesty's Government; he has, on the contrary, intimated that he has personally no such desire or intention; and I can see no prospect of any satisfactory result from any official application being now made by your Lordship to the United States' Government on the subject.

This case is one of a much less aggravated character than others which have already occurred in the United States in which Her Majesty's Government has not been able to obtain any satisfactory explanation or redress; and upon the whole I cannot advise your Lordship to take any further steps in it.

I have, &c.
(Signed) J. D. HARDING.

No. 334.

The Law Officers of the Crown to Earl Russell.—(Received December 21.)

UNITED STATES. (GENERAL.)

Privileged position of the "Trent" as a subsidized mail-packet.
Difference recognized by law of nations between postal packets and merchant-vessels.

My Lord, *Doctors' Commons, December* 21, 1861.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 16th December instant, stating that he was directed to transmit to us the accompanying communication from Mr. Murlock (dated December 11), relative to the privileged position of the "Trent" as a subsidized mail-packet, and to request that we would furnish your Lordship with our opinion whether the difference between postal packets and other merchant-vessels is recognized by the law of nations.

In obedience to your Lordship's commands we have taken this subject into consideration, and have the honour to report—

That your Lordship's question must, in our opinion, be answered negatively. We are not aware of any recorded case in which any substantial difference between postal packets and other merchant-vessels has been recognized by the law or usage of nations, so far as regards the exercise of belligerent rights over them. In expressing this opinion, however, we assume that the postal packets alluded to, are, in point of fact, and by the municipal law of the country under whose flag they sail, the property of private individuals, firms, or companies; and that they are not, by charter-party or otherwise, engaged or employed generally by the Government, or on its behalf, or in its service exclusively, for a definite period; but that their owners merely contract specifically with the Government, in consideration of certain payments, to carry the mails, and one or more officers in charge thereof, at certain times, between certain places. Under such circumstances, we are of opinion that, by the existing law of nations, and independent of Treaty, the vessels in question are not entitled to be recognized in any other character than that of ordinary merchant-vessels.

We may observe that the peculiar class of vessel in question has (in effect) had its inception in modern times; and that the question of their international character, or *status inter gentes*, has not (as far as we are aware) as yet been seriously considered.

The notorious character and employment of such vessels, their regular periodical voyages between certain defined ports, and their carrying by special contract with their Government, and in its interest and service, the Post Office mails and Government despatches, in charge of a naval officer, including (we believe), in many cases, the mails and official despatches of many different nations, entitle them, by international comity, to peculiar consideration; more especially as regards the exercise of belligerent rights over them when they are neutrals. It is obvious, for instance, that as regards visiting, searching, detaining, or capturing them, their mails, despatches, passengers, and cargo, many considerations arise which would not apply to the case of ordinary merchant-vessels; but we cannot say that they are entitled, by international law, to the peculiar rights and privileges of those ships which are either the property of, or in the exclusive service of, the State; or that they can be said to hold any peculiar or intermediate status between such ships and ordinary merchant-vessels. We beg to call attention to some observations on this subject in Hautefeuille, "Droits et Devoirs des Nations Neutres en temps de Guerre Maritime," vol. ii, page 463 *et seq.*, and to a note thereupon in Mr. Laurence's (sixth) edition of "Wheaton's Elements of International Law," at page 567.

We may add that, in a letter just published by M. de Hautefeuille himself, the doctrine that packet-boats of this class are to be deemed public vessels, and as such exempted from the right of visit and search in time of war, appears to be expressly denied; and the doctrine laid down, and acted upon by Lord Stowell, as to neutral vessels sailing under convoy (the "Maria," 1 C. Robinson, 340), seems to us to be quite inconsistent with the supposition that the character of the "Trent" could be altered so as to exclude the exercise against her of any belligerent right which might otherwise have been competent by the mere presence on board her of an officer of Her Majesty's navy in charge of the mails.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 335.

The Queen's Advocate to Earl Russell.—(Received December 21.)

GENERAL.

Question as to the greater safety of goods shipped in neutral vessels, in time of war, than if carried in ships belonging to belligerents.

My Lord, *Doctors' Commons, December* 21, 1861.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 19th December instant, stating that he was directed to transmit to me the accompanying letters from the Secretary to the General Shipowners' Society (dated the 14th and 18th December), requesting to be informed whether goods shipped in neutral vessels would, in the event of war, be safer than if carried in ships belonging to the belligerents; and to request that I would take these papers into consideration, and furnish your Lordship. at my earliest convenience, with my opinion as to the answer which your Lordship should return to the Society.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That an answer may (subject to your Lordship's discretion) be returned to the Society to the following effect:—

"That with respect to the question in Mr. Bonar's letter of December 18th, as to the prevailing 'opinion being either doubtful or unfounded, that goods shipped in neutral vessels will, in the event of war, be safer than if carried in the ships belonging to the belligerents;' it must be obvious that in the event of war, goods shipped in neutral vessels will be safer than goods shipped in vessels of either belligerent; the vessels of each belligerent being in war subject to

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capture on the high seas by the cruizers of the opposite party generally, without regard to their cargoes or destination, whilst the vessels of neutrals will only be subject to capture under certain peculiar and defined circumstances.

"That with respect to the suggestion in Mr. Bonar's letter of the 14th December, as to 'the prevalence of a general impression among merchants that, in the event of a war between this country and America, goods shipped in neutral vessels will be free from capture,' and to his request therein, 'that in consideration of the extreme anxiety so extensively felt on the subject, your Lordship would have the goodness to communicate to the Society such information or opinion as may appear to your Lordship not inconsistent with your public duty,' your Lordship can only say that you must decline to define or explain generally the various circumstances and conditions under which neutral ships will, by the existing law and practice of nations, be liable to or exempt from capture in war; which will obviously depend upon many considerations connected with their destination, cargoes, and so forth; more especially as the various questions connected with their liability to, or exemption from, capture, are questions arising under the Law of Nations, upon which the Society is not without the means of informing itself without the assistance of Her Majesty's Government.

"That it is not in your Lordship's power to communicate to the Society any information as to any special or peculiar concessions as to immunity from capture, either under certain qualifications and conditions, or generally, which in the unfortunate event of war between this country and the United States, either or both belligerents may see fit to make in favour of neutral vessels."

I consider it my duty to point out that, adverting to the position and information of the General Shipowners' Society, Mr. Bonar's letters are of a very vague and indefinitive character. No allusion is made therein either to general law and practice of nations as to capturing neutrals in war; to the relaxation thereof in favour of all neutrals without exception, made by Great Britain and France in the last war with Russia; or to the Declaration of Paris (all of which must be well known to the Society). Nor is it suggested that the Society has taken any legal advice (as might have been expected), or that it requires information upon any one or more specific points: the general question whether property in war is safer on board a neutral than on board a belligerent vessel, is one which shipowners might answer for themselves without resorting to Her Majesty's Government; and the object of the letters appears to me to elicit for publication any information which your Lordship may be inclined to give them.

Under these circumstances it is for your Lordship to consider whether the letters should receive any answer; and in the event of your Lordship's considering that an answer should be given, I have endeavoured to frame one in cautious and general terms.

Declaration of Paris, of April 16, 1856, "Neutral flag covers enemies goods." Not acceded to by United States.

I must also point out (for your Lordship's guidance confidentially), although the point is not alluded to by Mr. Bonar, and therefore need not, in my opinion, be alluded to by your Lordship in answering his letters, yet that the Declaration of Paris, April 16, 1856, according to my present impression of its effect (2. "The neutral flag covers the enemy's goods, with the exception of contraband of war"), will preclude Her Majesty's ships, in the event of war, from capturing the (neutral) vessels of any Power which has acceded thereto, even when laden with enemy's goods not contraband of war; whilst the United States not having acceded to that Declaration, their ships of war and privateers may capture all neutrals, without exception, having British goods on board. It will of course remain to be seen whether this right will be exercised without exception or modification.

The international position and belligerent rights of Her Majesty's Government in regard to this Declaration, in the event of war with the United States, are matters requiring grave consideration, as to which I would suggest that it will not be desirable for Her Majesty's Government to publish its opinion until absolutely necessary.

I have, &c.
(Signed) J. D. HARDING.

No. 336.

The Queen's Advocate to Earl Russell.—(*Received December* 28.)

My Lord, *Doctors' Commons, December* 27, 1861.

GUATEMALA.

Decision of Nicaraguan tribunals on claim of Hilario Gonssen, British subject, against Don Juaquin Chamorro, for interest on moneys borrowed.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 18th December instant, stating that he was directed to transmit to me a despatch, and its inclosures, from the Acting British Consul-General at Guatemala (No. 27, October 5), reporting the particulars of the claim of a British subject, named Hilario Goussen, upon Don Juaquin Chamorro, and the decision of the Nicaraguan tribunals upon the claim in question; and to request that I would report to your Lordship what steps, if any, Mr. Hall should be instructed to take in regard to this matter.

In obedience to your Lordship's commands I have taken this matter into consideration, and have the honour to report—

That I cannot advise Her Majesty's Government to interfere in this case; and consequently I cannot suggest that any instructions should be given to the Consul.

The only question is that of Mr. Goussen's right to receive interest upon certain advances of money made by him to Messrs. Chamorro in 1855 and 1856 (the principal sum having been repaid to him); his right to the interest thereon appears to be a question of a purely legal character, arising between two private individuals, in which the Government of Nicaragua is not interested, and has not interfered in any manner.

Mr. Goussen having instituted proceedings for this interest before the Tribunal of Commerce, that Court, by its Judgment of the 4th December, 1858, decided that he had no right to recover the interest which he claimed.

It is to be observed that the only reason assigned in the Judgment for this decision, namely, the general distress and confusion caused by the dominion exercised by Walker and his "filibusters," is not very satisfactory; but Mr. Goussen appealed from this decision to the Supreme Court of Justice, and this latter Court, by its Judgment of December 20, 1858, confirmed the Judgment appealed from, with costs.

This Judgment of the Supreme Court sets forth that "in regard to interest nothing was stipulated between the Messrs. Chamorro and Goussen; nor did the latter, when Messrs. Chamorro failed to meet their payments when due, notify them judicially for default of payment; nor did he make the necessary protest." It also sets forth that compound interest is demanded by Mr. Goussen, and refers to certain articles of the Code of Commerce and to legal authorities, in order to show that compound interest is prohibited by the law of Nicaragua.

It is not suggested that Mr. Goussen was not fully heard, or that the Supreme Court acted under any corrupt or undue influence. Not only are no reasons whatsoever suggested by Mr. Goussen or the Consul to show that the Judgment of the Supreme Court is contrary to law or natural justice, but the truth and relevancy of the reasons expressly adduced by the Court in support of the Judgment are not impugned or questioned by Mr. Goussen or by the Consul.

The Consul, moreover, states that he has consulted a legal adviser, "on whose opinion he has much reliance;" and he cites this opinion, which is decidedly in favour of the correctness of the decision of the Supreme Court, and appears to be founded upon the same reasons as those adduced by that Court. This opinion is adverse to Mr. Goussen on every point. The Consul merely observes upon this opinion "that he does not quite concur in it," for which he assigns no reason.

There is nothing forthcoming from Mr. Goussen or his legal advisers to impugn the decision of the Supreme Court, or to support his claim to the intervention of Her Majesty's Government, for which intervention, under the circumstances of the case, I am unable to suggest any reason whatsoever.

I have, &c.
(Signed) J. D. HARDING.

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Appendix.

No. 47*.

The Queen's Advocate to Earl Russell.—(Received March 11.)

My Lord, *Doctors' Commons, March* 9, 1861.

VENEZUELA.

Application of Messrs. Cutler and Turner for original will of Mr. F. A. Hamilton, handed over to a Venezuelan Court in 1858.

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 27th February ultimo, stating that he was directed to transmit to me a letter, dated the 9th February ultimo, from Messrs. Cutler and Turner, setting forth the circumstances under which they request to be placed in possession of the will of Mr. Hamilton, a British subject, deceased, in Venezuela.

Mr. Hammond was also pleased to inclose a Memorandum which had been prepared in the Foreign Office, showing the steps which have already been taken as to this will, and to request that I would take these papers into consideration, and report to your Lordship my opinion as to the answer which should be returned to Messrs. Cutler and Turner.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That it appears from the Memorandum that the will is now in the possession of a Venezuelan Court, and that Messrs. Cutler and Turner may therefore be informed that the original will of the deceased is, according to the best information of which your Lordship is possessed, in the custody of a legal tribunal at Caracas, to which it was delivered over by Mr. Orme in the year 1858,* and that your Lordship will instruct Mr. Orme, if Messrs. Cutler and Turner so desire, to furnish them, in reply to their written request addressed to him, and setting forth fully the character in which, and the purpose for which, they apply for it, with the precise date and particulars of its delivery to that tribunal; and Mr. Orme may be instructed to act accordingly on hearing from Messrs. Cutler and Turner.

I have, &c.
(Signed) J. D. HARDING.

Memorandum relative to the Will of the late Mr. F. A. Hamilton.

Mr. Bingham, Nos. 20 and 21, August 15 and 20, 1855.

IN August 1855 Mr. Bingham reported the decease of Mr. F. A. Hamilton, and stated that he had died under very suspicious circumstances.

Mr. Bingham had himself drawn up the will of Mr. Hamilton shortly before his death, wherein he had bequeathed a sum of 200*l.* (but which sum, he had been informed, had been changed to 2,000*l.*, without any codicil to the will) to a Mrs. Nelson, against whom certain suspicions existed with regard to the death of Mr. Hamilton.

Mr. Bingham also stated that Mr. Hamilton's affairs had been left in a deplorable state of confusion.

Mr. Hamilton's will and papers were delivered over to the local authorities, who refused to deliver them to Mr. Bingham on his applying for the same.

This refusal on the part of the authorities to deliver the will and papers of

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* Possibly Mr. Orme's despatch of the 17th November, 1858, may give the correct technical name of this Tribunal; and, if so, the answer to Messrs. Cutler and Turner may end here.—J. D. H.

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Queen's Advocate, October 17, 1855.

the late Mr. Hamilton to Mr. Bingham was referred to the Queen's Advocate for opinion, who reported that he was of opinion that Mr. Bingham's demand could not be maintained upon general principles of international law or usage; that the existing Treaty with Venezuela did not support it, and that unless such demand should be founded upon and be in accordance with the law or practice of Venezuela, the authorities of that State would be justified in refusing to accede to it.

To Mr. Bingham, No. 8, October 30, 1855.

Instructions to the above effect were sent to Mr. Bingham.

Mr. Younghusband, November 26, 1856.

In November 1856 a Mr. Younghusband, who stated himself to be trustee for the children of the late Mr. Hamilton, requested that Mr. Bingham might be authorized to furnish him with a copy of the will of the deceased, which request, after reference to the Queen's Advocate, was granted, and Mr. Bingham was directed to procure and forward to Mr. Younghusband an official copy of the will in question.

Mr. Bingham, No. 83, November 28, 1857.

After considerable delay Mr. Bingham in November 1856 sent to the Foreign Office a bundle of papers, which he stated he had received from Government House, and which he believed contained the will.

Mr. Bingham also sent copies of his despatches to the Foreign Office (Nos. 20 and 21) of 1855, which he stated would explain his unwillingness to take charge of the papers and affairs of the late Mr. Hamilton.

To Queen's Advocate, January 7, 1858.

Mr. Bingham's despatch, as also the previous correspondence, was sent to the Queen's Advocate to report his opinion as to the steps which should be taken for making over the papers to the parties who had applied for them.

Queen's Advocate, January 26, 1858.

The Queen's Advocate in his reply reported that under the peculiar circumstances of the case he could not advise the Secretary of State to deliver the papers to Mr. Younghusband, who appeared only to require an official copy of the will of the deceased.

He also recommended that copies of the will should be given to Mr. Bingham, who had been appointed sole executor, and to such other persons as were chiefly interested therein; and that they should also be informed of the place of deposit of the original.

To Treasury, January 29, 1858.

The will and also the correspondence were sent to the Treasury, who were requested to direct their Solicitor to take the neeessary steps to carry out the views of the Queen's Advocate.

Treasury, April 28, 1858.

The Treasury in reply sent to the Foreign Office a copy of the Report of their Solicitor, in which they concurred.

The Secretary of the Treasury in his Report stated that the Treasury had no authority or interest in the matter.

That he had communicated with Mr. Younghusband and had given him a copy of the will, and that he had also given one to Messrs. Johnston, Farquhar and Leech, Solicitors, of 65, Moorgate-street, who represented the next of kin of Mr. Hamilton.

He also forwarded to the Foreign Office a copy of the will to be sent to Mr. Bingham, who he recommended should be instructed to give a copy to Mrs. Nelson, and also to the children mentioned in the will or to their representatives.

It appeared also from the Report of the Secretary of the Treasury that a suit in Chancery was at that time going on regarding the property of the deceased.

To Queen's Advocate, April 30, 1858.

Before acting upon the Report of the Secretary of the Treasury, the question was again referred to the Queen's Advocate, more particularly as to whether Mr. Bingham, under the terms of the will, could be held to be trustee and executor in his official or only in his private capacity.

Queen's Advocate, May 12, 1858.

The Queen's Advocate in his reply reported that he was of opinion that Mr. Bingham was, under the terms of the will, to be considered as a trustee and executor in his individual, and not merely in his official capacity; and that under the peculiar circumstances of the case it would seem to be consistent with Mr. Bingham's duty to prove the will as executor, and to endeavour (at least) to carry out its provisions as trustee and guardian to the children mentioned therein.

With regard to the disposal of the original will and other papers, the Queen's Advocate suggested that they should be sent back to Mr. Bingham for the purpose of enabling him to act as executor, trustee, and guardian of the children, and that in the event of his declining to do so he should restore the will and

papers to the custody of the Venezuelan Administration or Tribunal from which Mr. Bingham originally obtained them.

Throughout his Report the Queen's Advocate referred to the case as one of a private nature, in which Mr. Bingham was concerned in his private and not official character.

To Mr. Orme, No. 6, May 31, 1858.

In 1858 Mr. Orme, who succeeded Mr. Bingham as Chargé d'Affaires in Venezuela, received charge of the will and papers, and was instructed to communicate with Mr. Bingham on the subject of them, and to inform him that Her Majesty's Government was advised that, by the terms of the will, he was to be considered as trustee and executor in his individual and not merely in his official character; and it would therefore seem to be his duty to take steps for proving the will, and to endeavour to carry out its provisions.

Mr. Orme was also instructed to inform Mr. Bingham that as he appeared unwilling to take charge of the papers or affairs of Mr. Hamilton, that he (Mr. Orme) was directed to return the will and the papers to the Venezuelan authorities, from whom Mr. Bingham had received them, and to give Mr. Bingham a certified copy of the will, and to communicate another copy to Mrs. Nelson.

Mr. Orme, No. 66, November 17, 1858.

Mr. Orme, in compliance with these instructions, furnished Mrs. Nelson and Mr. Bingham with copies of the will, and handed over the original will, together with all the papers, to the tribunals of the city of Caracas.

From inquiries made by Mr. Orme, it appeared that although Mr. Hamilton in his will referred to certain property which he believed himself to be possessed of, bequeathing amongst other things a sum of 200*l.* to a Mrs. Nelson, and making allusion to claims on the Venezuelan Government, no property whatever belonging to Mr. Hamilton was to be traced after his death, and Vice-Consul Stacey was obliged to advance the sums necessary for his burial. It also appeared that Mr. Hamilton was in debt to many persons in Venezuela.

To Mr. Younghusband, December 16, 1858.

Mr. Younghusband was informed of the facts contained in the above despatch, and that the will and papers had been handed over to the proper tribunals at Caracas.

No. 51*.

The Queen's Advocate to Earl Russell.—(Received March 17.)

Doctors' Commons, March 16, 1861.

NEW GRANADA.

Complaint of Chief of insurgent party and President of Bolivar against proceedings of British officers.

My Lord,

I AM honoured with your Lordship's commands signified in Lord Wodehouse's letter of the 20th February ultimo, stating that he was directed to transmit to me the correspondence marked in the accompanying list, relating to certain proceedings on the part of British officers in New Granada, which have been complained of by Señor Nieto, Chief of the insurgent party, and President of Bolivar, in the letter and its inclosures of which translations were inclosed.

Lord Wodehouse was also pleased to state that the first case referred to by Señor Nieto is that of the schooner "Liberty," which was seized by Señor Nieto's party at Carthagena, and ultimately delivered up upon Commander Lyons' requisition. That the second case, that of the steamer "Mompox," seized by the authorities of the same party at Barranquilla, is similar to that of the "Liberty."

That Señor Nieto further complains of Commander Lyons' proceedings at Santa Martha, and of the detention by Her Majesty's Consul at Carthagena, of property and documents belonging to the Custom-house at that port, after the flight of the Government officials.

Lord Wodehouse was also pleased to state that I should find among the annexed papers all the correspondence which the Foreign Office possesses upon these subjects; and to request that I would take these papers into consideration, and furnish your Lordship with my opinion as to the justice of Señor Nieto's complaints, and further as to what instructions should be sent to Rear-Admiral Milne upon the subject of Commander Lyons' proceedings, as referred to in the letter from the Admiralty of the 2nd October last.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That in dealing with these cases I must assume that Señor Nieto, whatever

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may be his correct title or precise position, was at the period in question, July 1860, and still is, *de facto* in possession of independent and sovereign executive power at Carthagena, and is acknowledged and treated by Her Majesty's Government in this character. He appears to be President of certain States which have seceded from the Federal Government of New Granada. I observe that the charges and demands made in his letter of September 4, 1860, have not apparently, as yet, been communicated to Vice-Consul Druce, or Commander Lyons, who have had no opportunity of answering them.

Subject to these observations, I proceed to deal with these four cases as they stand; (1) schooner "Liberty;" (2) steamer "Mompox;" (3) conduct of Commander Lyons in breach of neutrality at Santa Martha; (4) conduct of the British Consulate at Carthagena, in retaining certain Custom-house documents and securities.

Conduct of Vice-Consul Druce and Commander Lyons:—
1. Case of the "Liberty."

1. With respect to the case of the "Liberty," I consider that Vice-Consul Druce and Commander Lyons conducted themselves towards Señor Nieto with unnecessary want of consideration and with excessive rigour, and that they had no sufficient reason for so doing. It is beyond my province to decide how far Commander Lyons may be considered as personally responsible, seeing that he acted throughout at the instigation of the Vice-Consul; but, subject to this observation, and to any explanations which the Vice-Consul may offer, I consider that the request of Señor Nieto, that Her Majesty's Government should express its disapproval of the conduct of its officers in this affair, with a view to prevent the repetition of similar demands, is well founded.

The "Liberty," a small schooner of 34 tons burthen, belonging to a citizen of New Granada, appears to have entered the port of Carthagena under the New Granadian flag and with New Granadian papers, in June 1860; she is alleged to have been sold there by her New Granadian owner, apparently named Bellodi, to Thomas Stevenson, her British owner, on the 25th of June. Vice-Consul Druce gave her a provisional certificate of registry on the 26th June, 1860. On the 13th of July she was pressed into the service of Señor Nieto, under the impression, on his part, that she was a New Granadian vessel; her re-delivery was demanded and enforced on the 17th July by the Vice-Consul and Commander Lyons, without any explanation to Señor Nieto of the peculiar circumstances of the case. This provisional certificate of registry does not strictly follow the form of an ordinary certificate of registry (see form appended to statute 17 and 18 Vict., cap. 104); but it may possibly be sufficiently correct; the Consul should, however, explain this, and state what form he followed, and by what instructions, or circular, he acted in issuing this provisional certificate.

By the "declaration of ownership" appended thereto, J. E. Stevenson, the sole owner, states himself to be a "natural-born British subject, born at the city of Carthagena." The Consul must of course explain this, and state who and what Stevenson is; and he must also explain the special design or object with which he granted this provisional certificate to him; as (for instance) to what British port the "Liberty" was then intending to go for registry. However this may be the Treaty with New Granada (Colombia), April 18, 1825, Article VII, which apparently defines what shall constitute a British vessel, and under the definition of which Article it could not be pretended that the "Liberty" came, was especially referred to by President Nieto, and this observation was never noticed or answered by the Vice-Consul or by Commander Lyons. This omission should be explained by the Vice-Consul. Above all, neither the provisional certificate of registry, nor the declaration of ownership, was ever, as far as I can discover, communicated to Señor Nieto; why this was not done I cannot understand, and this requires particular explanation. The whole affair has the appearance of a device to obtain British protection for a vessel either not entitled *bonâ fide*, or at least doubtfully entitled to the legal character of a British vessel. Rear-Admiral Milne appears to entertain a similar suspicion (see his letter to Admiralty, 20th September, 1860). I own that I can see no excuse for the non-explanation to Señor Nieto by the Vice-Consul of the circumstances, particulars, and documents of the transfer, and as little for the withholding from him any answer whatever as to his reference to the Treaty. The VIIth Article of the Treaty may possibly require modification owing to the changes in the British law as to property in British ships; but the Consul, when a Treaty was invoked by Señor Nieto, should have at least attempted to give an answer or explanation, and a grave question of international law arises, whether a mere provisional certificate

can, under the Treaty, entitle any vessel not fulfilling the conditions thereof to a British character in New Granada.

Conduct of Vice-Consul Druce and Commander Lyons:—
2. Case of the "Mompox."

2. In the case of the steamer "Mompox" the conduct of the Vice-Consul and Commander Lyons was much more unjustifiable. The schooner "Liberty" was, howsoever, a British vessel, in a certain sense, when pressed; but there was not the least pretence for considering the "Mompox" as a British vessel. She was avowedly a New Granadian vessel to every intent and purpose.

Two British subjects, named Clark, the master, and Campbell, the engineer, seem to have owned two-fifths of her, and were, perhaps, thus paid out of her earnings, instead of receiving monthly pay. Her owners (Hamburgher and Bates) appear either to have offered her services to the Government, or to have been inclined to acquiesce in her impressment upon certain terms, and they did not contend or suggest that she was a British vessel. She was pressed into Señor Nieto's service on the 15th July, and on the 29th her re-delivery, together with the payment of 3,000 dollars indemnity to Campbell and Clark for her detention, was enforced by Commander Lyons, at the Vice-Consul's instigation, under threat of laying an embargo upon all the vessels belonging to or carrying the New Granadian flag.

Commander Lyons, in his note to Señor Nieto of July 28, 1860, spoke of a "great indignity having been inflicted against the persons" of Clark and Campbell, and damages caused to their property "in direct violation of the Law of Nations and in opposition to the Treaty;" and stated that the seizure brought upon the authorities of Barranquilla "the responsibility of an act of piracy." Señor Nieto demands (in this case) "a proper satisfaction, the punishment of the offending officers, and the restoration of the 3,000 dollars so unduly demanded." I am of opinion that these demands are internationally well-founded; but it will be for Her Majesty's Government to determine what course to pursue under the circumstances. I have seldom seen an instance of such arbitrary and inconsiderate conduct as this on the part of British officials; and there may, of course, be some peculiar circumstances with which I am unacquainted.

3. Conduct of Vice-Consul Druce and Commander Lyons in breach of neutrality at Santa Martha.

3. The next case, mentioned at page 13 of Señor Nieto's note, relates to a charge made by him against Vice-Consul Druce and Commander Lyons, in respect of certain acts on their part, and particularly of the latter, at Santa Martha in August 1860, which are alleged to have amounted to a breach of neutrality in a civil war then raging, and by which the capture of that place by the forces of the States of Bolivar and Magdalena is said to have been prevented or delayed. It would seem as if the naval force of one party took refuge behind Her Majesty's ship "Racer" and another of Her Majesty's ships not named, and were thus in effect sheltered or protected; men were landed in Santa Martha from Her Majesty's ships: but I can find nothing in these papers throwing any light upon these facts excepting this statement in the note of Señor Nieto. I am therefore at present unable to offer any opinion thereon.

4. Conduct of Vice-Consul Druce at Carthagena in retaining certain Custom-house documents and securities.

4. The last case is one apparently having no connection whatsoever with either of the three former cases; it relates to the deposit and retention at the British Consulate at Carthagena, of certain Custom-house documents and funds, probably consisting of bonds, securities, or paper money, which has already formed the subject of my Report of May 17, 1860, and as to which the Consulate was instructed accordingly, May 31, 1860 (No. 6). The Consul apparently still persists in that extraordinary system of withholding all the necessary information upon which I have remarked in the above Report, and upon which I have so often felt it to be my disagreeable duty to remark in other Consular cases. It appears, however, from Vice-Consul Druce's note to Señor Nieto of the 20th of August, 1860, that the papers were received into the Consulate according to instructions received from Her Majesty's Minister at Bogotá, which directed that they should "not be given up to any person but an Agent nominated by the Federal Government" (which Señor Nieto is not). I can, therefore, only say that Señor Nieto's demand that these documents should be delivered to him, as President of certain seceding or separate States of New Granada, is a matter for the decision of Her Majesty's Government, whensoever it may succeed in extracting, either from the Consulate at Carthagena, or the Legation at Bogotá, the necessary information with facts and dates bearing on this subject, which information has now apparently been withheld for more than twelve months. Any remark of mine upon such remissness on so important a matter on the

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part of British functionaries would be useless. I can only leave the subject to your Lordship's consideration.

There is a separate bundle of papers marked "Admiralty" inclosed in Rear-Admiral Milne's despatch to the Admiralty of November 15, 1860, No. 288, which relate to the conduct of Captain Hillyar, R.N., of Her Majesty's ship "Cadmus," at Carthagena and Santa Martha, and the withdrawal of Vice-Consul Cano from Rio Hacha, which papers do not appear to me to have any connection with Señor Nieto's note, and upon which, therefore, I can offer no opinion. It is possible that Señor Nieto may mean to complain of Captain Hillyar, but if so the points intended to be raised require elucidation.

I have, &c.
(Signed) J. D. HARDING.

No. 328*.

The Queen's Advocate to Earl Russell.—(Received December 12.)

SPAIN.

Claim of certain persons in Spain to exemption from military service, on the ground of their alleged British parentage.

My Lord, *Doctors' Commons, December 11, 1861.*

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 3rd December instant, stating that with reference to Sir John Dodson's Report of the 21st October, 1841, therewith inclosed, and to the concluding portion of my Report of the 15th December, 1859, he was directed to transmit to me a despatch from Sir Andrew Buchanan (No. 543), and also three despatches from Her Majesty's present Minister at Madrid (Nos. 148, 150, 151), respecting the cases of certain persons in Spain who have claimed exemption from military service in that country on account of alleged British parentage; and to request that I would take these papers into consideration, and report to your Lordship my opinion as the instructions which should be addressed to Sir John Crampton in this matter.

In obedience to your Lordship's commands, I have taken these papers into consideration, and have the honour to report,—

That Sir J. Crampton appears to me to have taken a correct view of this case in No. 148; and that I can see no sufficient grounds for instructing him to interfere in any of the cases herewith transmitted.

GENERAL.

Grandchildren of natural-born British subjects, when both they and their fathers have been born and domiciled abroad, cannot claim exemption from military service on the sole ground of their descent from British grandfathers.

The grandchildren of natural-born British subjects, when both they and their fathers have been born and domiciled in Spain, cannot, in my opinion, rightfully claim to be exempted from military service (as being themselves British subjects) in Spain, merely by reason of their descent from British grandfathers. British law would certainly not admit this principle, nor extend any reciprocity to this class of cases.

The persons in question are (by statute) British subjects in the Queen's dominions; but this will not make them British subjects in Spain; nor protect them, whilst in the country of their birth, from being dealt with as its natural-born subjects.

This general principle has been frequently considered by the Law Officers (see, for instance, their Report of the 1st May, 1856, on this same question, and their Report of the 26th February, 1858, on a question submitted by the French Government with reference to Julian Walewski).

I do not understand upon what principle, after and notwithstanding the despatch of the Earl of Clarendon to Lord Howden of the 8th May, 1856 (in accordance with the Law Officers' Report of May 1, 1856), Her Majesty's Consuls in Spain have persisted in claiming for the persons in question, on the ground that they are British subjects, the absolute right of exemption from military service, and also apparently have registered them and granted them passports as being such. Sir J. Crampton offers no explanation of this practice, which should, in my opinion, be discontinued.

I have, &c.
(Signed) J. D. HARDING.

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CONFIDENTIAL.

Reports from the Law Officers of the Crown: 1862.

No. 1.

The Queen's Advocate to Earl Russell.—(*Received January* 6.)

HONDURAS.

Notice for "Gazette" respecting latest date for presentation of claims before Commissioners.

My Lord, *Doctors' Commons, January* 2, 1862.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 26th December ultimo, stating that with reference to my Report of the 18th May last,* he was directed to transmit to me the accompanying despatch from Her Majesty's Minister at Grey Town (No. 21, November 16th), inclosing a record of the proceedings of the Commission which has been appointed to meet at that place, in accordance with the provisions of the Treaty of Managua of the 20th January, 1860, from which it will be seen that the Commissioners propose to issue a notice, "that after the 1st March next, they will cease to receive claims which may not have been presented within opportune time, under the conditions expressed in the notices published in the 'London Gazette' of the 19th April, 1861;" and to request that I would take these papers into consideration, and furnish your Lordship with my opinion as to whether the publication of such a notice would be right and proper.

The Treaty of Managua and the "London Gazette" of the 19th April were inclosed for my information.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That considering the time occupied in communicating with Mr. Green, and the probability that the notification in question may have been already published by the Commissioners, I am of opinion that its publication in the Gazette will be proper under the peculiar circumstances of the case.

The advertisement should, however, in my opinion, be more extensive than this particular notification, it being apparent that the Commissioners intended the publication of at least a portion of the Minutes of their second meeting, 15th of November (see Record, page 10).

I would suggest that the Gazette advertisement should commence as follows:—

"*Honduras Claims.*—With reference to the notification on this subject inserted in the 'London Gazette' of April 19, 1861, the following extract from the Record of the proceedings of the Commissioners is published for the information of all parties interested in such claims.

"*Second Meeting*, 15th November, 1861.—Memorandum," (and thence, *verbatim*, as marked in pencil to the end of Record at page 12).

I would also suggest that Mr. Green should be instructed to send full information as to the number and character of all claims, as far as hitherto known, both those (1) presented, and (2) not presented; together with any information in his possession as to the reasons for which any claims have not been presented; and to consider and report as to the expediency of publishing any further and more definite notification, to the effect that no claim whatever will be received unless presented on or before the 1st March, 1862. This will depend in some degree upon the number and nature of claims still remaining unpresented. The Notification of November 16, 1861, is not as explicit as could be desired, possibly from inadequate translation, of which there are instances in the Record.

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* See Reports for 1861, page 97.

I presume (although this is not distinctly stated) that the proceedings of the Commissioners, or at all events those of their third meeting (November 16, 1861), containing the notification alluded to, have been duly published in Grey Town. Mr. Green's attention should be directed to the necessity for such publication.

I have, &c.
(Signed) J. D. HARDING.

No. 2.

The Queen's Advocate to Earl Russell.—(*Received January* 6.)

MOSQUITO.

Interpretation to be put upon Article III of Treaty of Managua of 28th January, 1860, respecting the territorial rights of the Mosquito Indians.

Doctors' Commons, January 3, 1862.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 26th of December ultimo, stating that he was directed to transmit to me the accompanying correspondence (Mr. Green's No. 21 of 1861), relative to a difference of opinion which has arisen between Her Majesty's Consul at Greytown and Señor Saeroz, the Governor of that port, as to the interpretation to be put on the IIIrd Article of the Treaty of Managua of the 28th of January, 1860, respecting the territorial rights of the Mosquito Indians; and to request that I would take this matter into consideration, and furnish your Lordship with my opinion thereupon.

In obedience to your Lordship's commands I have taken this matter into consideration, and have the honour to report—

That this discussion seems to have commenced accidentally in the course of a conversation which took place in July 1861, between Consul Green and Señor Saeroz (reported in the Consul's No. 17). This conversation was followed by Consul Green's note to Señor Saeroz of July 22 (Inclosure 5 in No. 17), which note apparently led to that from Señor Marcoleta to your Lordship of November 7. There is nothing in writing from Señor Saeroz.

It does not appear that any particular case has occurred calling for a decision; that the Indians have made any claim or done any act which the Nicaraguan Government has refused to authorize; or that any British interest is concerned. The British Protectorate of the Mosquito territory has ceased under the Ist Article of the Treaty; and the Indians have made no complaint or representation whatsoever to Her Majesty's Government in relation to the question thus raised.

Under these circumstances it does not appear to me to be either incumbent on Her Majesty's Government, or expedient for it, to enter upon any abstract discussion of the precise effect and operation of the Treaty upon the right of the Indians to deal with their "reserved district" or territory as absolute owners, independently of the control of Nicaragua, not merely by disposing of the produce of the soil, but also by its permanent or temporary alienation; as by sales, leases, grants of minerals and mining privileges, and so forth.

The particular position or version of the Treaty which Her Majesty's Government is called upon either to maintain or to controvert, is not apparent. Consul Green's note was founded on his previous conversation with Señor Saeroz; and on that gentleman's claim, on the part of Nicaragua, as understood by the Consul. Señor Marcoleta's note is founded on the note of Consul Green, but takes widely different ground from that taken by Señor Saeroz in his reported conversation, to which Señor Marcoleta does not allude.

Subject to these observations I am of opinion:—

1st. That the position alleged to be maintained by Señor Saeroz (see Consul Green's No. 17), namely, "that Nicaragua *alone has the right* to give privileges for *collecting the native products* of the reserved territory, such as cutting timber, collecting india-rubber, cocoa-nuts, and other natural productions," cannot be maintained consistently with the Treaty. The absolute ownership of this territory is in the Indians; and they are entitled to exercise all such acts of ownership (including those above mentioned) as are not "inconsistent with the sovereign rights" of Nicaragua. On this point I concur generally with Consul Green's remarks in No. 20.

2ndly. The permanent alienation of lands or minerals by the Indians, without the consent of Nicaragua, or the grant of exclusive privileges thereto (more particularly to foreigners) without such consent (if this question is to be considered), is subject to different considerations, into which it is not, in the present state of things, desirable for Her Majesty's Government to enter.

Señor Marcoleta, in his note of November 7, does not put forward any such claim as that of Señor Saeroz; he does not allude to the *exclusive* right to give privileges for collecting the native products; he confines himself to grants of land and mines, and contends "que les concessions dont il s'agit (concessions de terres, exploitation des mines, &c.), ne pourraient être faites *que d'accord avec* le pouvoir souverain;" and he asks for your Lordship's opinion upon this particular question. Thus, whilst Señor Saeroz apparently claims for the Nicaraguan Government the exclusive right to give privileges for collecting the native products, Señor Marcoleta seems only to claim for that Government a joint right of concurring in grants of lands and mineral privileges. The wide practical difference between these two positions is apparent.

Grants of lands or mines made by the Indians without the concurrence of Nicaragua, especially to foreigners resident out of its dominions, may, under certain circumstances, be inconsistent with the sovereign rights of the Republic, and at variance with the true intent of the Treaty.

Her Majesty has, by Article I of the Treaty, "recognized, as belonging to and under the sovereignty of the Republic, the country hitherto occupied or claimed by the Indians." By Article II the reserved district "may not be ceded to any foreign person or State;" and by Article III the customs and regulations by which the Indians are to govern themselves, and all persons residing within such district, are not to be "inconsistent with the sovereign rights of the Republic."

Under these circumstances the claim of Nicaragua to concur in or consent to such grants does not appear to me to be incompatible with the Treaty, or unreasonable in itself; nor can I advise your Lordship to contend for the right of the Indians to make such grants without the concurrence of Nicaragua.

It will be, however, for your Lordship to consider whether, under the peculiar circumstances, any statement to this effect should be now made to Señor Marcoleta; or whether it will be more expedient merely to point out to him that Señor Saeroz's position, which originated the discussion, cannot, in the opinion of Her Majesty's Government, be maintained; and that Consul Green was justified in so stating to him, and that your Lordship sees no necessity at present for entering upon any further discussion on the subject of his note.

I have, &c.
(Signed) J. D. HARDING.

No. 3.

The Law Officers of the Crown to Earl Russell.—(*Received January* 8.)

TURKEY.

Messrs. Argenti and Co. have no right to claim exemption from the operation of Patent tax levied by Wallachian authorities.
Messrs. Argenti and Co. cannot be considered as British subjects.

Doctors' Commons, January 6, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 19th December ultimo, stating that he was directed to transmit to us a correspondence between the Foreign Office and Her Majesty's Agent and Consul-General at Bucharest,* relative to the claim of Messrs. Argenti and Co. to exemption from the operation of a patent tax levied by the Wallachian authorities, on the ground that they are the agents of a British commercial firm; and to request that we would report to your Lordship our opinion as to the instructions that should be given to Mr. Green in regard to this matter.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we see no reason for the claim of exemption from the tax in question on the grounds put forward, that Messrs. Argenti and Co. are the agents of a British commercial firm. For, assuming the persons on whom the tax is sought to be imposed to be agents only, we fail to discover any British element in the firm. The senior partner (Leonidas Argenti) was born at Scio, a part of Turkey, and is, therefore, a natural-born Turkish subject; and not, as appears to have

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* From Consul-General Green, Nos. 3, 26, and 34, of March 2, September 16, and November 17; to Consul-General Green, No. 11, October 15.

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been supposed, a Greek. English letters of naturalization can have no effect upon the status of this gentleman as represented in Turkey. One of the other two partners (Leonidas Argenti) is a French subject, and the other (Ambrose Sechiari) was also born in Scio, as were all the local managers.

Under these circumstances it appears to us that Mr. Green should be instructed not to interfere on behalf of Messrs. Argenti and Co. with reference to the tax in question.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 4.

The Law Officers of the Crown to Earl Russell.—(Received January 7.)

GENERAL.

Conditions under which a privateer may legally act as such in the service of a belligerent Government.

My Lord, *Doctors' Commons, January 7, 1862.*

WE are favoured with your Lordship's commands signified in Mr. Hammond's letter of the 3rd instant, stating that he was directed by your Lordship to request that we would furnish your Lordship with our opinion whether a privateer can legally act as such if she is not fitted out and does not sail from a port of the country in whose service she acts.

In obedience to your Lordship's commands we have taken this question into consideration, and have the honour to report—

That we are of opinion that a privateer may legally act as such in the service of a belligerent Government, provided she is legally the property of citizens or subjects of such Government, and is duly commissioned by such Government, although she may not have been fitted out in or have sailed from a port of that Government.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 5.

The Queen's Advocate to Earl Russell.—(Received January 15.)

SPAIN.

No power to compel Mr. Anderson of the "Caroline" to pay award for damages by collision with the "San José" at Teneriffe in 1861.

My Lord, *Doctors' Commons, January 14, 1862.*

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 11th January instant, stating that with reference to my Report of the 23rd October last,* he was directed to transmit to me a despatch from Her Majesty's Consul at Teneriffe (No. 11), containing explanations as to the circumstances under which the Spanish vessel "San José" was injured by the British vessel "Caroline," in the harbour of Santa Cruz de Teneriffe.

Mr. Layard was also pleased to state that this case was brought under your Lordship's consideration by the Spanish Minister in this country, whose note on the subject, dated 9th September ultimo, as well as a letter from the Board of Trade, dated the 8th October ultimo, containing the explanations given by the master of the "Caroline," were inclosed for reference.

Mr. Layard was also pleased to request that I would take these papers into consideration, and report to your Lordship my opinion as to the answer which should be returned to M. Isturiz's note.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That the note of Señor Isturitz (of which no translation is appended) may, according to my understanding of it, be answered to the following effect:—

"That Her Majesty's Government has no power or authority to compel Mr. Anderson, the master of the British vessel 'Caroline,' to pay the amount stated to have been awarded against him, for damages done by collision with the Spanish vessel 'San José,' which occurred at Teneriffe in May 1861, or to interfere in this case.

"That Her Majesty's Government has inquired into the facts of the case, and is informed that whatever may have been the validity of the decision or judgment pronounced in the case, no attempt whatever was made to enforce it judicially by the arrest or detention of the 'Caroline,' or of her master, or by any similar step, although it was known at the time that she was about to sail.

"That the Consul was never applied to, to assist in detaining her; and that she had all her papers in order, and was permitted to sail without interruption or objection by the authorities of the port.

"That she was not allowed to sail at the request of the British Vice-Consul, who made no request to that effect; that it is not suggested that the Consul or Vice-Consul entered into any undertaking to pay or guarantee the amount awarded; that no application to pay or guarantee the amount was ever made to the Consul or Vice-Consul until after the 'Caroline' had sailed.

"That the Consul only affixed his signature to the proceedings as verifying the signatures, and that he was no party to the suit, nor did he in any manner become responsible for the alleged liability of the master of the 'Caroline.'

"That under these circumstances Her Majesty's Government does not conceive itself to be responsible, and cannot take any step in the matter in question."

I have, &c.
(Signed) J. D. HARDING.

No. 6.

The Law Officers of the Crown to Earl Russell.—(Received January 15.)

UNITED STATES.

Reparation for seizure of the British mail-steamer "Trent." Points of Maritime Law raised by American Government.

My Lord, *Doctors' Commons, January 15, 1862.*

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 9th instant, stating that he was directed by your Lordship to transmit to us therewith a copy of a note which had been addressed by the Secretary of State of the United States to Lord Lyons, Her Majesty's Minister at Washington,* in reply to the communication which the latter was instructed to make to the Government of the United States respecting the seizure on board the mail-steamer "Trent" of the two Commissioners from the Southern States, with their two Secretaries.

Mr. Hammond was also pleased to state that he was directed by your Lordship to acquaint us that Her Majesty's Government accept the reparation offered in Mr. Seward's note; but, as regards the various points of maritime law raised in that note, Her Majesty's Government desired to have our opinion thereupon at our earliest convenience, with the view, if necessary, of making a communication on the subject to the Government of the United States.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That Mr. Seward, in his note,—

1. Admits the justice of the demand made by the British Government, on the ground that the "Trent" was not brought into any port of the United States for adjudication; that omission having been voluntary on the part of the Commander of the "San Jacinto."

2. That he appears to assume that the demand now made by the British Government, and acceded to on this ground by his own, involves in principle the abandonment of claims formerly insisted upon by Great Britain, and the final settlement, "upon principles confessedly American," of a question upon which the two nations were long at issue with each other, and which had led to war between them—referring, manifestly, to the claim of Great Britain to take British seamen in time of war out of neutral ships, the denial of which claim by the United States led to the war of 1812.

3. That he insists, and conceives himself to have shown, that the four persons who were taken from the "Trent" by Captain Wilkes, and their despatches, were contraband of war.

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* See Reports for 1861, page 249.

* In Lord Lyons' No. 800 of 1861.

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4. That he concludes that the "Trent" was on this ground justly liable to capture and confiscation; and that, if she had been taken into a port of the United States for adjudication, not only the four persons in question, and their despatches, might have been lawfully detained, but that the ship herself might have been lawfully condemned, without giving any just cause for reclamation to the British Government.

Upon these several points (which we have arranged in what seems to us the most convenient order, though different from that of Mr. Seward's note), we beg to submit the following observations: premising that the whole proceeding in this case is declared by Mr. Seward to have been "undertaken as a simple, legal, and customary belligerent proceeding by Captain Wilkes to arrest and capture a neutral vessel engaged in carrying contraband of war for the use and benefit of the insurgents."

1. That the justice of the demand made by Her Majesty's Government should be frankly admitted by the Government of the United States is, no doubt, extremely satisfactory; and the satisfaction which must be felt at that admission is not likely to be diminished by the circumstance that it has been found capable of being placed upon a ground which the Government of the United States could not only accept as their own, without receding from any pretensions formerly advanced by them, but in support of which they might fairly and consistently refer to principles uniformly maintained by them during former discussions between their own country and Great Britain. In the proposition that every question of contraband must (in the absence of positive necessity) be brought for adjudication before a Prize Court, in order to justify any cruizer in forcibly taking either persons or things out of a neutral vessel on that ground, we, as your Lordship is already aware, entirely agree: and we think it unnecessary to enter into any examination of the course of reasoning by which that proposition is maintained in Mr. Seward's note, or to consider whether it might not also be supported by other arguments.

Right of Great Britain to take British seamen in time of war out of neutral vessels.

2. We cannot, however, acquiesce in the assumption which Mr. Seward appears to make that, by taking up this ground, the British Government has adopted any new principle, or has acted inconsistently with any claim made and insisted upon by this country at any former time, when questions between the two Governments have been under discussion. We presume that Her Majesty's Government while cordially sharing in the hope expressed by Mr. Seward that nothing may hereafter occur to revive former occasions of difference and hostility between the two nations, will not propose now unnecessarily to enter upon the questions which led to those differences, and will not anticipate or interfere with the judgment and responsibility of those who, if circumstances such as existed in 1804 and 1812 should ever again unfortunately arise, may then be entrusted with the administration of the Government of this country. These questions still remain, in our judgment, open, as they were before. Whatever arguments may have been used on either side in the discussions which formerly took place, and whether the claims of this country were well or ill-founded, there are plain and broad distinctions of principle between the impressment of British seamen on board a neutral merchant-ship and the seizure of the persons of enemies on board such a ship as contraband of war; and as long as these distinctions exist it will be impossible to admit that the rule which governs the latter case must necessarily be applicable to the former. The foundation on which the liability of a ship carrying contraband of war to capture, adjudication, and condemnation rests is, that by carrying such contraband she has violated the duties of neutrality, and has contracted a hostile character. But it has never been pretended that a neutral ship, merely by having British seamen on board while Great Britain is engaged in war, violates any duty of neutrality, or exposes herself to capture or condemnation. No neutral vessel could possibly be carried in for adjudication on such a ground; and, therefore, if the right exists, it cannot depend, for the justification of its exercise in any particular case, on the capture and adjudication of the ship. The taking such seamen from on board neutral vessels was vindicated in the Speech of the Prince Regent on the 9th of March, 1813, not as a hostile measure against vessels violating the laws of neutrality, but as depending upon "the clearly established right of every Sovereign to the allegiance of his own subjects, especially in time of war;" and upon the (asserted) duty of friendly nations, upon principles of international law, to respect that right, and not to interpose their own special jurisdiction on board their merchant-ships at sea between foreign seamen and the claims of the Sovereign of those seamen to their services in time of need. Wheaton, though not admitting the right, distinctly places the claim upon the same foundation of principle. He says: "Every State has an incontestable right to the service of all its members in the national defence; but it can only give effect to this right by lawful means. Its right to reclaim the military service of its citizens can only be exercised within its own territory, or in some other place not subject to the jurisdiction of any other nation. The ocean is such a place; and any State may, unquestionably, there exercise, on board its own vessels, its right of compelling the military or naval services of its subjects. But whether it may exercise the same right in respect to the vessels of other nations is a question of more difficulty. In respect to public commissioned vessels belonging to the State, their entire immunity from every species and purpose of search is generally conceded. As to private vessels, belonging to the subjects of a foreign nation, the right to search them on the high seas, for deserters and other persons liable to military and naval service, has been uniformly asserted by Great Britain, and as constantly denied by the United States."* The claim was also insisted upon by Great Britain on the ground of usage; and it was in its nature one which would have been wholly defeated and rendered nugatory, unless it could be exercised without the delay necessary for adjudication (if adjudication in such a case had been possible); the object of impressment being to supply an immediate and pressing want of seamen on board the ships of war of the country to which the men taken belong, for the exigencies of present and actual service.

These remarks are enough to show the distinction between cases of impressment and cases of contraband. They, at the same time, show that the claim of impressment on board neutral ships did not depend upon any supposition that the seamen impressed were liable to be reclaimed by their own country as criminals. It may not be superfluous to add that, during the existence of the present civil war between the Government of the United States and the States seceding from that Government, in which Great Britain has recognized both parties as belligerents, and has engaged to observe towards both of them the duties of an impartial neutrality (and the existence of which war could alone give a right to the ships of war of the United States to visit or search any British merchant-ship at all); the British Government could not possibly have permitted the persons taken out of the "Trent" to be treated otherwise than as belonging to a Power then at war with the United States; and could not, under these circumstances, have recognized any claim (even if it could have been consistently advanced by the United States) to deal with them, either as offenders against the laws of the United States, or as persons then liable to the military or naval service of that Government.

United States not justified in considering the Confederate Commissioners and their despatches as contraband of war.

3. Upon the question whether the four persons taken out of the "Trent," and their despatches, were contraband of war, we differ from the argument and also from the conclusion, of Mr. Seward; and, as the principles involved in this question are of great importance, and as any misunderstanding upon them might possibly lead hereafter to serious consequences, we think it desirable to explain the view we take of it in some detail. We do this the rather because, if Mr. Seward's argument were acted upon as correct, there would be no security against the capture and detention of other British ships under similar circumstances even during the present war; nor against the recurrence, perhaps in a more aggravated form, of the difficulties which have been now so happily avoided.

The general right and duty of a neutral Power to maintain its own communications and friendly relations with both belligerents cannot be disputed. "A neutral nation," says Vattel,† "continues, with the two parties at war, in the several relations Nature has placed between nations. It is ready to perform towards them both all the duties of humanity, reciprocally due from nation to nation. It is, in everything not directly relating to war, to give them all the assistance in its power, and of which they may stand in need; but this assistance is to be given with impartiality; that is, in not refusing to one of the parties anything on account of his being at war with the other. It is, therefore, equally to allow, as far as the public good will permit, the subjects of the contending parties to visit its territories on business, &c." In the performance

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* Wheaton, "Elements," part ii, chap. 2, sec. 11.

† Vattel, book iii, chap. 7, sec. 118.

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of these duties, on both sides, it has itself a most direct and material interest, especially when (as in the case of Great Britain under the circumstances of the present civil war in North America), it has numerous subjects resident in the territories of both belligerents; and when its citizens, both there and at home, have property of great value, which may be exposed to danger from acts of confiscation and violence, if the protection of their own Government should be withheld.

Acting upon these principles, Sir William Scott, in the case of the Caroline,[*] decided that the carriage of despatches from the French Ambassador resident in the United States, to the Government of France, by an United States' merchant-ship, was no violation of the neutrality of the United States in the war between Great Britain and France, and that such despatches could not be treated as contraband of war. "The neutral country," he said, has a right to preserve its relations with the enemy; and you are not at liberty to conclude that any communication between them can partake, in any degree, of the nature of hostility against you. The enemy may have his hostile projects to be attempted with the neutral State; but your reliance is on the integrity of that neutral State, that it will not favour nor participate in such designs, but, as far as its own councils and actions are concerned, will oppose them. And, if there should be private reasons to suppose that this confidence in the good faith of the neutral State has a doubtful foundation, that is matter for the caution of the Government, to be counteracted by just measures of preventive policy; but it is no ground on which this Court can pronounce, that the neutral carrier has violated his duty by bearing despatches, which, as far as he can know, may be presumed to be of an innocent nature, and in the maintenance of a pacific connexion." And he continues, shortly afterwards:—"It is to be considered, also, with regard to this question, what may be due to the convenience of the neutral State; for its interests may require that the intercourse of correspondence with the enemy's country should not be altogether interdicted. It might be thought to amount almost to a declaration that an Ambassador from the enemy shall not reside in the neutral State, if he is declared to be debarred from the only means of communicating with his own. For to what useful purpose can he reside there, without the opportunities of such a communication? It is too much to say, that all the business of the two States shall be transacted by the Minister of the neutral State, resident in the enemy's country. The practice of nations has allowed to neutral States the privilege of receiving Ministers from the belligerent States, and the use and convenience of an immediate negotiation with them."

That these principles must necessarily extend to every kind of diplomatic communication between Government and Government, whether by sending or receiving Ambassadors or Commissioners personally, or by sending or receiving despatches from or to such Ambassadors or Commissioners, or from or to the respective Governments, is too plain to need argument: and it seems no less clear that such communications must be as legitimate and innocent in their first commencement as afterwards; and that the rule cannot be restricted to the case in which diplomatic relations are already formally established by the residence of an accredited Minister of the belligerent Power in the neutral country. It is the neutrality of the one party to the communications, and not either the mode of the communication or the time when it first takes place, which furnishes the test of the true application of the principle. The only distinction arising out of the peculiar circumstances of a civil war, and of the non-recognition of the independence of the *de facto* Government of one of the belligerents, either by the other belligerent or by the neutral Power, is this:—that "for the purpose of avoiding the difficulties which might arise from a formal and positive solution of these questions, Diplomatic Agents are frequently substituted, who are clothed with the powers, and enjoy the immunities, of Ministers, though they are not invested with the representative character, nor entitled to diplomatic honours."[†] Upon this footing, Messrs. Mason and Slidell (who are expressly stated by Mr. Seward to have been sent as Diplomatic Agents from the Southern States to the Courts of St. James' and of Paris), must have been sent, and would have been (if at all) received; the independence of those States not

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[*] The "Caroline" (Chr. Rob. 461), cited and approved by Wheaton ("Elements," part iv, chap. 3, sec. 22).

[†] Wheaton, "Elements," part iii, chap. 1, sec. 5.

being recognized by Great Britain or France: and their reception, upon this footing, could not have been justly regarded, according to the law of nations, as a hostile or unfriendly act towards the United States.

It appears to us to be a necessary and certain deduction from these principles, that the conveyance of public Agents of this character from Havana to St. Thomas, on their way to Great Britain and France, and of their credentials or despatches (if any), on board the "Trent," was not, and could not be, a violation of the duties of neutrality on the part of that vessel; and both for that reason, and also because the destination of these persons and of their despatches was *bonâ fide* neutral, and unconnected with any military or naval operations of the belligerent Power from which they came, it is, in our judgment, clear and certain that they were not contraband.

The doctrine of contraband has its whole foundation and origin in the principle which is nowhere more accurately explained than in the following passage of Bynkershoek. After stating in general terms the duty of impartial neutrality, he adds:—

"Et sane id, quod modo dicebam, non tantum ratio docet, sed et usus, inter omnes fere gentes receptus. Quamvis enim libera sint cum amicorum nostrorum hostibus commercia, usu tamen placuit, ne alterutrum his rebus juvemus, quibus bellum contra amicos nostros instruatur et foveatur. Non licet igitur alterutri advehere ea, quibus in bello gerendo opus habet; ut sunt tormenta, arma, et, quorum præcipuus in bello usus, milites. . . . Optimo jure interdictum est, ne quid eorum hostibus subministremus; quia his rebus nos ipsi quodammodo videremur amicis nostris bellum facere."[*]

The reason on account of which men and despatches may, in some circumstances, be contraband of war, is here clearly explained; and it is impossible that men or despatches which do not come within that reason can be contraband of war. The penalty of knowingly carrying men or despatches which are contraband of war, is, as Mr. Seward truly states, nothing less than the confiscation of the ship; but it is impossible that this penalty can be incurred when the neutral has done no more than employ means usual among nations for maintaining his own proper relations with one of the belligerents. It is of the very essence of the definition of contraband, in all other cases, that the articles should have a hostile, and not a neutral, destination. "Goods," says Lord Stowell,[†] "going to a neutral port, cannot come under the description of contraband; all goods going there being equally lawful. The rule respecting contraband," he adds, "as I have always understood it, is, that articles must be taken *in delicto*, in the actual prosecution of the voyage to an enemy's port." On what just principle can it be contended that a hostile destination is less necessary, or a neutral destination more noxious, in the case of public agents or despatches, than in the case of arms and ammunition?

Mr. Seward seeks to support his conclusion on this point by a reference to the well-known dictum of Sir William Scott in the case of the "Caroline," that "you may stop the Ambassador of your enemy on his passage;"[‡] and to another dictum of the same Judge, in the case of the "Orozembo," that civil functionaries, if sent "for a purpose intimately connected with the hostile operations,"[§] may fall under the same rule with persons whose employment is directly military.

These quotations are both, as it seems to us, irrelevant. Sir William Scott does not say that an Ambassador sent from a belligerent to a neutral State may be stopped, while on his passage, as contraband, on board a neutral vessel belonging to that or any other neutral State; nor that, if he be not contraband, the other belligerent would have any right to stop him on such a voyage. The sole object which Sir William Scott had in view was to explain the extent and limits of the doctrine of the inviolability of Ambassadors in virtue of that character, for he says:—

"The limits that are assigned to the operations of war against them by Vattel and other writers upon these subjects are, that you may exercise your right of war against them wherever the character of hostility exists. You may stop the Ambassador of your enemy on his passage; but when he has arrived, and has taken upon him the functions of his office, and has been admitted in his

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[*] Bynkershoek, "Quæst. Jur. Publ.," lib. i, cap. 9.

[†] The "Imina" (3 Chr. Rob., 167).

[‡] The "Caroline" (6 Chr. Rob., 468).

[§] The "Orozembo" (6 Chr. Rob., 434).

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representative character, he becomes a sort of middle-man, entitled to peculiar privileges, as set apart for the protection of the relations of amity and peace, in maintaining which all nations are, in some degree, interested."

There is certainly nothing in this passage from which an inference can be drawn so totally opposed to the general tenour of the whole Judgment as that an Ambassador, proceeding to the country to which he is sent on board a neutral vessel belonging to that country, can be stopped on the ground that the conveyance of such an Ambassador is a breach of neutrality, which it must be if he be contraband of war. Sir William Scott is here expressing, not his own opinion merely, but the doctrine, which he considers to have been laid down by writers of authority upon the subject. No writer of authority has ever suggested that an Ambassador proceeding to a neutral State on board one of its merchant-ships is contraband of war. The only writer named by Sir William Scott is Vattel, whose words are these: "On peut encore attaquer et arrêter ses gens" (*i. e.*, gens de l'ennemi) "partout où on a la liberté d'exercer des actes d'hostilité. Non seulement donc on peut justement refuser le passage aux Ministres qu'un ennemi envoye à d'autres Souverains; on les arrête même, s'ils entreprennent de passer secrètement et sans permission dans les lieux dont on est maître."* And he adds an example: the seizure of a French Ambassador, when passing through the dominions of Hanover during war between England and France, by the King of England, who was also Sovereign of Hanover. The rule, therefore, to be collected from these authorities is, that you may stop an enemy's Ambassador in any place of which you are yourself the master, or in any other place where you have a right to exercise acts of hostility. Your own territory, or ships of your own country, are places of which you are yourself the master; the enemy's territory, or the enemy's ships, are places in which you have a right to exercise acts of hostility. Neutral vessels, guilty of no violation of the laws of neutrality, do not come within either description. It would surely be a more just conclusion, that an Ambassador sent to a neutral Power is inviolable on the high seas, as well as in neutral waters, while under the protection of the neutral flag; especially under the flag of the Power to which he is sent.

The other dictum, in the case of the "Orozembo," is even less pertinent. That was the case of a neutral ship, which, upon the effect of the evidence, was held by the Court to have been engaged as an enemy's transport, to convey the enemy's military officers, and civil officers whose duties were intimately connected with military operations, from the enemy's country to one of the enemy's colonies which was about to be the theatre of those operations; the whole being done under colour of a simulated neutral destination. But, as long as a neutral Government, within whose territory no military operations are carried on, adheres to its profession of neutrality, the duties of Civil officers on a mission to that Government, and within its territory, cannot possibly be "connected with" any "military operations," in the sense in which these words were used by Sir William Scott; as, indeed, is rendered quite clear by the passages already cited from his own Judgment in the case of the "Caroline."

In connection with this part of the subject, it is necessary to notice a remarkable passage in Mr. Seward's note, in which he says:—

"I assume, in the present case, what, as I read British authorities, is regarded by Great Britain herself as true maritime law; that the circumstance that the 'Trent' was proceeding from a neutral port to another neutral port does not modify the right of the belligerent capture."

If, indeed, the immediate and ostensible voyage of the "Trent" had been to a neutral port, but her ultimate and real destination to some port of the enemy, or if she had been the bearer of despatches of which the true and ultimate destination was to the enemy, although she undertook to be the medium of transmitting them through a neutral port, we might have been better able to understand the reference to British authorities contained in this passage. It is, undoubtedly, the law, as laid down by British authorities, that if the real and ultimate destination, whether of the vessel or of the despatches, be hostile (that is, to the enemy, or the enemy's country), it cannot be covered and rendered innocent by a fictitious or intermediate destination to a neutral port. But if the real terminus of the voyage of the men and of the despatches be *bonâ fide* in a neutral territory where there is no war, and where no military operations are carried on, no English (nor, as we believe, any American) authority can be found which has ever given countenance to the notion that either the men or the despatches can be subject during such a voyage, and on board such a neutral vessel, to belligerent capture as contraband of war. We regard such a doctrine as wholly irreconcilable with the true principles of maritime law, and certainly with those principles as they have been understood in the Courts of this country.

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* Vattel, lib. iv, chap. 7, sec 85.

The "Trent" might not have been justifiably taken into a port of the United States for adjudication. Reparation, whether condemned or not, must have been insisted on.

4. It remains for us only to notice Mr. Seward's conclusion, that the "Trent" might have been justifiably taken into a port of the United States for adjudication, on the mere ground of the presence on board her of the Southern Commissioners, and their (supposed) despatches. It is clear that, unless these persons or their despatches were contraband, she could not have been lawfully condemned; nor do we conceive that the Government of this country could properly have acquiesced in such a proceeding, without ultimately requiring the fullest reparation, whether she might have been condemned or released by the Prize Courts of the United States. If she had been condemned, the Government of the United States would have become responsible to this country for such a miscarriage of justice in their Prize Courts; the responsibility of the Government beginning, in such a case, where that of the captor ceases. That miscarriage, would not, as we view the matter, have been on a small or doubtful point, but on one vitally concerning the general interests of civilization, and of all neutral and commercial nations. Even if the ship had been released without full and complete indemnity to all persons who might have been sufferers by her detention, the case would still have been one calling, in our humble judgment, for energetic remonstrance on the part of this country. For packets engaged in the postal service, and keeping up the regular and periodical communications between the different countries of Europe and America and other parts of the world (though, in the absence of Treaty stipulations, they may not be exempted from visit and search in time of war, nor from the penalties of any violation of neutrality, if proved against them), are still, when sailing in the ordinary and innocent course of their legitimate employment (which consists in the general conveyance, without particular inquiry, of mails and passengers), entitled to peculiar favour and protection from the Governments in whose service they are virtually engaged. To detain, disturb, or interfere with them, without the very gravest cause, would be an act of a most noxious and injurious character, not only to a vast number and variety of individual and private interests, but to the public interests of neutral and friendly Governments.

By the Treaty between Great Britain and the United States, provision is made for the undisturbed continuance of these facilities of postal communication between the two countries, even in the event of war; and the same considerations which led to that stipulation are equally applicable to all other similar lines of postal communication. Heavy, therefore, in our opinion, would be the responsibility of any unjustifiable capture and detention (even if the forms of international procedure were strictly followed) of any mail-packet of this description; and we cannot hesitate to express our belief that the full extent of that responsibility would be incurred, unless the circumstances under which the detention might take place should be such as to furnish very different grounds of justification from any which could have been alleged in the case of the "Trent."

We have, &c
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 7.

The Queen's Advocate to Earl Russell.—(*Received January* 16.)

UNITED STATES.

United States' authorities not justified in putting in irons masters and seamen of the "Revere" and "Louisa Agnes," captured for breaking blockade.

My Lord, *Doctors' Commons, January* 15, 1862.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 8th January instant, stating that he was directed to transmit to me the accompanying correspondence with Her Majesty's Minister at Washington,* relative to the treatment by the United States' authorities of the masters

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* Lord Lyons, No. 547; to Lord Lyons, No. 395; Lord Lyons, No. 631; to Lord Lyons, No. 434; Lord Lyons, Nos. 723 and 764.

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and seamen of two British schooners, "Revere" and "Louisa Agnes," which have been captured on a charge of breaking the blockade by the United States' vessel of war "Cambridge;" and to request that I would take these papers into consideration, and furnish your Lordship with any observations I may have to make thereupon.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That the putting the seamen in question in irons, under the circumstances in which, and for the period for which, this was avowedly done, was, in my opinion, wholly unjustifiable. These cases (of the "Revere" and the "Louisa Agnes") are distinguishable from the case of nine British seamen, imprisoned and put in irons in Fort Lafayette, upon which I reported on the 2nd December ultimo. These nine men were captured while voluntarily serving on board Confederate merchant-ships, and thereby became liable to be treated as prisoners of war, which is not the case with respect to the cases of the "Revere" and the "Louisa Agnes," two British vessels captured for breach of blockade.

The tone of Mr. Seward's note to Lord Lyons of December 3 is not satisfactory; and his suggestion at page 13 of this note as to the probability of the two seamen in question, if left free from irons, attempting the life of the prize master, or the delivery of the prize, when the prize crew apparently consisted of five in all, appears to me wholly unwarranted, there not being any ground whatever for suspecting them of having attempted, or even entertained, any such design.

I entirely concur with the observations of Lord Lyons in No. 764, and of Admiral Milne in his letter of October 28, 1861. The crews of neutral vessels captured and sent in for adjudication for breach of blockade are not enemies or prisoners of war; they are only to be detained to ensure their temporary safe keeping.

The observations of Lord Stowell in the case, cited by Admiral Milne, of the "San Juan Baptista" and "La Purissima Concepcion" (5 C. Robinson, 40), are conclusive as to the law and usage of nations on the subject.

This appears to be the first case in which this point has arisen between Her Majesty's Government and that of the United States; and the concluding paragraph of Lord Lyons' note of December 3, together with the special instructions which he states will be issued to the flag officers of blockading squadrons on the subject, may probably render it needless, in your Lordship's opinion, to address any official communication to Mr. Seward, inasmuch as the result of Lord Lyons taking up these cases has been practically successful.

If, however, any such communication should, in your Lordship's opinion, be desirable, I would suggest that it may be to the following effect:—"That your Lordship had seen with satisfaction, that upon two cases having been brought to Mr. Seward's notice by Lord Lyons, in which British seamen captured and detained in charge of United States' prize crews, on board British merchant-vessels, for breach of blockade, had been unjustifiably confined in irons, Mr. Seward had informed Lord Lyons that an instruction would be addressed from the Secretary of the Navy to the flag officers of the blockading squadrons, to use irons only when and so long as necessary, and in all cases to pursue the utmost kindness, consistent with the safety of captures and prizes, towards seamen captured in attempting to break the blockade," and that your Lordship trusted that this instruction would be so carried into effect as to prevent the recurrence of any such cases; or to that effect.

I have, &c.
(Signed) J. D. HARDING.

No. 8.

The Attorney and Solicitor-General to Earl Russell.—(Received January 16.)

UNITED STATES.

Establishment of coal-depôts in British Colonies by belligerents.

My Lord, *Temple, January* 15, 1862.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of this day's date, stating that he was directed by your Lordship to transmit to us therewith a copy of a Report from Commodore Dunlop, inclosing copies of correspondence with the Governor of Nassau, New Providence, respecting the supposed intention of the Government of the United States to establish a depôt at that port, and the apprehensions which the Governor seems to entertain of the possible proceedings of the United States' cruizers in the neighbouring waters, to be inferred from the preparations made by a cruizer now there to pursue any Southern vessel belonging to the so-styled Confederate States now in that port.

Mr. Hammond was also pleased to state that he was directed by your Lordship to request that we would take this despatch into immediate consideration, and report to your Lordship what instructions should be given to the naval or Colonial authorities in regard to the matters to which he had specifically referred, as well as in regard to any other points adverted to in the correspondence which might seem to us to call for observation.

Mr. Hammond was further pleased to state that your Lordship would be glad to be enabled to inform the Board of Admiralty early to-morrow of the opinion we might arrive at, in order that such instructions as may appear requisite may be sent out by the West India mail to-morrow evening.

In obedience to your Lordship's commands, and during the temporary absence from town of Her Majesty's Advocate-General, we have taken this despatch into consideration, and have the honour to report—

Coal-depôts by belligerents to be refused.

1. That we think Lieutenant-Governor Nesbitt has acted properly in refusing to allow the proposed coal-depôt to be formed at Nassau, or to allow American men-of-war of either party to call at Nassau during the war. The formation or permission of such a depôt, for a purpose so directly connected with belligerent operations, would, in our opinion, be inconsistent with the neutrality of this country; and we think that it will be proper to instruct the Lieutenant-Governor that no such depôt can be permitted; but that if there are there any coals belonging to the Government of the United States, which may have been brought to Nassau in *bonâ fide* ignorance that the use intended to be made of them would be objected to, permission may be given to remove such coals, provided the whole quantity be simultaneously removed.

Belligerents to be prevented from making any British harbour a place from which to pursue the enemy's vessels.

2. That the authorities of the Bahama Islands will clearly be justified in preventing either of the belligerents from making any British harbour a place from which to pursue the enemy's vessels, though it may not be intended actually to assail them within British waters; and we think that the Lieutenant-Governor ought to be instructed to take such measures as may be necessary for that purpose, and that the naval authorities should be ordered to co-operate with him therein. Any such use of British waters would be a plain violation of the rights of the neutral territory. There is, however, some difficulty in defining, *à priori*, what ought to be deemed to be the proper test of such use; the rule that an interval of twenty-four hours shall elapse before a ship of one belligerent, leaving neutral waters, shall be followed by a ship of war of the other belligerent, being one which cannot be said to be established by the general consent and usage of nations, so as to have become part of international law. If (as seems to us probable) it would be desirable to establish a positive rule of this kind, we think that the most proper and unexceptionable course would be to do so by Royal Proclamation, made applicable to all those places to which the rule may be intended to apply; and if this course should be followed, the Proclamation should be so expressed as to prevent the pursuit, within the prohibited time, of any merchant-ships or ships of war of either belligerent; and it might be expedient, by the same Proclamation, to make express provision against the coaling of ships of war of either belligerent in such ports and places as it may not be thought proper to allow to be used for that purpose.

Belligerent operations to be strictly prevented within the British waters (considered as extending three miles from the shore).

3. With respect to any belligerent operations within British waters (which are to be considered as extending everywhere, in all British possessions, to a distance of three miles from the shore), we are of opinion that they should be strictly prevented, and that force ought, if necessary, to be used for that purpose. But we think that Her Majesty's naval officers cannot be instructed to interfere with any hostile operations which may be carried on by either belligerent wholly beyond these limits; and that, although the presence in the immediate neighbourhood of British waters, but beyond these limits, of a belligerent naval force, on the look-out for ships of the other belligerent, or for neutral ships suspected of carrying contraband or breaking blockade, may be attended with inconvenience to the trade of the Bahama Islands, it cannot lawfully be prevented by any interference on the part of the British authorities.

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Cannot seize vessels of belligerents in British ports having on board contraband of war.

4. We observe, that Commodore Dunlop mentions the presence in the port of Nassau of a Southern steamer suspected of having contraband of war on board, in terms which imply that if sufficient proof of that fact had been brought forward, this vessel would have been deemed liable to seizure by the Colonial authorities; but unless there be some local law applicable to such a case (of which we are not aware), we do not conceive that the Colonial authorities would be justified in seizing any vessel, either of one of the belligerents or of any neutral Power which might come into any British port, merely on the ground that such vessel had on board contraband of war. She might be entitled to no protection, if seized by the other belligerent beyond the limits of neutral waters, but she would not be liable to seizure by the British authorities on that ground.

Having so recently reported our opinion upon the important questions of maritime law raised by Mr. Seward's note in the case of the "Trent," we do not conceive it to be necessary that we should advert, on this occasion, to those parts of Commodore Dunlop's despatch which relate to the same or any similar questions.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.

No. 9.

The Queen's Advocate to Earl Russell.—(Received January 23.)

UNITED STATES.

Shipment of marine steam-engines and iron armour plates for use of United States. Question of contraband of war.

My Lord, *Doctors' Commons, January* 23, 1862.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 22nd January instant, stating that he was directed to transmit to me the accompanying letters from Mr. Mc Cay and Messrs. James Jack and Co., dated respectively the 14th and 16th January instant, requesting to be informed whether marine steam-engines and iron armour-plates can lawfully be purchased in this country, and shipped for the use of the United States.

Mr. Hammond was also pleased to inclose a letter from the Council Office, dated the 18th instant, stating that the Commissioners of Customs are authorized to permit the free exportation of all the articles that were prohibited to be exported by Her Majesty's Proclamations of the 30th of November and 4th of December last, until those Proclamations shall have been formally rescinded; and to request that I would take these papers into consideration, and furnish your Lordship with my opinion, at my earliest convenience, as to what answers should be returned to Mr. Mc Cay and Messrs. James Jack and Co.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That there is not at present any legal objection or impediment to the manufacture or export to the United States of America of any of the articles mentioned by Messrs. James Jack and Co., and Mr. Donald Mc Kay, viz., marine steam-engines, iron armour-plates for vessels of war, or gun-boat towers, but it is competent to Her Majesty at any time, by Proclamation or Order in Council, to prohibit their export.

The exercise of this power is a question depending on various considerations, and entirely within the discretion of Her Majesty's Government. Your Lordship can give no undertaking whatever on the subject.

An answer to this effect may, if your Lordship thinks fit, be returned to these applications.

I have, &c.
(Signed) J. D. HARDING.

No. 10.

The Law Officers of the Crown to Earl Russell.—(Received January 27.)

UNITED STATES.

As to what constitutes an effective blockade.

My Lord, *Doctors' Commons, January* 25, 1862.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 23rd January instant, in which he stated that he was

directed by your Lordship to transmit to us the accompanying letter from the Commander of Her Majesty's ship "Racer,"* on the state of the blockade of the ports of Charleston and Wilmington; and to request that we would take these papers into our consideration, and favour your Lordship with our opinion as to whether a state of blockade being notified, and a sufficient number of ships stationed at the entrance of the port, constitute an effective blockade, although, as stated in the inclosed papers, various ships may have successfully escaped through it.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we are of opinion that, assuming that the blockade is duly notified, and also that a sufficient number of ships is stationed, and remains at the entrance of the port, really to prevent access to it, or to create an evident danger of entering or leaving it, and that these ships do not voluntarily permit ingress or egress, the fact that various ships may have successfully escaped through it (as in the particular instances mentioned in these papers), will not *per se* prevent it from being an effective blockade by international law.

The adequacy of the force to maintain a blockade being, however, always and necessarily a matter of fact and evidence, and one as to which different opinions may be entertained, it will probably be considered that a neutral State ought to exercise the greatest caution with reference to the disregard of a *de facto* and notified blockade, and ought not to disregard it, except when it entertains a conviction, which is shared by neutrals generally having an interest in the matter, that the power of blockade is abused by a State either unable to institute or maintain it, or unwilling, from some motive or other, to do so.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 11.

The Law Officers of the Crown to Earl Russell.—(Received January 28.)

TURKEY.

Restriction on the free sale of charcoal imported into Constantinople by Ionian, Demetrio Antippa.

Doctors' Commons, January 25, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 18th January instant, stating that he was directed by your Lordship to transmit to us a despatch from Her Majesty's Consul-General at Constantinople (No. 42, December 12, 1861), relative to a restriction placed by the Prefect at Constantinople on the free sale of charcoal imported into that capital by an Ionian named Demetrio Antippa; and to request that we would furnish your Lordship with our opinion whether the protest made by Mr. Cumberbatch is well founded, and whether Her Majesty's Government can claim under Treaty, for British and Ionian subjects, the right to unrestricted action in regard to the selling price of merchandize.

In obedience to your Lordship's commands we have taken these questions into consideration, and have the honour to report—

That we observe that the particular act complained of, appears to be an arbitrary order (whether verbal or written does not appear), from Hussein Bey, to the effect that Antippa, an Ionian subject, shall not sell two cargoes of charcoal, purchased by him in the Ottoman dominions, and imported into Constantinople after payment of the established duties thereon, for more than a certain price (viz., 45 piastres per 100 okes), no general regulation or law, either fixing the price, or authorizing the Bey to fix it, at which charcoal is to be sold at Constantinople, is referred to; and it would appear (from Inclosures 3, 5, and 6, in Consul Cumberbatch's No. 42) that in previous instances similar attempts at interference by the Turkish local authorities have been successfully resisted. There does not appear anything in the Capitulations or Treaties to justify the conduct of Hussein Bey; and the note of the Turkish Government, of 27th August, 1838, on the IInd Article of the Convention of Balta Liman, is also in favour of the Consul's contention. *Primâ facie*, therefore, and in the absence

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* In Admiralty letter of January 20, 1862.

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of any general law or regulation fixing prices at which sales of certain articles shall take place, or conferring powers to fix them on the local authorities, British and Ionian subjects in Turkey are, in our opinion, clearly entitled to unrestricted action in regard to the selling price of merchandize owned by them.

If, however, any such law or regulation is relied on, then it must be referred to for the purpose of determining its consistency with existing Treaties.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 12.

The Law Officers of the Crown to Earl Russell.—(Received January 27.)

JAPAN.

Power of Consuls to punish persons returning to Japan, having been banished by Consular sentence.

Doctors' Commons, January 27, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 21st January instant, in which he stated that he was directed by your Lordship to transmit to us a despatch from Mr. Alcock, Her Majesty's Minister at Yeddo (No. 89 of the 27th of September, 1861), inclosing a copy of letter which he had addressed to the Attorney-General at Hong Kong, with reference to the case of persons returning to Japan in disregard of a Consular sentence banishing them from that country, and suggesting that Her Majesty's Consuls should be armed with power to visit with additional punishment such disregard of a Consular sentence, and to request that we would take this matter into our consideration, and favour your Lordship with our opinion thereupon.

Mr. Hammond was also pleased to inclose, for reference, copies of the Orders in Council, relating to Japan, of the 23rd of January, 1860, and 4th of February, 1861; as well as the Report of the Law Officers of the 18th of April, 1861,* upon a somewhat similar question which had arisen in regard to British subjects returning to Turkey, after being banished from that country. And he was also pleased to state that instructions founded upon that Report were addressed at the time to Her Majesty's Ambassador at Constantinople and to the Judge of the Consular Court, but that no replies have yet been received from those officers.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we are of opinion that, under the Order in Council of the 23rd of January, 1860 (Article 21) no power of second deportation from the dominions of the Tycoon of Japan is conferred on the Consul, on the ground and by reason merely of a deported person returning back to Japan after deportation, and, on his return, not finding satisfactory security for future good behaviour.

The Article in question does not appear to have contemplated the return of deported offenders to Japan; and we think that the Consular power of deportation is exhausted by the single exercise of it after a second conviction, or, under under the following Article (22), after a first conviction.

As to the course suggested by Mr. Alcock of refusing protection, and apprising the Japanese authorities of the position of returned offenders, the question raised is one of policy, rather than of law; but we venture to express a serious doubt whether, taking into consideration the character of the Japanese, and their practices and habits, such a course would be either expedient or safe. The proper course (as it appears to us) would be, if a practical inconvenience be found to arise under the existing Order, to advise Her Majesty to issue a further Order imposing, in respect of such returning after deportation (without more), the penalty of fine and imprisonment, to be followed again by deportation in the absence of security for good behaviour being given, and so *toties quoties*, as often as any deported offender may return.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

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* See Reports for 1861, page 68.

No. 13.

The Queen's Advocate to Earl Russell.—(Received January 27.)

UNITED STATES.

Landed property belonging to Mr. Ross, in Virginia, taken possession of by United States' Government.

My Lord, *Doctors' Commons, January 27, 1862.*

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 18th January instant, in which he stated that with reference to the damage done to the estate of Mr. Ross in Virginia in consequence of its occupation by Federal troops (reported on in my letter of the 17th June ultimo*), he was directed by your Lordship to transmit to me, together with the previous papers, a letter from Mr. Ross, dated the 11th instant, again requesting Her Majesty's Government to bring his claim for compensation before the Government of the United States, and to request that I would take Mr. Ross' application into consideration, and favour your Lordship with my opinion as to the course which should be adopted.

In obedience to your Lordship's commands I have taken these papers into my consideration, and have the honour to report—

That the information contained in the papers is still so imperfect that it is difficult to advise with any precision as to the course to be adopted. Lord Lyons in his letter to Mr. Ross' agent (Mr. Cassels) 15th June, 1861, pointed out the Regulations published by the United States' Government as to claims of this character.

There is no precise statement of the steps taken in accordance with these Regulations; but Mr. Ross states that he has made a claim for damages amounting to 19,997 dollars 27 cents "in the proper quarter" (whatever that may be), and that "no satisfaction of any kind could be got." It does not appear upon what estimate, evidence, or vouchers this claim was made, or how it was supported. It appears, however, that the United States' Government has paid Mr. Ross rent for his premises, at the rate of 300 dollars per month; but it does not appear whether this was claimed by Mr. Ross, either separately or as a portion of his general claim, or was voluntarily offered, and on what terms, by the United States' Government, independently of the claim. The payment of this rent, therefore, requires full explanation.

There is no information forthcoming as to the course which has been followed by the United States' Government in similar cases of claims made upon it by its own citizens, or by other foreigners, which information is necessary for enabling Her Majesty's Government to decide upon its course.

As the case actually stands, I cannot say that Mr. Ross has shown any sufficient ground for the intervention of Her Majesty's Government; he has made a claim which has not been rejected, and he has received something by way of rent on account of the military occupation of his property; he does not state that any other claims of the same class have been treated more favourably. There seems, nevertheless, no reason to doubt that the facts are substantially such as he represents, and that he has sustained serious losses by the use made of his property for military purposes, for which he is entitled to some compensation beyond that which he has received. He requests your Lordship to cause his claim to be brought to the notice of Mr. Seward "in a friendly way." I can only suggest that he may be desired to instruct his agent to explain fully to Lord Lyons the present state of the case, accompanying such explanations with full particulars as to dates, amounts, vouchers, and official communication with the United States' Government, and particularly to explain to Lord Lyons whether any, and what, legal means of redress are competent to Mr. Ross, and also what is the course which has been followed by the United States' Government in other cases of the same kind.

Lord Lyons may be instructed, on receiving this information, to use his influence to get the claim put in a proper train for settlement, if he shall upon the whole consider this advisable; but otherwise to send home the papers with his observations thereon, and not to make any official application to the United States' Government in the matter without instructions to that effect.

I have, &c.
(Signed) J. D. HARDING.

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* See Reports for 1861, page 124.

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No. 14.

The Law Officers of the Crown to Earl Russell.—(*Received January* 28.)

UNITED STATES.

Export of arms to the United States.

Doctors' Commons, January 27, 1862.

My Lord,

WE were honoured with your Lordship's commands signified in Mr. Hammond's letter of the 23rd January instant, stating that he was directed by your Lordship to transmit to us the accompanying letter from the Liverpool, New York, and Philadelphia Steam-Ship Company, dated the 21st January instant, desiring to be informed whether, under the provisions of the Proclamation of the 13th of May last, they might lawfully convey arms to the United States.

Mr. Hammond also inclosed a letter from the Council Office, stating that the Commissioners of Customs were authorized to permit the free exportation of all the articles that were prohibited to be exported by Her Majesty's Proclamations of the 30th of November and 4th of December last, until those Proclamations should have been formally repealed; and to request that we would take those papers into our consideration and furnish your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That the applicants may be informed that, under existing circumstances, the Commissioners of Customs are authorized to permit the free exportation of the articles prohibited to be exported by Her Majesty's Proclamations of November 30 and December 4, 1861, until those Proclamations shall have been formally rescinded; that, consequently, there is no legal objection or impediment on the part of Her Majesty's Government, or by the law of England, to the exporting or carrying to any port in the United States, or in the Confederate States, any articles whatsoever, whether contraband of war or of whatever description.

That it is competent to Her Majesty at any time, by Proclamation or Order in Council, to prohibit the export of arms, ammunition, gunpowder, military and naval stores, and any articles which Her Majesty shall judge capable of being converted into or made useful in increasing the quantity of military or naval stores; and that Her Majesty may at any time, and without previous notice, find it necessary to exercise this power. That the carrying by sea any article contraband of war, for the use of one belligerent, although it is no infringement of the law of this country, subjects the ship and cargo concerned therein to the risk of capture and condemnation by the other belligerent, as the applicants are doubtless aware.

An answer to the above effect may be returned to this application, subject to your Lordship's approval.

We assume that the Liverpool, New York, and Philadelphia Steam-Ship Company has no contract with, or regular employment in, the service of Her Majesty's Government. Should this be the case, we must request further information.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 15.

The Queen's Advocate to Earl Russell.—(*Received January* 28.)

UNITED STATES.

Seizure of the "Admiral" for alleged breach of blockade of Savannah.

Doctors' Commons, January 28, 1862.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 22nd January instant, stating that he was directed by your Lordship to transmit to me a letter from Messrs. Fernie Brothers, of Liverpool, dated the 16th January instant, complaining of the seizure, by an United States' man-of-war, of their vessel, the "Admiral," for an alleged breach of the blockade of Savannah; and to request that I would take this case into my consideration, and report to your Lordship my opinion thereupon.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That there is nothing at present forthcoming to call for the intervention of Her Majesty's Government in this case. The "Admiral" appears to have sailed from Liverpool on the 13th September last, laden with salt under a charter-party, "to proceed off the port of Savannah, and if the blockade is raised, then to proceed into that port, and deliver the salt as per bill of lading, and if the blockade be not raised, then to proceed to St. John, New Brunswick."

There is a letter from the owners to the master of similar purport, dated the 12th September, instructing the master to call off the port, and endeavour to meet the blockading ship, and if warned off, to go to St. John.

The master states that he arrived "off the coast" on the 11th of December, after a very long passage, and that she was captured on the same day by the United States' ship of war "Alabama," thirty miles from the entrance to Savannah, without any previous "warning-off." It does not appear whether she had previously met with any vessel or received any further information as to the blockade. She has been sent to Philadelphia, where prize proceedings appear to have been instituted against her, and the master is in communication with Her Majesty's Consul there. Her owners rely on the absence of any previous warning-off from the blockading force, which warning they allege has been given in many similar cases, and they state that the vessel warned has thereupon been allowed to depart for her "alternative port."

Some intimation of the intended adoption by the United States' cruizers of this practice of "warning-off" previous to capture, was, I believe, given by President Lincoln in a Proclamation as to the blockade of the Southern ports issued in April last (of which I have no authentic copy), but I am not aware in what precise terms this intimation was given, or how it has been carried out in practice. Her admitted knowledge of the existence of the blockade when she sailed, and her intention to inquire of the blockading force at the mouth of the port as to its continuance, and her reliance on receiving a warning-off before capture, are questions for the Prize Court.

British prize law does not require any "warning-off" before capture, in cases where the blockade was previously known; nor does it allow of inquiries being made as to the continuance of a blockade of the blockading force off the port.

The attention of Lord Lyons and of the Consul at Philadelphia should be directed to the case, especially as regards the American law and practice on this point, and the owners may be so informed.

I have, &c.
(Signed) J. D. HARDING.

No. 16.

The Law Officers of the Crown to Earl Russell.—(*Received January* 28.)

UNITED STATES.

Draft Rules for the treatment of belligerent ships of war or privateers within British jurisdiction. Case of the "Nashville" and "Tuscarora."

Doctors' Commons, January 28, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 24th January instant, stating that he was directed by your Lordship to recapitulate the points upon which (as generally agreed upon in the meeting of some of Her Majesty's confidential servants held that day at the Foreign Office, at which we were present) it was desired that we should frame the Rules which might be required to give effect to the understanding then arrived at:—

1. That the port of Nassau should be closed as a port to ships of war of both belligerents in the contest now prevailing between the United States and the so-styled Confederate States of North America.

2. That the rule in regard to belligerent ships of war or privateers not being allowed to quit a British port in pursuit until the expiration of twenty-four hours after the departure of ships of war or privateers of the other belligerent, should be extended so as to afford the like exemption from pursuit to unarmed vessels.

3. That the Confederate steamer "Nashville" should be required to depart from British waters, or from the port in which she then was, within twenty-four

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hours; and the Federal steamer "Tuscarora" should be required to depart from British waters, or from the port in which she then was, within forty-eight hours, from a date to be named.

4. That, for the future, the ships of war and privateers of either belligerent should be required to depart from a British port in the United Kingdom and its Colonies twenty-four hours after their entrance, except in case of requiring repairs, and then twenty-four hours after such repairs are effected.

5. That such ships of war or privateers should be allowed to take in, while in a British port, only provisions and necessaries for the subsistence of their crews.

6. That so much coal only should be furnished in a British port to the ships of war or privateers of either belligerent as should be sufficient to carry them to the nearest port of their own country, or to some nearer destination.

7. That no coal should be supplied again to a ship of war or privateer of either belligerent in a British port until the expiration of three months after it had been allowed to obtain a supply in a British port.

Mr. Hammond was also pleased to state that your Lordship would be glad to receive our answer to this reference at our earliest convenience.

Mr. Hammond was further pleased to state, that he inclosed despatches from Mr. Grey and Mr. Edwardes, inclosing the French and Spanish Rules on some of the points above specified.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we have prepared the accompanying draft of such Rules as we conceive to be proper for carrying into effect the several objects which Her Majesty's Government have in view, as explained in Mr. Hammond's letter. We have observed the same order in which those objects are enumerated by Mr. Hammond, but being of opinion that the three last heads of Mr. Hammond's enumeration may conveniently be combined in a single Rule, we have framed one Rule for that purpose accordingly.

We have adopted, as part of the *second* of our draft Rules, a general prohibition of the use of any British port as a station or place of resort for warlike purposes, for which a precedent occurs in the Gibraltar Proclamation of the 12th October, 1826.

Not being, at present, aware of the manner in which these Rules are intended to be promulgated, nor whether they are all to be embodied in one document, or some of them to be separately issued, we have not introduced them by any general recital or preamble, and we have framed the first and third so as to be capable of being separated, without inconvenience, from the rest.

If any preamble should be thought desirable, the forms usual in similar cases may be easily adapted to the draft. The second, fourth, and fifth Rules, if adopted in substance, will naturally go together.

The Spanish Rules, as well as the French, seem to be confined to ships of war or privateers coming into port with prizes; but the same principle justifies any other restriction on the use of neutral ports by belligerent vessels which may be thought requisite or convenient for the better preservation of a complete and impartial neutrality. At the same time, we consider it our duty to point out that these restrictions are very stringent, and, in many respects, peculiar; and it might be possible to suggest cases (as the case of many merchant-ships of one belligerent sailing from the same port successively in the presence of an armed ship of the other belligerent) in which the effect of such restrictions might be, to cause an unreasonable detention of the armed vessels of one of the belligerents. We do not, however, consider it our province to enter into the various questions of policy connected with this subject, which belong exclusively to Her Majesty's Government.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

Inclosure in No. 16.

*Draft Rules.**

1. DURING the continuance of the present hostilities between the Government of the United States of North America and the States calling themselves "the Confederate States of America," or until Her Majesty shall otherwise order, no ship of war or privateer belonging to either belligerent shall be permitted to enter or remain in the port of Nassau, or any other port, roadstead, or waters of the Bahama Islands, except by special leave of the Lieutenant-Governor of the Bahama Islands, or in case of stress of weather. If any such vessel should enter any such port, roadstead, or waters, by special leave, or under stress of weather, the authorities shall require her to put to sea as soon as possible, without permitting her to take in any supplies beyond what may be necessary for her immediate use.

If, at the time when this order is first notified in the Bahama Islands, there shall be any such vessel already within any port, roadstead, or waters of those islands, the Lieutenant-Governor shall give notice to such vessel to depart, and shall require her to put to sea, within such time as he shall, under the circumstances, consider proper and reasonable. If there shall then be ships of war or privateers belonging to both the said belligerents within the territorial jurisdiction of Her Majesty, in or near the same port, roadstead, or waters, the Lieutenant-Governor shall fix the order of time in which such vessels shall depart. No such vessel of either belligerent shall be permitted to put to sea until after the expiration of at least twenty-four hours from the time when the last preceding vessel of the other belligerent (whether the same shall be a ship of war or privateer, or merchant-ship), which shall have left the same port, roadstead, or waters, or waters adjacent thereto, shall have passed beyond the territorial jurisdiction of Her Majesty.

2. During the continuance of the present hostilities between the Government of the United States of North America and the States calling themselves the Confederate States of America, all ships of war and privateers of either belligerent are prohibited from making use of any port or roadstead in the United Kingdom of Great Britain and Ireland, or in any of Her Majesty's colonies or foreign possessions or dependencies, or of any waters subject to the territorial jurisdiction of the British Crown, as a station or place of resort for any warlike purpose, or for the purpose of obtaining any facilities of warlike equipment: and no ship of war or privateer of either belligerent shall hereafter be permitted to sail out of, or to leave, any port, roadstead, or waters, subject to British jurisdiction, from which any vessel of the other belligerent (whether the same shall be a ship of war, a privateer, or a merchant-ship), shall have previously departed, until after the expiration of at least twenty-four hours from the departure of such last-mentioned vessel beyond the territorial jurisdiction of Her Majesty.

3. Whereas there have been for some time past, and now are, within the limits of Her Majesty's territorial jurisdiction in or near Her Majesty's port of Southampton, two armed ships called the "Nashville" and the "Tuscarora," one of which belongs to the said States calling themselves the Confederate States of America, and the other belongs to the United States of North America; and whereas the said ship called the "Nashville" arrived in the said port some time before the said ship called the "Tuscarora," it is hereby ordered that the said ship called the "Nashville" be, and she is hereby required to leave the said port, and the waters within British jurisdiction adjacent thereto, and to proceed beyond the limits of the territorial jurisdiction of Her Majesty, within a period not later than twenty-four hours from of the clock in the forenoon (afternoon) on the day of 1862. And the said ship called the "Tuscarora" is, in like manner hereby required to leave the said port, and the waters within British jurisdiction adjacent thereto, and to proceed beyond the limits of the territorial jurisdiction of Her Majesty, within a period not later than forty-eight hours from of the clock in the forenoon (afternoon) on the same day of , 1862: Provided, nevertheless, that, if either of the said two ships shall put to sea before the expiration of the period hereby limited for that

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* For Rules as issued, see Letter to Admiralty of January 31, 1862; laid before Parliament with North American Papers, 1862 (No. 1), p. 140.

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purpose, the other of the said ships shall not be permitted to depart until after an interval of twenty-four hours from the time when the ship which shall so first put to sea shall have passed beyond the territorial jurisdiction of Her Majesty: and if any other vessel belonging to either belligerent (whether the same shall be a ship of war, or a privateer, or a merchant-ship), shall have left the same port or the waters within British jurisdiction adjacent thereto, previously to the sailing of both or either of the said two ships, that one of the said two ships which shall belong to the other belligerent shall not be permitted to depart until after a like interval of twenty-four hours from the time when such other vessel as aforesaid shall have passed beyond the territorial jurisdiction of Her Majesty; and the times hereinbefore limited for the departure of the said two ships called the "Nashville" and the "Tuscarora" respectively, shall, in case of necessity, be extended so far as may be requisite for giving effect to this proviso but not further or otherwise.

4. If any ship of war or privateer of either belligerent shall, after the time when this Order shall be first notified and put in force in the United Kingdom, and in the several colonies and foreign possessions and dependencies of Her Majesty, respectively enter any port, roadstead, or waters belonging to Her Majesty, either in the United Kingdom or in any of Her Majesty's colonies or foreign possessions or dependencies, such vessel shall be required to depart and to put to sea within twenty-four hours after her entrance into such port, roadstead, or waters, except in case of stress of weather, or of her requiring provisions or things necessary for the subsistence of her crew, or repairs; in either either of which cases, the authorities of the port, or of the nearest port (as the case may be), shall require her to put to sea as soon as possible after the expiration of such period of twenty-four hours, without permitting her to take in supplies beyond what may be necessary for her immediate use: and no such vessel which may have been allowed to remain within British waters for the purpose of repair shall continue in any such port, roadstead, or waters for a longer period than twenty-four hours after her necessary repairs shall have been completed: Provided, nevertheless, that in all cases in which there shall be any vessels (whether ships of war, privateers, or merchant-ships) of both the said belligerent parties in the same port, roadstead, or waters within the territorial jurisdiction of Her Majesty, there shall be an interval of not less than twenty-four hours between the departure therefrom of any such vessel (whether a ship of war, a privateer, or a merchant-ship) of the one belligerent, and the subsequent departure therefrom of any ship of war or privateer of the other belligerent: and the times hereby limited for the departure of such ships of war and privateers respectively, shall always, in case of necessity, be extended, so far as may be requisite for giving effect to this proviso, but not further or otherwise.

5. No ship of war or privateer of either belligerent shall hereafter be permitted, while in any port, roadstead, or waters subject to the territorial jurisdiction of Her Majesty, to take in any supplies except provisions and such other things as may be requisite for the subsistence of her crew, and except so much coal only as may be sufficient to carry such vessel to the nearest port of her own country, or to some nearer destination; and no coal shall be again supplied to any such ship of war or privateer in the same or any other port, roadstead, or waters subject to the territorial jurisdiction of Her Majesty without special permission, until after the expiration of three months from the time when such coal may have been last supplied to her within British waters as aforesaid.

J. D. H.
W. A.
R. P.

UNITED STATES.

Approval of draft of a preamble to a letter to Secretaries of States, &c., embodying intended Rules to be enforced on belligerent ships of war or privateers within British jurisdiction.

No. 17.

The Law Officers of the Crown to Earl Russell.—(*Received January* 31.)

My Lord, *Doctors' Commons, January* 29, 1862.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 29th January instant, stating that with reference to our Report of the 28th instant,* he was directed by your Lordship to transmit to us a draft of

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* Page 19.

a preamble to a letter which your Lordship proposed to address to Her Majesty's Secretaries of State, to the Lords Commissioners of Her Majesty's Treasury, and to the Lords Commissioners of the Admiralty, embodying the rules intended to be enforced by Her Majesty in regard to belligerent ships of war or privateers within British jurisdiction; and to request that we would furnish your Lordship at our earliest convenience, with our opinion thereupon.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we have considered the draft preamble inclosed in Mr. Layard's letter, and we are of opinion that, with certain verbal alterations which we have made therein, the same may be adopted.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 18.

The Law Officers of the Crown to Earl Russell.—(*Received January* 31.)

UNITED STATES.

As to power to prevent a vessel of one belligerent to put to sea until twenty-four hours after the time the vessel of the other belligerent shall have left the same port.

My Lord, *Doctors' Commons, January* 29, 1862.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 29th January instant, stating that, with reference to that part of the Draft Rules inclosed in our Report of the 28th instant,* in which it is stated that "no such vessel of either belligerent shall be permitted to put to sea until after the expiration of at least twenty-four hours from the time when the last preceding vessel of the other belligerent (whether the same shall be a ship of war, or privateer, or merchant-ship) which shall have left the same port, roadstead, or waters adjacent thereto, shall have passed beyond the territorial jurisdiction of Her Majesty," he was directed by your Lordship to inquire whether there is any precedent to justify Her Majesty in ordering that a ship of war of one belligerent should not sail till twenty-four hours after the departure of a merchant-ship of the other belligerent, and that, if not, your Lordship would wish to omit this condition; and to request that we would favour Lordship, at our earliest convenience, with our reply to this inquiry.

In obedience to your Lordship's commands we have taken this question into our consideration, and have the honour to report—

That we are unable to refer to any direct precedent to justify Her Majesty in ordering that a ship of war of one belligerent should not sail until twenty-four hours after the departure of a merchant-ship of the other belligerent.

We consider, however, that Her Majesty will be justified, in point of principle, in making such an order: having the power of excluding belligerent armed ships from her ports absolutely, excepting in case of distress, she may impose any limitations on permission to enter them; and the wrong to be guarded against, viz., the inception of hostile acts (as by chasing) within neutral territory is obviously more to be apprehended in relation to merchant-vessels, which are without the means of defending themselves against attack, than to armed ships.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 19.

The Law Officers of the Crown to Earl Russell.—(*Received January* 31.)

FRANCE.

Search of the "Marie Louise" of Quebec at Paimbœuf, on suspicion of French deserters being on board.

My Lord, *Doctors' Commons, January* 30, 1862.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the January instant, stating that he was directed by your

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Lordship to transmit to us a despatch from Her Majesty's Ambassador at Paris inclosing a copy of a despatch from Her Majesty's Consul at Nantes, reporting the circumstances under which a portion of the crew of the British barque "Marie Louise," of Quebec, have, on the pretext of their being French deserters, been arrested by the gendarmerie of Paimbœuf, and the vessel itself been searched and two men taken from her; and to request that we would take this case into our consideration, together with the correspondence (herewith inclosed*) referred to by Earl Cowley as bearing upon the subject, and that we would favour your Lordship with our opinion as to the legality of the proceedings of the French authorities, and the instructions which should be addressed to Earl Cowley or to the Consul in this matter.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That, in our opinion, a British merchant-ship while lying in a French port is subject to French jurisdiction; and that her crew, whether on board or on shore, may be dealt with and punished, judicially, for any violation of French law committed by them within French jurisdiction. We therefore think that the French authorities at Painbœuf were warranted in arresting on shore those of the crew of the "Marie Louise" who were French subjects, on reasonable suspicion of their being by French law "deserters," and in boarding and searching the "Marie Louise," if they had reasonable suspicion of French subjects liable, according to the law of France, to be punished as deserters, being on board; and that they were further justified in removing from the ship such deserters (if any) as on search they may have discovered. But as regards British subjects, or persons of any other nationality than French, forming part of the crew of the "Marie Louise," we think that the French authorities had no right, according to international law, to deal with them as deserters, unless it appeared that they had, at some former period, voluntarily entered themselves on board some French ship, and had afterwards in France, and during the continuance of their engagement, deserted therefrom.

The Convention of 1854, between Great Britain and France, does not apply to the present case.

Such being the law, as between the two nations, bearing on the case (as we view it), we have further to observe that the facts do not appear to be fully known to, or to have been fully inquired into by, the Consul at Nantes; and to enable us to apply the law to the particular circumstances, we should be furnished with a full statement of the grounds, as to each of the persons detained or apprehended, on which the French authorities acted, and (it may be presumed) will seek to justify what they have done. We would therefore submit to your Lordship that the Consul should be instructed to represent the circumstances of the case (as they have come before him) fully to the French authorities on the spot, and to request (as we think he may well do under the circumstances) an explanation of the proceedings that have taken place. He should also transmit with such explanation (when it is received) such information as to the nationality of each person arrested, and the particular act of "desertion" charged against each, as he may be able to collect.

With reference to the Consul's question as to whether the men arrested and detained by the French authorities are to be considered as deserters from the "Marie Louise" within the meaning attaching to "desertion" by English law, we are of opinion that this question must be answered in the negative.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

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* From Earl Cowley, No. 732, May 26, 1859; to Law Officers, May 27, 1859; from Law Officers, May 31, 1859; to Earl Cowley, No. 680, June 2, 1859.

No. 20.

The Queen's Advocate to Earl Russell.—(*Received January* 30.)

UNITED STATES.

Seizure by blockading force off the Mississippi of the "Empress," grounded upon a mud-bank.

My Lord, *Doctors' Commons, January* 30, 1862.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 25th January instant, stating that he was directed by your Lordship to transmit to me a letter from the Board of Trade, dated the 22nd January instant, inclosing a copy of a communication addressed to that Department by Messrs. Pearson and Co. of Hull, respecting the detention at New York of their barque the "Empress," which had been conveyed thither by the Federal blockading force stationed off the Mississippi, where the "Empress" had grounded upon a mud-bank; and to request that I would take this case into consideration, and favour your Lordship with my opinion thereupon.

In obedience to your Lordship's commands I have taken these papers into my consideration, and have the honour to report—

That the British vessel "Empress" appears to have sailed from Rio Janeiro in September 1861 (the precise date is not stated), with a cargo of coffee, to New Orleans, under charter-party stipulating that "if the vessel on arrival be warned off by a blockading squadron, she was to proceed to New York, Baltimore, or Philadelphia."

She was found aground on a mud-bank off the mouth of the Mississippi, apparently on the 27th November, by some of the blockading squadron (not named), and sent (apparently in charge of a prize-crew) to New York, where she is said to have arrived on the 18th December "as a prize." Since her capture in November, no communication has been received from the master or crew.

I can only, therefore suggest that the Consul at New York should be instructed to send full particulars respecting what has been done, or is doing, with the ship, her master, and crew, and to watch the case.

This case seems to involve the same question as that of the "Admiral," reported on by me January 28th,* and to be subject to the concluding observations in that Report.

I have, &c.
(Signed) J. D. HARDING.

No. 21.

The Queen's Advocate to Earl Russell.—(*Received January* 31.)

UNITED STATES.

Claim of Messrs. Whitworth for losses sustained by their vessel the "Boyne" being warned off the whole Southern Coast of the United States.

My Lord, *Doctors' Commons, January* 30, 1862.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 22nd January instant, stating that with reference to my Report of the 11th October ultimo,† upon the case of the "Boyne," whose owners claim compensation from the United States' Government on account of that vessel having been warned off the whole Southern coast of the United States, he was directed by your Lordship to transmit to me, together with the former papers,‡ a despatch from Lord Lyons,§ inclosing a copy of a Report from Her Majesty's Consul at New York of all particulars known to him with regard to that vessel; and to request that I would again take this case into consideration, and favour your Lordship with my opinion thereupon.

In obedience to your Lordship's commands I have again taken these papers into my consideration, and have the honour to report—

That Consul Archibald states that the master of the "Boyne," on his arrival at New York on the 31st May, stated verbally to the Consul that he had been boarded by an officer of the "Niagara," and warned off the Southern coast, and that he considered that his owners would have a claim for damages for the breaking up of the voyage, and that on his return to England he would make up his claim. Therefore, notwithstanding the delay in making the claim, there is no reason to doubt that the facts suggested as to the "warning off" are

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* Page 18.

† See Reports for 1861, page 243.

‡ Messrs. Whitworth, September 26, 1861; to Lord Lyons, No. 365, October 17, 1861; Queen's Advocate, October 11, 1861.

§ Lord Lyons, No. 709, November 29, 1861.

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substantially true. The "Boyne" appears to have sailed from Fleetwood on the 25th of March, before any blockade of Savannah existed, with a cargo of coal, bound to that port; she was entitled to continue her voyage unless and until the port was blockaded; she was warned off the whole Southern coast on the 11th May by the "Niagara."

If, therefore (as alleged by the owners), no blockade of Savannah then existed, and that the blockade of this port only commenced (as they state), on the 28th May, they will, in my opinion, have a fair claim for compensation against the Government of the United States, although not to the amount suggested (6,567*l.*), which appears extravagant.

The question, therefore, now turns upon the existence of any blockade of Savannah on the 11th May last; and upon this I can only again refer to the second and third questions in my previous Report on this case of the 11th October.

There is no information on this subject contained in these papers, excepting the certificate from several masters of ships in that port, dated May 16 (Inclosure 3 in Messrs. Whitworth's letter of September 26, 1861); the then Acting Consul at Savannah (Mr. Fullarton) does not certify to this effect; and the certificate, as it stands, is not sufficient to enable Her Majesty's Government to act upon it. Before Her Majesty's Government can interfere in support of this claim, it must be in a position to adduce adequate proof of the non-existence of any blockade of Savannah on the 11th May last; if such proof can be adduced, a claim for compensation to the owners may be made, but not otherwise.

My Reports of the 3rd July and 17th August last on the somewhat similar case of the "Monmouth," apparently refer to some information received in that case as to the non-existence of any blockade of Savannah until May 28, which may (on reference thereto) prove sufficient for the purpose.

If, in addition to this case, and that of the "Monmouth," there are any other cases of the same class (viz., vessels warned off all Southern ports when the particular ports of their destination were not blockaded), it may be desirable to deal with them all, as far as practicable, at the same time, and to consider what (if any) communication should be addressed to the United States' Government thereon. This must greatly depend upon the evidence forthcoming or procurable as to the non-existence of the particular blockades at the dates in question, as to which any information from Her Majesty's Consulate at Savannah will be material.

I have, &c.
(Signed) J. D. HARDING.

No. 22.

The Queen's Advocate to Earl Russell.—(*Received January* 31.)

BRAZIL.

Draft of Convention for reciprocal treatment and privileges of Consuls in Great Britain and Brazil.

My Lord,

Doctors' Commons, January 30, 1862.

I AM honoured with your Lordship's commands signified in Mr. Layard's of the 16th January instant, stating that he was directed by your Lordship to acquaint me that some time ago you received a despatch from Mr. Christie, Her Majesty's Minister in Brazil, inclosing the draft of a Convention respecting the reciprocal treatment and privileges of Consuls, which he had submitted to the Brazilian Government, and which he thought they would be willing to sign with him.

Mr. Layard was also pleased to state that on examining the draft of Convention, your Lordship perceived that it contained some provisions which Her Majesty's Government would not have the power to carry into effect, and which Mr. Christie had communicated without authority to the Brazilian Government. And that Mr. Christie subsequently came to this country, and that no further step has been taken with regard to this Consular Convention; but that being now about to return to his post, it becomes necessary to furnish him with some instructions on the subject.

Mr. Layard was also pleased to state that it will of course be beneficial to British interests to obtain from Brazil a Convention in the terms of the draft, with such alterations as are necessary to adapt it to the law of England; but that under the equal and reciprocal form of its stipulations, British Consuls in Brazil

would obtain much greater powers and privileges than Brazilian Consuls in England. But that on some points, however, facilities can be given by Great Britain on condition of reciprocity; as in regard to merchant seaman deserters, under "The Foreign Deserters Act," 15 Vict., cap. 26; and in regard to the administration of estates in the absence of personal representatives, by the Act of last session 25 and 25 Vict., cap. 121.

Mr. Layard was also pleased to state that it would be distinctly explained to the Brazilian Government that Her Majesty's Government will be unable, if the Convention were concluded, to give to Brazilian Consuls in England identically the same privileges as the law of Brazil may enable the Brazilian Government to give to foreign Consuls in Brazil, but that they would give every privilege which British law does or may permit them to give. And he was also pleased to state that if the Brazilian Government were, under these circumstances, willing to conclude the Convention, your Lordship would instruct Mr. Christie to sign it. And that your Lordship therefore requested that I would have the goodness to examine the draft, and report to you my opinion whether it might be adopted, subject to the alterations marked in red ink, or what further amendments I might think necessary.

In obedience to your Lordship's commands I have taken these papers into my consideration, and have the honour to report—

That I have examined the draft Convention and introduced certain alterations therein in order to render it more consonant to the requirements of English law; subject to which, and to the explanations to be given to the Brazilian Government pointed out in Mr. Layard's letter, the Convention may, if your Lordship thinks it desirable, be adopted. I add some remarks, which may assist Mr. Christie in avoiding misapprehension in his negotiations with Brazil on this subject:—

Article III.—It should be clearly understood that no Brazilian Consul can be permitted to solemnize marriages in the British dominions; and unless this stipulation is requisite to render valid British Consular marriages in Brazil, and will have that effect, the word "marriages" had better be omitted.

Article IV.—Her Majesty's power in respect of Consular administration to property of Brazilians dying in her dominions is strictly defined and limited by Statute 24 and 25 Vict., cap. 121, sec. 4, and it will be therefore very desirable to introduce into the Convention the words of that section, which I have done. An Order in Council will be requisite if this Article of the Convention stands.

Article V.—As this Article stands, it is in the nature of a general international stipulation. The omission of the words struck through will be necessary to confine it to Consular privileges.

Article VI.—"The Foreign Deserters Act, 1852" (15 Vict., cap. 26), gives Her Majesty the special power thereby conferred whenever it is "made to appear to Her Majesty that due facilities are or will be given for recovering and apprehending seamen who desert from British merchant-ships in the territories of any foreign Power." No Convention is absolutely requisite on this subject. The mode of proof of the fact of desertion cannot be regulated by Convention. This in the British dominions must be determined by the Magistrates according to the local law.

Article VII.—The laws relating to wreck and salvage are by no means simple or uniform throughout the British dominions; and Her Majesty would not be able to carry out the express stipulations contained in the former part of this Article. This portion of the Article is also of a general nature, extending beyond Consular privileges; I would therefore suggest that this portion of the Article should be omitted.

If Mr. Christie should, in the course of his negotiations on the subject of this Convention, find that either the omission or insertion of any particular stipulation on the subject of Consular privileges is desirable, he should bear in mind that Her Majesty's power of conferring any such privileges on Brazilian Consuls is strictly limited by law; and that any special stipulations should be therefore avoided; but Her Majesty may safely stipulate generally to place Brazilian Consuls on the same footing as those of "the most favoured nation."

The particular points upon which British interests practically require express stipulations for Consular privileges in Brazil are, of course, the most important to be kept in view by Mr. Christie; and in framing such stipulations, regard

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should be had to the particular object to be attained, or alteration of the existing state of things to be secured, in Brazil. As regards reciprocity, it may, perhaps, turn out that Brazil does not urgently require any other Consular privileges than those which she actually possesses in the Queen's dominions.

I have, &c.
(Signed) J. D. HARDING.

Inclosure in No. 22.

Draft of Convention respecting the Reciprocal Treatment and Privileges of Consuls in Great Britain and Brazil.

[The alterations proposed by the Queen's Advocate are printed in Italics and Brackets, except where the alterations are considerable, in which cases the entire Clauses are placed in the parallel column.]

ARTICLE I.

Each of the High Contracting Parties shall have the right of appointing Consuls-General, Consuls, Vice-Consuls, or Consular Agents, to reside wherever it shall judge desirable, in the dominions and territories of the other; but before any Consular officer shall act as such, he shall be approved in the usual form by the Government of the country in which he is to reside.

ARTICLE II.

As originally drafted.	*As altered by the Queen's Advocate.*
The Consuls-General, Consuls, Vice-Consuls, and Consular Agents of each of the two High Contracting Parties shall enjoy, in the dominions and territories of the other, all the privileges, exemptions, and immunities which are usually recognized as belonging to their office, or which are or shall be, under any circumstances, granted to the Consular officers of the same rank of any other the most favoured nation.	The Consuls-General, Consuls, Vice-Consuls, and Consular Agents of each of the two High Contracting Parties shall enjoy, in the dominions and territories of the other, all the privileges, exemptions, and immunities which are or shall be, under any circumstances, granted or allowed there to the Consular officers of the same rank of any other the most favoured nation.

ARTICLE III.

As regards solemnization of marriages,* jurisdiction over countrymen or ships of their country, taking of oaths and declarations, attestation of wills, deeds, and documents, and as regards the validity and force, in the Courts of Law of either country, of all acts relating to any of the aforesaid matters performed by a Consular officer of the other, the Consuls-General, Consuls, Vice-Consuls, and Consular Agents of each of the two High Contracting Parties shall have, in the dominions and territories of the other, all the rights and privileges which are or shall be, under any circumstances, granted [*or allowed there*] to the Consular officers of any other the most favoured nation.

ARTICLE IV.

As originally drafted.	*As altered by the Queen's Advocate.*
If any subject or citizen of either of the High Contracting Parties should die in the dominions or territories of the other without a will, or without having appointed executors, or if the heirs should be unknown, or absent, or not to be found, or minors, or under any incapacity of acting, the Consul-General, Consul, Vice-Consul, or Consular Agent, shall be permitted to act for the benefit of the heirs in the administration of the property of the deceased, so far as the laws of the country will permit, and so far as is or shall be under any circumstances permitted to the Consular officers of any other the most favoured nation.	If any subject or citizen of either of the High Contracting Parties shall die in the dominions or territories of the other, and there shall be no person present at the time of such death who shall be rightfully entitled to administer to the estate of such deceased person, the Consul-General, Consul, Vice-Consul, or Consular Agent within whose district such person shall die, shall be permitted to take possession and have the custody of the personal property of the deceased, and to apply the same in payment of his or her debts and funeral expenses, and to retain the surplus for the benefit of the persons entitled thereto, and to act for the heirs in the administration of the property of the deceased, so far as the laws of the country will permit, and so far as is or shall be under any circumstances permitted to the Consular officers of any other the most favoured nation.

ARTICLE, V.

In whatever relates to the police of the ports, the lading and unlading of ships, and the warehousing and safety of merchandize, goods and effects, the subjects and citizens of each of the two High Contracting Parties shall enjoy in the dominions and territories of the other the same privileges, liberties, and rights, as native subjects and citizens; and the Consuls-General, Consuls, Vice-Consuls, and Consular Agents of each Party shall enjoy all the privileges and rights which are or shall be, under any circumstances, granted to the Consular Officers of the same rank of any other the most favoured nation.	In whatever relates to the police of the ports, the lading and unlading of ships, and the warehousing and safety of merchandize, goods and effects, the Consuls-General, Consuls, Vice-Consuls, and Consular Agents of each Party shall enjoy all the privileges and rights which are or shall be, under any circumstances, granted or allowed there to the Consular Officers of the same rank of any other the most favoured nation.

ARTICLE VI.

Each of the two High Contracting Parties will give to the other every aid consistent with the laws of their respective countries for the apprehension and surrender of deserters from the naval and military or from the merchant service of either country on application being made to that effect by the Consul-General, Consul, Vice-Consul, or Consular Agent of the Party concerned, and on its being proved by the register of the vessel, the list of the crew, or other similar documents, that the said deserters formed part of the crew of the said vessel, and that they had deserted from vessels in the ports, coasts, or waters of the country before whose authorities they were claimed.	Each of the two High Contracting Parties will give to the other every facility consistent with the laws of their respective countries for the recovery, apprehension, and surrender of deserters from merchant-ships of either country in the territories of the other, not being slaves, on application being made to that effect by the Consul-General, Consul, Vice-Consul, or Consular Agent of the Party concerned, and on its being proved, as required by the law of the country where their recovery, apprehension, or surrender is applied for, that such persons have within the territorial limits of such country deserted from a merchant-ship of the country whose Consul-General, Consul, Vice-Consul, or Consular Agent applies for their recovery, apprehension, or surrender.
With respect to the detention of deserters in the public prisons, and the time they ought to remain under the control of the local authorities, when apprehended, in order that they may be placed at the disposal of the Consul who claims them, and be sent on board	

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* See Report herewith.—J. D. H.

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vessels of their nation, the rules established by the laws of each country shall be observed; but any favour or facility with respect to the recovery of deserters which, under any circumstances, either of the High Contracting Parties has granted or may hereafter grant to any other State shall also be granted to the other Contracting Party.

Separate Article.

Any other favour or facility with respect to the recovery, apprehension, or surrender of deserters from merchant-ships (not being slaves) which, under any circumstances, either of the High Contracting Parties has granted or may hereafter grant to any other State shall also be granted to the other Contracting Party.

ARTICLE VII.

[The Queen's Advocate proposes to omit the first paragraph.]

If any ship of war or merchant-vessel of one of the High Contracting Parties should run aground or be wrecked upon the coasts of the other, such ship or vessel, and all parts thereof, and all furniture and appurtenances belonging thereto, and all goods and merchandize saved therefrom, including any which may have been cast into the sea, or the proceeds thereof, if sold, as well as all papers found on board such stranded or wrecked ship or vessel, shall be given up to the owners or their agents when claimed by them. If there are no such owners or agents on the spot, then the same shall be delivered to the British or Brazilian Consul-General, Consul, Vice-Consul, or Consular Agent in whose district the wreck or stranding may have taken place, upon being claimed by him within the period fixed by the laws of the country; and such Consuls, owners, or agents shall pay only the expenses incurred in the preservation of the property, together with the salvage or other expenses which would have been payable in the like case of a wreck of a national vessel. The goods and merchandize saved from the vessel shall be exempt from all duties of custom, unless cleared for consumption.

The Consuls-General, Consuls, Vice-Consuls, and Consular Agents of each of the High Contracting Parties shall have the same rights and privileges with regard to vessels [*and goods of the one country*] stranded or wrecked on the coasts of the other, as are or shall be under any circumstances granted to the [*like*] Consular officers of any other the most favoured nation.

ARTICLE VIII.

Qy. as to this period?

The present Convention shall remain in force twenty [*ten*] years from the date of the exchange of the ratifications, and further until the expiration of twelve months after either of the High Contracting Parties shall have given notice to the other of its intention to terminate the same, each of the High Contracting Parties having the right to give such notice to the other at the expiration of nine years from the exchange of ratifications, or at any time afterwards.

Qy. as to this period?

The present Convention shall be ratified, and the ratifications shall be exchanged at

[J. D. H.]

No. 23.

The Law Officers of the Crown to Earl Russell.—(*Received January* .)

BRAZIL.

Question of claims to be submitted to Mixed Commission.

My Lord, *Doctors' Commons, January* 31, 1862.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 9th January instant, stating that, with reference to previous correspondence as to the Mixed Commission at Brazil, he was directed by your Lordship to transmit to us a note from the Brazilian Minister at this Court, inclosing a Memorandum which he had been instructed to present to Her Majesty's Government on the part of the Brazilian Government containing their views as to the questions which have arisen regarding the Commission, and the nature of the claims to be submitted to its decision.

Mr. Layard was also pleased to inclose a letter and Memorandum on this subject which have been received from Mr. Christie, Her Majesty's Minister at Rio, now on leave of absence in this country, and to state that your Lordship thought it advisable that Mr. Christie should communicate with us on this subject if that gentleman could do so before leaving England on his return to his post on the 8th of February, beyond which day he cannot be detained in this country.

Mr. Layard was also pleased to state that your Lordship would be glad if we could in the interval direct our attention to this question, and report to you our opinion upon the views respectively entertained by Her Majesty's Government and that of Brazil, as to the nature of the claims which should have been submitted to the Commission now brought to a close, and to any Commission which may hereafter be appointed to inquire into the matters in dispute between the two Governments, and that we would advise generally upon the suggestions contained in Mr. Christie's Memorandum; and he was also pleased to inclose for our convenience the previous correspondence connected with this case.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we have had the advantage of a full communication with Mr. Christie on the subject of your Lordship's note, and with respect to—

1. The claims which *should have been submitted to the Commission now brought to a close*, we have to observe:—That in our opinion (and in conformity with all previous Law Officers' opinions on the subject) no claims brought forward, or proposed to be brought forward, by the Brazilian Government, in respect of, or arising out of, cases adjudicated by the "Mixed Commission" previous to 1845 ought to have been submitted to the Commission lately brought to a close. For, in the first place, such claims could not, with especial reference to the composition of the Mixed Commission, and to the express stipulation that the decrees of the Commissioners should be without appeal, be "considered," even in any just or reasonable sense of the term, as being "unsettled;" and, in the next place, all the claims so adjudicated had, by the act of adjudication, and by the terms of the Convention under which the Mixed Commission was constituted, been changed from claims by corporations or individuals, on whose behalf their own Government might interpose, into claims by one Government directly and immediately against the other Government, and so, were placed beyond the provisions of the Convention of 1858. Her Majesty's Government, on the one hand, refused to sanction any cognizance being taken by the late Commission of cases of this class; the Brazilian Government, on the other, insisted upon their being entertained as within the Convention. This state of things, as it appears to us, fully justified Her Majesty's Government in allowing the Convention of 1858 to expire by lapse of time, and in not consenting to any prolongation of the time of its operation, quite independently of the great latitude which its terms unfortunately gave to unsettled matters, namely, such as should be so "considered" by either party. Such being our view of the Convention of 1858 having thus, *de facto*, come to an end, we do not feel that we ought to discuss (or could do with any advantage) the various arguments and observations of the Brazilian Minister in his Memorandum of November 1861, on this head, namely, as to what ought, on a proper construction of the Convention of 1858, to have been submitted on the one side, and on the other, to the Commissioners.

2. *The claims which ought to be submitted to any Commission which may hereafter be appointed.*—These we think ought to include all unadjudicated claims on either side, subject to the condition as to "lists," to which we advert hereafter. Of these we understand there are several, so as to furnish a full answer to the argument put forward in the Brazilian Memorandum of November 1861, that the British interpretation of the Convention would reduce its operation as regards Brazilian claims to *nil*. We think it equally clear, for the reason given above, that no claims arising out of or connected with cases which were adjudicated on by the Mixed Commission, ought to be submitted to any Commissioners or other tribunal to be hereafter invested with powers of inquiry and award; and it follows that, unless the Brazilian Government will come under a Convention with this exclusion, we cannot advise Her Majesty's Government to consent to any new Convention for the *general* settlement of claims on the one side or on the other. The means and power of pressing

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individual claims by the one Government against the other, will, of course, still remain to either Government. It is obvious, at the same time, that a grouping of the various existing claims, and the submitting of them to a common arbitration, is most desirable, if such an arrangement can be accomplished on terms not altogether unreasonable, and therefore inadmissible. Cases which were adjudicated by Vice-Admiralty Courts since 1845 ought not, in our opinion, to be entirely opened (if at all) under any fresh Convention.

It will, however, be for the consideration of Her Majesty's Government whether (especially if, in the interests of British subjects, a new Convention be desirable, and such new Convention be found unattainable on any other terms) it may not be expedient to include amongst the cases to be submitted the Vice-Admiralty adjudications, on the condition, however, that the adjudications shall, in each case, be *primâ facie* evidence both of jurisdiction in the Court, and of the justice of the decision. We think it might be highly inexpedient to allow the wide question to be opened of the competency of the Vice-Admiralty Courts, which have acted since 1845, to entertain and decide on the charges against Brazilian vessels of piracy under the Slave Trade Suppression Treaties.

After reading the Brazilian Memorandum of November 1861, we cannot say that these claims, thus limited, might not, with a fair show of reason, have been insisted on by the Brazilian Government as coming within the Convention of 1858, so long as that Convention remained in force; and if that be so, there is, of course, all the more reason for Her Majesty's Government consenting to their being plainly, and in terms, included in a new Convention.* Without the limitation we have pointed out we cannot recommend that any cases adjudicated by British Vice-Admiralty Courts since 1845 should be submitted for the consideration of any fresh Commission.

With reference to the payment of sums adjudicated in favour of Brazilian subjects, we think that sums adjudicated by the Mixed Commission, having, by the terms of the Convention under which that Commission sat, become debts from one Government to the other, all such sums awarded in favour of Brazilian claimants might with propriety be paid by Her Majesty's Government, assuming, of course, that the determination will be taken never, under any circumstances, to re-open these claims, or any claims of the same class.

Whether sums awarded in favour of Brazilian subjects by the Vice-Admiralty Courts (as by way of "costs and damages" on the release of captured vessels) should be paid by the British Government, would seem properly to depend on the final arrangement that may be made as to the conclusiveness or non-conclusiveness of the Vice-Admiralty adjudications, should Brazil, as well as Great Britain, agree to treat these adjudications as final, and leaving nothing, so far, unsettled, then we cannot discover any fair and reasonable grounds for withholding payment. But, on the other hand, so long as Brazil shall insist on treating these adjudications as not final, and as, on the contrary, giving rise to possible claims for compensation (and if one such adjudication may be re-opened, so may any other for a like reason), we see no sufficient reason for concluding that the British Government ought at present to satisfy the award in favour of Brazilian subjects. As we have before oberved, it is, of course, open to either or both Governments to urge, in proper diplomatic form, the claims of individual subjects of either against the other.

Should any future Convention be agreed on or negotiated, we would strongly recommend the adoption of "lists" of the claims on each side being delivered to the other, and by proper references being incorporated in, and made part of, the Convention. We would further venture to suggest the careful avoidance of the use of any such inconveniently comprehensive terms as were employed in the Convention of 1858 in describing what the "unsettled" claims intended to be brought under the consideration of the Commission were.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

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* N.B.—This would require confirmation by Parliament.—J. D. H.—W. A.—R. P.

No. 24.

The Law Officers of the Crown to Earl Russell.—(Received February 4.)

Doctors' Commons, February 3, 1862.

General.

Production of Papers before the Court of Session in Scotland, relating to appointment of Mr. J. Udney as British Consul at Venice and Leghorn in 1760 and 1776.

My Lord,

WE were honoured with your Lordship's commands signified in Mr. Layard's letter of the 28th January ultimo, stating that he was directed by your Lordship to transmit to us a letter from Messrs. Bristow, requesting on behalf of their client, Mr. George Udney, that certain papers relating to the appointment, in 1760, of Mr. John Udney as British Consul at Venice, and his subsequent appointment, in 1776, as British Consul at Leghorn, might be allowed to be produced in evidence in a suit now pending before the Court of Session in Scotland.

Mr. Layard inclosed copies and extracts of the papers in question, together with a correspondence which had passed between the Foreign Office and Mr. Udney on the above-mentioned subject, and requested that we would take this matter into our consideration, and furnish your Lordship with our opinion as to whether Messrs. Bristow's application might properly be complied with.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That, under the peculiar circumstances of this case, we see no objection to the request of Messrs. Coverdale and Co., in their letter of the 27th ultimo, being complied with, viz., by allowing copies of the letters in question to be taken or made; and by some person from the Foreign Office attending, with the originals, before the Examiner, on a convenient appointment of time and place being made. The originals, we understand, are not desired to be left with the Examiner; and, in our opinion, possession of such originals ought not to be parted with.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 25.

The Law Officers of the Crown to Earl Russell.—(Received February 4.)

Doctors' Commons, February 3, 1862.

Turkey.

Refusal of British legal and Consular authorities at Smyrna to afford assistance to Mr. Stephen Reggio, a naturalized British subject.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 28th ultimo, stating that he was directed by your Lordship to transmit to us a letter from Messrs. Coleman, Turquand, Young, and Co., dated the 17th January ultimo, relative to the refusal of the British Legal and Consular authorities at Smyrna to afford assistance to Mr. Stephen Reggio, a naturalized British subject.

Mr. Layard was also pleased to state that he inclosed Mr. Reggio's certificate of naturalization, as it had accompanied Messrs. Coleman's letter, and that he was directed by your Lordship to request that we would furnish your Lordship with our opinion as to the instructions which should be given to the British authorities at Smyrna in this matter.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That Mr. Stephen Reggio's certificate of naturalization expressly excepts "all rights and capacities of a natural-born British subject out of, or beyond, the dominions of the British Crown and the limits thereof, other than such as may be conferred on him by the grant of a passport from the Secretary of State to enable him to travel in foreign parts."

It appears to us, therefore, that Vice-Consul Logie has taken a correct view of this case. Mr. Reggio is only entitled to the ordinary protection of a traveller with a British passport; he is not entitled to the assistance which he seeks in his letter to Legal Vice-Consul Logie of October 17, 1861, viz., the

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assistance of a dragoman in obtaining information at the local Ottoman Courts as to some property appertaining to him at Smyrna.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 26.

The Queen's Advocate to Earl Russell.—(*Received February* 10.)

ARGENTINE CONFEDERATION.

Mrs. Rowley's claim to lands belonging to her late husband Captain Rowley, R.N.

Doctors' Commons, February 10, 1862.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 5th February instant, stating that he was directed by your Lordship to transmit to me the accompanying papers* respecting a claim preferred by Mrs. Rowley (widow of the late Captain Rowley, R.N.), against the Argentine Government, and to request that I would take these papers into consideration, and favour your Lordship with my opinion whether Mrs. Rowley is entitled to the support of Her Majesty's Government in respect to this claim, and if so, to what extent.

In obedience to your Lordship's commands I have taken these papers into my consideration, and have the honour to report—

That considering the absence of any statement in support of Mrs. Rowley's claim to the intervention of Her Majesty's Government on her behalf, beyond that contained in the "extract" appended to the Countess of Kinnoull's letter to your Lordship of July 1861, and the various reasons against such intervention suggested in Mr. Lettsom's despatch No. 71, I cannot advise your Lordship that, in the actual state of the case, any sufficient ground exists for such intervention.

I observe, however, that Mr. Lettsom considers Mrs. Rowley's claim to be "in part, at least, well founded," and "admits its justice to a certain extent." The Government appears to be wrongfully in possession of a very valuable property in which she has a legal interest, and it does not appear that she has any legal means of redress. She claims to represent the rights of her deceased husband and the interests of her children, and she alleges that an "arrangement" was entered into between her husband and the Government that the lands in question should be valued at 300,000*l.*, which arrangement she now seeks the assistance of Her Majesty's Government in enforcing.

Under the peculiar circumstances of the case, I would therefore suggest that she should have an opportunity of making a distinct statement, with dates and particulars, of the nature and amount of her claim, and of the precise grounds on which she seeks the intervention of Her Majesty's Government as to the whole or any part of such claim; she should explain the position of her late husband as to this claim, and the legal character in which she represents his rights and those of her children therein, and further explain why no legal remedy is open to her; she should also give the precise dates and terms of any arrangements or admissions on the part of the Government, on which she relies, and state distinctly what she now asks of the Monte Videan Government, and what steps she desires that Her Majesty's Government should take on her behalf. If the Monte Videan Government has ever given any answer to her claim, she should supply it. She might transmit this statement to your Lordship through Mr. Lettsom, who might annex his observations and explanations thereon, putting the matter into such a position as to enable Her Majesty's Government to form an opinion on the whole case.

Mr. Lettsom should further explain whether there have been any other claims of the same character, in which no question of nationality arises, and if so, how the Government has dealt with them; and also, as to this claim, whether the Government altogether disputes its validity, or has made any, and what, offers of settlement or admissions; or has put it into any, and what, course of settlement or adjudication.

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* From Lady Kinnoull, July 19, 1861; to Lady Kinnoull, July 29, 1861; to Mr. Lettsom, No. 28; from Mr. Lettsom, No. 71.

Mr. Lettsom's attention may be particularly directed to the following points:—

1. The existence or non-existence of any legal means of redress on the part of Mrs. Rowley against the Government.

2. The probable answer or defence of the Government to any official intervention; bearing in mind that Her Majesty's Government might be content with securing a fair hearing for Mrs. Rowley, as before Commissioners or an arbitrator.

3. The apparent fact that the Government has committed, and profited by, a great wrong, and refuses to make any compensation whatsoever, and that Mrs. Rowley and her children will be entirely without redress unless Her Majesty's Government can interfere in their behalf.

4. The excessive amount being capable of subsequent adjustment, and not affording any conclusive reason against intervention.

5. The existence and effect of any arrangement made by the Government with the late Captain Rowley, and Mrs. Rowley's rights thereon accruing, as his legal representative, and as acting on behalf of his children.

7. The practicability of separating Mrs. Rowley's claim into different parts, and of supporting those parts only which are well founded.

I have, &c.
(Signed) J. D. HARDING.

No. 27.

The Queen's Advocate to Earl Russell.—(*Received February* 11.)

UNITED STATES.

Capture of the "Cheshire" off Savannah, and removal of part of the crew from the vessel.

Doctors' Commons, February 10, 1862.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 7th February instant, stating that he was directed by your Lordship to transmit to me the accompanying papers and memoranda connected with the voyage and capture of the British vessel "Cheshire," off Savannah, and the proceedings which have been hitherto taken in the case before the Prize Court at New York; and to request, more especially with reference to the removal from the vessel, by the captor, of the master, mate, and greater part of the crew, that I would report to your Lordship my opinion whether any and what steps can, as the case now stands, be taken by Her Majesty's Government in behalf of the owners of the ship and cargo, or of the portion of the crew taken out of the vessel.

In obedience to your Lordship's commands I have taken these papers into my consideration, and have the honour to report—

That the capture of the "Cheshire" appears to me to have been justifiable, under the circumstances appearing in the set of papers indorsed "Correspondence."

The cargo is described, in Mr. Hill's letter to the master of October 8, 1861, as "the property of Messrs. W. Battersby and Co., of Savannah," and the master is instructed to call off that port and go in, if there is no blockade, but on no account whatever to attempt to enter a blockaded port."

It appears, from Mr. Finn's letter to Mr. Joseph Battersby of December 24, 1861, that she made the land on the 5th December, off Port Royal, and ran along about nine miles from the land, towards Tybee, and that she saw a number of vessels at Port Royal and Tybee. She does not appear to have attempted to communicate with any of these, or with either port, in order to obtain information as to the blockade of Savannah. She is then stated to have "stood out to sea for the night and run in the next morning, when she was overhauled and captured by the steamer 'Augusta,'" which put a prize-crew on board and removed the master and crew. She was taken to New York, where the case is pending before the Prize Court, wherein the owner's interests are duly represented by Mr. Edwards as Counsel; and it appears from the letter of Mr. Dubrow (the owner's agent there) of the 21st January (the latest document in point of date), that the Consul and Lord Lyons are attending to the case, and that Mr. Dubrow is inclined to think "it will be bad policy to push the matter."

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There is nothing forthcoming from the Consul or Lord Lyons, who may possibly have taken some steps in the matter.

Under these circumstances I am of opinion that there is, at present, no ground for Her Majesty's Government instructing Lord Lyons to make any application to the United States' Government as regards either the ship or the cargo.

As regards the master and crew, their removal from the ship has been brought to the notice of the Prize Court, which pronounced such removal to be "very irregular," and an application has been made to discharge the vessel on this ground, which seems to be, in effect, still pending.

If, under these circumstances, the parties interested desire the intervention of Her Majesty's Government as to the master and crew, Her Majesty's Government will, in my opinion, be justified in instructing Lord Lyons (provided that they still remain absent from New York) to apply to the Government of the United States on the subject, and to call the attention of the Government to the Judge's opinion of the irregularity of such removal, and to the fact that they are not enemies or rebels, and cannot be treated as prisoners of war; requesting the production of the master and mate as witnesses at New York, and their discharge, as well as that of the rest of the crew, and an explanation of the reason for their exceptional treatment.

I have, &c.
(Signed) J. D. HARDING.

No. 28.

The Queen's Advocate to Earl Russell.—(*Received February* 11.)

UNITED STATES.

As to request of Mr. Lindsay to be informed what ports or parts of coasts of Confederate States are efficiently blockaded.

My Lord, *Doctors' Commons, February* 11, 1862.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 10th February instant, stating that he was directed by your Lordship to transmit to me the accompanying letter from Mr. Lindsay, requesting to be informed what ports or parts of the coast of the so-styled Confederate States are now in such a state of blockade as to render it imperative on British merchants to avoid them in order to be protected against lawful capture; and to request that I would take this letter into my consideration, at my earliest convenience, and favour your Lordship with my opinion as to what answer should be returned to Mr. Lindsay.

In obedience to your Lordship's commands I have taken these papers into my consideration, and have the honour to report—

That Mr. Lindsay's application is for information as to a matter of fact, as to which I am not in a position to offer any opinion. I am not aware of any port in the Confederate States being free from blockade; I can, therefore, only suggest that he may be informed that your Lordship is not aware of any port in the possession of the so-called Confederate States of America being actually free from blockade, or open to foreign ships without danger of capture; and that he must act upon his own responsibility in dispatching a vessel with cargo to any of those ports.

I have, &c.
(Signed) J. D. HARDING.

No. 29.

The Queen's Advocate to Earl Russell.—(*Received February* 12.)

UNITED STATES.

As to expediency of laying before Parliament nominal Lists of Vessels which have eluded the blockade of Confederate ports.

My Lord, *Doctors' Commons, February* 12, 1862.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 11th February instant, stating that he was directed by your Lordship to state to me that you propose to lay before Parliament the reports which have reached Her Majesty's Government as to the manner in which the blockade of the Confederate ports has been enforced by the Government of the United States.

Mr. Hammond was also pleased to state that among these papers are found nominal lists of vessels which have succeeded in eluding the blockade; and that,

politically, your Lordship would have no objection to lay those lists before Parliament, but that it occurred to your Lordship that possibly some prejudice might result to the owners of such vessels at some future time, if the names of the vessels were to be published in an official document presented to Parliament; and that your Lordship would therefore be glad to have my opinion, at my earliest convenience, as to the expediency or otherwise of publishing these lists.

In obedience to your Lordship's commands I have taken this matter into my consideration, and have the honour to report—

That your Lordship is doubtless aware that I am ignorant of the contents of the papers in question, and of the object contemplated by their publication. I am not aware of any communication having been made to the United States' Government by that of Her Majesty of the invalidity or inefficiency of the blockade of the Confederate ports; and I cannot, as at present advised, see any advantage which is likely to accrue to Her Majesty's Government, or to British commercial interests, by the proposed publication.

However this may be, the official publication of the details, with names and dates of British vessels, or of any vessels chartered or freighted on British account, which have broken or eluded this blockade, will, under existing circumstances, in my opinion, be attended with prejudicial results to the owners or parties interested, and possibly also to Her Majesty's Government in relation to that of the United States, and, according to my present impression, I am of opinion that any such publication will be decidedly inexpedient.

I have, &c.
(Signed) J. D. HARDING.

No. 30.

The Law Officers of the Crown to Earl Russell.—(*Received February* 13.)

UNITED STATES.

Stay of the Confederate ship of war "Sumter" in the port of Gibraltar, having entered that port previous to the Rules issued 31st January.

Doctors' Commons, February 12, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 11th instant, stating that he was directed by your Lordship to transmit to us therewith a letter from the War Office, requesting to be enabled to return an answer to a question in regard to the stay of the Confederate ship of war "Sumter" at Gibraltar, which had been asked by the Governor of that fortress.

Mr. Hammond was also pleased to state that it appeared to your Lordship that the "Sumter" had not entered the port of Gibraltar after the notification at that port of the Rules contained in your Lordship's letter to the Admiralty of the 31st of January, which he therewith transmitted to us, but that if she went away and returned, she would be subject to the Rules as promulgated; but that your Lordship requested that we would take the question into our consideration, with reference generally to the Rules laid down in your Lordship's letter, and, at our earliest convenience, report our opinion as to the answer which should be returned to the Governor of Gibraltar.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That the Governor may be informed that, under the circumstances stated, the "Sumter," not having entered the port of Gibraltar after the notification of the Rules and Orders in question, cannot be required to depart within the 3rd Rule.

If she should have made use, or should hereafter make use, of the port or territorial waters of Gibraltar as a station or place of resort for any warlike purposes (such as for the purpose of making, or cruizing with intent to make, hostile captures of ships), she may be ordered by the Governor to depart, under Rule 2; and it will be competent for Her Majesty, at her discretion, to send special instructions to the Governor as to his requiring her to depart, treating her in this respect as the "Tuscarora" was treated at Southampton. She is in all respects subject to Rule 4.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

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No. 31.

The Queen's Advocate to Earl Russell.—(Received February 14.)

TURKEY.

Mr. Glover's claim against Ismail Pasha for breach of contract for hire of the steamer "Enchantress." Question as to reference to a Mixed Commission.

Doctors' Commons, February 13, 1862.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 11th February instant, stating that he was directed by your Lordship to transmit to me, together with the former papers, a despatch which your Lordship had received from Her Majesty's Ambassador at Constantinople (No. 19), in reply to the accompanying instruction, which was addressed to his Excellency on the receipt of my Report of the 5th November ultimo,* on the claim of Mr. Glover.

Mr. Hammond was also pleased to state, that I should see by Sir Henry Bulwer's report that the Porte does not accede to the demand made for payment of 4,000*l.* to the claimant, but proposes that the question should be referred to a Mixed Commission; and that, under these circumstances, he was to request that I would take the papers again into my consideration, and furnish your Lordship at my early convenience with my opinion whether Her Majesty's Government should accede to the Porte's proposal, or should persist in the demand already made for the settlement of this claim.

In obedience to your Lordship's commands I have taken these papers into my consideration, and have the honour to report—

That the question now submitted to my consideration appears to be one of policy and expediency rather than of law.

There is nothing stated which alters or affects the opinion as to the liability of the Turkish Government to pay Mr. Glover 4,000*l.* expressed in my Report of November 5, 1861. If, however, your Lordship does not consider it advisable, under existing circumstances, to insist further on the payment of this sum, *then* I see no alternative but a reference to a Mixed Commission.

I assume that Mr. Glover is still in a position to prove his case before such a Commission. The reference to such a Commission appears to have been first suggested by Sir Henry Bulwer in his note to Aali Pasha of October 2, 1861, and is accepted ("adhered to") by Aali Pasha in his note to Sir H. Bulwer of January 7, 1862; nothing, therefore, remains but to settle the terms of the reference.

I observe that Sir Henry Bulwer proposes, if your Lordship should think fit to refer the case to a Mixed Commission, to send to Aali Pasha the draft note inclosed (No. 3 in No. 19); but it seems to me that this draft will require some modification. I would suggest, that in order to save time, the note now to be sent by Sir H. Bulwer to Aali Pasha should contain the heads or terms of the submission or reference of the claim to the decision of a Mixed Commission; and not merely (as now) an offer to submit a proposal to this effect to your Lordship.

The terms of reference suggested in this draft note are not precisely identical with those suggested in Sir H. Bulwer's despatch to your Lordship (No. 19). The terms contained in the despatch are preferable to those contained in the draft. A definite time should be fixed for the payment of the money, but I question the propriety of insisting on a guarantee from the Turkish Government that the Commission shall give its sentence within three weeks of its appointment; but this must be left to Sir H. Bulwer's discretion. It may also be desirable, adverting to what has passed, to insist that the Turkish Government shall expressly admit its direct liability to that of Her Majesty in respect of this claim without reference to the question of the liability of Ismail Pasha to Mr. Glover, or to the Government, or to his residence in Turkey, or appearance before the Commission. It should be expressly provided that the Commission shall decide upon all questions of interest and costs, and shall name the currency in which the amount is to be paid. I would suggest that the note should be precise in terms, and, as nearly as practicable, in the form of a Convention for the final settlement by a Mixed Commission of the amount due to Mr. Glover from the Turkish Government. Mr. Glover should have immediate notice of the course adopted.

I have, &c.
(Signed) J. D. HARDING.

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* See Reports for 1861, page 270.

No. 32.

The Queen's Advocate to Earl Russell.—(Received February 16.)

NEW GRANADA.

Claim of Pacific Steam Navigation Company arising out of tonnage duties levied at Panamá on their vessels.

Doctors' Commons, February 15, 1862.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 10th February instant, stating that, with reference to my Report of the 24th of August ultimo,* relative to the claim of the Pacific Steam Navigation Company to repayment of the tonnage dues levied by the Government of New Granada on their vessels up to April 1860, he was directed by your Lordship to transmit to me a despatch and its inclosures from Mr. Griffith (No. 114 of 1861), stating the grounds on which United States' vessels have hitherto successfully resisted the tax; and to request that I would take these papers, together with the previous correspondence, into my consideration, and favour your Lordship with my observations thereupon, and with my opinion whether Her Majesty's Government are called upon at present to take any steps in this matter.

In obedience to your Lordship's commands I have taken these papers into my consideration, and have the honour to report—

That having regard to the fact that the Treaty of Bogotá, 1825 (Articles V and IX) clearly contemplated the imposition of tonnage duties, and merely stipulated for British vessels being liable to no other or higher duties than New Granadian vessels, and not for any exemption from such duties in favour of British vessels; to the absence of any objection to the payment of such duties on the part of any other Power than that of the United States, and to the contents of Mr. Griffith's No. 114, from which it appears that the exemption from these duties obtained by the United States' Government in favour of its citizens has not been voluntarily or finally conceded by the Government of New Granada, but is still open as between these two Governments, I cannot say that Her Majesty's Government is called upon at present to take any steps in the matter.

Mr. Griffith should, however, continue to direct his attention to it, and if, owing to the recent political changes in New Granada, to a claim on the part of other Powers to exemption, or to any other circumstances, a favourable opportunity should arise for finally settling the question, *communications should be entered into with* New Granada for this purpose. If the tonnage duties should be increased, the matter should at once be taken up.

I have, &c.
(Signed) J. D. HARDING.

No. 33.

The Law Officers of the Crown to Earl Russell.—(Received February 17.)

UNITED STATES.

Claim of Messrs. Byrne and Co. for losses sustained by their vessel the "Monmouth" being warned off the Southern Coast of the United States.

Doctors' Commons, February 17, 1862.

My Lord,

WE were honoured with your Lordship's commands signified in Mr. Hammond's letter of the 11th instant, stating that with reference to the opinion given by us on the 30th of October last,† on the case of the British vessel "Monmouth," the owners of which claimed to be compensated by the United States' Government, on account of their vessel having been warned by a United States' man of war off the port of Savannah at a time when that port was not under blockade; he was directed by your Lordship to transmit to us, together with the previous papers, a copy of the note‡ in which, under instructions from the Foreign Office, Lord Lyons preferred a claim for compensation on behalf of Messrs. Byrne and Co., and a despatch from his Lordship§ inclosing a copy of the answer from Mr. Seward, in which he argued that the loss sustained by the owners of the "Monmouth" on the occasion in question was the fault of the master of the vessel, and was not referable to the United States' Government,

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* See Reports for 1861, page 187.

† On case submitted by Queen's Proctor; see Reports for 1861, page 265.

‡ December 31, 1861; in Lord Lyons' No. 4, January 2, 1862.

§ No. 54, January 27, 1862.

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which was consequently not called upon to make compensation to Messrs. Byrne and Co.

Mr. Hammond was pleased to request that we would take these further papers into our consideration, and furnish your Lordship with such observations as we might have to offer thereupon.

In obedience to your Lordship's commands we have considered these papers, and have the honour to report—

That Mr. Seward not only does not deny or dispute, but, on the contrary, must be considered as, in effect, admitting the fact to be, that Savannah was not blockaded on the 12th May last, the day when the "Monmouth" was boarded and warned off. Nor does he disavow. but, on the contrary, adopts and justifies, the conduct of the boarding officer (Lieutenant May).

It is also appears from Lord Lyons' note to Mr. Seward of the 31st of December, that the blockade of this port only commenced on the 28th of May, which is not questioned by Mr. Seward.

Under these circumstances, it appears to us that Mr. Seward's answer to Lord Lyons' application is inconclusive and unsatisfactory. The only point on which he relies is, that the master of the "Monmouth" should, after and notwithstanding the warning of Lieutenant May, have proceeded off the port of Savannah. It appears to us to be quite clear that, if she had done this, or even attempted to do it, the "Monmouth" would have rendered herself liable to capture; and that if the truth had proved to be according to Lieutenant May's statement, she might have been justly condemned. She had received formal notice from an officer of the United States' blockading force that the whole Southern coast of the United States of America was blockaded, and she was bound thereby; she would have been guilty of a clear *primâ facie* breach of her duty as a neutral if she had, in disregard of such notice, proceeded towards any port of the Southern coast.

That such is the general principle and practice of the law of nations is abundantly clear, and has never been denied or questioned; "the fact, duly notified to the *party on the spot*, is of itself sufficient to affect him with a knowledge of it; for the public notifications between Governments can be meant only for the information of individuals: but if the individual is personally informed, that purpose is still better obtained than by a public declaration." ("Wheaton's Elements of International Law," page 578 (edition 1857), citing and incorporating Lord Stowell's Judgment in the "Mercurius," 1 C. Rob., 83.)

"This information" (says Chancellor Kent, vol. i, "Commentaries," page 147) "may be communicated to him in two ways: either actually by a formal notice from the blockading Power, or constructively by notice to the Government or by the notoriety of the fact; it is immaterial in what way the neutral comes to the knowledge of the blockade."

"All that is necessary to make a notification valid and effectual, is that it shall be communicated in a credible manner, because though one mode may be more formal than another, yet any communication which brings it to the knowledge of the party, in a way which could leave no doubt in his mind as to the authenticity of the information, would be that which ought to govern his conduct, and will be binding upon him." (Lord Stowell's Judgment in "The Rolla," 6 C. Rob., 367.)

The master of the "Monmouth" was "personally informed of the fact on the spot" by an officer of the blockading force, "and in a way which could leave no doubt on his mind as to the authenticity of the information." But, in addition to the general principle of the law of nations, the Proclamation of President Lincoln, 19th April, 1861 (referred to by Mr. Seward), expressly declares that "if, with a view to violate such blockade, a vessel shall approach, or shall attempt to leave any of the said ports, she will be duly warned by the Commander of one of the blockading vessels, who will endorse on her register the fact and date of such warning, and if the same vessel shall again attempt to enter or leave the blockaded port she will be captured."

We cannot, therefore, understand Mr. Seward's statement "that there was no legal obligation in the warning to prevent the master of the 'Monmouth' from attempting to enter Savannah;" or that the warning was intended to apply specially to Charleston, and was substantially a "mere notification of possible danger of attempting to enter Savannah."

It cannot be doubted that if the "Monmouth" had persisted in proceeding

to Savannah after the warning she had received, and had been met by any armed vessel of the United States, she would have been captured under and by virtue of this Proclamation.

The United States' Government cannot, with any consistency, contend that masters of neutral ships are called upon to act, in relation to blockades instituted by it, in direct contravention of the formal notifications of the naval officers of the blockading force; or that they are entitled to presume that such notifications are or may be erroneous, and are, therefore, bound, at their own peril, to make further inquiries, which (if the notifications turn out to be correct) may subject their ships to confiscation.

The fact of the boarding officer having acted in the belief that Savannah was actually blockaded is immaterial; it is not pretended that he had any grounds for that belief, other than the President's Proclamation, which, so far from being (as contended by Mr. Seward) "a notification of the blockade of the coasts and ports of certain States," is only a notice of an intention to institute such a blockade at some posterior date, which is not stated. "For this purpose" (says the Proclamation) "a competent force *will be posted*, so as to prevent entrance and exit of vessels from the ports aforesaid."

Under these circumstances, it appears to us to be established that the "Monmouth" was bound to give full credit to, and to act upon, the formal, though erroneous, notification of Lieutenant May; and that for any loss sustained by her owners in consequence of her so doing, the Government of the United States must be held responsible; and we see nothing in Mr. Seward's note to affect this conclusion.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 34.

The Law Officers of the Crown to Earl Russell.—(Received February 19.)

Doctors' Commons, February 18, 1862.

FRANCE.

Claim of French Vice-Consul at Sierra Leone to exemption from arrest and imprisonment for non-payment of damages awarded against him by the Supreme Court for libel.

My Lord,

WE are honoured with your Lordship's commands signified in Mr Hammond's letter of the 12th of February instant, stating that he was directed by your Lordship to transmit to us the accompanying letter from the Colonial Office, inclosing a copy of a despatch from the Governor of Sierra Leone, reporting the circumstances under which the French Vice-Consul in that Colony had allowed a judgment against him in the Supreme Court, for libel, to go by default, and thereupon claimed, by virtue of his office, exemption from arrest and imprisonment for non-payment of the damages awarded against him; and to request that we would take these papers into our consideration, and that we would favour your Lordship with our opinion thereupon.

Mr. Hammond was also pleased to state that we should find marked in the accompanying volumes the correspondence alluded to by the Governor of Sierra Leone in his letter to the Vice-Consul of the 11th of January.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That foreign Consuls can claim no exemption, by virtue of their office, from the jurisdiction of British Courts of Civil Judicature, in respect of acts of such Consuls by them committed within British jurisdiction.

In this case the action is founded on the alleged publication by the Consul, within the Colony, of a libel on the plaintiff in the suit; and if the Consul had any valid defence to the action (such, for instance, as that the circumstances attending the publication negatived the ordinary presumption of "malice," or that the imputations were true, &c.), he should have "appeared" to the action, and set up such defence in the usual way.

He designedly declined to "appear," or take any legal step to defend himself; and thereupon judgment (necessarily) passed against him in the ordinary course of law.

The Governor rightly states that he has no power to interfere. We observe that the Consul, in his letter to the Governor of January 16, indicates an intention

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of appealing from the Judgment in question; but he appears to suppose that it is for the Governor to "put the matter in motion." The Governor thereupon, in his letter of January 17, properly informs him that he should take legal advice. With this letter the correspondence closes; it does not appear whether the Consul has legally appealed from the Judgment.

Under these circumstances the matter must necessarily be left to take its course. The Governor's conduct has been perfectly correct, and he has no power in his executive capacity to interfere in any manner with the Judgment or its consequences.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 35.

The Queen's Advocate to Earl Russell.—(*Received February* 19.)

UNITED STATES.

Case of the British schooner "Telegraph." Treatment of master and crew by the Commander of the United States' schooner "Wanderer."

Doctors' Commons, February 19, 1862.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 14th February instant, stating that he was directed by your Lordship to transmit to me a letter from the Colonial Office, dated the 11th February instant, and a despatch from Her Majesty's Minister at Washington (No. 55, of the 27th of January), inclosing papers received from the Lieutenant-Governor of the Bahamas respecting the treatment to which the master and crew of the British schooner "Telegraph" are stated to have been subjected by the commander of the United States' schooner "Wanderer," and to request that I would take this case into consideration, and report to your Lordship my opinion thereupon.

In obedience to your Lordship's commands I have taken these papers into my consideration, and have the honour to report—

That, assuming the facts to be correctly stated in the extended protest dated Nassau, January 1, 1862, the capture and detention of the "Telegraph" appears to have been wholly without cause or justification. It is therein stated (page 10) that no cause or reason of any kind was offered by the commander, officers, or crew of the "Wanderer," for stopping, detaining, and carrying back the "Telegraph" to Key West;" and (at page 9) that the Marshal at Key West (to whom the master had been referred by the captor) asked the master why he had been brought back, and told him that nothing could be proved against him.

The handcuffing William Jones Fisher, and keeping him handcuffed for three days and three nights, appears also to have been unjustifiable. The circumstances connected with the previous voyage of the "Telegraph" from Nassau to Key West are not stated; and there is no information whatsoever as to the case, excepting that which is contained in the extended protest: the first protest made before Vice-Consul Welch at Key West, December 7, 1861, is very short, and in it nothing is said as to the handcuffing of William Jones Fisher. Nothing is suggested as to any loss incurred, nor is any compensation demanded; and it does not appear that the "Telegraph" had any cargo on either voyage.

The Vice-Consul at Key West should transmit a full report of the case, if he has not already done this; stating what passed between him and the authorities at Key West on the subject, and giving any additional information which he can as to the details and merits of the case, and the supposed cause of the "Telegraph's" treatment.

In the meantime a copy of the extended protest may (if your Lordship think fit) be transmitted to Lord Lyons, who may be instructed to state to Mr. Seward that your Lordship has received information that the British schooner "Telegraph," of Nassau, sailed from that port for Key West on the 20th November, 1861, and arrived there on the 26th; that on the 28th November she left Key West, bound to Green Turtle Key, otherwise New Plymouth, in the Island of Abaco, Bahamas. That, on the 30th November, whilst prosecuting his voyage, and near Indian Key, she was brought-to by the United States' cutter or schooner "Wanderer," Commander Spotts, and her master was ordered on board with his ship's papers, which were taken from him. That the "Telegraph" was thereupon detained, and taken by the "Wanderer" back to Key West, arriving on the 3rd December. That soon after her capture, William Jones Fisher, one of her crew, was ordered on board the "Wanderer," and then placed and kept in handcuffs for three days and nights. That after her arrival at Key West Henry Augustus Fisher, her master, was informed by the commander of the "Wanderer" "that he might go ashore and see the Marshal;" that he went to the Marshal's office, who asked him "why he had been brought back;" in reply to which the master stated the facts as above narrated; that the Marshal thereupon returned him his ship's papers, and said "he was all clear, and that nothing could be proved against him." That on the 6th December an officer of the "Wanderer" hailed the "Telegraph," and informed her master that his vessel was released, and that she thereupon returned to Nassau.

That no person on board the "Wanderer" ever made any charge against, or stated any reason for the capture of, the "Telegraph," which (as well as the handcuffing of Fisher) appears to your Lordship to have been wholly unjustifiable, and of which your Lordship must, therefore, request a full explanation.

I have, &c.
(Signed) J. D. HARDING.

No. 36.

The Queen's Advocate to Earl Russell.—(*Received February* 21.)

MEXICO.

Claim of Messrs. Finlay, Hodgson, and Co., on account of certain written orders of the then Mexican Government upon certain Custom-houses for the payment of 250,000 dollars out of the import duties.

Doctors' Commons, February 20, 1862.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 17th February instant, stating that he was directed by your Lordship to transmit to me two letters from Messrs. Finlay, Hodgson, and Co., dated the 28th November, 1861, and 29th January, 1862, stating the particulars of their claim upon the Government of Mexico, and requesting that the influence of Her Majesty's Government may be exerted to obtain its settlement by that Government; and to request that I would take this case into consideration, and report to your Lordship my opinion thereupon.

In obedience to your Lordship's commands I have taken these papers into my consideration, and have the honour to report—

That I am of opinion that Her Majesty's Government cannot properly support this claim against the Government of Mexico.

Apart from all considerations connected with the peculiar position in which Her Majesty's Government is now placed in relation to Mexico, I observe that Messrs. Finlay, Hodgson, and Co. never had on their own account any claim or demand upon any Mexican Government. They received (apparently in 1858) as a collateral security for a private debt owing to them by a Mexican citizen, certain written "orders" which he had obtained from the Mexican Government in possession of the capital, on account of a debt due to him from that Government, upon certain Custom-houses (not then in its possession or under its control, but I presume in the hands of the party in arms against it), for the payment of 250,000 dollars out of the import duties there received. They took these orders with full knowledge of all the circumstances. The orders never seem to have been presented at the Custom-houses; nor was any step apparently taken by Messrs. Finlay, Hodgson, and Co., in support of their claim against either the Government issuing the orders, or any Mexican Government, until 1861. They appear to have then, for the first time, sought to enforce these orders.

The present Mexican Government denies or repudiates the validity of the orders, and the authority of the Government which issued them to bind the Republic thereby. No copy of the orders is supplied, and their precise form and effect does not appear.

Messrs. Finlay, Hodgson, and Co. do not state that any other claims of the same character have been supported by Her Majesty's Government, or by any other foreign Government on behalf of their subjects; or that the claims of any Mexican holders of similar orders have been admitted by the present Government of Mexico.

1862

Messrs. Finlay, Hodgson, and Co. only represent in this matter the claim (whatever it may have been) of their Mexican debtor upon his Government: they are, in respect thereof, only in the same position as he would be if he now held these orders; and his claim would not be admitted by the Mexican Government.

Their claim is not, in my opinion a "British claim," in the ordinary international sense of these words: they have not alleged that they are placed in a worse position than Mexicans having similar claims; and they have not established any special grounds for the intervention of Her Majesty's Government. I cannot, under these circumstances, advise your Lordship to authorize any application to the Mexican Government in their favour.

I have, &c.
(Signed) J. D. HARDING.

No. 37.

The Law Officers of the Crown to Earl Russell.—(Received February 24.)

Doctors' Commons, February 22, 1862.

PERU.

Alleged atrocities of Peruvian Agents in the collection of Chinese emigrants for shipment to Peru in the French ship "Ville d'Agen."

My Lord,

WE were honoured with your Lordship's commands signified in Mr. Hammond's letter of the 12th February instant, in which he stated that he was directed by your Lordship to transmit to us the papers, as marked in the margin,* respecting atrocities alleged to have been committed by certain Peruvian agents in the collection of Chinese emigrants for shipment to Peru in the French ship "Ville d'Agen."

Mr. Hammond added that your Lordship learnt from the letter from the Colonial Office of the 11th instant, that the Duke of Newcastle had transmitted some papers to us on this case, and had requested our opinion as to whether, on the application of Laou, Governor-General of the Two Kwang, the Governor of Hong Kong would be justified in surrendering to the Chinese Government the person of Juan Pastor, who was implicated in the forcible detention and murder of some of the kidnapped coolies. But, inasmuch as the Peruvian Minister at this Court, in his letter to your Lordship of the 7th instant, had made the supposed intention of the British authorities to comply with the application of the Chinese Governor Laou the subject of a representation to Her Majesty's Government, your Lordship was pleased to request that we would take the inclosed papers into our consideration, together with those sent to us from the Colonial Office, and that, in addition to furnishing you with any observations on the general question which we might propose to address to the Duke of Newcastle, we would furnish your Lordship with our opinion as to the answer which should be returned to the Peruvian Minister.

Your Lordship also requested our opinion whether the facts disclosed in these papers would bear out Her Majesty's Government either in revoking the exequatur of the French Vice-Consul at Hong Kong, or in applying to the French Government to revoke his appointment.

In obedience to your Lordship's commands we have considered these papers, and have the honour to report—

Cannot surrender to Chinese Government the person of Juan Pastor.

That with respect to the first question put to us in Mr. Hammond's letter, we are of opinion that the Governor of Hong Kong would not be justified in surrendering to the Chinese Government the person of Juan Pastor. English law would not sanction even a trial of the offender before a British Court, as the crime imputed was committed out of British jurisdiction: international law would not sanction it, as the accused person is a subject not of Great Britain, but of Peru; and, were such a course to be adopted, the Peruvian Government would be entitled to complain. Extradition of persons charged with crime can take place, according to British law, only under valid and binding Treaties with foreign Governments; and the Treaty between Great Britain and China relates only to subjects of the respective countries; and this is a complete answer to the request of the Chinese Governor.

With respect to the security taken by the Chief Justice for the appearance of Pastor and Helguero, such security cannot, in our opinion, be enforced, and no further proceedings should be taken in the matter.

With respect to the answer to be returned to the note of the Peruvian Minister of the 7th of February, we would suggest that it may be stated that information reached the authorities at Hong Kong that the Chinese coolies then on board the "Ville d'Agen" at that port had been, by the direct instrumentality of Pastor, and apparently with the knowledge and concurrence of Helguero, wrongfully and forcibly seized or kidnapped, under various false pretences, in China; that the ship had been fitted out at Hong Kong for the carrying out this criminal enterprise without the knowledge of the authorities, whose attention had not been attracted to her, owing to her foreign flag; that, in carrying it out under the immediate superintendence of Pastor, a series of the most flagrant outrages had occurred, many Chinese lives had been sacrificed within Chinese territorial jurisdiction, and great cruelties perpetrated on the survivors. That this state of things threatened the most serious consequences to the relations existing between European Governments and that of China, and especially to British and French interests. That on the French Commandant at Canton becoming aware of what had happened in connection with the "Ville d'Agen's" proceedings he promptly intervened, and applied to the authorities of Hong Kong on the subject, and upon full inquiries was so satisfied of the guilt of the master and crew of the "Ville d'Agen," that they were, on his requisition, delivered up to him to be sent to France for due punishment. That the British and French authorities at Canton and the British authorities at Hong Kong had made the fullest inquiries into the case, and had procured satisfactory evidence of the entire truth of the above facts. That, under such circumstances, they had rightfully interfered, at the request of the French Commandant, to prevent the coolies, thus brought under the French flag within British jurisdiction, from being detained therein against their will: and that judicial proceedings had been instituted against Pastor and Helguero at Hong Kong in respect of their conduct in wrongfully bringing into and keeping them in custody within British jurisdiction.

That, notwithstanding the acquittal of Pastor and Helguero, on technical grounds, on this charge, the Chinese Governor of the province within which the coolies had been seized had made a formal application to the Governor of Hong Kong for the surrender of those persons to him, upon which, after a full argument, the Chief Justice had held them to bail, and remitted the case to England; and that it was only on a fuller consideration of the question here that the conclusion had been arrived at that, in strictness of law, the Chinese application cannot be complied with. That Her Majesty's Government is convinced that the Government of Peru will, upon further information, take the same view of the substantial merits of the case which that of Her Majesty has taken, in which it is confirmed by the conduct adopted by the chief French officer on the spot, and will see that a series of gross crimes and wrongs has been committed by the Peruvians in question, and their agents, under cover of the French flag; and by availing themselves of the use of a British port, both against the coolies and the Chinese Government. That they began their criminal enterprise by fitting out the ship within British jurisdiction, into which they afterwards brought the Chinese subjects whom they had seized in China, thus seriously compromising the relations of China and Great Britain; and that if, for technical reasons, it has not been found possible to punish them, or to deal with them (as the master and crew of the French vessel chartered by them have been dealt with), by remitting them for punishment to their own Government, this is only to be regretted.

It will be for your Lordship to consider whether or not to transmit to the Peruvian Minister any of the evidence contained in the papers.

Not justified in surrendering to French Commandant the master of the French ship "Ville d'Agen."

We observe that, in the letter of Sir Frederic Rogers to Mr. Hammond of the 31st of December, 1861, the question is raised whether the Hong Kong authorities were justified, according to English law, in giving up to the French Commandant the master of the French ship "Ville d'Agen." We are of opinion that this question must be answered negatively. Internationally, as between France and England, no complaint can, of course, be made; but the extradition could, according to our law, be justified only under the Statute embodying and enforcing the Treaty with France for extradition; and this

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* Colonial Office, December 27 and December 31, 1861; Mr. Bruce, No. 162, November 13, 1861; M. de Osma, February 7, 1862; Colonial Office, February 11, 1862.

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Treaty (1843) and the Statute enforcing it (see 6 & 7 Vict., cap. 75) relate to such offences only as are committed "within the territories and jurisdiction" of France.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 38.

The Law Officers of the Crown to Earl Russell.—(Received February 26.)

CHINA.

Resolutions of Shanghae land-renters.

Doctors' Commons, February 25, 1862.

My Lord,

WE were honoured with your Lordship's commands signified in Mr. Hammond's letter of the 18th February instant, in which he stated that he was directed by your Lordship to transmit to us a despatch from Mr. Bruce, Her Majesty's Minister at Peking (No. 65), inclosing, together with other papers, a series of resolutions passed at a meeting of the Shanghae land-renters, at which it was determined that the Governments of those Powers whose subjects or citizens were interested in the matter, should be applied to, to recognize the Land Regulations of 1854, so as to enable the respective Consuls to enforce their observance.

Mr. Hammond added, that the considerations involved in this question appeared to be fully set forth in the inclosed papers, as well as in the correspondence of 1854* (which was also sent therewith), and requested that we would take the matter into our consideration, and advise your Lordship as to the answer which should be returned to Mr. Bruce.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we are of opinion that the application in question (which we observe was unanimously recommended by the meeting of foreign renters of land at Shanghae on the 6th January, 1861, and which is approved of by Her Majesty's Minister at Peking) should be acceded to.

It appears from the note of Sir John Bowring to M. de Bourboulon, 4th of December, 1854, that these "land regulations," having been approved by the Chinese authorities, were in 1854 signed by the Consuls of the then (three) Treaty Powers (Great Britain, France, and the United States), and afterwards ratified by the adhesion of the three Plenipotentiaries. France appears subsequently to have withdrawn her concurrence, and to have maintained her right to exercise an exclusive authority over a separate portion of the limits in question.

Adverting to the statement in Mr. Medhurst's note to Mr. Bruce, 26th of June, 1861, that these Land Regulations having never been adopted and published, or made or enforced by the British Consul under section 3 of the Order in Council of the 13th June, 1853, as Consular Rules and Regulations, doubts may exist as to their legal force and authority, *quoad* British subjects, we consider those doubts to be well founded; and we recommend that the "Code of Land Regulations" should be adopted and published by the Consul as "Rules and Regulations" under the Order in Council aforesaid, with any modifications which may be found necessary in form, but without altering their substance; penalties should be enacted for the breach of the Regulations by the Consul, and added to the Regulations, which may thereupon be enforced against British subjects by the Consular jurisdiction.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

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[*] Sir J. Bowring, No. 94, July 22, 1854; No. 215, December 4, 1854; to Sir J. Bowring, No. 158, October 24, 1854.

No. 39.

The Law Officers of the Crown to Earl Russell.—(Received February 27.)

UNITED STATES.

Claim of Mr. J. Carville Stovin for unjust imprisonment and loss of property.

Doctors' Commons, February 25, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 11th February instant, stating that he was directed to transmit to us therewith, a letter dated the 15th January ultimo, from Mr. J. Carville Stovin, a British subject, inclosing a printed statement of a claim made by him upon the Government of the United States, for compensation for unjust imprisonment, and loss of property consequent thereon; and also to inclose the previous correspondence* which has passed on the subject with Her Majesty's Minister at Washington, and to request that we would take the case into consideration, and report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That upon the question whether Mr. Stovin was, at the time of his arrest, entitled to British protection, we entertain no doubt; and, inasmuch as this has been admitted by Mr. Seward, we do not think it necessary to dwell upon that subject. At the same time we must observe that, to a person who had taken an oath renouncing (though prospectively, and not in an irrevocable manner) his allegiance to Her Majesty, nothing more can be due than that strict measure of protection which it may be incumbent upon Her Majesty's Government to give to all Her Majesty's subjects resident and suffering wrong in the territories of a foreign State.

Mr. Stovin complains, in the first place, of certain acts done on the 19th of June, 1861; which appear to have been acts of lawless interference by certain military officers of the United States with his personal liberty, and also with his property; a horse belonging to him having been taken without payment. It does not, however, appear that these acts were authorized or sanctioned by the United States' Government, or that Mr. Stovin may not have adequate civil remedies for them by the laws of the United States, even as administered during the present civil war. The interference, on this occasion, with his personal liberty, was of only a few hours' duration; and we cannot think that it is either necessary or expedient for Her Majesty's Government to treat instances like this, of the mere casual abuse of military power by individual soldiers and officers, as furnishing sufficient grounds for international complaint.

The subsequent arrest of Mr. Stovin on the 7th of October, and his imprisonment from that time till the 14th of November, are acts of which the responsibility clearly belongs to the Executive Government of the United States.

It appears by Mr. Seward's letter of the 18th October, 1861, that Mr. Stovin was accused of being "found, on the 10th of that month, actively engaged in seditious proceedings to foment insurrection in the State of Maryland;" and that his arrest and imprisonment were justified by the United States' Government, "under the suspension of the writ of *habeas corpus*," on the ground that "the public safety required that, for the present, he should remain in custody." The accusation was denied by him as soon as he had any opportunity of learning its nature; no attempt was ever made to support or substantiate it in any manner whatever; the name of the accuser was not even divulged, and the charge itself appears to have been absolutely false and groundless. He was nevertheless, arbitrarily detained for more than a month in prison, suffering, during that time, very severe hardships; and, by the sudden and violent interruption of his business, he also suffered serious and unavoidable pecuniary loss, although the amount at which he himself estimates that loss may be much exaggerated.

That Mr. Stovin is, in justice, entitled to ample compensation for these injuries, seems to us to be clear; and we are of opinion that, as no satisfactory answer has yet been given upon the subject, it will be proper for Her Majesty's Government (if they think fit) to make such representations in his favour as may be calculated to obtain for his claims the fair and just (and, if possible, the favourable) consideration of the United States' Government.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

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[*] From Lord Lyons, Nos. 604, 619, and 650 (1861); to Lord Lyons, No. 422 (1861); No. 16 (1862); No. 38 (1862).

No. 40.

JAPAN.

Rules and Regulations issued by Mr. Alcock under the Order in Council of 23rd January, 1860, for the peace, order, and good government of Her Majesty's subjects.

The Law Officers of the Crown to Earl Russell.—(Received February 26.)

Doctors' Commons, February 26, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 18th February instant, stating that he was directed by your Lordship to transmit to us a despatch from Mr. Alcock (No. 101 of the 20th of November, 1861), inclosing copies of the Rules and Regulations issued by him under the Order in Council of the 23rd of January, 1860, for the peace, order, and good government of Her Majesty's subjects in Japan; and to request that we would take the same into our consideration, and report to your Lordship whether, in our opinion, they should be approved by Her Majesty's Government.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we observe that, by these Rules and Regulations, a common punishment of a fine of 200 dollars, or a month's imprisonment, is imposed in respect of each of the various offences prohibited, although such offences differ very considerably in their character. This, however, is a matter of discretion; and Mr. Alcock's local knowledge and experience make him the best judge. Any inconvenience or injustice likely to arise from the common punishment may be probably obviated by making the fine and imprisonment to be "not exceeding" 200 dollars, or one month's imprisonment; and we would suggest an amendment to this effect.

A more difficult question, it appears to us, arises on the 7th Regulation, providing, in a given event, for the liability of British subjects to arrest by "any Japanese official." It is true that such arrest cannot, under the Regulations, take place without "a Consul's warrant, or license;" but it would appear by the nature of the case that such warrant or license must be general to arrest all British subjects doing certain acts, and not delivering a card (*i.e.*, in other words, a warrant or license issued by the Consul, without cognizance or consideration of any particular facts or circumstances). This would seem to place British subjects unprovided with the "card" very much at the mercy of the Japanese officials. We would suggest this matter as deserving the reconsideration of Mr. Alcock, the more especially as no Rule or Regulation provides for the application for, or issuing of, any such "card" at the Consulate, as, in our opinion, it ought to have done.

It is not, of course, possible for us, in ignorance of the very peculiar circumstances connected with the existing international relations with Japan, and the position of British subjects in that country, to judge of the policy of the Rules, as regards, especially, the scope and extent of their provisions; but we see no objections to them in other respects sufficient to require their alteration.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 41.

JAPAN.

Proposed Consular Notification interdicting British subjects repairing to or residing in the city of Yeddo without special warrant and authority.

The Law Officers of the Crown to Earl Russell.—(Received February 26.)

Doctors' Commons, February 26, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 18th of February instant, stating that he was directed by your Lordship to transmit to us a despatch from Mr. Alcock (No. 108, November 28, 1861), inclosing the draft of a Notification which, after consulting with the Attorney-General of Hong Kong, he purposes to issue, under the Order in Council of the 23rd of January, 1860, interdicting British subjects from repairing to or residing in the city of Yeddo, without special warrant and authority from Her Majesty's Consul-General, by and with the consent and concurrence of the Japanese Government, and rendering British subjects who may disregard this order liable to be dealt with by the Japanese authorities; and to request that

we would take this draft Notification into our consideration, and report to your Lordship our opinion whether it is right and proper.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we are of opinion that the proposed Notification of Mr. Alcock, prohibiting the resort of British subjects to Yeddo, except under the conditions therein specified, is altogether *ultra vires*, and ought not, therefore, to have been issued. By Article III of the Treaty with Japan it is expressly stipulated that British subjects "shall be allowed to reside in the city of Yeddo" from the 1st of January, 1862. But to allow the exercise of this right to depend (as the Notification proposes it shall) on the "consent and concurrence of the Government of the Tycoon of Japan," would be to rescind this part of the Treaty,—an act competent alone to the two Governments who were parties to the Treaty, and (as far as this country is concerned) quite beyond the Consular power of making rules, &c., for the "peace, order, and good government of Her Majesty's subjects," under the 4th Regulation of the Order in Council.

Supposing, however, that the Consular power could be held to extend to the making of a rule or regulation such as is proposed in the Notification, it would be contrary to the letter and spirit of the Treaty (which alike require that the offences of British subjects shall be tried and punished by British tribunals), that, for the breach of any particular regulation, a British subject should be handed over to "the authorities appointed by the Government of the Tycoon, to be dealt with according to the laws of Japan." On considerations of policy, and humanity also, such a regulation would, as it appears to us, be most objectionable.

The Consul-General, it apears to us, would be justified in issuing a regular tion prohibiting the resort of any British subjects to Yeddo until further notification "pursuant to the instructions from your Lordship to him of the 10th of April, 1861" (printed papers herewith). He may also, by the same regulation, impose a defined punishment for disregard thereof; but beyond this, we do not think the Consul-General can legally go in the way of prohibition. He may, of course, warn his fellow-subjects of the probable consequences to themselves personally of visiting Yeddo in disobedience of this order; but it would be wrong, in our judgment, if he were to intimate to such British subjects, and more particularly to the Japanese Government, that from such subjects British protection was to be considered as withdrawn. Any rule to that effect would be bad.

If the Notification of which a draft is submitted to us shall have been published, we think that Mr. Alcock should be instructed to revoke it, and to issue, in lieu thereof, a regulation to the effect above suggested.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 42.

UNITED STATES.

Request of Mr. G. Fry that certain legal documents may be sent to Her Majesty's Consul at New Orleans.

The Queen's Advocate to Earl Russell.— Received February 28.)

Doctors' Commons, February 26, 1862.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 22nd February instant, stating that he was directed by your Lordship to transmit to me a letter, dated the 17th February instant, from Mr. G. Fry, stating the grounds upon which he requests Her Majesty's Government to forward to Her Majesty's Consul at New Orleans certain legal documents which he inclosed.

Mr. Hammond was also pleased to state that your Lordship has for some time past declined to comply with similar applications from merchants and others having commercial interests in the Southern States, but that he was directed to request that I would take Mr. Fry's application into consideration, and furnish your Lordship with my opinion as to whether there is anything in this case of so exceptional a nature as should induce you to relax that rule in favour of the parties represented by Mr. Fry.

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In obedience to your Lordship's commands I have taken these papers into my consideration, and have the honour to report—

That this application comes from the attorney of certain American citizens, owners of a United States' merchant-ship which has been wrecked, who have brought actions in the Court of Common Pleas on policies of insurance effected at Lloyd's upon the vessel, against the British underwriters, which actions are contested by them, upon what grounds does not appear. All the plaintiffs reside at New York, and have executed the necessary documents to authorize the actions, except one Phillips, who was resident at New Orleans, and who has taken the oath of allegiance to the Confederate States, and obtained a commission in the Confederate army.

The plaintiff's attorney now seeks to employ Her Majesty's Consul at New Orleans to find Phillips, and to obtain from him the execution of the necessary documents, on the ground that the action cannot proceed to trial until these documents are sent to England, and that owing to existing circumstances it has not been found practicable to obtain them from him.

The only British interest is that of the defendants, as against whom the Consul's active intervention is sought; and if your Lordship has hitherto, during the civil war in America, refused, as a rule, to allow Her Majesty's Consuls to act in similar cases on behalf of British subjects, or in favour of British interests, I do not consider that your Lordship is called upon to relax this rule in favour of American plaintiffs in action against British defendants.

This must not, however, be stated to Mr. Fry, who may be simply informed that your Lordship regrets that you cannot comply with his application.

I have, &c.
(Signed) J. D. HARDING.

No. 43.

The Queen's Advocate to Earl Russell.—(Received March 1.)

TURKEY AND GREECE.

Dispute between the two Governments respecting certain landed property near Thebes belonging to Mussulmans.

Doctors' Commons, February 28, 1862.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 10th February instant, stating that he was directed by your Lordship to transmit to me the accompanying despatches from Her Majesty's Ambassador at Constantinople (No. 700), and Her Majesty's Minister at Athens (No. 4), on the subject of a dispute which has arisen between the Turkish and Greek Governments respecting certain landed property near Thebes belonging to Mussulmans; and also to transmit a Memorandum on this case, together with copies of the Convention and Protocols referred to in the inclosed papers; and to request that I would furnish your Lordship with my opinion on the rights of the matter.

In obedience to your Lordship's commands I have taken these papers into my consideration, and have the honour to report—

That this controversy, arising between the two Governments of Turkey and of Greece, is submitted to the consideration of Her Majesty's Government in the following papers:—

(1). The note of Conéménos Bey to M. Conduriottis, March 7, 1861.

(2). That of M. Conduriottis to Photiades Bey, July 24, 1861.

(3). The note of Mehemed Djemil Bey to Sir H. Bulwer, of November 2, 1861, which concludes by requesting from Her Majesty's Government, in concurrence with the Governments of France and Russia, its intervention under the Protocols of London and of the Arrangement of Constantinople, July 21, 1832, in order to obtain possession for the Turkish claimants of certain lands in the Province of Thebes in Greece. It further appears (from Sir F. Wyse's No. 4 to your Lordship), that he had received a communication from Sir H. Bulwer, begging him to give what support he could to the Turkish claim against Greece; and that Photiades Bey, the Turkish Minister at Athens, had applied to him and also to the Russian and to the French Ministers at that Court, to support the Turkish claim, but that neither of these Ministers had received any instructions in the case. There is, therefore, nothing to show the view taken of the case by France or Russia, and Her Majesty's Government cannot act alone.

It is apparent that the Turkish Government can only be entitled to the intervention of the three Powers in support of this claim, on the ground that it falls within some of the international stipulations or arrangements to which those Powers were parties in connection with the separation of Greece from Turkey, and its erection into an independent kingdom. For, if the case is one arising and pending exclusively between the Governments of Turkey and Greece, in the ordinary shape, Her Majesty's Government cannot interfere, whatever may be its merits.

The notes of Conéménos Bey, March 6, 1861, and of Mehemed Djemil Bey, November 2, 1861, have failed to satisfy me that the Greek Government has in this matter acted in violation either of the Treaty of 1827 (Article II), of the Arrangement of July 21, 1832, or of any of the Protocols or international documents to which I have access, so as to justify the intervention of the three Powers.

The circumstances of the case appear to be shortly these:—Certain Turkish proprietors of lands in the district of Thebes sold these lands in 1834 to a Russian named Zacharoff; Zacharoff's title never seems to have been perfected or recognized by the Greek Government; he never appears to have obtained possession, or to have received any rent; and at some date (not appearing), it is stated that this Government took arbitrary possession of the lands, which it has ever since retained. In 1840 Zacharoff is alleged to have re-sold the same lands to the present claimants (the heirs of the originals owners), who now claim possession from the Greek Government under and by virtue of this title, contending that both the first purchase by Zacharoff and their second purchase from him were valid transactions within the stipulations and arrangements sanctioned by the three Powers, relating to the sale and purchase of Turkish lands in Greece, and of such a character as to require the intervention of the three Powers to compel Greece to admit the claim.

It appears that although the Greek Government has never admitted the validity of the claim, no application to the three Powers has ever until now been made on the subject, either by Zacharoff, by the claimants, or by the Turkish Government, and no sufficient or material explanation is given for the long delay which has occurred on the part of all concerned in applying to the three Powers. Other claims of a similar character were arranged by their intervention in 1843. One material question is, whether the three Powers ever formally sanctioned and required Greece to recognize, as a general principle, the right of the original Turkish owners to sell their lands in Greece to foreigners, or to purchase such land from foreigners; and, if so, when and by what documents they did so.

The Treaty of 1827 (Article II) and many of the subsequent Protocols seem to have contemplated and provided for the purchase by the Greek Government (exclusively) of all "Turkish property" in Greece. The words "the Greeks" in this Article must, in my opinion, have had this meaning, as far as I can understand the argument of Mehemed Djemil Bey in his note of November 2, 1861. The arrangement of July 21, 1832, Article III, *first* authorized the sale of such property to private individuals (including foreigners) within the term of eighteen months from the day when the demarkation of boundary should be completed; I assume (although this is not expressly stated) that the sale of the lands now in question, by their Turkish owners to the Russian Zacharoff in 1834, was made within this period. Looking, however, to the previous intention of the Powers, and to the words, "the Greek State," at the end of this Article, I am not satisfied that the sale of Turkish lands to foreigners was thereby contemplated and provided for.

Subsequently, by the intervention of the three Powers, and after a protracted negotiation, the Convention of 1837 between Greece and Turkey was negotiated (of which no copy is stated to be in the Foreign Office), by which the Turkish Government renounced all right on behalf of itself and its subjects as to all property situated in the Province of Thebes. The Greek Government contends that Turkey is "estopped" by this stipulation. The Turkish Minister contends that it only applied to property "not sold," and that this was not the condition of the claimants' property, which had been sold to Zacharoff in 1834. The Turkish argument appears to be cogent; but without seeing the text of this Convention, I cannot decide this point.*

In 1843 a question (which had been long pending) as to the sale by certain

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* See subsequent Report of March 18, 1862, page 63.

Turks of lands in the lower district of Thebes to foreigners, was reluctantly settled, through the intervention of the three Powers, by the Greek Government ceding this property to the foreign purchasers upon certain terms including the verification of their titles by the purchasers. (See the note of M. Rizo to Sir E. Lyons, 31st August, 1843.)

Mehemed Djemil Bey refers to and relies upon this arrangement as bearing on the present claim, and contends that Zacharoff would have been entitled to have availed himself of its benefit had he duly applied for that purpose; and this arrangement of 1843 seems to be the principal ground relied on by the Bey; but I can find therein no general principle applicable to this case. It only settled *certain* claims which had then been advanced, of which the present claim did not form one.

I have altogether failed to discover any general stipulation by which the Government of Greece has ever bound itself to the Three Powers either to permit (generally) the sale to foreigners of lands in Greece originally owned by Turks, or to admit the validity of purchases of lands in Greece made by Turks from foreigners. The original intention expressed in Article II of the Treaty of 1827, that the Greek Government should acquire all lands owned by Turks in its territory, seems only to have been modified by express stipulation or arrangement in certain particular cases, specifically brought to the notice of the three Powers, of which the present is not one; and neither Zacharoff nor the claimants having taken any steps to bring forward their case under these stipulations or arrangements, the claimants cannot now appeal to them with any effect.

The particular species of title now relied on by Turkey (viz., purchase by Turks from a previous foreign purchaser) has never, as far as I am aware, been considered or dealt with by the three Powers, or recognized by Greece in any other instance. If, as suggested by Mehemed Djemil Bey, the sale of such property by its Turkish owners to a Russian was valid, and was provided for by the existing arrangements, I cannot understand why Zacharoff did not, whilst he was owner between 1834 and 1840, obtain some recognition of his title by the Greek Government, or, failing so to do, apply, as other foreign purchasers did, to the three Powers for their intervention. So with respect to the purchase of it in 1840 by the claimants, the heirs of the original owners. I fail to perceive how this transaction falls within the cognizance of the three Powers under any document forthcoming, or, if it does, why earlier application was not made to them on the subject by Turkey.

The Greek Government (1) relies upon the Treaty with Turkey of 1837, of which no copy is forthcoming; (2) it denies the validity of the purchase by the claimants from Zacharoff in 1840—a transaction which is in my opinion open to question, Zacharoff never having obtained possession or any recognition of his title; (3) it offers, in the event of the claimants establishing their real ownership, to pay them an equitable indemnity upon certain bases, in accordance with the arrangements of 1837 in similar cases. (See conclusion of note of M. Conduriottis, July $\frac{12}{24}$, 1861). The Turkish Government, on the other hand, insists upon the claimants receiving absolute possession of the lands, and requests the intervention of Great Britain, France, and Russia in favour of this demand. (See conclusion of note of Mehemed Djemil Bey, November 2, 1861.)

Under these circumstances I am of opinion (1) that the Turkish Government has not established any case sufficient for the intervention of the three Powers; (2) that the offer of the Greek Government is, under the peculiar circumstances of the case, one which the three Powers would be justified in considering as a sufficient concession to Turkey; and that no other material result could reasonably be anticipated from their intervention than that which is thus already attained.

I would therefore suggest that your Lordship should decline to accede to the application of Mehemed Djemil Bey.

I have, &c.
(Signed) J. D. HARDING.

No. 44.

The Queen's Advocate to Earl Russell.—(*Received March* 4.)

UNITED STATES.

Capture of the "Cheshire" by the United States' cruizer "Augusta" for attempt to break the blockade of Savannah.

Doctors' Commons, February 28, 1862.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 26th February instant, stating that with reference to my Report of the 10th instant,* he was directed by your Lordship to transmit to me, together with the previous papers,† a letter from Mr. Baines,‡ inclosing a copy of the protest made by the master of the "Cheshire," the vessel captured by the United States' cruizer "Augusta," on a charge of attempting to break the blockade of Savannah.

Mr. Hammond was also pleased to state that I should see from the inclosed papers that the owners stated, in reply to the letter which was addressed to them founded upon my report, that the men who had been taken from on board the "Cheshire" had been released, and that consequently no instructions were sent to Lord Lyons on the subject; but that he was now to request that I would again take this case into consideration, with reference to the statements contained in the master's protest, and furnish your Lordship with my opinion as to the instructions, if any, which should be sent to Her Majesty's Minister at Washington.

In obedience to your Lordship's commands I have taken these papers into my consideration, and have the honour to report—

That the facts stated in the protest are not of a very grave character, nor do they seem to have caused any very serious consequences to those concerned. They do not appear to me to be such as urgently to require the intervention of Her Majesty's Government. I can only suggest that, if your Lordship thinks fit, the protest may be sent to Lord Lyons, who may be instructed to call the attention of the United States' Government (in a courteous manner, and rather with a view to future cases than as a matter of distinct complaint), to the fact that the master and a portion of the crew were taken out of the ship and detained by the captors from the 5th of December to the 19th January, whereas the "Cheshire" arrived at New York on the 19th December, and that the separation of a master and crew of a ship sent in for adjudication is not regular, and, especially as regards the master, may be attended with serious detriment to the owners.

Jones, who was put in irons, had refused to work, and he was released without being treated with any extraordinary severity; and I do not advise any distinct complaint being made on this subject or on any other point.

I have, &c.
(Signed) J. D. HARDING.

No. 45.

The Law Officers of the Crown to Earl Russell.—(*Received March* 4.)

TURKEY.

Refusal of British screw-steamer "Euphrosyne" to pay hospital dues at Smyrna.

Doctors' Commons, February 28, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 21st February instant, stating that he was directed by your Lordship to transmit to us herewith a correspondence which has taken place on the subject of the refusal by the owners of the British screw-steamer "Euphrosyne" to pay hospital dues at Smyrna; and also to inclose a Memorandum drawn up in this office on the subject of those dues; and to request that we would take these papers into consideration, and furnish your Lordship with our opinion whether any and what steps can be taken to enforce the payment of the dues by the master or owners of the "Euphrosyne."

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That in our opinion no effectual steps can now be taken either against the master or the owners of the "Euphrosyne" to enforce payment of the hospital dues in question. The powers of jurisdiction and authority conferred on the Levant Company, by the terms of their charter, were certainly very extensive,

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* Page 35.

† Messrs. Hill and Battersby, February 7, 1862; Queen's Advocate, February 10, 1862; to Mr. Battersby, February 12, 1862; Mr. Baines, February 12, 1862; Mr. Battersby, February 13, 1862.

‡ Mr. Baines, February 21, 1862.

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as appears by the Memorandum (in pages 2, 3, 4 and 5) which accompanies these papers, and doubts may, perhaps, be entertained as to the legality of some of the powers conferred thereby on the General Court. (See in pages 4 and 5 as to the Court punishing by "fine and imprisonment," and particularly as to their sending persons "to England" for trial, &c.) It is not, however, material to consider this, seeing that the transfer of authority from the Company by the Act of 1825 was of "such rights and duties of jurisdiction" only as had been formerly "lawfully exercised and performed by any Consul or other officer appointed by the said Company" (pages 9 and 10 of Memorandum), and such rights and duties are transferred from the Company's Consuls to "such Consuls and other officers as His Majesty might be pleased to appoint, &c." (p. 12 of Memorandum). The successive Orders in Council of 1854 and 1858 deal with the matter of jurisdiction and authority in the same way, merely authorizing "British Consuls," residing in the Ottoman dominions, to "levy" the duty in the first place (Order in Council of 3rd July, 1854), of 1*d.*, and afterwards (Order in Council of 31st July, 1858) of 1½*d.* per ton. Under these circumstances it appears to us that the Consular power is the only means of enforcing payment of the dues, and that such power must be exercised on the spot. It is the Consul's duty, if payment is not made on demand, to "levy" the amount on the defaulting vessel, which he has undoubted power to do. The exercise of this power must ensure payment of the dues, and its existence prevents any practical inconvenience as the result of the view we have taken in answering the question submitted to us.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 46.

The Law Officers of the Crown to Earl Russell.—(*Received March* 4.)

UNITED STATES.

Capture of the "M. S. Perry" or "Salvor" under British colours.

Doctors' Commons, March 3, 1862.

My Lord,

WE are honoured with your Lordship's commands as signified in Mr. Hammond's letter of the 24th ultimo, stating that he was directed by your Lordship to transmit to us two despatches and their inclosures from Lord Lyons (No. 67 of January 30, and No. 72 of February 3), respecting the case of the "M. S. Perry" or "Salvor," a schooner under British colours, which was captured by an United States' cruizer in the month of October last, and sent to Philadelphia for adjudication.

Mr. Hammond was also pleased to state that we should observe that Lord Lyons takes advantage of the circumstances of this case to ask the following questions, viz.:—

"Is it my duty (or if not my duty, is it discretionary with me) to intervene in behalf either of (*a*) enemies of the United States, or (*b*) neutrals, not British subjects, taken on board vessels under the British flag, which have been captured for breach of blockade, and sent before a Prize Court?

"May or ought the intervention to take place (*c*) before the commencement of the suit in the Prize Court, (*b*) during the suit, (*c*) if the vessel be acquitted, (*d*) if she be condemned?

"Is any distinction as regards intervention to be made between foreigners forming part of the crew, and foreigners who are only passengers?"

Mr. Hammond was also pleased to state that he was directed by your Lordship to request that we would take these questions into our consideration, and report to your Lordship our opinion as to the answers which should be returned to them.

In obedience to your Lordship's commands we have taken these questions into our consideration, and have the honour to report—

Intervention in behalf of enemies taken on board vessels under British flag, captured for breach of blockade.

That Lord Lyons may be informed that, as regards enemies of the United States, whether passengers or seamen, on board vessels under the British flag, captured for breach of blockade, it is Lord Lyons' duty not to intervene in their behalf, without special instructions, or circumstances of very peculiar emergency. By "enemies of the United States," we understand those who, by birth or naturalization, are citizens of the United States, and who are charged by the Government of the United States with serving, aiding, or adhering to the Government of the (so-called) "Confederate States of America," contrary to their allegiance to the United States' Government.

Intervention in behalf of neutrals, not British subjects, taken on board such vessels.

As regards "neutrals," not British subjects, taken on board such vessels, if serving as seamen, it will be Lord Lyons' duty to intervene in their behalf, if they are treated as prisoners of war, or otherwise subjected to any other detention than may be requisite to secure their evidence in a Prize Court. He will of course exercise his discretion as to such intervention. By "neutrals" we understand all persons, of whatsoever nationality, not British subjects, and owing no allegiance to the United States. Such persons, when serving as seamen on board vessels under the British flag, are to be considered and dealt with in the same manner as British seamen, so far as regards Lord Lyons' intervention. With respect to such persons when passengers, Lord Lyons should exercise a careful discretion as to his intervention. The United States' Government is not entitled, on any general principle of international law, to confine or detain such persons, except only when their evidence is required in the Prize Court; but it is the primary duty of the Legation of their own Government to intervene, when necessary, in their favour, and to such Legation they should, as a general rule, be referred. The fact of their being passengers on board a British vessel will not, *per se*, give them any exclusive or absolute claim to Lord Lyons' intervention.

When intervention is requisite, the state of the case against the ship and cargo in the Prize Court will not affect the question of the time at which it should take place. The earliest period will generally be the best, subject only to the consideration of the possibility of the evidence of the persons in question being required in the Prize Court, and of their being detained on that ground alone. If such evidence is not required, or when the persons in question shall have given their evidence, there will be no reason for their further detention.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 47.

The Law Officers of the Crown to Earl Russell.—(*Received March* 10.)

GENERAL.

Question as to power of Governor of Gibraltar to liberate prisoners on board foreign national vessels entering port or territorial waters of Gibraltar.

Doctors' Commons, March 7, 1862.

My Lord,

WE were honoured with your Lordship's commands signified in Mr. Hammond's letter of the 3rd March instant, stating that in connection with a recent occurrence at Morocco, the particulars of which are stated in the inclosed copy of a despatch from Her Majesty's Minister in that country (No. 28), the Governor of Gibraltar had put the following question to the Secretary of State for War:—

"If an American ship of war enters Gibraltar, can she keep in an English harbour the prisoners whom she may have on board, or must they be released?"

And to request that we would take this question into our consideration, and report to your Lordship, at our earliest convenience, our opinion as to the terms in which it must be answered.

In obedience to your Lordship's commands we have taken this question into consideration, and have the honour to report—

That the question of the Governor of Gibraltar must be answered to the effect that he has no jurisdiction or power to liberate prisoners on board foreign national vessels of war which may enter or be in the port or territorial waters of Gibraltar.

Foreign ships of war, even when in the ports or territorial waters of other nations, are considered internationally as extra-territorial; and by the law and usage of nations the local authorities abstain from exercising any jurisdiction over the persons who may be on board of them. If the prisoners were landed and put on shore it would be otherwise. In that case, they could not any longer be detained or kept as prisoners (Vattel, lib. iii, cap. 7, sect. 132).

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

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No. 48.

The Law Officers of the Crown to Earl Russell.—(*Received March* 11.)

UNITED STATES.

Claim of Messrs. Zacharie and Rogers (not British subjects) for seizure from on board the British vessel "Eugenia Smith."

Doctors' Commons, March 11, 1862.

My Lord,

WE are honoured with your Lordship's commands, signified in Mr. Hammond's letter of the 1st March instant, stating that he was directed by your Lordship to transmit to us the accompanying papers respecting the seizure of Messrs. Zacharie and Rogers from on board a British vessel, the "Eugenia Smith," while on the voyage from Havana to Matamoros, and their subsequent release by order of the Government of the United States, and to request that we would take these papers into our consideration, and furnish your Lordship with our opinion whether Her Majesty's Government would be justified in instructing Her Majesty's Minister at Washington to demand compensation from the United States' Government on account of the capture and detention of these persons.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That in our opinion Her Majesty's Government would not be justified in demanding compensation from the United States' Government on account of the capture and detention of Messrs. Zacharie and Rogers. These gentlemen are not British subjects, and the only interest the British Government had in respect of their capture and detention arose from the circumstance of such capture having been effected on board a British ship. This was an international wrong, which, however, Mr. Seward has acknowledged and repaired in a manner with which Her Majesty's Government have expressed their satisfaction.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 49.

The Law Officers of the Crown to Earl Russell.—(*Received March* 12.)

TURKEY.

Draft Supplemental Order in Council conferring Consular jurisdiction on Her Majesty's Consul in the Delta of the Danube.

Doctors' Commons, March 11, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 20th February ultimo, stating that with reference to our Report of the 11th of December last,* inclosing the draft of an Order in Council to enable Her Majesty to confer power on the British Consular officers in the Delta of the Danube to enforce the Regulations framed by the European Commission of the Danube, he was directed by your Lordship to transmit to us a despatch from Mr. Hornby, the Judge in the Supreme Consular Court at Constantinople (No. 8 of January 29), stating that doubts will probably arise as to the competency of the Commission to frame these Regulations, and consequently as to their being binding on British subjects, inasmuch as they have been promulgated after the period of two years when it is specified, by Article XVIII of the Treaty of Paris of 1856, that the European Commission should be dissolved.

And he was also pleased to state that the question of the duration of the European Commission was, however, brought under the consideration of the Plenipotentiaries of the great Powers assembled in Conference at Paris in 1858, and that he had to refer us to their 19th Protocol, as containing their decision upon the subject.

Mr. Hammond was also pleased to state, for our information, that in 1859 the Austrian Government was desirous that the European Commission should be dissolved, but that it was urged by Her Majesty's Government and by the Government of France that the execution of the works necessary to ensure the safe navigation of the mouth of the Danube was specially entrusted, by the Treaty of Paris, to this Commission, and that the period of two years, to which its duration was limited, was fixed in ignorance of the existence of any physical obstacle which would prevent the completion of such works within that period. And also that all the Commissioners have since continued to reside at Galatz, and have been engaged in carrying out the works entrusted to them to execute.

Mr. Hammond was also pleased to inclose copies of the Treaties of Paris, and of the Order in Council of the 6th of January, 1862, and to request that we would take this matter into consideration, and furnish your Lordship with our opinion on the questions raised in Mr. Hornby's despatch.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That, without at present expressing any final opinion upon the questions raised in Mr. Hornby's despatch, we consider that those questions, having been thus raised, render it expedient to issue a Supplemental Order in Council (a draft of which we have prepared and herewith transmit*). In this draft we have endeavoured to provide for the due enforcing by the British Consular jurisdiction, upon all persons subject to such jurisdiction, of the Rules, Orders, and Regulations which have been made and promulgated by the Danube (European) Commission, without expressly reciting the doubts suggested by Mr. Hornby of the validity thereof, or of the extent of the powers of that Commission under the Treaty of Paris, in order to avoid any complaints from the other Powers parties to that Treaty, which might be elicited by any express recital of such doubts by Her Majesty in an Order in Council.

If, hereafter, other Rules, of the same character, should be issued, it may be advisable to confirm them also in a similar manner, but this, we think, cannot be done by any prospective Order.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 50.

The Queen's Advocate to Earl Russell.—(*Received March* 13.)

UNITED STATES.

Capture of the British vessels "Sarah Starr" and "Aigburth" belonging to Mr. Graveley, a British subject, residing at Charleston.

Doctors' Commons, March 12, 1862.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 4th March instant, stating that with reference to my Reports of the 21st September and 8th and 22nd October ultimo,† he was directed by your Lordship to transmit to me a letter dated the 14th February, 1861, from Mr. Graveley, of Charleston (received through Lord Lyons), applying for the interference of Her Majesty's Government on account of his vessels the "Sarah Starr" and "Aigburth" having been seized and condemned by the United States' authorities as prize of war.

Mr. Hammond was also pleased to state that the question which Mr. Graveley seems to imagine to have been at issue was, whether these vessels had or had not attempted to run the blockade; but that, adverting to my Report of the 22nd October last, it appeared to your Lordship not improbable that both vessels are regarded as lawful prize on the ground of their being owned by a person commercially domiciled at Charleston. But that, however, he was to request that I would take Mr. Graveley's letter into my consideration, and furnish your Lordship with my opinion as to the answer which should be returned thereto. Mr. Hammond was also pleased to annex the previous papers.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That Mr. Graveley may be informed that he appears to be domiciled at Charleston, and that the "Aigburth," of which he was sole owner, was captured by an United States' ship of war, and has been condemned as prize by a Prize Court at New York; that under such circumstances such condemnation must be considered as *primâ facie* legal; and that before Her Majesty's Government can

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* See Reports for 1861, page 306.

* The draft was sent to the Colonial Office on the 25th of March, 1862.

† See Reports for 1861, pages 223, 241, and 247.

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make any application to that of the United States on his behalf, it must be satisfied that the sentence of the Court was invalid, or contrary to the Law of Nations, and that some definite principle or reason can be adduced against its validity; that in the absence of any copy of the Judgment, or any accurate account of its purport, or of any explicit statement of the facts alleged or established in the suit, Her Majesty's Government cannot interfere.

That the same observations apply to the case of the "Sarah Starr," excepting that it is only stated that she was sent to New York "for adjudication," and it is not stated that she has been condemned.

That Her Majesty's Government will, however, instruct the Consul at New York to furnish any information in his power in both cases, and will consider any material information which may be supplied by Mr. Graveley.

The Consul at New York should be instructed to transmit any information which he may be able to procure as to both these cases; especially as to the points raised in argument, or determined by the Court; together with copies of the papers, arguments, and judgments, if procurable.

I may add that the fact of Mr. Graveley having a "hostile domicile" (at Charleston) seems to justify the condemnation of his ships at New York, as "enemy's property," quite independently of any question of breach of blockade.

I have, &c.
(Signed) J. D. HARDING.

No. 51.

The Law Officers of the Crown to Earl Russell.—(*Received March* 13.)

UNITED STATES.

Claim of owners of British vessel "Boyne" for losses sustained by their vessel being warned off the Southern Coast of the United States.

My Lord, *Doctors' Commons, March* 13, 1862.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 26th February ultimo, stating that he was directed by your Lordship to transmit to us the accompanying papers* respecting a claim preferred by the owners of the British vessel "Boyne," on account of that vessel having been warned off the whole Southern Coast by an United States' cruizer at a time when it is alleged that the blockade of Savannah (to which port she was destined) was not yet established.

Mr. Hammond was also pleased to state that this case has already been submitted to Her Majesty's Advocate-General in his letters of the 2nd October and 22nd January last; and that he was now to request that we would take it into our consideration with reference to our Report of the 17th ultimo on the subject of the claim of the owners of the "Monmouth," and furnish your Lordship with our opinion as to whether there is sufficient similarity between the two cases to warrant an application to the United States' Government for compensation to the owners of the "Boyne." And he was also pleased to inclose the papers relating to the "Monmouth."

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That referring, as we are desired to do, to our Report on the case of the "Monmouth" of the 17th ultimo, we are of opinion that the present is a case, *à fortiori*, for an application by Her Majesty's Government to the Government of the United States for compensation to the owners. At the time of the "Boyne" sailing from England for Savannah (25th March, 1861), it was not even known to be probable that a blockade of that port would take place; nor was any such blockade, in fact, established until many days (28th May) after the "Boyne" was warned off the "whole coast of the South," and the warning endorsed on her ship's papers by the boarding officer of the United States' ship "Niagara."

The notification was legally invalid as to Savannah; for "the notice of the blockade, being more extensive than the blockade itself, is of no effect against a neutral" (see Northcote *v.* Douglas, the "Franciska," 10 Moore's Privy Council Reports, p. 37, and cases there cited); but the master had no means of knowing this: and for the reasons stated in our last Report on the case of the "Monmouth," we are of opinion that he was entitled to give full credit to the act of

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* Messrs. Whitworth, September 26, 1861; Queen's Advocate, October 11, 1861; to Lord Lyons, No. 365 of 1861; Lord Lyons, No. 709 of 1861; Queen's Advocate, January 30, 1862.

the officer of the United States' blockading force; and the Government of the United States cannot properly contend that he was bound to proceed in defiance of the notification, at the risk of capture and of confiscation, if such notification should have proved to be correct. We therefore consider this to be a case in which compensation for all actual loss may be fairly required and ought to be granted.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 52.

The Queen's Advocate to Earl Russell.—(*Received March* 17.)

UNITED STATES.

Capture by blockading squadron off Mobile of the "Andreita," or "J. W. Wilder," originally a United States' merchant-vessel, subsequently under the Confederate flag, and purchased at Havana by a British subject, Mr. Dexter.

Doctors' Commons, March 14, 1862.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 7th March instant, stating that he was directed by your Lordship to transmit to me a despatch, and its inclosures, from Her Majesty's Minister at Washington (No. 114 of the 15th February), relating to a schooner, the "Andreita," or "J. W. Wilder," which has been captured by the United States' blockading squadron off Mobile; and to request that I would take this case into my consideration, and furnish your Lordship with my opinion thereupon.

Mr. Hammond was also pleased to transmit on the 14th instant a further despatch from Her Majesty's Minister at Washington, inclosing a letter from Mr. Capella.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That the facts of this case are only to be collected from the letters of Capella (the master and consignee) to the Consul at Mobile, of the 23rd and 27th of January last. They are as follows:—The "J. W. Wilder," which was originally a merchant-vessel of the United States, and subsequently of the Confederate States, sailed in the latter character, and under the Confederate flag, from Mobile to Havana on the 22nd December, 1861. It does not appear what was her ultimate destination or design when she left Mobile, or at what date she arrived at Havana. She is stated to have been there purchased by Mr. Dexter, a British subject, who changed her name to the "Andreita," and there obtained from Her Majesty's Consul a British provisional certificate of registry, dated the 8th of January last.

Neither the date nor the particulars of such purchase are forthcoming; and it does not appear to what British port Mr. Dexter contemplated sending her to complete her registration. A cargo of coffee and assorted goods, the property of Messrs. Sola, Cantonell, and Co., Spanish merchants at Havana, was shipped in her, and consigned to the master; neither his nationality nor his domicil are stated. She sailed from Havana, under British colours, on the 14th of January last, for Matamoros; but she was on such voyage, by the master's account, "to approach within reasonable distance of Mobile (then known to all concerned to have been long under blockade), and, if no obstruction of blockade prevented, to enter this port."

On the 20th January last, she was at anchor under British colours within twelve or fifteen miles of the bar of Mobile, when an United States' gun-boat (the "Cuyler") approached her, and is said to have fired two cannon-shots at her (which is, however, denied by the United States' officers); thereupon she slipped her cable, was run aground, and deserted by her master and crew, who landed with the ship's papers, and some of their effects; an engagement ensued between the boats of the "Cuyler" and the Confederates on shore, and she was ultimately towed off by the captors.

A flag, and a board with "J. W. Wilder" thereon, and also a Confederate flag, were found on board of her.

After knowledge of the blockade of Mobile, she had no right to go to the blockade station at the mouth of that port, under pretence of inquiry; and her being found so near the port, with the admitted intention of there making inquiry, raises a strong presumption against her master that he intended to

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break the blockade, which is strengthened by his abandoning her with his papers, without communicating with the captor.

It is to be observed that the only British interest concerned is that of Mr. Dexter, the alleged owner of the ship, from whom there is not any application; but it is possible that he may not know of the capture, or that there has not been time for his application to arrive. I may add, that it does not distinctly appear what has been done with the vessel. The cargo has been sent to Philadephia; but Her Majesty's Government is not called on to interfere in favour of the Spanish owners.

Lord Lyons appears to me to have taken a proper view of this case in his despatch No. 114, and to have done all that is necessary by instructing the Consul at Philadelphia, as in his letter of the 14th February (Inclosure 2 in No. 114).

I do not consider that the demand of the Consul at Mobile for the immediate release of the vessel was justifiable; and I cannot advise Her Majesty's Government to make any application to the United States' Government on behalf of the owner.

I would suggest that the Consul at Havana should be instructed to furnish all the information in his power as to the alleged purchase by Mr. Dexter (such as the price, the instrument of sale, the entire divesting of all interest on the part of her Confederate owners, and the port at which her British registration was to be completed), and as to the nationality and domicil of Capella, the master and consignee, and his previous connection (if any) with the vessel, or her Confederate owners. The circumstances of the case throw some suspicion on the *bona fides* of the purchase, and on the alleged change of nationality consequent thereon, and the Consul should be invited to explain them fully.

I have, &c.
(Signed) J. D. HARDING.

No. 53.

The Queen's Advocate to Earl Russell.—(Received March 17.)

NEW GRANADA.

Claim of Mr. Pedro N. Merino to British protection at Panamá as a naturalized British subject.

My Lord, *Doctors' Commons, March* 14, 1862.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 4th March instant, stating that he was directed by your Lordship to transmit to me a letter from Mr. Pedro N. Merino, inclosing copies of a correspondence which has passed between him and Her Majesty's Consul at Panamá in 1855, respecting his right to protection as a naturalized British subject; and to request that I would take Mr. Merino's letter and its inclosures into my consideration, and report to your Lordship my opinion as to the instructions which should be given to Her Majesty's Consul at Panamá in regard to this matter.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That the Consul at Panamá should be instructed to adhere to the instructions forwarded to him in this case by the Earl of Clarendon on the 7th September, 1855, and not to extend British protection to Mr. Merino in New Granada. I can only repeat that Mr. Merino's having been naturalized in Jamaica will confer on him the rights and privileges of a British subject in that island, but not in New Granada. It is not for Her Majesty's Government to enter into the question (raised by him) of his nationality as between Spain and New Granada; the circumstance stated by him that he was "really born a citizen of Spain," to which Power Panamá belonged at the date of his birth, will not enable him to claim British nationality there by virtue of his colonial naturalization in Jamaica.

I have, &c.
(Signed) J. D. HARDING.

No. 54.

The Queen's Advocate to Earl Russell.—(Received March 17.)

SARDINIA.

As to registration of births, deaths, and marriages at Milan by the Anglican Minister.

My Lord, *Doctors' Commons, March* 15, 1862.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 10th of March instant, stating that he was directed by your Lordship

to transmit to me a despatch and its inclosures from Her Majesty's Minister at Turin (No. 41), requesting to be informed as to the manner in which the births, deaths, and marriages of British subjects at Milan should be registered by the resident Anglican minister in that city, the chapel in which he officiates not being under the control of Her Majesty's Government; and to request that I would take these papers into consideration, and furnish your Lordship with my opinion as to the answer which should be returned to Sir James Hudson.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I must request further information before finally disposing of this case. I am unable at present to understand the legal question upon which my opinion is desired. I understand from the letter of the Rev. J. Williams that there is no British Consulate or Consular Officer at Milan; but it is not stated in what British Consular district Milan is officially placed.

I do not understand in what official capacity the reverend gentleman is considered by Her Majesty's Government to be acting at Milan. He is described by Sir J. Hudson as "officiating Anglican minister;" but he is not a Chaplain under Statute 6 Geo. IV, cap. 87, *et non constat* how he is otherwise regularly appointed, or empowered to officiate. I must therefore request to be furnished with a reference to the legal authority, and the instructions under which he is empowered, or required, or entitled to register births, deaths, and marriages at Milan; and especially by what authority he is empowered to solemnize marriages at Milan.

If there is any regular system of Consular registration of births and deaths, then I conceive that the Consular Officer of the district, and not the officiating minister, is the proper Registrar. As to marriages, the Statute 12 & 13 Vict., cap. 68, contains provisions as to their Consular registration (sec. 11), and no other form of registration of marriages in foreign countries is (as far as I am aware) legally or officially recognized or provided for, excepting in certain special cases, such as marriages in Ambassador's houses or chapels, which cannot occur at Milan.

I am not aware of the particular law or regulations under which any registration of births and deaths of British subjects in foreign countries, either by Consular Officers or Chaplains, is provided for, more especially in places where no Consular Officer or Agent is resident. British subjects at Milan are in the same condition in this respect as all other British subjects abroad, in places where there is no British Consular Officer; and I presume in such cases that they can only register, or obtain a certificate of registry of births, deaths, or marriages, at the Consulate of the district.

I am not, therefore, aware (as at present advised) that your Lordship can authorize the Rev. J. Williams to register such births, deaths, or marriages at Milan, or to solemnize any marriage there, or give him any instructions on the subject.

I have, &c.
(Signed) J. D. HARDING.

No. 55.

The Law Officers of the Crown to Earl Russell.—(Received March 17.)

MOROCCO.

Arrest of Messrs. Myers and Temstall, citizens of (so-called) Confederate States, by the Consul of the United States at Tangiers, and embarkation as prisoners for the United States.

My Lord, *Doctors' Commons, March* 17, 1862.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 15th March instant, stating that he was directed by your Lordship to transmit to us the accompanying despatches from Mr. Hay,* Her Majesty's Minister in Morocco, and other documents, showing the circumstances under which Messrs. Myers and Temstall, citizens of the so-called Confederate States, have been arrested at Tangiers by the Consul of the United States of North America at that port, and embarked on board the United States' vessel of war "Ino" as prisoners, and subsequently transferred at sea to an American merchant-vessel, to be carried to the United States.

Mr. Layard was also pleased to inclose copies of the Treaties between the

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* Mr. Hay, No. 38, February 21, 1862; No. 41, February 24, 1862; No. 43, February 26, 1862; No. 49, March 2, 1862; telegram to Governor of Gibraltar, March 14, 1862.

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United States and Morocco, and Great Britain and Morocco; and to request that we would take these papers into our consideration and report to your Lordship, at the earliest possible moment, our opinion as to the legality of the arrest and transportation of Messrs Myers and Temstall.

Mr. Layard was also pleased to transmit the accompanying letter and inclosures received from Mr. Mason, Agent for the so-called Confederate States.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That the arrest and transportation of Messrs. Myers and Temstall, citizens of the so-styled Confederate States, so far as such arrest and transportation are to be regarded as the acts of the United States' Consul-General at Tangiers, were clearly illegal. If the Moorish Government regarded (as it was entitled to do) these persons as belligerents, they were illegally captured within neutral territory. If, on the other hand, the two Confederate citizens are to be regarded as subjects of the United States, having violated the municipal law of that country within its own limits (as by the imputed crime of high treason), then the arrest by the United States' Consul, without the authority of the Moorish Government, was a violation of the plainest principles of international law.

Treaties of Extradition, with their accompanying guards and protections, are the well-recognized means whereby a State whose laws have been broken can call upon another State, in whose territories the offender may be, to deliver him up for trial and punishment. The Consular privileges "of the most favoured nation," secured to the United States by the Treaty of 1836, do not include extradition; and that Treaty contains no stipulations for extradition.

The persons arrested had committed no crime or offence in Morocco; and the Consular jurisdiction as stipulated by Treaty and sanctioned by usage did not, therefore, attach. Mr. Hay states that political offenders have never been claimed from or surrendered by Morocco.

We must observe, however, that however illegal the arrest may have been, the right to complain rests with the Moorish Government exclusively; if (as would appear to be the case) their officers at Tangiers acted, not voluntarily, but reluctantly, and really under the menace of the United States' Consul, and apprehensions thereby occasioned, this is a matter for the consideration of the Imperial Government of Morocco. If it could be assumed that the Government of Morocco voluntarily surrendered Messrs. Myers and Temstall, then the Confederate States alone would have reason to feel aggrieved; and we apprehend that, under existing circumstances, they are in no position to urge any diplomatic complaint. In no case, as it appears to us, can Her Majesty's Government be called upon to interfere, or to do more than (if so disposed) to intimate to the Moorish Government the principles and rules upon which they and other Christian Powers are in the habit of acting in such cases.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 56.

The Law Officers of the Crown to Earl Russell.—(Received March 18.)

TURKEY.

Tenure of land in Turkey by British subjects, and jurisdiction of the Consular Court.

My Lord, *Doctors' Commons, March* 17, 1862.

WE were honoured with your Lordship's commands signified in Mr. Hammond's letter of the 5th March instant, stating that he was directed by your Lordship to transmit to us the instructions which were addressed to Her Majesty's Ambassador and to the Judge of the Consular Court at Constantinople, on the receipt of our Report of the 18th of December last, respecting certain questions which had been in discussion between them with regard to the tenure of land in Turkey by British subjects, and the jurisdiction of the Consular Court.

Mr. Hammond also transmitted to us, together with the previous papers, the despatches which had been received from Sir H. Bulwer and Sir E. Hornby, in reply, containing observations on our Report, and stating the means by which they proposed to carry out its suggestions, and requested that we would take these papers into consideration, and furnish your Lordship with our opinion on the further remarks on the questions of tenure of land and jurisdiction in Turkey therein contained.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That first, as regards the present position, in a legal and international point of view, of the tenure of land by Her Majesty's subjects in Turkey, we adhere to the opinion expressed in our Report of December 18, 1861, and we invite attention to the Reports of Law Officers of May 16, 1860 (third point therein), and March 13, 1861. Sir E. Hornby's remarks on our Report of December 18, 1861, in the paper headed "Examen" (herewith) appear to us to be generally correct.

The best mode of dealing internationally with the Turkish Government so as to secure the practical exercise of the Consular jurisdiction over land held (howsoever) by or on behalf of Her Majesty's subjects is, we repeat, a question of policy and not of law, which we do not feel competent to decide. The mode now proposed in the identic note of the 15th February is (as we understand it) that such property should, in all cases, upon the formal requisition of the Consular Court made through the Embassy, be compulsorily sold by the Turkish authorities, and that the proceeds should thereupon be paid over to, and dealt with and distributed by, the Consular Court. This latter condition, as to paying it over to the Consular Court, is not expressly stated in the identic note, but is clearly contemplated by Sir H. Bulwer (see No. 70, p. 5). Assuming that the Turkish Government will accede to this arrangement, we see no legal objection thereto, and under the peculiar circumstances of the case, this plan appears to obviate many difficulties, and to promise many practical advantages.

We observe, however, that the Firman and Hatti-Sheriff of 1856 expressly concedes to foreigners the right to hold landed property in Turkey, from which they are nevertheless excluded in practice; and inasmuch as the plan suggested in the identic note would seem to be calculated to postpone indefinitely the practical concession of this right, and in effect to recognize the absence of any such existing right on the part of foreigners, the propriety of adhering thereto is a question for the consideration of Her Majesty's Government.

2. As regards the question of the exercise of criminal jurisdiction over British subjects for crimes committed in Turkey, we agree with the opinion of Sir E. Hornby (expressed in his Memorandum inclosed in his despatch No. 12 of February 19, 1862), and of Sir H. Bulwer (expressed at page 5 of his despatch No. 66), to the effect that, under the 42nd Capitulation, one and the same Mixed Court should hear, and "finally decide," such cases.

Assuming that (as stated by Sir H. Bulwer in No. 66) the Turkish Criminal Code is framed on the French Code, and that it has always hitherto been held by foreign Governments, and by that of Her Majesty, that this law should be adopted and carried out by the Mixed Court, we see no objection to this being done.

With regard to the opinion expressed by the Law Officers on this subject, adverted to by Sir H. Bulwer as a "vague opinion," that the affair should "be judged by the Mixed Court according to reason and equity, as understood by the most civilized nations," we need only observe that the Law Officers were never until now informed that Turkey had a Criminal Code "framed on the French Code;" and that the opinions of the Law Officers upon matters connected with Turkey are often and unavoidably given without the necessary information which, unless supplied in the papers transmitted, is not accessible to them.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 57.

The Queen's Advocate to Earl Russell.—(Received March 19.)

TURKEY AND GREECE.

Dispute between the two Governments respecting certain landed property near Thebes belonging to Mussulmans.

Doctors' Commons, March 18, 1862.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 17th March instant, stating that he was directed by your Lordship

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to inform me that since the date of my Report of the 28th ultimo* on the subject of the dispute between the Turkish and Greek Governments respecting some landed property near Thebes, a copy of the Convention of 1837 between Turkey and Greece relating to these lands has been obtained from M. Musurus, and that your Lordship, before acting on my Report, desired him to transmit this Convention to me, in order to ascertain whether the view I have taken of the case is at all affected by anything contained in the said documents. And he was also pleased to inclose the former papers.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That the view which I have taken of the case in my Report of February 28 is rather confirmed than altered by this Convention. The preamble and Ist Article are confined to the claims theretofore made on the part of the Turkish Government, for itself and subjects, on account of property in the Province of Thebes; and if the Convention had ended there, the Turkish argument that it did not extend to the claim in question (which had not theretofore been made by Turkey) would have disposed of it; but by the IIIrd Article, "The Sublime Porte, for itself and its subjects, relinquishes all claim upon any property situated in the Province of Thebes, of *whatever nature such claim may be*, or *under any form in which such claim may be made;* and it will not henceforward put forward any demand nor take any steps towards the Greek Government on behalf of any person whatsoever who *may make* a claim of this description, however small it may be."

This Article affords, in my opinion, strong grounds to the Greek Government for contending (as it does) that the Turkish Government is thereby precluded from taking up or pressing upon it the particular claim in question, and confirms my opinion that it is not a case for the interference of Great Britain, France, and Russia.

I have, &c.
(Signed) J. D. HARDING.

No. 58.

The Queen's Advocate to Earl Russell.—(*Received March* 20.)

PORTUGAL.

Case of the "Flor da Cabaceira," captured by the "Penguin" on suspicion of Slave Trade.

My Lord, *Doctors' Commons, March* 19, 1862.

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 10th March instant, stating that he was directed by your Lordship to transmit to me a despatch and its inclosures from Her Majesty's Commissioners at the Cape of Good Hope, reporting the case of the "*Flor da Cabaceira,*" a Portuguese launch, captured by Her Majesty's ship "Penguin" on suspicion of being engaged in the Slave Trade, and brought for adjudication before the Mixed British and Portuguese Commission Court at that place. And he was also pleased to transmit to me a letter from the Board of Admiralty, forwarding a copy of a despatch from Sir Baldwin Walker, the Commander-in-chief of Her Majesty's naval forces on that station, together with a report upon this case from the Admiralty Proctor at the Cape of Good Hope, and to request that I would take these papers into my consideration, and furnish your Lordship with my opinion upon the decision come to in this case.

In obedience to your Lordship's commands I have taken these papers into my consideration, and have the honour to report—

That in dealing with this case, I proceed to consider, first, the Judgment pronounced by Commissioner Frere upon the evidence and papers adduced before the Court; secondly, the general aspect of the case, as dealt with (as it were) out of Court, in the other papers transmitted.

First, as regards the Judgment. This must be considered in connection with the last paragraph of Article IX of the Treaty of Lisbon of 1842, in which it is stipulated that any "one" or more of the several things enumerated, "if proved to have been found on board" during the voyage, "shall be considered as *primâ facie* evidence of the actual employment of the vessel in the transport of negroes or others for the purpose of consigning them to slavery, *and the*

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* Page 51.

vessel shall thereupon be condemned, unless clear and incontestably satisfactory evidence on the part of the master or owners shall establish, to the satisfaction of the Court, that such vessel was, at the time of her detention or capture, employed on some legal pursuit, *and* that such of the several things above enumerated, as were found on board of her on the voyage on which she was proceeding when captured, *were needed for legal purposes on that particular voyage.*" This must, in my opinion, be considered as binding on the Court; and accordingly, if it is proved to the Court that any one of the enumerated articles was on board, the aspect of the case is changed, the burden of proof is at once shifted, and the Court is bound to condemn the vessel, unless "satisfied by clear and incontestable evidence" both that the vessel was, when captured, employed on some legal pursuit, *and* that the enumerated articles found on board were needed for legal purposes on that particular voyage." The Court should adhere to the words of the paragraph, and find and determine accordingly.

It is stated in the Judgment that "the presence of the irons brings the vessel within Article X of the Treaty," and on this ground no compensation was awarded. (See the Registrar's note of judgment, Inclosure No. 4 in Commissioners' despatch No. 8; see also conclusion of Commissioners' Report, 18th January, 1862, Inclosure No. 1 in their despatch No. 8.) This reference to Article X is an error, it should be Article XI; but it is obvious that the Court was satisfied that the irons were found on board, and it is not stated in the Judgment that it was "established by clear and satisfactory evidence" (or by any evidence) to the satisfaction of the Court, that they were "needed for legal purposes." With respect to certain other enumerated articles, deposed to by Lieutenant McHardy as having been found on board (viz., slave-deck, boiler, and cooking apparatus, and mats or matting), the Judgment does not say that it was not satisfied of the fact that they were found on board by the captor; and, with regard to the phrase, "the Court has not the means of sifting the evidence," I do not see why it was unable to sift the evidence on this point, by requiring further proof, or by the further examination of the witnesses as to the fact of such articles having been on board, if it entertained doubts on the subject. If the Court was, in fact, satisfied that any of such articles were on board, then my previous observation as to the shackles, and the effect of the concluding paragraph of Article IX of the Treaty, will apply to the other articles;—*juncta juvant*, and each additional article adds to the proof requisite of their being needed for legal purposes.

With regard to the evidence of the only two negro boys found on board, who were produced as witnesses, Zenne and Unwun (or some such names), I observe at page 8 of the Commissioners' report that, on the 31st December, "the Court examined the two boys." I feel bound to state that they seem to have been very imperfectly examined, and that their evidence, as it stands, appears to me to be at variance with the case of the owners of the vessel. The owners' case was that they were free hired sailors; the captors that they were slaves; Zenne deposes that he was a sailor on board, but a slave; that the captain's name was Pener (his name being Assuadi according to the muster-roll); that he does not know Assuadi, or Xatabargi (supercargo), or Baraca (sailor according to the muster-roll), and that he does not know the names of any of the others on board.

Unwun's evidence is very imperfect; he was apparently not asked as to the names of those on board; he says that all on board were free (Zenne deposing that he was a slave); that all were black people on board, and that he does not know how much wages he got a month.

The evidence of these witnesses does not appear to have been "sifted" by the Court, nor is any explanation forthcoming of the very imperfect state in which it appears. If they were part of the crew, and not slaves, it seems incredible that they should not know the name of the master, or any of those on the muster-roll. This, however, would be quite consistent with their being slaves.

It was upon the evidence of these two witnesses, and of the papers found on board, that the Court released the vessel. With regard to the papers, I must observe that slavers are notoriously in the habit of providing themselves with regular papers; I am not aware what papers would have been regularly requisite for the particular voyage in question, and the Court does not refer to the particular papers on which it relied.

The papers do not, in my opinion, afford clear and incontestably satisfactory evidence of the innocent nature or "legal pursuit" of the voyage on which she was captured, or that the enumerated articles of slave-equipment found on board were needed for legal purposes on that voyage. If the Court was not satisfied that any of the enumerated articles were found on board, it should have said so; if otherwise, it should have pointed out the "clear and incontestably satisfactory evidence," (1), that the vessel was employed in a legal pursuit; (2), that the articles were needed for legal purposes.

Secondly, I proceed to consider the general aspect of the case as dealt with (as it were) "out of Court," upon the face of the papers transmitted. The impression which I have derived from a consideration of all the papers, more especially Lieutenant McHardy's letter to Captain Bickford of January 10th (Inclosure No. 3 in Sir B. Walker's No. 9), is that the vessel was acting in violation of the Treaty when captured, and that she probably had slaves on board. The facts stated at pages 12 and 13 of that letter respecting the absence of any serious claim or remonstrance on the part of the Portuguese authorities, or of the asserted owner, when taken in conjunction with the localities, the attempt of the vessel to escape when first seen, and the escape and disappearance of the master and asserted crew, coupled with the articles found on board (including a boiler and the means of cooking for forty persons in a vessel of 29 tons burthen), appear to me to be almost conclusive.

As regards the Commissioners' despatch of the 18th January, No. 8, I I agree with many of the suggestions therein contained. Wherever it may be practicable, it would be desirable that the captured vessel should, instead of being destroyed, when it may be impossible to carry her to any port where there is a Mixed Commission, be taken into the nearest port, and a survey and *constat* of her crew, fittings, &c., there obtained; and also that where this cannot be done, a survey and specification, especially as to the articles enumerated in Treaties, should be made and reduced to writing, and signed by the capturing officers, before the prize is destroyed; nothing of the kind was done in this case, nor, as far as I am aware, are naval officers instructed to this effect. It is, of course, highly important that the master and two or three of the principal persons on board should be produced as witnesses before the Mixed Commission Court, but where this has been rendered impossible, as in this case, by their escape from custody, the Court is not thereby precluded from condemning the vessel.

With respect to Sir B. Walker's despatch No. 9 of the 18th January, 1862, I do not consider the observation of the Court, "that it had not the means of sifting the evidence," is an offensive reflection upon the veracity and honour of the two lieutenants, who were upon their oath.

As regards the letter of the Admiralty Proctor at the Cape, I concur generally with the observations made therein; but as regards the last paragraph, I am of opinion that under the very peculiar circumstances of the case (the prize having been destroyed, and all on board having escaped excepting the two boys), it would have been a proper and prudent course to have produced two or three witnesses to corroborate Lieutenant McHardy as to the particular articles found on board, upon which point the result, in effect, depended.

I have, &c.
(Signed) J. D. HARDING.

No. 59.

The Law Officers of the Crown to Earl Russell.—(Received March 24.)

CHINA.

Action by Mr. Moss for damages and false imprisonment against Her Majesty's Minister in Japan.

My Lord, *Doctors' Commons, March* 20, 1862.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letters of the 6th and 18th instant, stating that he was directed by your Lordship to transmit to us two letters from the Colonial Office, inclosing copies of three despatches from the Governor of Hong Kong, respecting the recent proceedings in the Court of that Colony, in the action for damages and false imprisonment brought by Mr. Moss against Her Majesty's Minister in Japan, and to request that we would take these papers into our consideration, and furnish your

Lordship with our opinion as to the course which your Lordship should pursue in the matter.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we observe from the official letter of December 31, 1861, from the Attorney-General of Hong Kong to the Colonial Secretary, that the Attorney-General has made, on behalf of the defendant, an application to the Supreme Court for a rule to show cause why the verdict in favour of Mr. Moss should not be set aside, and a nonsuit entered instead; and that the Judge was, at that date, "considering his application." This being so, and Mr. Moss not having made any application to Her Majesty's Government since the verdict, Her Majesty's Government is not at present either called on, or in a position, to take any steps in this matter. It must remain to be determined hereafter, when the legal proceedings still pending are completely at an end, and when any ulterior proceeding on the part of Mr. Moss shall be threatened or taken, what course it may be proper for Her Majesty's Government to adopt.

We have, &c,
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 60.

The Queen's Advocate to Earl Russell.—(Received March 24.)

UNITED STATES.

Complaint of Mr. O'Connor of non-restoration of tobacco found on board the "Hiawatha," captured and condemned for breach of blockade.

Doctors' Commons, March 21, 1862.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 18th instant, stating that, with reference to my several Reports relative to the cases of the vessels "Hiawatha" and "Crenshaw," he was directed by your Lordship to transmit to me a correspondence, as marked in the margin,* respecting a complaint made by Mr. O'Connor, that some tobacco on board the "Crenshaw," which belonged to a German, has been delivered in Liverpool, whereas Mr. O'Connor has been unable to obtain possession of his tobacco which was on board the "Hiawatha," although that vessel left Richmond before the "Crenshaw."

Mr. Hammond was also pleased to state that the explanation would appear to be, as stated by Lord Lyons, that the whole cargo of the "Hiawatha" has been condemned, while restoration has been decreed of that portion of the cargo of the "Crenshaw" which belonged to neutrals residing at a distance; and to request that I would take Mr. O'Connor's case into my consideration, and furnish your Lordship with my opinion as to whether Her Majesty's Government would be borne out in interfering on his behalf. And he was also pleased to inclose the decrees of the Prize Court in the respective cases of the "Hiawatha" and "Crenshaw."†

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That the explanation suggested appears to be correct; Her Majesty's Government has already (through Lord Lyons) interfered fruitlessly in favour of the "Hiawatha" and her cargo, which have now after a full hearing been condemned as prize.

I have already in my Report of 31st October, 1861,‡ expressed my opinion that it cannot be successfully contended that the Judgment is invalid, or in breach of international law; under these circumstances, I regret to say that I see no prospect of success in any further interference in favour of a portion of the cargo. Her Majesty's Government would not, in my opinion, be borne out in interfering on Mr. O'Connor's behalf, at all events without the suggestion of some special grounds distinct from any hitherto adduced, and I cannot discover any such grounds.

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* Mr. O'Connor, January 9, 1862; to Mr. O'Connor, January 20, 1862; to Lord Lyons, No. 37; Lord Lyons, No. 134.

† In Lord Lyon's No. 638; in Consul Archibald's No. 96.

‡ See Reports for 1861, page 262.

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I may add (for your Lordship's information) that in the case of the "Crenshaw," which was a United States' ship, the Prize Court came to the conclusion that, under the circumstances, the American master was not the agent of the neutral owners, so as to bind their interests by his violation of the blockade; whilst in the case of the "Hiawatha" (a British vessel with a British master), it came to a different conclusion as to the effect of his acts on the interest of the British owners of the cargo. It cannot be contended that there is no distinction between the cases; and hard as this case is, there is, I fear, therefore, no reason to hope that any further intervention in favour of Mr. O'Connor would avail.

I have, &c.
(Signed) J. D. HARDING.

No. 61.

The Law Officers of the Crown to Earl Russell.—(*Received March* 24.)

United States.

Claim of Mr. J. G. Shaver on account of arrest and imprisonment in United States, and consequent loss of business.

My Lord, *Doctors' Commons, March* 22, 1862.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 14th instant, stating that he was directed by your Lordship to transmit to us a letter, received through the Colonial Office, from Mr. John G. Shaver, requesting that Her Majesty's Government will obtain compensation for him from the United States' Government, on account of his arrest and imprisonment in the United States, and on account of loss in business thereby.

Mr. Layard was also pleased to state that he inclosed the papers which had been laid before Parliament on this case, and that he was directed by your Lordship to request that we would take Mr. Shaver's application into our consideration, and furnish your Lordship with our opinion thereupon.

In obedience to your Lordship's commands, we have taken these papers into our consideration, and have the honour to report—

That we observe that Mr. Shaver states in his memorial that, although in the service of the Grand Trunk Railway of Canada, his "head-quarters were at Louisville, Kentucky."

It appears, however, from the letter of Mr. Benjamin, a member of the Canadian House of Assembly (at page 3 of the printed papers), that he is a resident of Belleville, in Canada. We assume, therefore, that although his employment frequently required his presence in the United States, he was not, when arrested in October 1861, domiciled in the United States, but in Canada.

We must further assume (although this does not expressly appear from the papers) that no ordinary legal remedy is practically open to him.

We observe that he was arrested on arriving from Canada October 15, 1861, at Detroit, in the State of Michigan, in the extreme north of the United States, far removed from the seat of war, or of any internal disturbance, where the ordinary course of law and criminal jurisdiction was not interrupted or suspended. He was perfectly well known, and was arrested by the order (as he states) of Mr. Secretary Seward, conveyed apparently by telegraph. No charge was made against him, or reason assigned for his arrest; he was searched and imprisoned, first (as he states) "in a dungeon amongst negroces and malefactors of the vilest kind," subsequently in a dark and unventilated room, with forty-eight others, in Fort Lafayette.

He states that on arriving at New York, he was taken before Mr. Kennedy, of the Police Department, who, on going into his case, said "his arrest was an error, and that there was no charge against him." He was transferred to Fort Warren, where he was confined until the 6th of January, 1862, and then only released on taking an oath (which is at page 9 of the printed papers), that he will not enter any of the Confederate States, or hold any correspondence with persons residing therein, without permission of the Secretary of State, and that he will not do anything hostile to the United States during the present insurrection, saving his allegiance to the Crown of Great Britain.

With regard to his having been arrested by the order of Mr. Secretary Seward, Mr. Seward states in his letter to Lord Lyons of November 14, 1861 (page 4 printed papers),—

1. That Mr. Seward believed, at the time of his arrest, that he was a citizen of the United States.

2. That he at first directed his release, upon taking an oath of allegiance to the United States, "for the reason that the police authorities who had induced his arrest had not then shown any sufficient cause for it; that Mr. Shaver declined to take this oath; but that, before that fact became known to Mr. Seward, information had been received of the grounds of his arrest; upon considering which he decided that his release at present would not be compatible with the public safety."

From the inclosure in Mr. Seward's letter to Lord Lyons of December 23, 1861, it would appear that the United States' Government "has satisfactory evidence that he was engaged in affording aid and comfort to the insurrectionists both by his conversation and his acts; that he willingly suffered himself to be made a medium of communication between them and their agents in Canada and Europe; and that he conveyed to them revolvers and other articles contraband of war, in violation of the law of the United States."

This is the only statement of the cause of his treatment to be found in the papers. Mr. Shaver has, from the first, denied that there was any truth in, or the slightest foundation for, the charges made against him. The first and only specification of any charges received by him appears to have been at Fort Warren in December, 1861, when Colonel Dimick, the commander, showed him a paper, a copy of which was refused him, "recapitulating a number of charges against him, most of them indefinite, and all of which he solemnly declares to be untrue." (Printed papers, page 7.)

He lost his employment, and has suffered severely from the treatment he has received. Under these circumstances, we are of opinion that he is *primâ facie* entitled to reasonable compensation, although not to that which he suggests, 25,000*l.*, which is extravagant. *Non constat* that, when arrested, he had committed within the territories of the United States any crime or offence against the law of the United States, and if the acts charged against him were not committed within the United States but in Canada, we are at a loss to understand how they can have been in violation of the law of the United States.

Again, if they were committed within the United States, it remains to be explained why he was not proceeded against according to law. As the case actually stands, it has not been satisfactorily shown that he has in fact done anything in respect of which he was amenable to arrest in the United States.

We are, therefore, of opinion that Her Majesty's Government will be justified (if it thinks fit so to do) in making such representations in his favour as may obtain the fair consideration, by the United States' Government, of his claim for reasonable compensation. The exaction of the peculiar oath imposed upon him, and the opening of Lord Lyons' letters addressed to him at Fort Warren (Memorial, page 7), also appear to us to require explanation.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 62.

The Law Officers of the Crown to Earl Russell.—(*Received March* 24.)

United States.

Request of Mr. Adams that measures be taken to prevent vessels loading cargoes in British ports with declared intention of running the blockade of the Confederate States.

Doctors' Commons, March 22, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 12th March instant, stating that he was directed by your Lordship to transmit to us a letter, dated the 10th instant, from Mr. Adams, the United States' Minister at this Court, in which, after representing a case of alleged want of faith shown by the Captain of the English steamer "General Miramon" in May last, he called your Lordship's attention to the circumstances under which a number of vessels are loading cargoes in this country, with the declared intention of running the blockade, and requested that Her Majesty's Government would take such action in the matter as may be within their power; and to request that we would take Mr. Adams' note into our consideration, and favour your Lordship with our opinion, whether the proceedings complained of by him are contrary to law, and

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render the parties concerned liable to punishment, and whether Her Majesty's Government are bound to take notice of these proceedings. And he was also pleased to state that a copy of the note in which your Lordship has acknowledged the receipt of Mr. Adams' communication was annexed for our information.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we are of opinion that both questions must be answered negatively. The proceedings of which Mr. Adams complains are not cognizable by the Municipal Law of this country, and consequently Her Majesty's Government is not bound to take notice of such proceedings, and could not do so with any effect.

Mr. Adams adverts to three subjects:—

1. The conduct of the master of the "General Miramon," who, having been permitted by the United States' Flag-Officer McKean, to enter Mobile in May last, in order to land a lady passenger, who was ill, on a pledge to come out without breaking cargo, on the next day, nevertheless, discharged his cargo there, and has recently brought another cargo to Havana.

This complaint appears to have originated in a letter from the United States' Consul at Havana to Her Majesty's Consul there, dated January 18th. The exact particulars of the case are not supplied; and Mr. Adams uses the expression, "it would appear from the statements therein made, if in accordance with the facts, &c."

It is impossible for Her Majesty's Government either to investigate these statements, or to assume their correctness without investigation; and it is evident that, in order to do so, the inquiry would first have to be made, whether there was a legal blockade of Mobile at the particular date when the ship "Miramon" left that port,—a question into which we cannot advise Her Majesty's Government to enter for such a purpose.

Under these circumstances, Mr. Adams is not in a position to call on Her Majesty's Government (even if it were in their power, under any circumstances, to do so) "to put the seal of public reprobation upon" (Captain Golding's conduct as) "a single well-authenticated act of dishonesty." It may be sufficient to say that, no such act being established, Her Majesty's Government is under no obligation to take any steps in relation thereto.

As regards the two other subjects adverted to by Mr. Adams, viz., (2), the newspaper advertisements of vessels "about to depart with the declared intention of violating the blockade," and (3), "respectable Companies in London having gone so far as to establish a specific rate of premium at which they are prepared to guarantee the property engaged in such unlawful adventures;" it is obvious, that Her Majesty's Government has no power to interfere, nor do we observe that this is even suggested by Mr. Adams. To actual, or attempted, or intended, breach of lawful blockade by neutral vessels, it is well known that certain penal consequences are attached; but these belong purely to the law of nations, and are no part of Municipal Law, and they are consequently enforceable by the blockading ships, and not by the Civil Magistrate of the neutral State.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 63.

The Queen's Advocate to Earl Russell.—(Received March 24.)

UNITED STATES.

Complaint of Messrs. Bailey and Leetham of seizure of their steamer "Labuan" by United States' man-of-war, while taking on board a cargo of cotton at Matamoros (Mexico).

My Lord, *Doctors' Commons, March* 22, 1862.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 17th March instant, stating that he was directed by your Lordship to transmit to me a letter (dated the 15th of March instant) from Messrs. Lefevre and Co., inclosing a letter of the same date, with other papers, from Messrs. Bailey and Leetham of Hull, respecting the seizure of their steamer the "Labuan," by the United States' man-of-war "Portsmouth," while taking on board a cargo of cotton at the Mexican port of Matamoros, and also to state that these papers have been submitted to your Lordship "with a view to Her Majesty's Government taking such steps as they may deem proper for the protection of the interests of the owners of the 'Labuan' and her cargo;" and to request that I would take this case into consideration, and furnish your Lordship with my opinion as to the instructions if any, which it may be proper to address to Lord Lyons on the subject.

Mr. Hammond was also pleased to transmit on the 19th March instant, a despatch, and its inclosures, from Her Majesty's Minister at Washington (No. 152, 3rd March).

Mr. Layard was also pleased to transmit on the 22nd instant a despatch, and its inclosure, from Her Majesty's Consul-General at Havana (No. 7, 1st March).

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That, as the case now stands, the expediency of sending any definite instructions to Lord Lyons appears to me to be questionable.

The ship has arrived at New York in charge of a prize-crew, and his Lordship has already called Mr. Seward's attention to the case, and expressed his conviction "that if she was captured unlawfully, the Government of the United States will be prompt to redress the wrong thus committed by its officers."

The information transmitted to your Lordship by Messrs. Bailey and Leetham, with their letter of the 15th instant, as to the facts connected with the capture, is contained in the letter from the mate of the "Labuan" (Hargill) to them of the 14th February. From this letter it appears that although the mate states that she was lying "off the Rio Grande," and that the "Labuan" was "in Mexican waters" when captured (referring to the latitude and longitude), yet that the Captain of the "Portsmouth" (the captor) stated to him at the time that she was in "American waters," and was taking on board "American cotton." In the extract from the "New York Herald" of the 25th February (transmitted by Lord Lyons in his despatch No. 152) it is stated that the "Portsmouth" "saw a large steamer at anchor *in the river off Matamoros,* and a *small Secession steamer* evidently engaged in bringing a cargo of cotton to her."

Consul Crawford's despatch No. 7 is founded upon one to him from Vice-Consul Blackie at Matamoros, which has been sent to Lord Lyons, but of which no copy is with the papers. From this it would appear that the "Labuan" was lying when captured "within the limits of the port of Matamoros," and that part of her cargo of cotton was Spanish property, in respect of which the Captain-General of Cuba intended to remonstrate strongly with the United States' Government through the Spanish Minister at Washington. Consul Crawford has written to Lord Lyons; and the master and the supercargo of the "Labuan" (who were on shore at the Custom-house when she was captured) have proceeded to New York and Washington to communicate with Lord Lyons, and to appear in the Prize Court.

Although, therefore, the capture seems unjustifiable, especially if it took place within the limits of the port of Matamoros (and I conclude within three miles of the coast of Mexico), yet all the facts and circumstances are not quite free from question. Lord Lyons will be more correctly informed than Her Majesty's Government now is. I can, therefore, only suggest that copies of the mate's letter and of the affidavit of Messrs. Leetham and Atkinson, and of the bill of lading annexed, should be sent to Lord Lyons, and that he should be instructed to use his discretion according to the circumstances which may transpire, and under legal advice if necessary, as to whether he should address to the United States' Government any formal demand for the release of the ship and cargo, but that he should only do this on being satisfied that there was no apparent legal justification for the capture of either; otherwise the case should be left to the adjudication of the Prize Court.

Some of the crew are stated in the mate's letter to have been taken out of the "Labuan" and put on board the "Portsmouth;" they, as well as all others not required as witnesses in the Prize Court, should be forthwith set at liberty.

I have, &c.
(Signed) J. D. HARDING.

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No. 64.

The Queen's Advocate to Earl Russell.—(Received March 24.)

UNITED STATES.

Condemnation of the "Herald" for breach of blockade of port of Beaufort.

Doctors' Commons, March 24, 1862.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 17th instant, stating that he was directed by your Lordship to transmit to me a despatch and its inclosures from Her Majesty's Consul at Philadelphia, reporting the condemnation of the British brig "Herald," and which formed the subject of my Report of the 24th September last;* and to request that I would again take this case into consideration, and report to your Lordship my opinion thereupon. And he was also pleased to annex the previous papers, as well as an instruction to Lord Lyons (No. 885).

In obedience to your Lordship's commands I have taken these papers into my consideration, and have the honour to report—

That the Judgment of the United States' Court of the Eastern District of Pennsylvania, condemning the "Herald" (Inclosure No. 1 in Consul Kortright's No. 6), does not appear to me to be entirely satisfactory, but it is unaccompanied by evidence, or papers, or the arguments; and an appeal from it is open to the owners to the Circuit Court. There is no further application for the interference of Her Majesty's Government; and I cannot, therefore, under the circumstances, advise your Lordship at present to take any step in the matter.

The Judgment of a Court of Admiralty in a question of prize is, *primâ facie*, conclusive internationally; and if the intervention of Her Majesty's Government should be invoked, after and notwithstanding such Judgment, all the papers must be supplied, and the reasons upon which the parties rely as rendering the sentence of condemnation invalid assigned; and the charges (adverted to in the Judgment and in Consul Kortright's despatch No. 6) of her sailing for a false destination, and of the false or deceptive statements of the master, as to the ownership, must be cleared up. It will then remain for the consideration of Her Majesty's Government whether and on what grounds it can properly interfere.

I have, &c.
(Signed) J. D. HARDING.

No. 65.

The Law Officers of the Crown to Earl Russell.—(Received March 25.)

TURKEY.

Appointment of a paid British Commissioner to attend the Mixed Turkish and European Tribunals of Commerce.

Doctors' Commons, March 24, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 17th March instant, stating that he was directed by your Lordship to transmit to us the accompanying despatch and its inclosures from Sir Henry Bulwer (No. 84, March 4, 1862), respecting the desire of the British merchants at Constantinople to have a paid British Commissioner appointed to attend the Mixed Turkish and European Tribunals of Commerce, instead of the system now in force, for securing the attendance of foreign merchants in suits between Ottoman and British subjects; and to request that we would take these papers into consideration, and report to your Lordship our opinion respecting the appointment of such a Commissioner.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we see no legal objection to the proposed alteration, which seems to promise a great improvement upon the present system, and which (as we collect from Sir H. Bulwer's letter) is proposed to be made with the concurrence of the Ottoman Government.

We must observe, however, that no facts or documents are submitted to us raising any legal doubt or question on the subject; and that we are not aware of the Treaty or Capitulation under which the Mixed Tribunals in question are constituted, or by what authority or to what extent they exercise and enforce their jurisdiction. The 24th Capitulation appears to stipulate for the presence of the Ambassador, Consul, or Interpreter at the hearing and decision of all law-suits or other affairs connected with the law in which Her Majesty's subjects shall be involved.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 66.

The Law Officers of the Crown to Earl Russell.—(Received March 28.)

UNITED STATES.

Permits issued by United States' Government authorizing trade between loyal and seceded States.

Doctors' Commons, March 25, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 21st March instant, in which he stated that he was directed by your Lordship to transmit to us two despatches from Her Majesty's Minister at Washington (No. 147 of February 28, and No. 151 of March 3, 1862), respecting some permits which had been issued by the United States' Government, authorizing trade between the loyal and the seceded States, and requesting that we would take these papers into our consideration, and furnish your Lordship with our opinion as to how far the issue of these permits could be regarded as vitiating the blockade.

In obedience to your Lordship's commands we have taken the papers submitted to us into our consideration, and have the honour to report—

That the issuing of the "permits" or licenses in question cannot be considered as vitiating the blockade. The trade in question seems to be confined to ports in the Confederate States actually occupied by the forces of the United States' Government; and it does not appear that any permission has been given to trade with any ports in the Confederate States occupied by the Confederate Government, and blockaded by the naval forces of the United States.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 67.

The Queen's Advocate to Earl Russell.—(Received March 27.)

UNITED STATES.

Instructions to be sent to Washington relative to the seizure of the "Labuan" at Matamoros.

Doctors' Commons, March 27, 1862.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 26th March instant, stating that, with reference to my Report of the 22nd instant,* upon the case of the "Labuan," he was directed by your Lordship to transmit to me, together with the draft of an instruction which has been prepared for transmission to Lord Lyons, a despatch and its inclosures received from his Lordship (No. 171, March 10, 1862), containing further information respecting this case; and to request that I would take these papers into consideration, and report to your Lordship, by Friday next at latest, whether, in my opinion, any further instructions beyond those contained in the inclosed draft should be sent to Lord Lyons for his guidance. And he was also pleased to transmit a further letter and its inclosure from Messrs. Lefevre and Co. on this subject, dated the 24th March instant; and also the former papers.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That the important additional information now received will obviously render it necessary to alter the draft to Lord Lyons herewith.

Her Majesty's Government is now in a very different position as to the documents and information which it has received from that in which it was when my former Report was made, and when that draft was prepared; and the draft requires alteration, at least to this extent.

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* See Reports for 1861, page 225.

* Page 70.

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No. 64.

The Queen's Advocate to Earl Russell.—(Received March 24.)

United States.

Condemnation of the "Herald" for breach of blockade of port of Beaufort.

Doctors' Commons, March 24, 1862.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 17th instant, stating that he was directed by your Lordship to transmit to me a despatch and its inclosures from Her Majesty's Consul at Philadelphia, reporting the condemnation of the British brig "Herald," and which formed the subject of my Report of the 24th September last;* and to request that I would again take this case into consideration, and report to your Lordship my opinion thereupon. And he was also pleased to annex the previous papers, as well as an instruction to Lord Lyons (No. 885).

In obedience to your Lordship's commands I have taken these papers into my consideration, and have the honour to report—

That the Judgment of the United States' Court of the Eastern District of Pennsylvania, condemning the "Herald" (Inclosure No. 1 in Consul Kortright's No. 6), does not appear to me to be entirely satisfactory, but it is unaccompanied by evidence, or papers, or the arguments; and an appeal from it is open to the owners to the Circuit Court. There is no further application for the interference of Her Majesty's Government; and I cannot, therefore, under the circumstances, advise your Lordship at present to take any step in the matter.

The Judgment of a Court of Admiralty in a question of prize is, *primâ facie,* conclusive internationally; and if the intervention of Her Majesty's Government should be invoked, after and notwithstanding such Judgment, all the papers must be supplied, and the reasons upon which the parties rely as rendering the sentence of condemnation invalid assigned; and the charges (adverted to in the Judgment and in Consul Kortright's despatch No. 6) of her sailing for a false destination, and of the false or deceptive statements of the master, as to the ownership, must be cleared up. It will then remain for the consideration of Her Majesty's Government whether and on what grounds it can properly interfere.

I have, &c.
(Signed) J. D. HARDING.

No. 65.

The Law Officers of the Crown to Earl Russell.—(Received March 25.)

Turkey.

Appointment of a paid British Commissioner to attend the Mixed Turkish and European Tribunals of Commerce.

Doctors' Commons, March 24, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 17th March instant, stating that he was directed by your Lordship to transmit to us the accompanying despatch and its inclosures from Sir Henry Bulwer (No. 84, March 4, 1862), respecting the desire of the British merchants at Constantinople to have a paid British Commissioner appointed to attend the Mixed Turkish and European Tribunals of Commerce, instead of the system now in force, for securing the attendance of foreign merchants in suits between Ottoman and British subjects; and to request that we would take these papers into consideration, and report to your Lordship our opinion respecting the appointment of such a Commissioner.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we see no legal objection to the proposed alteration, which seems to promise a great improvement upon the present system, and which (as we collect from Sir H. Bulwer's letter) is proposed to be made with the concurrence of the Ottoman Government.

We must observe, however, that no facts or documents are submitted to us raising any legal doubt or question on the subject; and that we are not aware of the Treaty or Capitulation under which the Mixed Tribunals in question are constituted, or by what authority or to what extent they exercise and enforce their jurisdiction. The 24th Capitulation appears to stipulate for the presence of the Ambassador, Consul, or Interpreter at the hearing and decision of all law-suits or other affairs connected with the law in which Her Majesty's subjects shall be involved.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

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* See Reports for 1861, page 225.

No. 66.

The Law Officers of the Crown to Earl Russell.—(Received March 28.)

United States.

Permits issued by United States' Government authorizing trade between loyal and seceded States.

Doctors' Commons, March 25, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 21st March instant, in which he stated that he was directed by your Lordship to transmit to us two despatches from Her Majesty's Minister at Washington (No. 147 of February 28, and No. 151 of March 3, 1862), respecting some permits which had been issued by the United States' Government, authorizing trade between the loyal and the seceded States, and requesting that we would take these papers into our consideration, and furnish your Lordship with our opinion as to how far the issue of these permits could be regarded as vitiating the blockade.

In obedience to your Lordship's commands we have taken the papers submitted to us into our consideration, and have the honour to report—

That the issuing of the "permits" or licenses in question cannot be considered as vitiating the blockade. The trade in question seems to be confined to ports in the Confederate States actually occupied by the forces of the United States' Government; and it does not appear that any permission has been given to trade with any ports in the Confederate States occupied by the Confederate Government, and blockaded by the naval forces of the United States.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 67.

The Queen's Advocate to Earl Russell.—(Received March 27.)

United States.

Instructions to be sent to Washington relative to the seizure of the "Labuan" at Matamoros.

Doctors' Commons, March 27, 1862.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 26th March instant, stating that, with reference to my Report of the 22nd instant,* upon the case of the "Labuan," he was directed by your Lordship to transmit to me, together with the draft of an instruction which has been prepared for transmission to Lord Lyons, a despatch and its inclosures received from his Lordship (No. 171, March 10, 1862), containing further information respecting this case; and to request that I would take these papers into consideration, and report to your Lordship, by Friday next at latest, whether, in my opinion, any further instructions beyond those contained in the inclosed draft should be sent to Lord Lyons for his guidance. And he was also pleased to transmit a further letter and its inclosure from Messrs. Lefevre and Co. on this subject, dated the 24th March instant; and also the former papers.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That the important additional information now received will obviously render it necessary to alter the draft to Lord Lyons herewith.

Her Majesty's Government is now in a very different position as to the documents and information which it has received from that in which it was when my former Report was made, and when that draft was prepared; and the draft requires alteration, at least to this extent.

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The instructions to be sent to Lord Lyons for his guidance are, under the circumstances, a question of policy rather than of law. I can only suggest that the altered aspect of the case appears to me to justify the giving instructions to his Lordship to make a formal representation to Mr. Seward to the effect that Her Majesty's Government consider the capture of the "Labuan" as unjustifiable, and view it as a serious violation of international law, and must require the prompt release of the vessel, her cargo, papers, and crew, together with reasonable compensation to the parties interested for the losses they have sustained by or in consequence of the capture, unless his Lordship should (after full consideration and taking legal advice, if he should think it advisable so to do) see sufficient reason for abstaining from taking this course.

As time presses, I have prepared (by way of suggestion), and herewith transmit, a draft to Lord Lyons, expressing my present view of the case, for your Lordship's consideration.

I forbear from entering upon the very important question involved in this case, and opened in these papers (especially in Vice-Consul Blackie's despatch of the 9th of February), of the future export from Matamoros, in British vessels, of cotton grown in Texas, which has, for the present, been effectually interrupted by the conduct and declarations of Captain Swartout, of the "Portsmouth," and which he has declared his intention to persist in interrupting, without any sufficient justification, as far as I can see. This matter urgently requires attention. I ought, however, to add that if vessels or small craft of any description, owned wholly or in part by persons domiciled in Texas, should be found by United States' ships of war out of Mexican waters (howsoever engaged), they will be legally liable to capture; and that, adverting to the actual state of circumstances in Mexico and the United States, and to the geographical position of that port, it may be expected that the United States' officers will, unless this difficulty is obviated, or they are instructed to the contrary, have both the disposition and the power of seriously interfering with neutral interests at Matamoros, and of greatly restricting, if not of effectually preventing, the free exportation therefrom of cotton produced in Texas, which is a matter of urgent importance to the interests of all neutral Powers.

I have, &c.
(Signed) J. D. HARDING.

Inclosure in No. 67.

Proposed Despatch to Lord Lyons.

Foreign Office, 1862.

[RECITE the dates and description of the various despatches received down to this date, and proceed—]

The case presented to Her Majesty's Government on the face of these papers is one of a very serious aspect, both as regards the interests of the British owners of the "Labuan" and of a portion of her cargo, and as regards the principle involved, with a view to similar cases, which, in consequence of the conduct and declarations of Captain Swartout of the "Portsmouth," may be expected to recur at Matamoros.

I confine myself at present to the case of the "Labuan;" and I must observe, in the first place, that there appears no reason whatever to suspect the good faith of the parties interested throughout the whole transaction.

At the time the "Labuan" left England, not only was all trade with Matamoros, as being a neutral port, perfectly lawful, but on her arrival at Havana on her outward voyage (as appears from Messrs. Frerick and Co.'s letter to Consul Archibald of March the 4th), the agent at that port of Messrs. De Jersey and Co. (the charterers) called, in company with the master, on the United States' Consul, stated the intention to proceed to Matamoros with cargo, and possibly to bring back a return cargo, and was thereupon assured by the United States' Consul "that he had nothing whatever to fear as regarded interference by the United States' cruizers.

The outward cargo landed at Matamoros (and consisting chiefly of blankets, bagging, and bale goods) was of a perfectly innocent character; it was consigned to Droize, Oetling, and Co., of Matamoros, to be sold there. The cargo of

cotton which she had partly laden on board when captured, was purchased by them at Matamoros from Mexican merchants, on account of the British charterers and of a Spanish merchant at Matamoros; and part of it was laden regularly through the Mexican Custom-house, with the regular papers from that office and from the Spanish and the British Vice-Consulates; the remainder was ready for lading, and a large sum in specie was also ready to be laden. Thus everything was done openly and in good faith.

The vessel, according to the positive information received by Her Majesty's Government from Her Majesty's Vice-Consul at Matamoros, was, owing to her draught of water not enabling her to reach the town of Matamoros, lying at anchor off the mouth of Rio Grande, not only in Mexican waters, but, as Her Majesty's Government is informed, within the legal limits of the port of Matamoros, as ascertained by frequent observations of latitude and longitude taken on board,[*] a fact which is corroborated by her lading being done through the Custom-house there;[†] and the master left Matamoros with his papers and part of the cargo, and was only prevented from getting on board and detained at the mouth of the river by tempestuous weather.

Previously to the appearance of the "Portsmouth," on the 1st of February, no blockade of the neighbouring ports of Texas (Brazos, Santiago, and Brownsville) had been established, and no United States' ship of war had boarded any vessel in that vicinity; there had been no warning, notification, or interruption of the trade of Matamoros or the Rio Grande.

This, I apprehend, disposes of any suggestion of the capture having been made for breach of blockade.

With respect to the shipment of the cargo by means of a Secession steamer (if this should be relied on by Mr. Seward), I can only refer you to the statement in Vice-Consul Blacker's despatch, pp. 14, 15. Having regard to such statement, it does not appear how this fact (which was not apparently witnessed by the "Portsmouth") can justify the capture, or have any material bearing on the case.

The mate states that the steamer carried the Mexican flag, and the master could not have known her nationality, even if that were of any importance.

Captain Swartout, the capturing officer, had, not only from the papers delivered up to him by the mate,[‡] but by his interview with Her Majesty's Vice-Consul on the 5th of February,[§] extraordinary facilities for satisfying himself upon all points involved in any doubt.

After the capture, several of the crew, instead of being regularly sent into a captor's port in the prize, were irregularly taken out of the "Labuan" and detained on board the "Portsmouth;" and on the arrival of the "Labuan" at New York on the 28th February, the mate was refused permission to confer with Her Majesty's Consul or with any legal adviser, until after his examination before a Prize Commission on the 3rd of March.

Under these circumstances I am unable to see any sufficient justification for this capture. Apart from the question of the place of capture (which appears, if clearly established, to dispose of the case), and apart from all questions of blockade (which did not exist, and was not violated), the mere fact of the cotton on board having been grown in Texas (which appears to have been relied upon by the captor), or having been, after its purchase at Matamoros, put on board in a steamer owned by Texan citizens, cannot afford any justification for the capture of the "Labuan," by international law. This capture, moreover, was not (as in ordinary cases) made on the high seas, when the captor has no means of ascertaining any questionable facts from any independent or trustworthy source: Captain Swartout had peculiar facilities of ascertaining from the Vice-Consul all the circumstances of the case.

I have therefore to instruct your Lordship (unless you should, in consideration of some communication from the United States' Government, or some circumstance not at present known to me, or upon the best legal advice, see reason to abstain from so doing;—as to which I leave to your Lordship with entire confidence the exercise of a wide discretion) to embody in a note to

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[*] See Mate's Protest, p. 4.

[†] See the allusion to the Treaty of Guadaloupe Hidalgo, in Vice-Consul Blacker's despatch of February 9, p. 17, to which Treaty I cannot now refer.—J. D. H.

[‡] See Mate's Protest, p. 8.

[§] See Vice-Consul Blacker's despatch, pp. 6, 7, 8, 9.

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Mr. Seward such of these facts and circumstances as may appear to you essential, and to require the prompt release of the "Labuan," her cargo, crew, and papers; and further, to intimate to Mr. Seward that Her Majesty's Government feel themselves compelled, under all the circumstances of the case, to insist upon the parties interested being compensated for all losses they may have sustained by this unjustifiable capture.

You will, of course, consider the propriety of acting as far as may be expedient in connection with the Spanish Minister at Washington, in the probable event of his demanding reparation for the capture of the Spanish portion of the cargo.

With a view to the possibility of the discussion with the United States' Government turning on the existence of a blockade of Texas, and the peculiar position of the State of Texas, especially of the port of Brownsville on the Rio Grande, which river forms the boundary between that State and the Republic of Mexico, I would call your Lordship's attention to the cases of the "Stert" (4 Christopher Robinson's "Reports," p. 65), the "Ocean" (3 ditto, p. 297), and the passages in 3 Phillimore's "Commentaries," p. 404, s. cccxiv, and especially in Wheaton's "International Law" (edited by Mr. Lawrence), p. 585, edition London, 1857, as to the carriage of goods from a blockaded port to a neutral port, through interior communication or inland navigation, not being a breach of a maritime blockade.

J. D. H.

No. 68.

The Queen's Advocate to Earl Russell.—(Received March 28.)

UNITED STATES.

Seizure by blockading squadron off Florida of the "Stephen Hart," the cargo of which belongs to Messrs. S. Isaac, Campbell, and Co.

My Lord, *Doctors' Commons, March* 28, 1862.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 25th March instant, stating that he was directed by your Lordship to transmit to me the accompanying letter, dated the 6th March instant, and its inclosure, from Messrs. S. Isaac, Campbell, and Co., stating the circumstances under which the "Stephen Hart," the cargo of which was their property, was captured by one of the ships of the United States' blockading squadron off the coast of Florida, and soliciting your Lordship to instruct Her Majesty's Minister at Washington to take steps for the protection of their interests, and to request that I would take this case into consideration and furnish your Lordship with my opinion thereupon.

In obedience to your Lordship's commands I have taken these papers into my consideration, and have the honour to report—

That as the case stands at present I cannot advise your Lordship to interfere. The interests of all concerned are duly represented at New York, to which port the vessel has been sent for adjudication, and where the master is in communication with Her Majesty's Consul.

All the material facts do not appear to me to be explicitly and candidly stated in the papers transmitted by the applicants.

1. *As to the ship*,—she is merely stated by Messrs. S. Isaac, Campbell, and Co., the owners of *the cargo*, to belong "to our Mr. John Harris." There is no statement from this gentleman. Nothing is stated as to the date or circumstances of her purchase, or her previous nationality, ownership, or employment; and there is no explanation of the expressions in the letter from the master, of the 18th February, who states "that he *finds* Mr. B. H. Hart, at New York, represents the interests of the schooner," and that the mate and boatswain, who have been examined, "have been stating things which they cannot substantiate," and that the mate has confessed "that he knew the schooner, and that she had been running to the Southern States, and had a Confederate flag on board;" expressions which obviously require explanation.

2. *As to the nature of the cargo*,—no information is forthcoming in any of the papers. The letter of Messrs. S. Isaac, Campbell, and Co. is dated "Military Warehouse, 71, Jermyn Street;" it is, therefore, probable that the cargo was in fact "contraband of war."

3. *As to its destination*,—no information is given on this point. It is stated that she was not intended to run the blockade, but it is not stated that her cargo was not intended to reach a Southern (or Confederate) port; nor is it stated to whose order, or on whose account, it was shipped. It is stated that she cleared from London for Cardenas, and was steering direct as the wind would allow for that port; yet the Inclosure B (described as "Letter to the Consignee") is very short, makes no allusion to the cargo, and is addressed to "Charles J. Helm, Esq., care of J. Crawford, Esq., *Havana*," (not *Cardenas*): and it is obvious from these inclosures, especially B and C, that she was intended to go to Havana, possibly after she had been at Cardenas, but this is not explained.

Considering all these circumstances,—that the probable cause or pretext of the capture is not stated by the master; that he does not state that he was advised by the Consul, or by his proctor, that it was unjustifiable; and from the case of the "Hendrik and Alida" being referred to by Messrs. S. Isaac, Campbell, and Co., it is probable that the cargo was contraband of war, ultimately designed for the use of the Confederates; and that this or other circumstances (known to, or suspected by them, but not stated), caused, and may have justified, the capture.

I can only suggest that, under these circumstances, Messrs. S. Isaac, Campbell, and Co., may be informed that your Lordship requires full information of the nature and ultimate real destination of the cargo, and as to the persons who (as principals) ordered it, or on whose credit or account it was supplied, together with the instructions to the master, or others, as to its disposal, and also explanations of the allusions in the master's letter to the examinations of Mr. Chadwick, mate, and of the boatswain, such explanations to be accompanied with the necessary papers; as also the cause or pretext for the capture, according to their information or conjecture. It may be further intimated to them, that as the master intended to write more fully by the mail of the 22nd ultimo, your Lordship requests to be furnished with any further information which they may have received, and that your Lordship, before you can determine the question of official intervention, must be furnished by them with a complete and candid statement of all the circumstances of the case.

Mr. Consul Crawford at Havana (who appears from the Inclosures A and C to have been in correspondence with Messrs. S. Isaac, Campbell, and Co., on the subject of this vessel), and the Consul at New York, should be instructed to report fully upon the case.

I have, &c.
(Signed) J. D. HARDING.

No. 69.

The Queen's Advocate to Earl Russell.—(Received March 31.)

PERSIA.

Right of foreigners to purchase houses and stores in Persia.

Doctors' Commons, March 29, 1862.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 24th March instant, stating that he was directed by your Lordship to transmit to me a despatch from Her Majesty's Minister at Tehran (No. 14), inclosing copies of a correspondence which has passed between him and the Persian Minister for Foreign Affairs on the subject of the right of foreigners to purchase houses and stores in Persia. And he was also pleased to inclose copies of the Treaties between Russia and Persia, and between Great Britain and Persia, referred to in this correspondence; and to request that I would take these papers into consideration, and furnish your Lordship with my opinion as to the course which Her Majesty's Government would be justified to take in this matter.

In obedience to your Lordship's commands I have taken these papers into my consideration, and have the honour to report—

That Her Majesty's Government will, in my opinion, be clearly justified in insisting on the absolute and unqualified right of Her Majesty's subjects to purchase dwelling-houses, warehouses, and places of deposit for their merchandize ("*emplacements* pour y déposer leur marchandises"): something may turn on the Persian meaning of this word; it may probably extend to such premises as are known to us as wharfs and yards.

The Persian Minister in effect admits that Her Majesty's subjects are entitled (I presume under "the most favoured nation clause," Article IX of the

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Treaty of Paris, 1857) to the same treatment in respect of the privilege in question, as Russian subjects under the Commercial Treaty of Turcomantchai, between Russia and Persia, February 10, 1828. Article V of this latter Treaty clearly stipulates for this privilege in favour of Russian subjects, without limitation. The introductory words, as to the difficulty of hiring houses, merely state the reason for the subsequent express stipulation; they do not in any manner limit or qualify this stipulation, or make it dependent on the difficulty or facility of hiring houses, and are not fairly susceptible of the meaning which the Persian Minister for Foreign Affairs seeks to give to them, in his notes to Mr. Alison of the 25th December, 1861, and 27th January, 1862; any such limitation or qualification as suggested, must, in order to be valid, be founded on the express terms of the Treaty, or be derived by necessary implication therefrom, and this cannot be established. The construction contended for would, moreover, practically enable the Persian Government to limit the stipulated privilege at its own uncontrolled discretion, contrary to the spirit as well as the terms of the Treaty. The stipulations of Article I of the Commercial Treaty of Turcomantchai will also apply to this description of property ("immeubles").

I have, &c.
(Signed) J. D. HARDING.

No. 70.

The Queen's Advocate to Earl Russell.—(Received April 1.)

SWEDEN.

Case of Walter Foreman, a British subject, called upon to serve in the Norwegian army.

Doctors' Commons, March 31, 1862.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 26th March instant, stating that, with reference to my Report of the 5th of December ultimo,* he was directed by your Lordship to transmit to me a despatch from Her Majesty's Consul-General at Christiania (No. 2, March 15, 1862), furnishing the details which I required respecting the case of Walter Foreman, a British subject, who had been called upon to serve in the Norwegian army; and to request that I would furnish your Lordship with my opinion as to the course which Her Majesty's Government should pursue in the matter. And he was also pleased to annex the former papers relating to this case.

In obedience to your Lordship's commands I have taken these papers into my consideration, and have the honour to report—

That it appears to me to be desirable that the legal question should be settled by the adjudication of the Supreme Court, the expense of which Consul Crowe states will not exceed 20*l*.

Should the decision be in favour of the exemption from military service, an important privilege will be thereby secured to a certain class of British subjects in Norway. Should it (as probable) be adverse to such exemption, all doubt will be removed, and the law will be settled; in this contingency I can only suggest an arrangement of the question by negotiation, on the grounds stated in my Report of December 5, 1861.

I have, &c.
(Signed) J. D. HARDING.

No. 71.

The Law Officers of the Crown to Earl Russell.—(Received April 4.)

TURKEY.

Case of Antippo *v.* Foca. Request of Nicolo Antippo that Wallachian Government be required to cause the personal arrest or attachment of Madame Foca.

Doctors' Commons, March 31, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 14th March instant, stating that, with reference to our Report of the 30th of October ultimo,† relative to the case of "Antippo *v.* Foca," he was directed by your Lordship to transmit to us drafts of despatches which your Lordship addressed to the Judge of the Supreme Consular Court at Constantinople,

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* See Reports for 1861, page 301.

† Ibid., page 254.

and to Her Majesty's Agent and Consul-General at Bucharest, and a despatch which has been received in reply from Sir Edmund Hornby.* And he was also pleased to inclose the previous papers relating to this case;† and to request that we would furnish your Lordship with our opinion as to the steps which it may be proper for Her Majesty's Government to take in the matter.

In obedience to your Lordship's commands, we have taken these papers into consideration, and have the honour to report—

That under existing circumstances we are unable to advise Her Majesty's Government to take any steps whatever for the purpose of procuring the Decree of the Consular Court against Madame Foca to be enforced, presuming, as we do, that it would not be expedient to risk a collision with the Wallachian Government, by instructing the Consul to cause her personal arrest or "attachment" to be effected by virtue of his Consular jurisdiction, and in order to compel her compliance with the Decree of the Supreme Consular Court.

It appears from Sir E. Hornby's despatch that Mr. Green had no means of enforcing that Decree without the intervention of the Wallachian authorities, except by attachment; and that he had properly abstained from attempting to attach the person of Madame Foca under the advice or direction of Sir E. Hornby himself. Signor Antippo, in his memorial of the 10th August, stated that Madame Foca, when her naturalization was objected to by Mr. Green, "said, in answer to his demand at the Wallachian Ministry that, as far as concerned the suit with Antippo, she did not intend to appeal to the laws of the country (*i. e.*, of Wallachia), but would have the matter to be settled by the English authorities, where it had begun; having other reasons of her own for becoming a naturalized Wallachian." He added, that, nevertheless, "the Consul-General, Mr. Green, was not allowed by the Wallachian Ministry to put the Decree of the Court into execution, on account of the intervening change of subjection; the Ministry declaring that the execution should be made by the Wallachian laws and by the local authorities." It was with reference to these statements of Signor Antippo that we desired to receive clear and correct information, especially as no exception appeared to have been taken by Mr. Green himself to the conduct of the Wallachian Government, subsequently to Madame Foca's naturalization; on the contrary, Mr. Green wrote in his letter of the 28th September, "The Wallachian Government has never refused to carry out the Decree of the British Consular Court of Constantinople against Madame Foca. In fact, Antippo has been engaged for several months in endeavours to effect seizures of Madame Foca's property, through the intervention and with the assistance of the Wallachian authorities." The only further information which we have now received on the subject is to the effect that, while Sir E. Hornby is "convinced that Madame Foca's object in seeking Wallachian nationality was to evade the jurisdiction of her lawful authority," he is "not in a position to prove that the naturalization given her was a pretext for the violation of the rights secured by Treaty to persons under British jurisdiction." We are not prepared entirely to subscribe to Sir E. Hornby's opinions that the Wallachian authorities acted improperly in giving to Madame Foca Wallachian naturalization, unless such naturalization was intended or permitted to be made use of, for the purpose of shielding her from the British jurisdiction, to which she was previously subject; and in the present state of our information we see no sufficient grounds for concluding, either that any such use has, in fact, been made of it, or that it was granted to her by the Wallachian authorities with any such intention.

The principle involved is important, inasmuch as if any British or Ionian subject could, by virtue of a Wallachian naturalization, succeed in setting at defiance a Decree of the Consular Court, justice might in all such cases be defeated, and the Capitulations practically violated. We apprehend that a Wallachian naturalization (whatever privileges it may confer) cannot have the effect of withdrawing from the British Consular jurisdiction any persons originally subject thereto, who cannot by reason of such naturalization be exempted from their original allegiance. In this case, however, the Wallachian Government has not thrown any obstacle in the way of Mr. Green's jurisdiction;

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* To Mr. Green, No. 12, November 14, 1861; to Mr. Hornby, No. 44, November 16, 1861; from Sir E. Hornby, No. 11, February 18, 1862.

† From Colonial Office, July 9, 1859; to Mr. Green, No. 3, July 19, 1859; from Mr. Green, No. 4, August 10, 1859; to Mr. Green, No. 7, August 31, 1859; from Mr. Green, No. 7, September 17, 1859; from Mr. Antippo, August 10, 1861; to Mr. Green, No. 8, August 31, 1861; from Mr. Green, No. 27, September 28, 1861; Law Officers, October 30, 1861.

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on the contrary, he has himself solicited and obtained the assistance of the Wallachian authorities, having abstained, under Sir E. Hornby's advice, from arresting Madame Foca by virtue of the Consular jurisdiction. Under these circumstances we do not see what further can be done.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 72.

The Queen's Advocate to Earl Russell.—(*Received April* 1.)

Doctors' Commons, March 31, 1862.

UNITED STATES.

Claim of Mr. McWhan for losses sustained by capture of the "C. P. Knapp," part of her cargo belonging to his firm.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 27th March instant, stating that he was directed by your Lordship to transmit to me the accompanying letter, dated the 12th instant, from Mr. Mc Whan, complaining of the loss occasioned to the firm of which he is a member, from the capture by the United States' blockading squadron of a vessel named the "C. P. Knapp," which was taken into Key West, and subsequently released. And that Mr. Mc Whan stated that his firm owned a portion of the cargo of that vessel, and that he claims compensation from the United States' Government for the pecuniary loss which they suffered in consequence of its not being delivered in due course. And he was also pleased to inclose some further papers,* from which, he stated, I should see that Her Majesty's Minister at Washington has already been in communication with the Government of the United States with respect to the "C. P. Knapp," and to request that I would take this case into my consideration, and furnish your Lordship with my opinion whether the claim of Mr. Mc Whan is one which Her Majesty's Government would be justified in presenting to the United States' Government.

In obedience to your Lordship's commands I have taken these papers into my consideration, and have the honour to report—

That it appears from the only information forthcoming (viz., the master's protest made before Her Majesty's Consul for Cuba, September 19, 1861), that this vessel was the property of Mr. Brunose, a British subject, but apparently residing in Louisiana, where he obtained, on purchasing her, from Her Majesty's Consul, a provisional certificate of registry (neither the date of which, nor the previous ownership or nationality of the ship, is given), nor does it appear at what British port her registration was to be completed.

She sailed on the 3rd August, 1861, from Berwick Bay, in Louisiana (forty-five miles south-west of the Bar of the Mississippi, a small port not blockaded, but where there was no United States' Collector of Customs), with a clearance from the Collector of the Customs at Franklin (Louisiana); she had a cargo of rice, and was bound to the Havana.

On the 8th August, in latitude 26° 40′ north, and longitude 87° 7′ west, the United States' ship-of-war "Santee" captured her, for what reason does not appear. She was sent to Key West for adjudication by the United States' Admiralty Court there, by which Court she was restored on the final hearing on the 16th September, 1861, the Judge declaring that "there were no grounds for condemnation as libelled." The United States' District Attorney-General entered an appeal from this sentence to the Supreme Court of the United States.

Nothing is stated as to the grounds of condemnation "libelled," or pressed in argument, or proved, nor as to the result of this appeal; nor does it appear whether the owners of the ship, or of the cargo, were represented in the suit; or if so, whether they applied for costs and damages, and what the Court decided with reference thereto. This application from Messrs. Mc Whan and Flood (a British firm established at New Orleans), the owners of the cargo, is

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* Lord Lyons, No. 538, October 7, and No. 557, October 17, 1861; to Lord Lyons, No. 390, November 2, 1861; Lord Lyons, No. 684, November 20, and No. 698, November 25, 1861.

the first application which has been made on the subject, and there is nothing from the owner of the vessel, notwithstanding the lapse of time.

It is obvious that, if the capture of the ship was not unjustifiable, the owner of the cargo cannot claim compensation under the circumstances. It would appear that both the vessel and the cargo were the property of persons domiciled in the Confederate State of Louisiana, and therefore (internationally) "hostile" to the United States, notwithstanding their British origin, and the ship probably obtained her British provisional certificate after the commencement of the existing civil war.

Under these circumstances there would seem, *primâ facie*, to have been sufficient ground for the *capture*, quite independently of any question of blockade. By the Prize Law and practice of England, a vessel captured under similar circumstances would not have obtained costs and damages on restoration, even had she been restored upon some grounds not at present appearing in this case.

I must further observe that the papers do not contain any vouchers or particulars as to the amount of loss or damage actually sustained by Messrs. Mc Whan and Flood by reason of the capture; the "account sales" alluded to in their letter is not with the papers, and they do not state, as from themselves and of their own knowledge, that the amount stated by their agents is correct.

At all events, therefore, until these particulars are supplied, and until the circumstances to which I have alluded connected with the proceedings of the Admiralty Court at Key West, are further explained, your Lordship is not in a position to interfere.

The case does not, as it stands, appear a favourable one for the interference of Her Majesty's Government, but much will depend on the proceedings and Judgment, as to which Her Majesty's Vice-Consul at Key West should furnish all the information in his power.

I have, &c.
(Signed) J. D. HARDING.

No. 73.

The Law Officers of the Crown to Earl Russell.—(*Received April* 1.)

Doctors' Commons, March 31, 1862.

JAPAN.

Mr. Alcock's circular to Her Majesty's Consuls in Japan relative to the rules and regulations for the peace, order, and good government of British subjects in Japan.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 25th March instant, stating that with reference to our Report of the 26th ultimo* upon the rules and regulations for the peace, order, and good government of Her Majesty's subjects in Japan, issued by Mr. Alcock under the Orders in Council of the 23rd of January, 1860, he was directed by your Lordship to transmit to us, together with the draft of an instruction which was addressed to Mr. Alcock (No. 24, February 26, 1862) founded on our Report, a despatch from that gentleman (No. 109, December 28, 1861) inclosing copies of a circular to Her Majesty's Consuls in Japan, and a correspondence with the United States' Minister, on the subject of those rules and regulations; and to request that we would peruse these further papers and favour your Lordship with our opinion as to whether, in view of them, it is necessary or desirable to address any further instructions to Mr. Alcock.

In obedience to your Lordship's commands we have the honour to report—

That we see nothing in these papers to alter or affect the contents of our Report of February 26th, and we do not consider that they require the issuing of any further instructions to Mr. Alcock.

The fact that neither the French nor the United States' Consul has issued, or intends to issue, any such rules and regulations, only makes greater care and caution necessary on the part of the British Consul-General as to the substance and the wording of the rules and regulations issued by him.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

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* Page 48.

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No. 74.

The Law Officers of the Crown to Earl Russell.—(Received April 2.)

UNITED STATES.

Permits issued by United States' Government authorizing trade between loyal and seceded States.

Doctors' Commons, March 31, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 27th March instant, stating that, with reference to his letter of the 21st instant, respecting permits which have been issued by the United States' Government, authorizing trade between the loyal and the seceded States, he was directed by your Lordship to transmit to us, for our consideration, a further despatch from Her Majesty's Minister at Washington (No. 158, 10th March, 1862,) inclosing copies of the regulations laid down by the United States' Secretary of the Treasury, concerning the internal trade with the Southern ports.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That these rules and regulations do not alter or affect the opinion expressed in our Report of the 25th March. They relate only to internal commercial intercourse between the United States and the Confederate States, and have no reference to maritime intercourse, or blockade.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 75.

The Queen's Advocate to Earl Russell.—(Received April 2.)

UNITED STATES.

Capture of the British vessels "Sarah Starr" and "Aigburth" belonging to Mr. C. Graveley, a British subject, residing at Charleston.

Doctors' Commons, March 31, 1862.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 29th March instant, stating that, with reference to that part of my Report of the 12th instant,* respecting the cases of the "Sarah Starr" and Aigburth," in which I stated that the letter from the owners of those vessels, which was forwarded to me in his letter of the 4th instant, did not contain sufficient particulars to enable me to judge of the special grounds on which they were condemned, he was directed by your Lordship to transmit to me the accompanying despatch from Her Majesty's Consul at New York (No. 7, January 11), inclosing copies of the decisions of the Prize Court in both of these cases; and to request that I would take these further papers into consideration, and furnish your Lordship with my opinion whether I see anything in them to alter my previously expressed opinion, and whether I consider that any more information on the subject is required. And he was also pleased to inclose the previous papers.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That the Judgment of Judge Betts, reported in the "New York Times" of January 10, 1862, condemning these vessels, confirms the opinion which I expressed in my Report of March 12th instant, and renders any further information unnecessary.

It appears from this Judgment that Mr. Graveley, the claimant of the ship "Sarah Starr," and of the ship "Aigburth" and her cargo, was commercially domiciled in the Confederate States when he purchased both these vessels and the cargo of the "Aigburth" from citizens of those States, their former owners; that, on this ground, both the ships, and the cargo of the "Aigburth," were rightfully condemned as "enemy's property."

This renders the question of the existence of a blockade, and of its breach by these vessels (which was the point on which these cases were at first supposed to depend), no longer material, and there is no ground for the interference of Her Majesty's Government.

I have, &c.
(Signed) J. D. HARDING.

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* Page 57.

No. 76.

The Queen's Advocate to Earl Russell.—(Received April 3.)

UNITED STATES.

Imprisonment of Mr. R. Maury and Mr. M. F. Maury for carrying letters from persons in Confederate States and their correspondents in the United States.

Doctors' Commons, April 3, 1862.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 1st of April instant, stating that he was directed by your Lordship to transmit to me the accompanying correspondence from Her Majesty's Minister at Washington relative to the imprisonment in the United States of two British subjects named Mr. Rutson Maury and Mr. Mathew F. Maury, and to request that I would take these papers into consideration, and furnish your Lordship with my opinion as to whether any claim for compensation can properly be advanced by Her Majesty's Government on behalf of those gentlemen.

In obedience to your Lordship's commands I have taken these papers into my consideration, and have the honour to report—

That I am of opinion that, having regard to the facts alleged in Mr. Seward's letter to Lord Lyons of December 5, 1861, and to the concluding paragraph of Lord Lyons' No. 738 of December 6, 1861, to your Lordship, your Lordship's question must be answered in the negative.

These gentlemen have been severely and perhaps illegally punished, but this punishment has been inflicted by reason of their having been voluntarily concerned in carrying letters between persons in the Confederate States and their correspondents in the United States and in Europe, and *vice versâ*, which are alleged to relate (*inter alia*) to the supply of arms and munitions of war to the Confederates.

They voluntarily undertook to convey these letters at their own risk, and not without some prospect of remuneration. Lord Lyons states that this was a serious infraction of the regulations of the United States' Government, and under such circumstances Her Majesty's Government cannot properly support any claim for compensation on their behalf.

I may add that it does not appear that they have made any such claim.

With respect to the sum of 300 dollars, the property of Mr. Rutson Maury, it appears that this has been legally confiscated, and Mr. Seward states that he cannot interfere in the matter.

I have, &c.
(Signed) J. D. HARDING.

No. 77.

The Law Officers of the Crown to Earl Russell.—(Received April 3.)

UNITED STATES.

Case of the "Labuan," seized at Matamoros while taking on board a cargo of cotton.

Doctors' Commons, April 3, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 31st March ultimo, stating that he was directed by your Lordship to transmit to us the accompanying papers* respecting the seizure, by the United States' man-of-war "Portsmouth," of the British steamer "Labuan," while taking on board a cargo of cotton at Matamoros. And that we should observe that this case has been already twice reported upon by Her Majesty's Advocate-General; and that an instruction was addressed to Lord Lyons by the mail of Saturday last, in the terms suggested by the Queen's Advocate in his Report of the 27th ultimo.† And that we should further observe that the Board of Admiralty has been requested to instruct Vice-Admiral Milne to provide for the security of British vessels and property at Matamoros, by one or more vessels of war of sufficient strength, against undue interference and molestation on the part of cruizers of the United States. But that the Board of Admiralty

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* Messrs. Lefevre & Co., March 15, 1862; Messrs. Bailey & Co., March 15, 1862; Lord Lyons, No. 152, March 3, 1862; Mr. Crawford, No. 7, March 1, 1862; Queen's Advocate, March 22, 1862; Messrs. Lefevre & Co., March 24, 1862; Lord Lyons, No. 171, March 10, 1862; Queen's Advocate, March 27, 1862; to Lord Lyons, No. 143, March 28, 1862; to Admiralty, March 28, 1862; to Messrs. Lefevre & Co., March 28, 1862; Admiralty, March 28, 1862; to Admiralty, March 29, 1862.

† Page 73.

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have, however, called attention, by their accompanying letter dated the 31st March ultimo, to certain questions that may arise in regard to this matter, viz., as to the right of a United States' cruizer to capture British vessels at Matamoros, either in the river or within the limits of the port; and also as to the alleged claim of the Commander of the "Portsmouth" to arrest "cotton the produce of rebel States," wherever he may find it. And that he was, accordingly, to request that we would take the points adverted to by the Board of Admiralty into our consideration, and furnish your Lordship with our opinion thereupon with reference to the instructions to be addressed to Sir Alexander Milne for the guidance of Her Majesty's naval officers under his orders.

Mr. Hammond was also pleased, on the 1st April instant, to transmit to us a further despatch which has been received from Her Majesty's Minister at Washington relative to this case (No. 184).

Mr. Hammond was also pleased, on the 2nd April instant, to transmit a further letter (dated the 1st April instant, 1862), which has been received from the owners of the "Labuan."

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That it is not possible for us to anticipate and provide beforehand for all the contingencies which may occur, having regard to the peculiar geographical position of Matamoros.

We can only say, generally, that with regard to British vessels *at Matamoros* (*i. e.*, vessels in Mexican waters, either on the Mexican side of the Rio Grande, the centre of the channel of which we understand to be the boundary between Mexico and Texas), or at sea within three miles of Mexican shore, and to the south of that boundary line when "produced" or extended seawards), such vessels will be absolutely protected from capture under all circumstances. We are not aware of the precise local or municipal limits of "the port of Matamoros;" but whether within such limits or not, all vessels in Mexican (neutral) waters will be internationally exempt from capture, howsoever laden. Whilst, therefore, British vessels in Mexican waters will be absolutely exempt from capture under all circumstances, the position of such vessels, when met with either on the high seas or in Texan waters, with goods on board the produce of Texas, is next to be considered.

The mere circumstance of the cargo of British vessels, wheresoever found, even on the high seas, being (whether composed of cotton or any other article) the growth or produce of Texas, will not of itself expose them to capture, assuming that their papers show that such cargo has been purchased and laden on board at or from a neutral port, and is *bonâ fide* British or neutral property, and that there is no probable cause for suspecting it to be Texan (or enemy's) property. It is not the origin, but the *property* or *ownership* of the cargo, which must determine the question of its liability to capture; and we would add that, even if such cargo were Texan property, the United States' Government having declared their intention of acting during the present war on the principle that the neutral flag shall cover enemy's goods, would not be at liberty to seize goods owned in Texas (not being contraband) on board a British vessel.

With respect to trade with the coast and ports of Texas on the left bank of the Rio Grande, and especially the ports of Brownsville on the Rio Grande, and Brazos Santiago on the coast to the north of the mouth of that river, Her Majesty's Government is not aware, at the date of the latest advices, of any effective blockade thereof having been established; but however this may be, no such blockade can by international law prevent neutrals from trading with the neutral port of Matamoros, or justify United States' cruizers in interrupting such trade.

If any such effective blockade should be established, the ordinary laws and principles of blockade will thereupon apply to all trade with such ports and coast. As regards the possible case of goods conveyed by internal navigation from blockaded ports in Texas to Matamoros, and there purchased and thence exported, we can only refer to the authorities cited by the Queen's Advocate in his Report of March 27th.

Vessels or small craft of any description, owned by persons, of whatever nationality, commercially domiciled in Texas, will be liable to be captured by the United States' cruizers and sent into a convenient port for adjudication, if met with either on the high seas or in Texan waters wheresoever, out of Mexican or

other neutral waters, with whatever cargo they may be laden. The cargo, if neutral property, must be claimed in the Prize Court.

Unless, however, in the clearest and most flagrant case of violation of the neutral waters of Mexico by United States' cruizers acting against British vessels we cannot recommend the resort to force by Her Majesty's ships to prevent captures by United States' ships of war.

With reference to the case of the "Labuan" we adhere to the view taken by the Queen's Advocate. Mr. Seward's confidential communication does not appear to us to be by any means satisfactory. Mr. Seward admits (in effect) that the capture was not justifiable; and this being so the original wrong done by such capture is aggravated by the United States' Government persisting in submitting the case to the adjudication of a Prize Court, after and notwithstanding that Mr. Seward has been (confidentially) put in possession of the whole of the case on the part of Her Majesty's Government, and has declined to justify such capture.

The Counsel for the United States' must contend before the Court that the capture was justifiable, notwithstanding Mr. Seward's admission to the contrary; and the result of the suit, both as to the capture and as to the costs and damages, is distant and uncertain, very prejudicial to the interests of the owners, and cannot, under the circumstances, be properly accepted beforehand as binding on Her Majesty's Government.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 78.

The Law Officers of the Crown to Earl Russell.—(Received April 4.)

TURKEY.

Collision between a British and a Russian steamer in the Sea of Marmora. Jurisdiction of Supreme Consular Court at Constantinople.

Doctors' Commons, April 3, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 31st March ultimo, stating that he was directed by your Lordship to transmit to us a telegram from Her Majesty's Ambassador at Constantinople dated the 30th March ultimo, inquiring what course he is to pursue with regard to an application made to him by the Russian Minister at that place, to investigate certain questions connected with a collision between a British and a Russian steamer in the Sea of Marmora, and to request that we would take these papers into our consideration and furnish your Lordship, at our earliest convenience, with our opinion as to the instructions which should be sent to Sir Henry Bulwer on the subject.

In obedience to your Lordship's commands we have taken these papers into consideration and have the honour to report—

That cases of collision between British and foreign vessels within the territorial waters of Turkey must frequently occur, and we presume that although jurisdiction in cases of collision at sea is not expressly conferred upon the Supreme Court by the Order in Council of August 27, 1860, yet that it has and exercises this jurisdiction (see Circular Letter of General Instructions, as to cases of collision, annexed to that Order, p. 7), and by section 13 of the Order "all Her Majesty's jurisdiction, civil and criminal, exerciseable within the dominions of the Sublime Ottoman Porte," is vested exclusively in the Court; and by section 26 it has and "may exercise all jurisdiction, power, and authority, legal, equitable, or other, which any Consul of Her Majesty by custom has or may exercise in the dominions of the Porte."

If, therefore, the Russian plaintiff chooses to sue the British defendant in that Court for damages in respect of this collision, we think that the Court will have jurisdiction; and we are of opinion that Sir H. Bulwer has taken a correct view of this point.

With respect to the resort to a "Mixed Commission" proposed by the Russian Envoy, we are not informed as to their peculiar jurisdiction in Turkey where foreigners are plaintiffs and British subjects are defendants, and in cases in which the Supreme Court has jurisdiction.*

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* See Consular Letter of Instructions, p. 22.

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With respect to the charge against the British master of not doing his utmost to save the Russian passengers, but leaving them to perish, we are not aware of any Court which can investigate such a charge with effect, or can punish the Master if guilty.

The Supreme Court has no such jurisdiction, inasmuch as such conduct as imputed to the master would not, by a Court of Justice having criminal jurisdiction in England, be deemed to be "a crime or offence rendering him amenable to punishment in England," under section 6 of the Order in Council, however morally censurable it may be, and we cannot see how the Consul-General and the Commander of Her Majesty's ship "Wanderer," or any similarly constituted Court, could do anything effectual in the matter. Any such inquiry must be considered as extra-judicial. We would accordingly suggest that Sir H. Bulwer may be instructed to this effect.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 79.

The Queen's Advocate to Earl Russell.—(Received April 5.)

UNITED STATES.

As to compensation to be demanded for imprisonment of Mr. J. C. Brain at Fort Lafayette.

Doctors' Commons, April 5, 1862.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 1st April instant, stating that he was directed by your Lordship to transmit to me the accompanying despatches from Her Majesty's Minister at Washington (No. 66, November 18, 1861, and No. 162, March 10, 1862), reporting the circumstances under which Mr. John C. Brain, a British subject, has been arrested by the United States' authorities and imprisoned at Fort Lafayette, and to request that I would take these papers into consideration, and furnish your Lordship with my opinion whether any claim to compensation can properly be advanced on Mr. Brain's behalf.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That the question whether any claim for compensation can properly be advanced on Mr. Brain's behalf appears to depend upon the substantial truth or falsehood of the charges made against him in Mr. Seward's despatch to Lord Lyons of November 13, 1861, viz., "that he is a member of the secret treasonable association called the 'Knights of the Golden Circle;' that he held a commission in the insurgent service; that he had been engaged in buying arms and munitions of war for the rebels, and in conveying such arms to them." If there should be reasonable ground for any one of these charges, it will be useless for Her Majesty's Government to demand compensation. He asserts his entire innocence, and says that "there was no proof to sustain any of these charges."

This case differs in some degree from most of the others of the same class which have occurred, inasmuch as these charges, or some of them, were distinctly brought against him on his arrest in August 1861, at La Porte, in Indiana, when he was taken before some Court or Magistrate, and in the ordinary course of law, after some investigation or hearing, was committed for trial before some Municipal Court, in default of bail. It is apparent that there must have been *some* evidence adduced to support the charges then made; and this, indeed, would appear to have been the fact from his statement to Consul Archibald (as given in that gentleman's letter to Lord Lyons of October 29, 1861), as to the evidence of Major Mahon, which he declares to have been contrary to the facts.

After remaining a month in the prison at La Porte, under this committal, expecting his trial, he was removed by order of the Secretary of State, handcuffed and fettered, to Fort Lafayette, where he suffered a long imprisonment. He has been detained for six months in all, and released in a state of destitution; a sum of 220 dollars, his only available means, having been taken from him on his arrest by a private soldier by order of a military officer of the United States, as to which an inquiry is pending. His treatment appears to have been very cruel and unjustifiable; having been committed for trial on certain definite charges in Indiana, where the ordinary course of law was not suspended by the civil war, he should have been tried thereon in due course of law, and not arbitrarily removed to, and imprisoned in, Fort Lafayette.

Mr. Brain, however, in his letter to Consul Archibald of October 4, 1861, admits that "he signed the roll of a company of State Guards in Kentucky, which he believes has never been organized." If the fact is (as I apprehend) established by his own admission that, after the commencement of the civil war, he enlisted himself in a military corps which was designed to act in support of the Confederate Government against that of the United States, Her Majesty's Government cannot, in my opinion, fairly sustain a claim for compensation on his account upon the Government of the United States.

He has gone to Canada; and there is at present no statement from him but his letter of October 4, 1861, to Consul Archibald, in which he asks for the "restoration of his money and liberty," but not for compensation; and his letter of February 14, 1862, to Lord Lyons, in which he only asks again about his money, and I do not find that he has made any claim for compensation. In this state of things I cannot, therefore, advise Her Majesty's Government to make any claim for compensation on his behalf. The inquiry as to the money taken from him on his arrest will of course proceed.

I have, &c.
(Signed) J. D. HARDING.

No. 80.

The Queen's Advocate to Earl Russell.—(Received April 9.)

UNITED STATES.

Seizure of the "Empress" by blockading squadron off the Mississippi.

Doctors' Commons, April 8, 1862.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 5th April instant, stating that, with reference to my Report of the 30th January ultimo,* he was directed by your Lordship to transmit to me, together with the previous papers,† a despatch from Lord Lyons,‡ inclosing copies of a report respecting the case of the "Empress," received from Her Majesty's Consul at New York, and the extended protest made by the master of that vessel on the 3rd of February last; and to request that I would take these papers into my consideration, and furnish your Lordship with such observations as I might have to offer upon the facts which they disclose.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That the only important new fact appearing in the master's protest is the statement therein that on the 19th or 20th November (seven days before her capture aground at the mouth of the Mississippi), the "Empress" spoke the American barque "Ellen Morrison," of New York, which vessel had heard there was a blockade of New Orleans. No particulars are given of the place where the "Ellen Morrison" was spoken with, the port from which she had sailed, or the date or place or manner of her having heard that the blockade existed. The importance of the particulars thus withheld to the interests of the owners is apparent; and the fact, as it stands, is obviously unfavourable to them.

The case is duly proceeding before the Prize Court, before which the interests of all concerned are duly represented; and Consul Archibald reports on March 13th, that "the evidence has all been taken, and the case stands for a hearing at an early day." He further states that "Mr. Gerard, a gentleman sent out from England by the owners of the ship, has arrived, and is giving his attention to their interests; that the master is in daily attendance at his office; and that he (the Consul) has omitted nothing which in the course of the proceedings it appeared to him could on his part be done to protect the rights of the owners."

Under these circumstances Her Majesty's Government cannot at present

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* Page 25.

† Board of Trade, January 22, 1862; Queen's Advocate, January 30, 1862; to Lord Lyons, No. 72.

‡ Lord Lyons, No. 187.

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take any further steps; the case must be allowed to proceed to the Prize Cour and I am not in a position to offer any further material observations thereon.

I have, &c.
(Signed) J. D. HARDING.

No. 81.

The Law Officers of the Crown to Earl Russell.—(Received April 10.)

TUNIS.

Claim of Directors of Bank of Tunis against the Bey of Tunis.

Doctors' Commons, April 8, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 27th March, stating that with reference to the Queen's Advocate's Report of the 29th September, 1860, inclosed therewith, he was directed by your Lordship to transmit to us, together with the former papers, a letter from the Directors of the Bank of Tunis, again calling upon Her Majesty's Government to support their claim against the Bey of that Regency, arising out of his alleged refusal to carry out his engagements connected with the formation of the above-named Bank.

Mr. Hammond was also pleased to state that he was directed by your Lordship to transmit to us two despatches from Mr. Wood, Her Majesty's Agent and Consul-General at Tunis, replying to the statements and allegations contained in the Director's letter, and to request that we would take these papers into consideration, and furnish your Lordship with our opinion as to the course which it would be proper for Her Majesty's Government to take in this matter.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we cannot advise Her Majesty's Government to take any steps for the purpose of enforcing the claims made by the Directors of the Bank of Tunis upon the Tunisian Government. The Bank, proposed to be founded under the "Statutes" (both as originally framed by the Directors, and as afterwards varied from time to time), appears to us to have been an establishment of a different character from that contemplated by the "Concession," both according to its natural and fair construction, and as it must be presumed to have been understood by the Tunisian Government. The "Concession" had in view a Bank, subject, as to its general operations, to an effective superintendence on the part of the Tunisian Government. The "Statutes" (and no one can be surprised that it should be so, having regard to the security of the English capital embarked in the undertaking), would have had the effect of practically excluding any such effective superintendence. We think it extremely probable, and indeed almost certain, that the parties never well understood each other upon this essential point. The Tunisian Government would plainly have waived every other objection, if they could have secured this effective superintendence in any shape satisfactory to themselves. But we see no reason for supposing that they ever meant to waive this point, or that the Directors ever meant to concede it. Under these circumstances, we think that the terms of the "Concession" were virtually set aside, and were treated as insufficient or impracticable by the Directors; and that the Treaty as to the "Statutes" really proceeded on that footing, but without ever arriving at any practical result. We understand that the Tunisian Government offers now to pay 800*l*., so that it is not necessary to inquire whether they are strictly bound to do so; but we are at all events, unable to come to the conclusion that they are under any obligation to do more, and we see no ground whatever for imputing to them any breach of faith.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 82.

The Law Officers of the Crown to Earl Russell.—(Received April 10.)

CHINA.

Conveyance of goods or merchandize to Hong Kong by a Spanish vessel of war.

Question as to extent to which the commercial character of the vessel affects its immunities and privileges as a ship of war.

Doctors' Commons, April 8, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 26th of March ultimo, stating that he was directed by your Lordship to transmit to us a letter dated the 21st March ultimo, and its inclosures, received from the Colonial Office, respecting a question which had arisen at Hong Kong with reference to a Spanish vessel of war which had been engaged in conveying goods or merchandize to that Colony, and requesting that we would take these papers into our consideration, and report to your Lordship whether we concur in the opinions which Sir Hercules Robinson has expressed as to the extent to which the commercial character of the vessel in question affects its immunities and privileges as a ship of war; and also as to the liability of the captain to be sued under the circumstances set forth in the inclosed correspondence.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we observe that the legal proceedings in this case commenced against the captain are stated by Sir H. Robinson to have been "amicably settled," and they appear to have originated in the agent (Mr. Reynolds) not only declining "either to make good the damage, or to answer in respect of the claim in Court, but *referring Mr. Cecil (the Plaintiff) to the captain of the 'Malespina' as the only responsible person.*" The particular question, therefore, has been settled; the general principle involved is one of some legal nicety.

With respect to the liability of the captain to be sued in a Colonial Court, and to be served with process "if found in any portion of Hong Kong or its waters beyond the limits of his vessel," we concur with the opinion expressed by Sir H. Robinson. With respect to his liability to be served with such process, when on board his ship, or to the liability of the ship herself to any process, we are unable to concur with him.

The better opinion of jurists and the usual practice of nations appears to be that foreign ships of war in the ports or territorial waters of a country should be considered and treated as *extra-territorial* in relation to that country; and that, consequently, neither the ships themselves nor those actually on board of them, should be considered as being within the local jurisdiction. Although this concession has been made on the supposition that such ships and persons do not engage in any commercial operations, yet we cannot say that the fact of their doing so to a limited extent, as under the circumstances stated in this case, would of itself change their character or render them amenable to the local jurisdiction, a conclusion which would be attended with very inconvenient consequences to all concerned.

Sir H. Robinson has no power to interfere with the action of any Colonial Court, and the party sued or served with process must appear and raise any legal defence which may be competent to him. It must be borne in mind, however, that no process of the Court can be put in force against either person or goods on board the ship of war.

Sir H. Robinson's suggestion that the Spanish authorities should appoint an agent as the only responsible person in relation to the packets in question appears reasonable, but this appointment would not settle the international question involved.

We can only suggest that in case of any serious difficulty arising from the service of process at Hong Kong against a foreign naval officer on board a foreign ship of war, Sir H. Robinson would be authorized, in the exercise of his discretion, to direct the Crown Solicitor to appear and require the discharge of the officer or the ship as the case may be, as recommended by the Law Officers in their Report of April 24, 1860, on the case of an officer of the Sardinian frigate "Beroldo," served with a summons from the County Court of Bow.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

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No. 83.

The Queen's Advocate to Earl Russell.—(*Received April* 10.)

PERU.

Claim of Mr. Barry Brown for interest on 5,000 dollars paid by Peruvian Government, as well as for payment of his expenses.

Doctors' Commons, April 10, 1862.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 4th April instant, stating that, with reference to my Report of the 17th August, 1860, he was directed by your Lordship to transmit to me, together with the previous papers, a despatch, and its inclosures, from the Acting British Chargé d'Affaires at Lima (No. 24, 28th February, 1862), and from which, he stated, it appeared that the Peruvian Government declined to allow interest on the sum of 5,000 dollars which they have paid on account of Mr. Barry Brown's claim; and to request that I would take these papers into my consideration, and furnish your Lordship with my opinion whether Mr. Barton should be instructed to continue to press for payment of interest on this claim.

Mr. Layard was also pleased to state that I should observe from Mr. Brown's letter to Mr. Barton of the 13th of September, that he adheres to his claim for "expenses;" and that he was to request that I would also inform your Lordship whether there is anything contained in Mr. Brown's letter which would induce me to alter my previous opinion on this point.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I am clearly of opinion that Mr. Barton should be instructed to continue to press for payment of interest on the sum of 5,000 dollars paid by the Peruvian Government on account of the claim.

The unreasonable procrastination of the Peruvian Government in settling this claim (the validity of which was formally and conclusively admitted by a Government "Resolution" of the 23rd May, 1857) is apparent throughout the papers. The despatch of Mr. Jerningham to your Lordship No. 128 of the 26th December, 1859, exhibits in a striking manner what he justly calls "its dilatory and reprehensible way of proceeding."

Even as to the interest now in question, it appears that Mr. Jerningham's official note to the Peruvian Minister for Foreign Affairs of the 25th June, 1860, in which it was expressly demanded, did not receive any answer until the 20th February, 1862, although Mr. Barton had requested an answer to that note on the 18th September, 1861.

The refusal to pay any interest contained in the above-mentioned note of Señor Ribeiro (20th February, 1862) appears to me to rest on no sufficient foundation; it is grounded merely upon the argument that the existing Peruvian Government does not consider Mr. Brown to have had any valid claim upon it, and that it paid the 5,000 dollars "only as a proof of deference, but never as a recognized obligation." This argument has no foundation either in the facts of this case, or the principles of international law. The Peruvian Government in 1857 formally admitted the validity of the claim; the only question which has since remained open, was the amount of compensation which Mr. Brown was entitled to receive.

The formal recognition by a Government of any State of the validity of a claim made against it internationally by another State, through its Legation, binds the State and all succeeding Governments by way of obligation, and gives the claimant a complete "title," which cannot be affected by the opinion which a subsequent Government may form of such claim, which it cannot (internationally) "repudiate."

The foundation of this claim is a recognized international obligation, binding on the Republic of Peru, and the declaration of the present Government that it has paid the money as a proof of deference, and not as a recognized obligation, cannot have any international effect, or alter the character of the obligation.

I may add (confidentially) that neither Mr. Brown nor Her Majesty's Government is in any degree responsible for the scandalous delay which has occurred in settling this small and simple case, for which the Peruvian Government is solely to blame; and that unless interest is paid, the unreasonable procrastination on the part of Peru which has been apparent throughout this protracted discussion, extending over a period of six years, will operate entirely to the pecuniary advantage of that State, and to the private injury of Mr. Brown, and will offer great encouragement to similar unreasonable delay in future cases. If the Peruvian Government had paid the principal sum as soon as the amount was ascertained and determined, no interest would have accrued; but, inasmuch as the delay in payment was solely the fault of the Government, it is clearly liable to pay interest upon the amount so retained by it, after it was due to Mr. Brown.

As regards Mr. Brown's claim for expenses, I cannot see any sufficient reason for altering my opinion.

I ought, perhaps, to add, that I cannot find with the papers his letter of June 27, 1860, to which he now refers; but I fear that even if his complaints of Mr. Jerningham's mismanagement of his case should be well founded, Her Majesty's Government cannot, after what has passed, properly re-open the whole case, or treat it as still unsettled *ab initio*. It can in my opinion now only insist upon the payment of interest on the 5,000 dollars.

I have, &c.

(Signed) J. D. HARDING.

No. 84.

The Queen's Advocate to Earl Russell.—(*Received April* 11.)

AFRICA (WEST).

Outrage on property of Mr. Lilley, a British subject trading in the Cameroons River.

Doctors' Commons, April 10, 1862.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 5th April instant, stating that, with reference to my Report of the 24th of October ultimo,* expressing my opinion that it would be inexpedient to comply with the request of Mr. Hawker to be furnished with copies of documents in the possession of Her Majesty's Government, relating to an outrage committed on Mr. Lilley's property in the Cameroons River, he was directed by your Lordship to transmit to me a further letter from Mr. Hawker renewing his request, on the ground that he is instructed to commence legal proceedings, and is referred for evidence to the papers in question; and to request that I would furnish your Lordship with my opinion as to the answer which should be given to Mr. Hawker. And he was also pleased to inclose the former papers.

In obedience to your Lordship's commands I have taken these papers into my consideration, and have the honour to report—

That I see no reason to alter my former opinion, that your Lordship cannot properly be advised to comply with Mr. Hawker's request.

Mr. Hawker, in his first application of October 18, 1861, did not allude to any intention of making Mr. Sill legally liable to Mr. Lilley in relation to these occurrences; he alluded only to Mr. John S. Brunn. He now suggests that this person was the agent of Mr. Sill, and that in effect Mr. Sill is legally liable to Mr. Lilley in respect to Mr. Brunn's acts in Africa. Mr. Brunn was on the spot, and attended at the inquiry, and was implicated in the proceedings. Mr. Lilley preferred charges against him which he promised to meet before the Consul at Fernando Po: but Mr. Sill was not there; he was no party to, nor was he cognizant of, the proceedings of the (so-called) "Court of Inquiry" at Cameroons.

Mr. Lilley himself does not appear to have made any application to your Lordship in this matter.

I see nothing in these papers to establish Mr. Sill's liability to Mr. Lilley in respect of the acts of Mr. Brunn; and, however this may be, I see no sufficient reason why your Lordship should assist Mr. Lilley in making out his case against Mr. Sill, by furnishing copies of official papers.

Mr. Hawker is not a solicitor; he does not state that he is legally advised that copies of the papers in question are necessary for the purposes of justice, and no legal proceedings have as yet been commenced on behalf of Mr. Lilley against Mr. Sill; and under these circumstances he is not, in my opinion, entitled to have copies of the proceedings and letters in question.

I have, &c.

(Signed) J. D. HARDING.

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* See Reports for 1861, page 251.

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No. 85.

The Queen's Advocate to Earl Russell.—(*Received April* 12.)

United States.

Claim of Messrs. Isaac, Campbell, and Co., to cargo of the "Stephen Hart," seized by blockading squadron off Florida.

Doctors' Commons, April 11, 1862.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 9th April instant, stating that he was directed by your Lordship to transmit to me, together with the previous papers, a despatch and its inclosures from Her Majesty's Minister at Washington (No. 204, March 24), respecting the case of the schooner "Stephen Hart," which formed the subject of my Report of the 28th ultimo.* And he also stated that some of the points on which I suggested that information should be sought from Messrs. Isaac, Campbell, and Co., seem to be set at rest by the papers transmitted by Her Majesty's Minister, who, though doubtful as to the legality of the capture of the "Stephen Hart," has not thought it necessary to interfere on her behalf; and to request that I would again take this case into consideration and report to your Lordship my opinion thereupon.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That the papers now transmitted confirm the suspicions which I have expressed in my previous Report, and are conclusive as to the impropriety of any intervention, at present, on the part of Her Majesty's Government.

Inasmuch, however, as the case may not be terminated by the decision of the Prize Court, and may lead to further correspondence, I venture to repeat my suggestion that Consul Crawford should report fully thereon.

The application of Messrs. S. Isaac, Campbell, and Co. may, if it has not already been answered, now be answered to the effect that your Lordship is informed that the "Stephen Hart" was recently purchased at Charleston from some Confederate owner; that she had a cargo, contraband of war, and was consigned to Mr. Helm at Havana, a citizen of the United States, who is a partisan of the Confederate States; that none of these matters are explained in their letter, and that your Lordship requests full information on these subjects, and a candid explanation of the ultimate destination and design of both the ship and the cargo, and on whose credit or account such cargo was shipped; and that, at present, your Lordship cannot make any application to the Government of the United States in this matter.

I have, &c.
(Signed) J. D. HARDING.

No. 86.

The Law Officers of the Crown to Earl Russell.—(*Received April* 12.)

United States.

Case of the "Labuan." Compensation granted to owners of a Spanish and Danish vessel.

Doctors' Commons, April 11, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 8th April instant, stating that with reference to our Report of the 3rd instant† upon the case of the "Labuan," he was directed by your Lordship to transmit to us a despatch from Her Majesty's Minister at Washington (No. 203, March 24), inclosing copies of two Messages of the President to Congress, recommending the payment of compensation to the respective owners of a Spanish and Danish vessel on account of their illegal seizure by vessels of the United States' blockading squadron, and Her Majesty's Minister observed that in each of these cases the vessel was released without judicial proceedings; and to request that we would take these papers into consideration, and favour your Lordship with any observations we might have to offer thereupon, with reference to the course pursued by the United States' Government in the case of the "Labuan."

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That these papers show that the Government of the United States in two cases of unjustifiable captures of neutral merchant-ships by its naval officer (in addition to the case of the "Perthshire"), has not only released such vessels without sending them before a Prize Court, but has also consented to pay compensation to those interested therein, the amount of which has been either settled by arbitration, or paid as demanded.

It appears to us that a similar course should have been adopted in the case of the "Labuan," and that the Government of the United States (for the reasons adverted to in our former Reports) ought not to persist in leaving this case to the adjudication of the Prize Court.

The possible amount of the damages claimed cannot effect the international question of the validity of the capture; and, unless the Government of the United States is prepared to maintain, at least, the *primâ facie* validity thereof (which it is not), it has not any sufficient justification, internationally, in retaining wrongful possession of the ship and cargo, and sending them for adjudication before the Prize Court, after and notwithstanding the formal intervention of Her Majesty's Government.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

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* Page 76.

† Page 83.

No. 87.

The Queen's Advocate to Earl Russell.—(*Received April* 12.)

United States.

Claim of Messrs. Armstrong and Gerard for losses sustained by the "Alliance" being warned off the port of Charleston in May 1861.

Doctors' Commons, April 12, 1862.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 8th April instant, stating that with reference to my Report of the 20th of November ultimo,* upon the case of the "Alliance" and "Gondar," he was directed by your Lordship to transmit to me, together with the former papers,† a letter from Mr. Reed, inclosing a petition, dated the 2nd April instant, from Messrs. Armstrong and Gerard, the owners of the "Alliance," requesting Her Majesty's Government to give their support to a claim preferred by them against the United States' Government, on account of losses sustained in consequence of the "Alliance" having been warned off the port of Charleston by one of the United States' cruizers, in May last, at a time when it is stated that no efficient blockade of that place was in operation; and to request that I would take these papers into consideration, and furnish your Lordship with my opinion whether this claim is one which Her Majesty, Minister at Washington might properly be instructed to bring before the United States' Government.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I am of opinion that your Lordship's question must be answered in the affirmative.

It appears that the "Alliance" left Newport, in England, on the 14th April, 1861, when she could have had no knowledge of any blockade, and that on the 28th May following she was boarded by a United States' naval officer, of the United States' steamer "Union," and informed of the existing blockade "of all the coast of the United States south of Maryland," and her manifest endorsed accordingly.

I gather from Consul Bunch's despatch No. 25 of June 12th (p. 16, Printed papers relating to the Blockade, presented to Parliament), that the blockade of Charleston, which had been commenced on May 11th by the "Niagara," and interrupted from the 15th to the 28th May by her departure, was resumed by the "Minnesota" on the 28th or 29th, and in this respect the fact may be open to discussion, notwithstanding the owner's representations to the contrary.

However this may have been, the notification was, in my opinion, of no effect against the "Alliance," being more extensive than the blockade itself

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* See Reports for 1861, page 291.

† Admiralty, August 19, 1861; to Admiralty, September 7, 1861; Admiralty, October 30, 1861; Consul Archibald, No. 89; Lord Lyons, Nos. 560 and 578; Queen's Advocate, November 20, 1861; to Lord Lyons, No. 429; Parliamentary Papers.

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(see Northcote *v*. Douglas, the "Franciska," 10 Moore's Privy Council Reports, p. 37, and cases there cited); but the master had no reason to suspect its correctness, and was bound to give credit thereto. If the notification had been true in fact, the "Alliance" would have been liable to capture for proceeding in disregard of it, which risk she was not called on to incur, and the United States' Government must be held responsible for the act of its naval officers.

I would beg to refer to the Reports of the Law Officers on the "Monmouth," 17th February, and "Boyne," 13th March ultimo, as illustrating the principle in question.

I do not consider that the subsequent proceedings of the "Alliance" on a different voyage, adverted to in my Report of November 20, 1861,* can affect this claim.

I have, &c.
(Signed) J. D. HARDING.

No. 88.

The Law Officers of the Crown to Earl Russell.—(*Received April* 21.)

FRANCE.

Search of the "Marie Louise," of Quebec, at Paimbœuf, on suspicion of French deserters being on board.

Doctors' Commons, April 16, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 11th of April instant, stating that he was directed by your Lordship to transmit to us a draft of a despatch which, upon the receipt of our Report of the 30th of January last,† your Lordship addressed to Her Majesty's Ambassador at Paris, instructing him to procure the further information requested by us to enable us to report more fully upon the question of the arrest at Painbœuf of part of the crew of the British barque "Marie Louise," of Quebec, on the charge of their being French deserters.

He also inclosed Earl Cowley's despatch, containing such additional information as he had been able to obtain in this matter, and requested that we would again take this case into our consideration, and favour your Lordship with our observations as to the bearing of Treaties on the facts as they are now stated.

Mr. Hammond further stated that the declaration of the captain and a portion of the crew of the "Marie Louise," mentioned as being inclosed in Lord Cowley's despatch, did not appear to be forthcoming; but as it is referred to by Mr. Consul Curtis as fully confirming the statements made in his communication of the 21st of January to Lord Cowley (being the inclosure of his Excellency's despatch No. 76), it might not be material in enabling us to reply to the present reference.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That the declaration of the master and a portion of the crew (mentioned as being inclosed in Lord Cowley's despatch) not being forthcoming, the Consul's letter of March 22 containing no additional particulars of the facts and circumstances, his letter to the Commissary-General of Marine of March 5 containing no particulars as to names and circumstances, and that officer having only replied to it verbally, we are still without any such "full statement of the grounds as to each of the persons detained or apprehended on which the French authorities acted, and seek to justify what they have done," as we requested in our Report of the 30th January last.

The Consul does not appear to have represented the circumstances of the case, as they came before him, fully to the French authorities on the spot, as we suggested; nor do the French authorities appear to have distinguished between the French and British seamen arrested, to which material distinction their attention has not been called.

Subject to these observations, we can only say, at present, that we cannot see any sufficient justification for the treatment to which Francis Roberts, Walter Aylward, and Sanchez, a Spaniard, were subjected. *Primâ facie*, they could not be "French deserters," and there does not appear to have been any definite charge or proof against them of any offence against French law committed within French jurisdiction.

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* See Reports for 1861, page 291.

† Page 23.

If it is the fact (as it seems to be) that the other seamen arrested were French subjects, and that evidence was adduced of their having deserted from French ships at Monte Video in 1850, and at Cardiff, at some date not given, we are of opinion that their arrest was legal; assuming (as we do) that they were punishable by French law for such desertion, notwithstanding the great lapse of time which, in one of the two cases, had taken place.

Under these circumstances, we would suggest that, inasmuch as the principle involved is of great importance, the cases of Roberts, Aylward, and Sanchez should be followed up, and distinct explanations required, in writing, as to the grounds for the treatment which each of them received.

We would also suggest that it would be very convenient if, when French authorities receive information which induces them to search British vessels lying in French ports, with a view to the arrest of any persons on board, whether as deserters or otherwise, and more especially where the persons in question form part of the crew which have entered such port in the vessel, and are suspected of being French deserters, they would previously communicate with the British Consul, and give him the opportunity of accompanying them on board, with the view of avoiding, as far as possible, any mistakes or international difficulties on the subject.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 89.

The Law Officers of the Crown to Earl Russell.—(*Received April* 25.)

TURKEY.

Restriction on the free sale of charcoal imported into Constantinople by Ionian, Demetrio Antippa.

Doctors' Commons, April 23, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 8th April instant, stating that, with reference to our Report of the 25th of January ultimo,* relative to the restriction placed by the Prefect of Constantinople on the free sale of charcoal imported into that capital by an Ionian named Demetrio Antippa, he was directed by your Lordship to transmit to us the accompanying instructions, which were addressed to Her Majesty's Ambassador and Her Majesty's Consul-General at Constantinople upon that subject, together with a despatch which had been received from Sir Henry Bulwer in reply;† and to request that we would furnish your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That the information given in Sir H. Bulwer's despatch of the 19th March, entirely alters the character of the question raised by Consul Cumberbatch. Sir H. Bulwer does not transmit any copy of the regulations of the Ottoman Government to which he refers, but he states its effect to be, to establish "*a general rule, applicable to all persons, Ottoman subjects and others*, with respect to an article of internal commerce." Assuming this representation to be correct, we agree with Sir H. Bulwer that such a regulation is one which, however impolitic, it is competent to the Porte to make; and that the only right which our Treaties give us, so far as relates to the internal trade of Turkey, is to enjoy that trade on the same terms as Ottoman subjects. If, therefore, the restriction placed by the Prefect at Constantinople upon the free sale of charcoal imported into that capital by Demetrio Antippa was (as we understand Sir H. Bulwer to state) not an arbitrary interference with the trade of one individual, but only a particular instance of the operation of a general law of the Ottoman Empire, we think Her Majesty's Government can do nothing more than use its influence to obtain the repeal or relaxation of so unwise a law.

The question is one of great importance in point of principle, inasmuch as

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* Page 15.

† To Sir H. Bulwer, No. 46; to Mr. Cumberbatch, No. 4, February 5; from Sir H. Bulwer, No. 129.

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it involves the right of the Turkish Government to fix and alter from time to time, at its discretion, the price at which all articles of Turkish produce may be sold within its dominions; and it may therefore be desirable that we should see a copy of the regulation, and be furnished with a reference to any Treaty stipulations which may be supposed to bear upon the subject.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 90.

The Law Officers of the Crown to Earl Russell.—(Received April 26.)

TURKEY.

Right claimed by the Porte to expel foreign lightermen and boatmen from the port of Constantinople without the intervention of a Mixed Court.

Doctors' Commons, April 25, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 15th instant, stating that he was directed by your Lordship to transmit to us the draft of an instruction which was addressed to Her Majesty's Ambassador at Constantinople (No. 252, April 25, 1861) on the receipt of the Queen's Advocate's Report of the 12th of April, 1861,* respecting the regulations proposed to be put in force by the Porte for the government of foreign lightermen and boatmen at Constantinople, together with the correspondence which had since taken place on the subject.

Mr. Hammond was also pleased to state that we should perceive from Sir Henry Bulwer's last despatch (No. 144) that his Excellency applies for further instructions with regard to the right claimed by the Porte to expel such foreign lightermen and boatmen by its own authority, and by means of a decision come to without the intervention of a Mixed Court, from the "Esnaf" or Corporation in which they will have to be enrolled in order to carry on those occupations; and to request that we would take these matters into consideration, and furnish your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we are of opinion that Sir Henry Bulwer has taken a correct view of this question; and that the Turkish authorities are entitled to decide for themselves, without the intervention of any British authority, whether British subjects or persons under British protection have violated any regulation or bye-law of a Turkish Corporation of which they may be members, and whether they are liable to expulsion therefrom, or to withdrawal of a license to exercise the particular trade or occupation requiring such license. Expulsion from such a Corporation, or withdrawal of such a license, is, in our opinion, a penalty which may be lawfully inflicted by the Turkish authorities upon such persons without the assent or intervention of any British authority.

The fact that persons under British protection are members of a Turkish Corporation, or have a Turkish license to exercise any particular trade or occupation, will not, of course, justify the infliction of any punishment on them other than a reasonable fine in accordance with general regulations applicable to all persons in the same condition and circumstances, or expulsion from the Corporation, otherwise than as in ordinary cases, and in accordance with the existing Treaties and Capitulations for the equal treatment of British and Ottoman subjects. They will not thereby forfeit their British privileges generally, or be in any other respect subject to Turkish authority.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

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* See Reports for 1861, page 64.

No. 91.

The Law Officers of the Crown to Earl Russell.—(Received April 26.)

TURKEY.

Application of Russian Ambassador to British Judge of Supreme Consular Court at Constantinople to act as Umpire in cases of differences between members of Russo-Turkish Mixed Commission.

Doctors' Commons, April 26, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 17th April instant, stating that he was directed by your Lordship to transmit to us a despatch from the Judge of the Supreme Consular Court at Constantinople (No. 21), stating that he has acceded to an application made to him by the Russian Ambassador in that capital, requesting him to act as Umpire in cases in which the Mixed Ottoman and Russian Commission cannot come to an agreement; and to request that we would take these papers into our consideration, and furnish your Lordship with our opinion as to whether we see any objection to this arrangement.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That it does not appear that any international Convention exists between Russia and Turkey on the subject in question; or that the Turkish Government has acceded or will accede to the selection of Sir E. Hornby as Arbitrator in cases of differences of opinion between the members of the Russo-Turkish Mixed Commission. Any effectual umpirage of Sir E. Hornby must, of course, be based on the express consent of each of the two Governments; and in the absence of such full consents, Sir E. Hornby ought not to interfere.

Subject to these observations, and as the case is actually presented to us, we see no legal objection to Sir E. Hornby's having acceded to Prince Lobanow's request.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 92.

The Law Officers of the Crown to Earl Russell.—(Received April 26.)

TURKEY.

Jurisdiction of British Consular Court at Constantinople.
Collision between British steamer "Laconia" and Russian steamer "Colchide."

Doctors' Commons, April 26, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 15th April instant, stating that with reference to our Report of the 3rd instant,* he was directed by your Lordship to transmit to us the accompanying despatches from Her Majesty's Ambassador (No. 160), and Her Majesty's Consul-General at Constantinople (Nos. 15 and 16), containing further information respecting the recent collision between the British steamer "Laconia" and the Russian steamer "Colchide" in the Sea of Marmora, and to request that we would take these papers into consideration, and report to your Lordship whether the further statements therein contained induced us to alter the opinion expressed in our above-mentioned Report.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That the papers now transmitted do not alter or affect the opinion which we have expressed in our former Report.

There does not appear to us to exist any tribunal having jurisdiction to inquire judicially, or to decide upon the charge against the master of the "Laconia;" and any extra-judicial inquiry or examination into the truth of this charge would be unsatisfactory and nugatory, and might (as Sir E. Hornby remarks) tend to prejudice the case when brought before the Supreme Consular Court, or any other legal tribunal.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

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* Page 85.

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No. 93.

The Law Officers of the Crown to Earl Russell.—(Received April 26.)

TURKEY.

Request of Porte to prevent the distribution at Constantinople of Greek newspaper "British Star," published in London.

Doctors' Commons, April 26, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 22nd April instant, stating that he was directed by your Lordship to transmit to us a telegram, dated the 18th April instant, which your Lordship had received from Her Majesty's Ambassador at Constantinople, stating that the Porte had requested him to prevent the distribution by the British Post Office in that city, of a Greek newspaper called the "British Star," published in London, on the ground that this journal incites to revolt against the Government and laws of Turkey. And he was also pleased to inclose a letter from the Post Office stating, in reply to an inquiry made by your Lordship, the measures which the Postmaster-General is prepared to adopt in order to meet the wishes of the Porte, and to request that we would take these papers into consideration, and furnish your Lordship with our opinion as to the course which Her Majesty's Government would be justified in taking in this matter.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That the setting up and existence of a British Post Office at Constantinople being, as we understand, a matter of mere "permission" on the part of the Turkish Government and not of Treaty stipulation, the *rights* (if such they can be called), both of the British Government and of British subjects in that respect are of such a very precarious character, and very far from such as can be insisted on against the reasonable wishes of the Porte: we therefore think that the Postmaster-General, with the sanction of the Government, would be perfectly justified in directing the British Postmaster at Constantinople, under the circumstances, to stop the papers in question. The persons transmitting such papers must be taken to have known the footing of the British Post-office establishment at Constantinople, and the consequent risk to which the delivery of the particular papers was, or might be, subject; and Her Majesty's Government cannot, it appears to us, urge any fair complaint against the request of the Porte described in the telegram of Sir H. Bulwer.

Whether the papers in question should be merely "stopped," or should (as suggested in the letter from the Post Office), be handed over "to an officer appointed by the Porte to receive them," is a question of policy. The obvious advantage of merely withholding the papers would be, that no means of proof or accusation against particular individuals to whom such papers might happen to be addressed, would thus be furnished. Possibly, the Turkish Government would not require more than the stopping of the papers; and we do not think that they could, in reason or in law, insist on the papers being delivered to their officer.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 94.

The Law Officers of the Crown to Earl Russell.—(Received April 28.)

TURKEY.

Request of Mr. Blagomerio, a naturalized British subject, that unofficial assistance be afforded him in the recovery of certain property.

Doctors' Commons, April 26, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 17th April instant, stating that he was directed by your Lordship to transmit to us a correspondence* which had passed between the Foreign Office and Mr. Blagomerio, a naturalized British subject, relative to a request made by him that Her Majesty's Government should instruct Her Majesty's Ambassador and the Judge of the Supreme Consular Court at Constantinople to afford him unofficial assistance in the recovery of certain property, and requested that we would take these papers into consideration and favour your Lordship with our opinion as to whether Mr. Blagomerio's request might be complied with.

In obedience to your Lordship's commands, we have taken these papers into consideration and have the honour to report—

That Sir E. Hornby may be instructed to afford Mr. Blagomerio any unofficial assistance in collecting his assets, for the benefit of his British creditors, which he may be able to do without any interference with, or objection from, the Turkish authorities. The Judge of the Supreme Consular Court at Constantinople, as such, cannot, of course, in any way interfere.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 95.

The Law Officers of the Crown to Earl Russell.—(Received April 28.)

UNITED STATES.

Application for restoration to United States' Government of the "Emily St. Pierre," captured for breach of blockade, but subsequently retaken by the master and brought to Liverpool.

Doctors' Commons, April 28, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 24th April instant, stating that he was directed to transmit to us the accompanying letter, dated the 24th April instant, from Mr. Adams, the United States' Minister at this Court, applying for the restoration to the United States' Government of the "Emily St. Pierre," a vessel which was captured by one of the United States' cruizers for an alleged breach of blockade, but subsequently retaken by the master and brought to Liverpool. And he was also pleased to inclose a despatch from Her Majesty's Consul at New York (No. 38), containing further particulars respecting this case, and to request that we would take these papers into consideration and furnish your Lordship with our opinion, at our earliest convenience, as to the answer which should be returned to Mr. Adams.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That an answer may be returned to Mr. Adams to the effect that Her Majesty's Government is unable to comply with his request for the restoration of the "Emily St. Pierre," having no jurisdiction or legal power whatever to take or acquire possession of her, or to interfere with her owners in relation to their property in her.

Acts of forcible resistance to the rights of belligerents, when lawfully exercised over neutral merchant-ships on the high seas (such as rescue from capture), however cognizable and punishable, as offences against international law, in Prize Courts of the captor administering such law, are not cognizable by the Municipal law of England, and cannot, by that law, be punished either by confiscation of the ship or by any other penalty, and Her Majesty's Government cannot raise, in an English Court, the question of the validity of this capture, or of the ensuing rescue or recapture; such recapture is not an offence against Municipal law, and Her Majesty's Government has no power to take any proceedings against the ship in relation thereto.

The Consul at New York should send the mate to England.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 96.

The Law Officers of the Crown to Earl Russell.—(Received April 29.)

UNITED STATES.

Act of Congress "to facilitate judicial proceedings in adjudications upon captured property."

Doctors' Commons, April 28, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 21st April instant, stating that he was directed by your Lordship

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* Mr. Blagomerio, January 22, 1862; to Mr. Blagomerio, February 6, 1862; from Mr. Blagomerio, March 25, 1862.

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to transmit to us the accompanying despatch from Her Majesty's Minister at Washington (No. 214, March 31, 1862), inclosing copies of an Act of Congress, which is entitled "An Act to facilitate judicial proceedings in adjudications upon captured property, and for the better administration of the Law of Prize," and to request that we would take the same into our consideration, and favour your Lordship with our opinion thereupon with reference to its bearing upon the general rules of international law.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we see nothing in this Act which is in conflict with the general rules of international law.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 97.

The Law Officers of the Crown to Earl Russell.—(Received April 29.)

Doctors' Commons, April 28, 1862.

UNITED STATES.

Liability of United States' Government to pay compensation in the case of the "Monmouth," warned off the Southern Coast of United States.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 14th April instant, stating that with reference to the opinions given by us on the 30th of October and the 17th of February ultimo,* on the case of the British vessel "Monmouth," he was directed by your Lordship to transmit to us, together with the former papers,† a despatch from Her Majesty's Minister at Washington,‡ inclosing a further reply from Mr. Seward contesting the liability of the United States' Government to pay compensation in that case; and to request that we would take Mr. Seward's reply into consideration, and furnish your Lordship with such observations as we might have to offer thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That Mr. Seward's note of the 24th March, 1862, contains nothing to alter or affect our opinion on this case, and does not, in our opinion, adduce anything relevant or material in answer to the demand of Her Majesty's Government.

Mr. Seward's reasoning appears to assume, that a notification given at Charleston that the whole coast of certain States was blockaded could not be operative (even if the fact had been so), except as notice of a blockade of the particular port of Charleston. If this assumption (which seems to us clearly erroneous) were not made, the fact would appear simply to be, that the "Monmouth" was warned off the port of Savannah, when that port was not blockaded, and she was thus prevented from accomplishing a lawful voyage by the wrongful act of an officer of the United States, which is adopted and justified by that Government; for the consequences of such an act the United States' Government is clearly responsible internationally.

Mr. Seward asserts that if she had, in disregard of the notification, proceeded on her voyage to Savannah, she would, if captured, have been restored by a Prize Court; but she was not called on to incur this risk.

The United States' Government cannot properly maintain that its officers may notify a blockade which does not exist, and that neutral vessels relying on such notification, and acting in obedience thereto, are not entitled to compensation for the wrongful interruption of a lawful voyage.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

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* See Reports for 1861, page 268; and *ante*, page 39.

† Queen's Proctor, November 1, 1861; Lord Lyons, No. 4, January 2, and No. 54, January 27, 1862; Law Officers, February 17, 1862; to Lord Lyons, No. 82, February 22, 1862; Lord Lyons, No. 170, March 10, 1862; to Lord Lyons, No. 137, March 27, 1862.

‡ Lord Lyons, No. 209, March 28, 1862.

No. 98.

The Law Officers of the Crown to Earl Russell.—(Received April 29.)

Doctors' Commons, April 29, 1862.

TURKEY.

Jurisdiction of British Consular Court at Constantinople. Collision between Her Majesty's gun-vessel "Weser" and the Russian ship "Amalia."

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 21st April instant, stating that he was directed to transmit to us a despatch from Sir Edmund Hornby, Judge of the Supreme Court at Constantinople (No 29, April 7th) inquiring with reference to the collision between Her Majesty's gun-vessel "Weser" and the Russian ship "Amalia," whether it is competent for that Court to decide the case.

Mr. Hammond was also pleased to inclose a letter from the Admiralty, dated the 19th April instant (to which Department your Lordship caused Sir E. Hornby's despatch to be referred), inclosing a copy of a Report from the Admiralty Advocate on the subject; and to request that we would take the accompanying papers into consideration, and furnish your Lordship with our opinion upon the answer which it may be proper to give to Sir Edmund Hornby.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That Her Majesty's ships are only subject to the jurisdiction of the High Court of Admiralty in cases of collision, whether with foreign or with British vessels, by reason of the consent of the Crown to the exercise of such jurisdiction over them, expressed through the Lords Commissioners of the Admiralty, on application from the plaintiff; which consent is always given in such cases. Without such consent neither that Court nor any Consular Court in Turkey can exercise Admiralty jurisdiction over them, as, by arrest of the ship, and so forth. Whether such Consular Courts have (strictly speaking) Admiralty jurisdiction "by custom," we are unable to say; but adverting to page 7 of the Circular Letter of General Instructions issued by the Judge of the Supreme Consular Court, with the Order in Council of August 27, 1860, and to what appears in regard to the recent collision between the "Laconia" and "Colchide" reported on by us on the 3rd April,* we presume that the Consular Courts have, "by custom," some kind of jurisdiction, in cases of collisions at sea, occurring within their local limits.

To the exercise of this jurisdiction in the case of Her Majesty's ships of war, we think the consent of the Crown will be practically necessary; and we recommend that it should be given in this case. Under these circumstances, it appears to us that Consul Ward of Galatz (within the local limits of whose jurisdiction we assume that the collision occurred) will have jurisdiction over a suit duly instituted before him by the Russian Plaintiffs against the Captain of Her Majesty's ship "Weser."

We observe that a suit is stated by Sir E. Hornby to have been commenced in Consul Ward's Court; and adverting to the agreement stated by Sir E. Hornby to have been entered into by Consul Ward "in concert with the Russian authorities," that the case shall be tried before the Supreme Court, we would suggest that this agreement may properly be carried out under the 18th section of the Order in Council, by Consul Ward reporting the pending action, and Sir E. Hornby "ordering it to be heard and determined" before himself at Constantinople.

The consent of the Crown to this course of proceeding should be signified to the Captain of the "Weser" through the Admiralty, and he should be instructed to appear to the suit, and not to dispute his personal responsibility for the consequences of the negligent or improper management of the ship, if such negligence be proved.

With reference to the suggestion of the Admiralty Advocate that a suit should be instituted by the Russian Plaintiff in the High Court of Admiralty here, and the cause be tried in that Court, we do not see how this can be reconciled with the agreement stated to have been entered into by Consul Ward "in concert with the Russian authorities" for the trial of the cause in the Supreme Consular Court; and we consider that the practical result of such a course might be onerous to the Russian Plaintiff.

Sir E. Hornby may be informed that Consular Courts have no jurisdiction over Her Majesty's vessels of war, or over the officers on board such ships, when

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* Page 85.

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on service, and in the discharge of their duty; but that any difficulty arising therefrom may be removed by Her Majesty's instructions to such officers.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 99.

The Queen's Advocate to Earl Russell.—(*Received April* 30.)

UNITED STATES.

Claim of D. Charlton (*alias* John Bull, *alias* Francis Cox) for interference of British Government to obtain release of his wife and children from slavery, as British subjects.

Doctors' Commons, April 29, 1862.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 25th April instant, stating that with reference to my Report of December 3rd ultimo,* in which I suggested that a thorough investigation should be made by the Attorney-General at Nassau into the case of the wife and children of Dimmock Charlton, *alias* John Bull, *alias* Francis Cox, illegally held in slavery in Savannah, he was directed by your Lordship to transmit to me, together with the former papers, the Report of the Attorney-General at Nassau upon this subject; and to request that I would take these papers again into consideration, and furnish your Lordship with my opinion as to any further steps which it may be proper that Her Majesty's Government should take in this matter.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That Charlton having left Nassau for the United States without any expressed intention of returning, I do not see how Her Majesty's Government can take any further steps in this matter, unless (as I have already suggested) Her Majesty's Consuls at Charleston, New York, and Philadelphia should be able to furnish any additional material information.

I have, &c.
(Signed) J. D. HARDING.

No. 100.

The Queen's Advocate to Earl Russell.—(*Received May* 5.)

UNITED STATES.

Seizure of the "Adelso" for alleged violation of the blockade of the port of Wilmington.

Doctors' Commons, April 30, 1862.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 25th April instant, stating that he was directed to transmit to me the accompanying despatches from Lord Lyons (No. 201, April 3, 1862), and Her Majesty's Consul at Boston (April 8, 1862), relative to the seizure and condemnation of the British schooner "Adelso" for an alleged violation of the blockade of the port of Wilmington; and to request that I would take the same into consideration, and inform your Lordship whether I see any reason to alter the opinion given in my Report on this case of the 3rd October last.† And he was also pleased to inclose the former papers.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That this vessel, whose owner, Horton, resides at St. John's, New Brunswick, cleared from Halifax, United States, for Bermuda, 9th July, 1861 (see Mr. Dennis to Consul Lousada, August 14, 1861, Inclosure 4 in Lord Lyons' No. 460), under charter entered into by her master with some citizens of the Confederate States, to proceed to Wilmington, North Carolina, for a cargo of naval stores for Great Britain or a British Colony.

It is stated by her owner (see Report of Comptroller of Customs at St. John's, New Brunswick, Inclosure 2 in Lord Lyons' No. 231), that her *first* master entered into this charter-party, and substituted for himself another master, who took command of her under such charter-party without his (the owner's) knowledge or consent. It is alleged that her master was ordered not to attempt to enter any blockaded port.

* See Reports for 1861, page 298.

† Ibid., page 236.

Having cleared from Halifax *as for Bermuda*, she went to Wilmington, which she entered on the 30th July, where she loaded a cargo, and sailed on the 6th August, without seeing any blockaded force, or being interfered with on entering or leaving. She put into Newport, Rhode Island, on the 13th August, from stress of weather, and was there seized and proceeded against as a prize for breach of the blockade of Wilmington. She was condemned by Judge Pitman, in the Rhode Island District Court of the United States, on the 12th November, 1861, for breach of blockade. Her cargo was condemned as enemy's property.

Consul Lousada, in No. 21, April 8, 1862, reports that "every possible point of defence was made by the learned Counsel for the schooner and cargo, among others the legal existence of any blockade; and that the claimants *of the vessel* took an appeal from the Decree of the District Court Judge; and the case now stands for hearing on the appeal to the United States' Circuit Court, and it will probably be still further carried up to the Supreme Court at Washington."

This being so, I cannot advise your Lordship to make any application to the United States' Government for compensation to the owner. The question of the legality of the condemnation of the "Adelso" (involving the question of the validity of the blockade of Wilmington) is under appeal, and still pending, in the United States' Prize Courts; and any such application would, under these circumstances, be, at all events at present, premature.

I do not see upon what ground it can properly be held that she broke any effective blockade by entering and leaving Wilmington; but the owner's case as to the circumstances preceding her leaving Halifax is not of a favourable aspect. The seizure was made in August 1861; he submitted his claim to the Prize Court, where it was fully argued; and he has appealed from the adverse decision (pronounced in November last) without (as far as I can discover) making any application to Her Majesty's Government until now. I cannot therefore say that the circumstances now disclosed alter or affect my opinion of the inexpediency of any intervention by Her Majesty's Government on his behalf.

I have, &c.
(Signed) J. D. HARDING.

No. 101.

Case for Opinion of the Law Officers of the Crown respecting the Proceedings of Her Majesty's Consuls in regard to the Effects of British Subjects dying Abroad Intestate.

In re José Augustin Lizaur, deceased.

URUGUAY.

Interference of Her Majesty's Consul-General to realize the intestate estate of José Augustin Lizaur, a British subject, there being heirs to the estate.

THE above-named deceased died in the Republic of Uruguay, on the 28th of August, 1861, intestate, leaving property, in lands and cattle, the value of which is estimated to be about 66,000*l*., but it does not appear that he was possessed of any other personal estate beyond the cattle.

The deceased is stated to have been a British subject, but whether his domicile was Uruguay the Consul has omitted to state, and he is represented to have left (as his heirs) Señor de Orense, a Spanish nobleman, who it is believed married a sister of Mr. Lizaur, and there is a gentleman at Monte Video, named Gereda, who is empowered to act for Señor de Orense.

The other heir is a gentleman named Trezevant, the husband or widower of another sister of the deceased who was residing some time since in or near Edinburgh.

The deceased is also alleged to have left two illegitimate children, who by the laws of the country in which he died are entitled to a certain provision from the estate, but as to their respective ages and residence there is no information.

It is also stated that the only debt of any amount due by the deceased is one of 10,000*l*. owing to Mr. R. J. Gower, living in London, for money advanced for the original purchase and stocking of the estate, which was managed as a joint concern by the deceased, but in what way does not appear.

Under these circumstances, Her Majesty's Chargé d'Affaires and Consul-General at Monte Video proposes to realize the effects with a view to

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transmit them to the Lords Commissioners of Her Majesty's Treasury as the trustees for the heirs, under the General Consular Instructions.

To this course, however, the Solicitor to the Treasury (Mr. Greenwood) has reported adversely, considering that, where there are heirs, no interference by Her Majesty's Consul ought to take place, except in aid of the family, and at their request.

On the 26th August, 1842, a Treaty of Amity, Commerce, and Navigation between Great Britain and Uruguay was signed at London, the VIIIth Article of which is as follows, viz:—

"In whatever relates to the police of the ports, the lading and unlading of ships, the safety of merchandize, goods, and effects, the succession to personal estates by will or otherwise, and the disposal of personal property of every sort and denomination, by sale, donation, exchange, or in any other manner whatsoever, and to the administration of justice, the subjects and citizens of each of the two Contracting Parties shall enjoy in the dominions and territories of the other the same privileges, liberties, and rights as native subjects or citizens, and they shall not be charged in any of these respects with any higher imports or duties than those which are or may be paid by natives; conforming, of course to the local laws and regulations of such dominions or territories.

"And it is further agreed that the subjects and citizens of the two Contracting Parties shall have and enjoy in all the dominions or territories of each other, the most full and perfect liberty to devise or dispose of their property and effects of every kind and denomination, and wheresoever situate, by will or testament, to such person or persons, and in such proportions, as their own free will may dictate.

"If any subject or citizen of either of the two Contracting Parties should die without will or testament in the dominions or territories of the other, the Consul-General or Consul, or in his absence the representative of such Consul-General or Consul, shall have the right to nominate Curators to take charge of the property of the deceased so far as the laws of the country will permit, for the benefit of the lawful heirs and creditors of the deceased, without being interfered with by the authorities of the country, but giving to those authorities due and proper notice."*

The following letter (and inclosures) has been addressed to the Queen's Proctor upon the subject by Mr. Layard, the Under-Secretary of State for Foreign Affairs:—

"*Foreign Office, March* 24, 1862.

"Sir,

I AM directed by Earl Russell to transmit to you a correspondence between this office and the Treasury, growing out of a despatch (also inclosed herewith) from Her Majesty's Chargé d'Affaires and Consul-General at Monte Video, reporting his proceedings in regard to the property left by Mr. Lizaur, an intestate British subject, and requesting instructions for his guidance in that matter.

"You will perceive from the Reports made by the Solicitor to the Board of Treasury that that officer is of opinion that Mr. Lettsom had no right to interfere with regard to the property in question, and that the instructions to Her Majesty's Consuls, in regard to taking charge of and administering intestate property left by British subjects abroad, are defective, and I am to request that you will prepare a case for submission to the Law Officers requiring their opinion, first, upon the course to be pursued at Monte Video; and secondly, as to the instructions which it may be proper for Lord Russell to issue generally to Her Majesty's Consuls for their specific guidance in regard to cases of intestate property.

"I am, &c.

(Signed) "A. H. LAYARD.

"The Queen's Proctor."

"*Monte Video, November* 26, 1861.

"My Lords,

"I HAVE the honour to acquaint your Lordships with the death, on the 28th of August last, near Paisandie, in this Republic, of Mr. José Augustin Lizaur, a British subject.

"Mr. Lizaur died intestate, leaving property in lands and cattle of the value of some 400,000 current dollars, or about 66,000*l*.

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* Hertslet's "Treaties," vol. vi, page 926.

"His heirs, as far as I have been able to ascertain as yet, are Señor de Orense, a Spanish nobleman, who, I believe, married a sister of Mr. Lizaur, and a gentleman named Trezevant, the husband or widower of another sister of the deceased.

"Mr. Trezevant was, I believe, residing some time since in or near Edinburgh.

"I have written to Mr. R. F. Gower, a gentleman living in London, to inquire for all particulars respecting Mr. Trezevant.

"The only debt of any amount due by the late Mr. Lizaur is one of, I think, 10,000*l*., owing to the above Mr. R. F. Gower, for money advanced for the original purchase and stocking of the estate, which was managed as a joint concern by Mr. Lizaur.

"The deceased left two illegitimate children, who, by the laws of this country, are entitled to a certain provision from the estate.

"Twenty per cent. of the proceeds are set aside for law expenses, management, administration, and other expenses, and what remains over, after all those costs are deducted, is divided equally between any illegitimate children there may be.

"By Paragraph 35 of the General Consular Instructions I am ordered to realize the property and effects of British subjects, not seamen, dying abroad intestate, and remit the proceeds to your Lordships as the trustees for the heirs.

"The sums concerned upon the present occasion are, however, so large, that I fear the Government of the Republic will endeavour to get the management of the whole matter into their hands, and, once fairly in the power of the tribunals of the country, next to nothing will be left for the heirs, and, what little they do get will be kept from them for years, inasmuch as the simplest legal proceedings here are next to interminable, what is termed 'justice' in this Republic being a solemn and costly farce.

"I write by this mail to Earl Russell, requesting him to favour me with such instructions as will enable me to prevent this matter being made over to the legal authorities of this country; and I venture to beg your Lordships, as the trustees for the heirs, to solicit his Lordship to direct his attention to my request.

"From the sale of cattle next month a sufficient sum will be received to pay a great part, if not all, of the amount due, as I have said, to Mr. R. F. Gower.

"I shall endeavour to transmit the proceeds to your Lordships, and shall be able to ascertain, approximately at least, by the action of the Judge of the Court of Intestate Estates what is likely to be the course taken in this affair generally by the judicial authorities of the Republic.

"I have, &c.

(Signed) "W. J. LETTSOM.

"The Lords Commissioners of
the Treasury."

Mr. Lettsom also addressed a letter to Earl Russell, but as it differs in some essential points from the above, it is thought desirable to give it *in extenso*:—

"(No. 54. Consular.)

"*Monte Video, November* 26, 1861.

"My Lord,

"I HAVE the honour to acquaint your Lordship with the decease, near Paisandie, in this Republic, on the 28th of August last, of Mr. José Augustin Lizaur, a British subject.

"Mr. Lizaur, I have every reason to believe, died intestate, leaving property in lands and cattle the value of which, from which I have as yet been able to learn, may be estimated to be worth some 400,000 current dollars, or about 66,000*l*.

"Mr. Lizaur left two heirs, one a Spanish nobleman of the name of Orense, who claims, I believe, as the widower of a sister of Mr. Lizaur. There is a gentleman here named Gereda, who is empowered to act for Señor de Orense.

"The other heir is, I fancy, a gentleman of the name of Trezevant, who, from what I can learn, was some time since living at or near Edinburgh.

"I have written to a gentleman named Robert F. Gower, residing in London, to inquire for particulars as to Mr. Trezevant.

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"The only debt due by the late Mr. Lizaur that I have as yet been able to hear of, with the exception of a few trifles due to servants for wages, is a sum of 10,000*l.* owing to the above Mr. R. F. Gower for sums lent to Mr. Lizaur to establish and manage the estate, the same having been conducted for their joint benefit.

"By the General Consular Instructions, Section 35, I am ordered, in the case of British subjects, not seamen, dying abroad intestate, to realize such property and effects, and remit the proceeds to the Lords Commissioners of Her Majesty's Treasury as the trustees for the heirs.

"But this property is so large that I cannot but fear the Oriental Government will throw every impediment in the way of the affairs of this estate being wound up here as speedily as the above instructions contemplate should be done, and that endeavours will be made to get the entire matter into the hands of the Tribunals here; in which case the greater part, if not the whole, of the proceeds will be devoured by the cormorants of the law.

"Such has been the case very frequently here, and there is no reasonable doubt to be entertained it will also be so on the present occasion.

"If the matter once gets fairly into the clutches of the lawyers here, a suit is almost certain to be entered into on some pretext or another; and once commenced, it is quite impossible to say when it will be concluded.

"During next month I shall have an opportunity of judging whether the impediments which I foresee are likely to occur.

"The Court here, charged jointly with Consuls with the management of the estates of intestate persons, has, at my request, authorized the sale of a considerable number of cattle; and as soon as the money is received for them I shall claim the proceeds in order to transmit the amount to the Lords Commissioners of Her Majesty's Treasury for the total or partial extinction of the debt due by the late Mr. Lizaur to Mr. R. F. Gower.

"I hold that, with the exception of such charges as the Republic may make for duty, I am entitled to transmit those proceeds to England for the purpose I have mentioned.

"I shall be greatly obliged to your Lordship if you would kindly furnish me with your instructions on this case generally, for, as I have stated, I have the utmost dread of the matter once coming into the power of the Tribunals of this country.

"I have, &c.
(Signed) "W. G. LETTSOM.

"Right Hon. Earl Russell,
&c. &c. &c."

Report of Treasury Solicitor on Mr. Lettsom's Despatch.

"*Treasury Chambers, January* 10, 1862.

"Sir,

"THEIR Lordships have been pleased to refer to me a letter of the 26th November, 1861, from Mr. Lettsom (Monte Video), reporting the death of a British subject, José Augustin Lizaur.

"Mr. Lettsom states that he died intestate, leaving property worth 66,000*l.*, and that, as appears at present, Señor de Orense, a Spanish nobleman, and Mr. Trezevant, each of whom had married a sister of the deceased, were his heirs.

"This, of course, is impossible: but it may be understood, as meant by the Consul, that these two gentlemen, in right of their wives, are entitled to shares of the property in distribution with the illegitimate children of the deceased.

"In the South American States generally, and I presume in Monte Video, as in Spain, the illegitimate daughters who, in certain modes, have been recognized by their father, are by law entitled to a defined status, and to a share of the property.

"In what proportion these members of the family are by the law of Monte Video entitled to the succession, or to whom falls the legal rights of distribution, like administration in this country, I am unable to say; but I venture most strongly to urge that, except in the aid of the family and at their request, the Consul ought not to intermeddle in the matter.

"The Consul quotes his general instructions to realize the effects of British subjects, not seamen, dying abroad intestate; and he entreats their Lordships to urge upon Lord Russell a compliance with his request that influence may be used to prevent the Tribunals of the country disposing of the matter.

"I cannot help thinking that the Consul has misunderstood the instructions that he cites. I have been from time to time furnished in similar cases with extracts from the Consular Instructions, and have seen no such injunctions.

"But, in truth, such injunctions would be inoperative; they cannot give a title to a Consul, or to anybody else, adverse to the family.

"There are some places, indeed, where by positive enactment, the Consul has the care and administration of the estate of his deceased countrymen; but except in such places (and Monte Video is not one) the duty of the Consul (not his right) may be to aid the family in the realization of the estate, and to prevent its plunder by strangers, but not to displace or contest the title of the relatives.

"I ask pardon for urging this most strongly on their Lordships, because enormous wrong and damage has been done to families by a wrongful assumption of authority by Consuls.

"I have taken every occasion in my power to call attention to these cases: the circumstances of some of them were so flagrant that I think their Lordships would forgive me in again alluding to them.

"I humbly venture to recommend to their Lordships that in submitting Mr. Lettsom's letter to Lord Russell, their Lordships should move Lord Russell to consider the expediency of warning the Consul that he has no title paramount to that of the surviving relatives, and that though he may exert himself to ascertain their wishes, he ought in no event to arrogate to himself a right to the administration of the effects in opposition to their title.

"I have, &c.
(Signed) "JOHN GREENWOOD.

"The Secretary to the Treasury."

Letter from the Foreign Office to the Treasury.—(Answer to above Report.)

"*Foreign Office, January* 24, 1862.

"Sir,

"I AM directed by Earl Russell to acknowledge the receipt of your letter of the 22nd instant, inclosing copies of a despatch addressed to the Lords of the Treasury by Her Majesty's Chargé d'Affaires and Consul-General in Monte Video, respecting the disposal of the effects of Mr. Lizaur, a deceased British subject, and of a Report from their Lordships' Solicitor to the effect that Mr. Lettsom had no right to interfere in regard to the property in question.

"In reply, I am to request that the Lords of the Treasury will call the attention of their Solicitor to the VIIIth Article of the Treaty between this country and Monte Video of the 26th August, 1842, by which it will be seen that it is both the right and the duty of the Consul-General in Monte Video to interfere in regard to property left in that country by British subjects dying intestate."

(Signed) "JAMES MURRAY."

Further Report of the Treasury Solicitor.

"*Treasury, February* 11, 1862.

"Sir,

"THEIR Lordships were pleased some days ago to refer to me a letter of 26th November, 1861, from Mr. Lettsom, Her Majesty's Consul at Monte Video, reporting the death of Mr. Lizaur, a British subject (leaving property worth 66,000*l.*), and stating his intention of selling a portion, and transmitting the proceeds to this country.

"Mr. Lettsom urged their Lordships to solicit Lord Russell to send him such instructions as would enable him to prevent the matter being made over to the legal authorities of the country.

"It appeared to me unadvisable that their Lordships should urge upon Lord Russell any particular instructions to the Consul, who acts entirely under the directions of the Foreign Office, but I ventured to submit (in reference to some recent cases where great wrong had been done through a mistake of their

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powers by the Consul) that a warning might be properly sent to Mr. Lettsom, that he has no title adverse and paramount to that of the family of the deceased, and that as the relatives in the present case seem known or discoverable, he ought to endeavour to ascertain their wishes, and to intermeddle only in their aid.

"I take the liberty of referring to my Report of the 10th January, 1862.

"A copy of the Report appears to have been transmitted by my Lords to the Foreign Office, and their Lordships have now been pleased to refer to me Mr. Murray's reply of the 24th January.

"Mr. Murray refers to the VIIIth Article of the Treaty between this country and Monte Video of 26th August, 1842, which he says makes it both the right and the duty of the Consul to interfere in regard to property left in that country by British subjects dying intestate; and this too, it seems, whether in aid or not, or whether in compliance with or adversely to the wishes of the relatives of the deceased (for otherwise Mr. Murray's observation has no application to my Report, since it cannot be doubted that the Consul has a right to assist the family, if they desire it).

"Mr. Murray, therefore, is apparently of opinion that it is not only the duty, but the right of the Consul of his own mere motion, without the authority of the family, and even against their wishes, by force of the Treaty to realize the effects of the deceased, and transmit the proceeds to this country.

"I venture to submit that the Consul has no such duty or right.

"The Consul himself rests his authority upon the instructions which he has quoted, saying nothing of the Treaty, while Mr. Murray quotes the Treaty alone.

"1st. I am satisfied that the Consul has received no such instructions as he quotes.

"He quoted, perhaps, from memory, and no doubt intended to quote correctly, but has failed to do so. Section 35 has no such injunctions as the Consul cites (and section 34, relating to the same subject, is, by some singular mistake, an exact transcript, to a letter, of the whole page which contained section 35).

"I venture also to submit that Mr. Murray has equally mistaken the whole object and effect of the Treaty.

"The Treaty was manifestly intended to assist the families of British subjects dying in the Republic of the Uruguay, but not to impair or supersede their title to the effects; they were enabled to invoke the aid of their own Consul, and to ask him to appoint curators 'without being interfered with by the authorities of the country,' but 'in all that relates to the succession of personal estates by will or otherwise, and the disposal of personal property,' British subjects were to have the same rights as native subjects and citizens.

"It is abundantly clear, I think, that the Treaty gave no power to the Consul to displace or suspend the rights of the next of kin.

"Indeed, it only enables him in any case to nominate curators to take charge of the property for the persons entitled to it; for example, in their absence, not certainly, to administer it himself, nor does it even purport to enable him to collect and realize the proceeds, or to remit them to England as now proposed. Yet Mr. Murray apparently thinks that the Consul is justified (even bound) to do so by the Treaty.

"But even if the Treaty assumed such power, if it affected to subject the property of Englishmen to the control of the Consul, it would be invalid.

"The Executive Government of this country has no power, without Act of Parliament, to deal with the property of Her Majesty's subjects; they might as well subject *persons* as *property* to the control of the Consul.

"It is quite familiar to provide by Act of Parliament for giving effect to any Treaty that deals with the lives, persons, or property of Her Majesty's subjects, as in the case of the numerous Treaties for the suppression of the Slave Trade, the Extradition Treaties, Treaties for the reciprocal compensation of foreign and English claimants, &c , &c.; and even as late as last session an Act (24 & 25 Vict., cap. 121) was passed for giving effect to any Treaty that might be made for the administration by Consuls of the effects of their deceased countrymen.

"If Mr. Murray's construction of the Treaty is correct, if there is an absolute right and duty of the Consul to intermeddle, then if a merchant still domiciled in Monte Video, but resident in London, were to die here, with his wife and family about him, the Consul in London of the Republic of the Uruguay

may, nay must, nominate curators of the property. Nevertheless, I venture to say that the Consul would have no more right to meddle with the estate than with that of any living inhabitant of London. And the same may be said of the British Consul at Monte Video; and if he insists, as other Consuls have done (except in aid of the family), in administering this estate, and takes 1,300*l*. or 1,400*l*. from it for his 2½ per cent. commission, he will be answerable for it to the personal representative, upon his return within the jurisdiction of our Courts.

"I take the liberty, therefore, of again urging upon their Lordships to warn the Consul, if they interfere at all, that he has no title, except in aid of the family of the deceased, and that his first duty is to ascertain their wishes.

"I ask pardon for once more referring to the numerous occasions upon which I have endeavoured to express what I believe to be the true and only duty of the Consuls, and in particular, since the question is to be re-opened, to refer to two cases:—

"First, to a case in 1854, where the proceedings of the Consul at Callao were involved, because in that case their Lordships were pleased to state, in forwarding the report to the Foreign Office, that they concurred in the opinion.

"Secondly. I would refer to a case in 1859, where the Consul at Caracas had assumed the right to administer large estates of a deceased British subject (sugar plantations, &c.) against the wishes, and to the vast and irreparable injury, of the family. Of these estates he kept forcible possession for above four years, appropriating to himself in his accounts 2½ per cent. on the very large sums that figured in them, and charging the estate with considerable amounts for his legal expenses.

"I ventured to report that he had no right to interfere with this property.

"The Secretary of State was pleased to adopt this opinion, and, further, to request that their Lordships would bear the report in mind in case the Consul should ever ask for a pension.

"After this concurrence of opinion, both of my Lords, and of the Secretary of State, it is to be regretted that the question is raised again. The pretensions put forward on behalf of the Consuls are very mischievous if they are groundless.

"They have possibly originated in a misconstruction of Statute 6 Geo. IV, cap. 87, the Schedule to which allows 2½ per cent. for the management of property of British subjects dying intestate.

"Upon this there has, apparently, been inferred an absolute right in the Consuls to administer such estates and to earn the 2½ per cent.

"It is manifest that the Statute, like the Treaty quoted by Mr. Murray, is applicable only to cases where the Consul acts in aid of the family, not adversely, or in assumption of any supposed independent rights.

"And the obvious misconstruction of the Act is the more remarkable from the following circumstance:—

"The Act enables Her Majesty in Privy Council to alter or abolish the fees in the Schedule; and, accordingly, by an Order in Privy Council dated 1st May, 1855, the fees were divided into two lists, one described as 'Fees to be taken in respect of matters in which the Consul's interposition is required by law,' the other is headed 'Fees to be taken in respect of matters in which the Consul's interposition is to be given only when required by the parties interested.' And amongst these is 'Management of property of a British subject not being a seaman, dying intestate, 2½ per cent.'

"And these lists are included in the General Instructions placed in the hands of all Consuls.

"It is difficult, therefore, to understand how this injurious misapprehension should continue to prevail.

"I am far from saying that, in the present case, the Consul intends to administer the estate in opposition to the relatives, but Mr. Murray's views are calculated to encourage him.

"Indeed, the Consul already talks of selling effects, paying debts, and remitting proceeds, as if it were quite unnecessary to consult the family; and for this reason I again humbly submit to their Lordships (if they interfere at all at the present stage) the expediency of sending warning to him to aid the family

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rather than to send him any encouragement to believe that he has an absolute inherent right of his own in the administration of the estate.

"I have, &c.
(Signed "JOHN GREENWOOD.

"The Secretary to the Treasury"

Paragraph 35 *of Consular General Instructions.*

Property of British subjects dying abroad intestate.

"35. Whenever it may be the duty of a Consul to take possession of, and administer to, the property and effects of British subjects, not seamen, dying abroad, intestate, he will realize such property and effects, and remit the proceeds to the Lords Commissioners of Her Majesty's Treasury, as the trustees for the heirs.

"The Consul will, at the same time, furnish the Lords of the Treasury with a detailed statement of all particulars relating to the deceased and his property; and he will also give any information which be may have obtained respecting the family and friends of the deceased.

"With respect to the property and effects of British subjects, being seamen, the Consul will be guided by the separate Instructions with which he is furnished on matters relating to the British Mercantile Marine."

It is to be observed that neither paragraph 34, as alluded to by the Solicitor of the Treasury, nor any other paragraph of the General Instructions to Consuls, has reference to the administration of the effects of British subjects dying abroad intestate.

Under the aforegoing circumstances the opinion of the Law Officers is requested on the following points:—

1. What is the duty of the Consul-General at Monte Video in the present case, and what instructions should be given to him in respect thereto?

2. Does the 35th paragraph of the General Instructions require to be amended, and how, with regard to the course to be pursued generally by Consuls in cases of intestacy of the like nature?

3. And, generally to advise whether any, and if so what, further instructions should be given to Consuls for their general guidance, with a view, on the one hand, to protect the interests of absent British heirs and creditors, and, on the other, to avoid improper Consular interference?

Opinion.

1. The terms of the Treaty with Uruguay are peculiar, and in the absence of any explanation of the Uruguayan law and procedure in cases of succession, it is impossible to say whether, in this particular case, the Consul's intervention was strictly justifiable or requisite, or what would be the practical result of his proposed further intervention, as by taking possession of, and transmitting to England, the money arising from the sale of the cattle, or by his retaining it, and proceeding further in the administration of the personal estate in Uruguay. It would seem, however, that there is a "Court of Intestate Estates" in Uruguay; and that it has, on his application, authorized the sale of the cattle, but not (as yet) the transmission to England of the proceeds of such sale. The Treaty only enables the Consul "to nominate curators to take charge of the property of the deceased, so far as the laws of the country will permit, for the benefit of the lawful heirs and creditors of the deceased, without being interfered with by the authorities of the country, but giving to those authorities due and proper notice;" and, therefore, *save* as to such nomination of curators, &c., the succession to personal estates of British subjects in Uruguay is by the Treaty placed on the same footing as that of native citizens, and is to be in conformity with the local laws and regulations. We do not see that any curator has been appointed; but the Consul has (properly) applied to the Court of Intestates' Effects, and purposes to renew such application. He has apparently, as yet, acted in conformity with the local law.

It would seem, however, that Señor Orense (a brother-in-law of the deceased, and stated to be interested in the succession) has a duly constituted agent at Monte Video, named Gereda; and it does not appear that either he or Mr. Gower (a creditor of the deceased, resident in London, in whose interest the Consul appears to have intervened), or any other person interested, has made any application for his intervention. The instructions only direct the Consul how to act "whenever it may be his duty to take possession of and administer the property." Here there is no *constat* as to its being "his duty" to take this course. It is not stated where the deceased was legally domiciled at the time of his death, nor who are by the law of Uruguay (if he died domiciled there) entitled to his personal estate, or in what shares or proportions each of such persons is entitled. This essential information should be supplied by the Consul. Under the peculiar circumstances of the case, until this information is supplied, it is not easy to give him any definite or final instructions. He should, however, be instructed not to remit to England any money on account of the deceased's estate, whether arising from the sale of the cattle or otherwise, until he has furnished a full explanation as to the conformity of his proceedings with the Treaty and the Uruguayan law, and furnished further information as above suggested, and has received further instructions so to do.* Subject to this qualification, and, if he is duly authorized by the Uruguayan law, or so far as he may be thereby authorized, he may be instructed to continue to act in accordance therewith for the protection of the property, subject to any objection on the part of any of the heirs or parties interested. He should explain whether Señor Orense's agent, or any and what other person interested in the succession, is able and willing to administer, or has applied to him for his intervention.

2 and 3. The 35th paragraph of the General Instructions appears to us to require amendment, the present form being too general. It will be desirable in the amended Instructions to refer the Consuls to the local law of each country, and the existing Treaties with Great Britain, for their guidance in determining whether it is or is not their "duty" to interfere at all in matters relating to the successions of British subjects, and to explain to them that without positive authority by law or Treaty they have no right or power of interference therein; and that as to the nature and extent of such interference, where authorized, they must be guided by the existing law and Treaty, and act in conformity therewith. The Instruction as to realizing and remitting to the Lords of the Treasury the proceeds of the property of British subjects dying abroad intestate should be qualified by reference to the extent of the power which may be conferred on the Consul by existing Laws and Treaties; and even where the power in question exists, it may be advisable to limit its exercise to cases in which there is no party on the spot entitled and willing in person, or by a duly appointed agent, to administer to the effects, other than the Consul, or to cases in which his assistance is invoked by or on behalf of any such party. Where any of those legally interested in the succession are on the spot, or duly represented there, and more especially if they are British subjects, the Consul should either desist altogether from official intervention, or only interfere to aid them. We agree with Mr. Greenwood that the Consul has not, as against the parties entitled at law to the personal estate, any absolute or inherent right of his own in the administration of the estate. Possibly when the further information required is received from the Consul, we may be able to suggest some further instructions as to the particular case in question or generally.

Doctors' Commons, May 2, 1862.

(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 102.

UNITED STATES.

Case of the "Emily St. Pierre," captured for breach of blockade, but subsequently retaken by the master. Power of United

The Law Officers of the Crown to Earl Russell.—(Received May 3.)

Doctors' Commons, May 3, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 30th ultimo, stating that with reference to our Report of

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* *Sic in orig.*

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States' Minister to raise the question in a Prize or Admiralty Court in England.

the 28th ultimo* on the case of the "Emily St. Pierre," the British vessel which was captured by a United States' ship of war for an alleged breach of blockade, but which was subsequently recaptured by the master and brought to Liverpool, he was directed by your Lordship to request that we would inform your Lordship whether it is possible for the United States' Minister at this Court to raise the question in a Prize or Admiralty Court in England.

In obedience to your Lordship's commands we have taken this question into consideration, and have the honour to report—

That we cannot say that it is absolutely impossible for the United States' Minister at this Court to raise the question of the title to the "Emily St. Pierre" in the High Court of Admiralty; he may possibly attempt to extract a warrant or monition in the Registry of that Court, in a cause of possession, as in the name of the captor, or possibly of the President of the United States; although we do not consider that he would succeed in doing so, at all events without special application to the Judge by motion, in which case the registered owner would be heard against the application, and probably with success.

Even if the application should be granted, and a monition or a warrant for the arrest of the vessel should issue, we are of opinion that the High Court of Admiralty would, on the facts of the case being made apparent to it by the British owner, refuse to entertain or decide the question of the validity of either the capture or the rescue; and would not practically disturb the title of the registered owner of the "Emily St. Pierre," or even allow it to be questioned.

The Minister cannot, in his own name or public character, raise the question as suggested.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 103.

The Law Officers of the Crown to Earl Russell.—(Received May 6.)

UNITED STATES.

Right of Confederate States to confiscate, by Act of Congress, the property and debts of alien enemies, subjects of Great Britain and other neutral Powers domiciled in Northern States being comprised in that designation.

Doctors' Commons, May 5, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 24th ultimo, stating that with reference to our Report of the 13th of November last,† relative to the Act of the Congress of the so-styled Confederate States, confiscating the property and debts of alien enemies, he was directed by your Lordship to transmit to us a despatch, dated the 10th March ultimo, from Her Majesty's Consul at Richmond, inclosing copies of an amended Sequestration Act which was passed in February last by the Confederate Congress, which it appears is intended to remove the hardship and injustice of which Her Majesty's Government had reason to complain, and to request that we would take the same into our consideration, and furnish your Lordship with our opinion as to the effect of the law as now modified.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That it does not appear from the papers in what manner either the original Act, 30th August, 1861 (on which our previous Report was founded) or the amended Act, 15th February, 1862, has been carried into effect against the property of British subjects, or how far the instructions of the Confederate Attorney-General for carrying the original Act into effect have been modified in conformity with the amended Act. It may, we presume, under these circumstances be taken for granted that British interests have not been seriously injured, in practice, under the legislation of the Confederate States on this subject.

The amended Act, 15th February, 1862, appears to us to contain some material improvements upon the former Act; and unless some attempts should have been or should hereafter be made to enforce the provisions of either or both Acts in a manner practically injurious to British interests, we do not recommend that any formal remonstrance should be addressed to the Confederate Government. The legal effect which may be given to the words in section 6, paragraph 3, relied on by the Consul, viz., "All subjects and citizens of neutral countries who cannot be shown to have voluntarily contributed to the cause of the enemy," is not altogether free from doubt; but it remains to be seen what construction will be given to this amended Act by the executive and legal authorities in practice, and by the Courts of the Confederate States, when the subject is brought before them; and inasmuch as, at all events, in a large portion of cases, the injury to British interests expected or apprehended under the former Act will be obviated by the qualifications introduced in the latter, we do not at present recommend Her Majesty's Government to take any further steps in this matter.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

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* Page 99.

† See Reports for 1861, page 282.

No. 104.

The Queen's Advocate to Earl Russell.—(Received May 6.)

MEXICO.

As to power of granting permission to American mail-steamers to enter and come out of Mexican ports in the Pacific, under British blockade, without affecting the validity of the blockade.

Doctors' Commons, May 6, 1862.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 2nd May instant, stating that he was directed to transmit to me a letter from the Admiralty dated the 29th April ultimo, inclosing a copy of a letter from Rear-Admiral Sir Thomas Maitland, requesting to be informed whether American mail-steamers may be allowed to enter and come out of Mexican ports in the Pacific, under blockade by British ships of war, without affecting the validity of the blockade; and to request that I would take this question into consideration, and furnish your Lordship with my opinion thereon.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That, under the peculiar circumstances of the case, I am of opinion that Sir Thomas Maitland's question may be answered in the affirmative.

It will be desirable, however, in the event of a blockade of the Mexican ports, that the permission in question should be specially conceded by the Admiral, as a favour, "until further notice," and subject to such conditions and regulations as the officer commanding the blockading force at each blockaded port may find it expedient to impose and make, from time to time, according to the exigencies of the case.

I have, &c.
(Signed) J. D. HARDING.

No. 105.

The Law Officers of the Crown to Earl Russell.—(Received May 7.)

RUSSIA.

Exemption of British Jews in Russia from liabilities to which Russian Jews are liable.

Doctors' Commons, May 6, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 26th April last, stating that he was directed by your Lordship to transmit to us therewith a despatch, with its inclosures, from Her Majesty's Ambassador at St. Petersburgh (No. 179), calling attention to the position in the Russian dominions of British subjects of the Jewish religion, and to request that we would take those papers into our consideration, and that we would favour your Lordship with our opinion whether Her Majesty's Government would be justified, under the provisions of the Treaty between Great Britain and Russia of 1859, of which a copy was inclosed, in claiming exemption for British Jews in Russia from the disabilities to which persons of that persuasion were there liable.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That it appears to us that, having regard to the language of the Treaty

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between Great Britain and Russia of 1859, and to the facts stated with reference to the legal status of Russian Jews in their own country, Her Majesty's Government would not be justified in claiming exemption for British Jews in Russia from the disabilities to which Russian Jews are there liable by law. We think the effect of the Ist and XIth Articles of the Treaty is to place British subjects on the footing of Russian subjects, before the law; each class being alike, and one not more than the other, amenable to all general laws applicable in like cases. Russian subjects, being Jews, incur certain disabilities; and we think that the equality intended and provided for by the Treaty is not infringed by British subjects in Russia, who are Jews, whilst residing there, also sharing the same disabilities. It would seem to be far beyond the scope and general intent of a Treaty of Commerce and Navigation, if it were to be held to repeal, in the persons of foreigners, the legal disabilities to which (for reasons of general State policy) particular classes of individuals, natives of the country, had been subjected; and it is hardly to be supposed that any independent Government would accept or adopt such an interpretation, as against itself.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 106.

The Law Officers of the Crown to Earl Russell.—(Received May 7.)

TURKEY.

Request of British subjects at Constantinople that parties in Civil suits in the Supreme Consular Court may have the right of demanding a trial by jury of six British subjects.

Doctors' Commons, May 7, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 17th April ultimo, stating that he was directed by your Lordship to transmit to us a Memorial signed by numerous British subjects at Constantinople, praying Her Majesty to confer on parties to a civil suit in the Supreme Consular Court in that city the right of demanding a trial by jury of six British subjects, as is already provided for by Order in Council in criminal cases. And that your Lordship thought it advisable in the first instance to ascertain the opinion of Sir Henry Bulwer and Sir Edmund Hornby on the matter, and that your Lordship therefore sent the inclosed instructions; and he was also pleased to inclose the answers received from them respectively. And he also inclosed a similar Memorial from Smyrna, together with a letter from Mr. Hyde Clarke, in which he inclosed a letter which he had addressed to the Legal Vice-Consul at Smyrna respecting trial by jury, and generally respecting the proceedings in the Consular Court; and to request that we would take these papers into consideration, and report our opinion, first, as to the propriety of complying with the request; and, if it should be in the affirmative, secondly, as to whether trial by jury should be confined to the Consular Courts at Constantinople, Smyrna, and Alexandria, which are presided over by persons having a legal education; and thirdly, by what process and under what conditions the system of trial by jury should be established.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That the question raised, and upon which our opinion is desired, is one of policy; namely, whether it is expedient, for the administration of justice in civil cases in the Supreme Consular Court at Constantinople, to introduce trial by jury, either upon the English or any other modified plan.

We have read and fully considered the petitions in favour of juries, as also the observations on the subject of Sir Henry Bulwer, Sir Edmund Hornby, and Mr. Hyde Clarke; and on the whole, and as at present advised, we are disposed to agree in the conclusions at which Sir E. Hornby has arrived. He necessarily has the best opportunity of acquiring a knowledge of those facts with reference to the numbers, pursuits, position, &c., of British residents without a careful consideration of which no practical conclusion can be reasonably drawn; and it appears to us that, granting to Sir E. Hornby the facts which he adduces, and which there is nothing in these papers to impugn or qualify, but one conclusion is possible, and that is adverse to the proposed introduction of juries, even limited to six jurymen, at the present time, from the impracticability of forming a sufficient panel or jury list.

We are not informed how the resort to juries in those criminal cases to which they are made applicable by Order in Council has answered, and it may be better, before a final course is resolved on, to seek for some detailed information upon that point. We presume, however, that the empanelling of a jury in criminal cases is of comparatively rare occurrence, whereas it would appear from Sir E. Hornby's despatch that if the jury system were to be adopted for the trial of civil suits, either as of course or on special requisition of parties, the demands upon the time of the class of jurors might be inconvenient and oppressive, and there might also be considerable difficulty in securing the attendance of impartial and indifferent jurors. If this be a correct view, then even the successful working of juries, as at present applied to criminal cases, would very little, if at all, affect the opinion which we have expressed upon the question submitted to us.

There is no information in the papers as to Smyrna, but we presume that it is not in a more favourable condition than Constantinople on the point in question.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 107.

The Queen's Advocate to Earl Russell.—(Received May 9.)

CHINA.

Mr. Duddell's claim on account of destruction of flour and baking-stores at Hong Kong.

Doctors' Commons, May 7, 1862.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 24th April ultimo, stating that he was directed to transmit to me the accompanying letter from the Board of Treasury, dated the 19th April ultimo, inclosing a petition addressed to that Board by Mr. George Duddell, claiming compensation for the destruction of certain factories belonging to him at Hong Kong, which were burnt in March 1857, and to request that I would take this petition into consideration, together with the former papers, and furnish your Lordship with my opinion whether there is anything in Mr. Duddell's present statement to cause me to alter the views which I had previously expressed with regard to his claim in my Reports of the 14th of May, 1857, and 29th of June last.*

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I must answer your Lordship's question in the negative.

In explanation of the view which I have taken of this case (which now comes before me for the third time), I may perhaps state that, excepting the despatch of Sir J. Bowring (No. 128, March 14, 1857), which contains nothing material, I am not cognizant of any statement or information in support or corroboration of Mr. Duddell's case having been supplied to Her Majesty's Government from any public officer, or, in effect, from any person but himself. The only proof furnished by him that the burning of the storehouses was, in effect, attributable to the Chinese Government, or to its officers at Canton generally; or that it was "a loss sustained through the misconduct of the Chinese authorities at Canton," within the meaning of the Separate Article annexed to the Treaty of June 26, 1858, of which I am aware, is contained in a Memorandum published in the Hong Kong Gazette of April 25, 1857, of the contents of some Chinese papers captured on board some junks on the 4th of April previous, which is set forth in his petition of May 28, 1861, in which petition he states that "he verily believes that the arson and destruction of flour and other materials as aforesaid was an act of the Esing bakers, or other emissaries of the Provincial Government, virtually the Queen's enemies." This same Memorandum is also annexed to his recent petition to the Treasury.

Seeing nothing in this statement, or in the Memorandum, sufficient to show that the fire was, in effect, designedly caused by the Chinese Government or its officers, I reported, on the 14th May, 1857, that Her Majesty's Government could not properly bring forward any claim against the Chinese Government for the losses occasioned by this fire, no Treaty being then in question.

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* See Reports for 1861, page 136.

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By the Separate Article annexed to the Treaty of Tien-tsin of June 26, 1858, it was agreed that a sum of 2,000,000 taels should be paid to Her Majesty's Representative in China by the authorities of the Kwang-tung Province, on account of the losses sustained by British subjects, through the misconduct "of the Chinese authorities at Canton." Mr. Duddell's claim was again submitted to me, but no additional information was forthcoming; and there being nothing in the papers sufficient to show that "the Chinese *authorities at Canton*" had caused the fire, and no suggestion from any officer or Department of Her Majesty's Government that this was the fact, I reported on June 29, 1861, that his petition contained nothing to alter or modify the opinion I had previously expressed in my Report of May 14, 1857; in effect, that he had established no case under that Treaty.

The IIIrd Article of the Separate Convention annexed to the Treaty of Pekin, ratified October 24, 1860, expressly annuls the Separate Article annexed to the Treaty of Tien-tsin of 1858, and stipulates that "in lieu of the indemnity therein specified the Emperor of China shall pay 8,000,000 taels by certain instalments;" and, "in order to prevent future discussion it is moreover declared that, of that sum, 2,000,000 will be appropriated to the indemnification of the British mercantile community at Canton for losses sustained *by them*, and the remaining 6,000,000 to the liquidation of war expenses."

No additional information is (as far as I am aware) forthcoming in support of Mr. Duddell's case. With respect to the statements in his petition to the Treasury (p. 7,) that he "did, both prior and subsequently to the conclusion of the said Treaty (1858), submit to the *local authorities in China* the particulars and grounds of his claim for his said losses as having been occasioned by emissaries and under the sanction of the Canton Government, but failed in his applications on the ground that the claim was not in respect of property destroyed or abandoned at Canton itself;" and to his observations thereon,—I can only say that I have no knowledge of the authority by which any such decision on his case was made in China, of the actual grounds of that decision, or of the proofs, if any, which he adduced of the responsibility of the Chinese authorities at Canton for his losses at Hong Kong. However this may be, I never advised that any such construction, as he therein submits to be erroneous, should be given to the Separate Article of the Treaty of 1858. Assuming such a decision to have been made, and bearing in mind the terms of the IIIrd Article of the Separate Convention, signed at Pekin, October 24, 1860 (now in force), annulling the Separate Article of 1858, and substituting for that Article new and different stipulations, I fail to perceive how this IIIrd Article can be construed to extend to Mr. Duddell's claim as he snggests. His claim is not, in my opinion, either in respect of "a loss sustained by any member of the British mercantile community at Canton," or in respect of "war expenses;" to which two classes, the indemnity to be paid by China is appropriated by the last paragraph of that Article.

If (as he suggests in his petition to the Treasury, p. 12), there will remain a considerable balance in Her Majesty's Treasury out of the sum to be paid by China, after satisfaction of all claims in consequence of the misconduct of the Chinese authorities, which have been allowed by Her Majesty's Government, and if the disposal of such balance is question for the discretion of the Treasury, Mr. Duddell's claim to receive compensation from such balance may be open to the consideration of that Department, upon its being satisfied, first, that his losses were in fact designedly caused by the officers of the Chinese Government, or the local authorities of Canton; secondly, that the amount claimed in respect theerof is correct: but this separate question does not, as I conceive, come properly within your Lordship's cognizance as Foreign Secretary.

I have dealt with Mr. Duddell's claim throughout, internationally, as between Great Britain and China; and in that point of view I can only repeat that there is nothing in the papers to satisfy me of its validity. If his losses were in point of fact designedly caused by the Chinese Government, or the local authorities at Canton, he has not, as far as I can see, established this either by direct proof or by any certificate, admission, or even expression of opinion from any British authority.

I have, &c.
(Signed) J. D. HARDING.

No. 108.

The Queen's Advocate to Earl Russell.—(*Received May 10.*)

GREECE.

Loan contracted by Greek Government on security of Government property, already mortgaged to holders of bonds of the loans of 1824 and 1825.

My Lord,
Doctors' Commons, May 9, 1862.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 13th April ultimo, stating that he was directed to transmit to me a correspondence relative to a loan lately contracted by the Greek Government, on the security of certain Government property in Greece, against which proceeding the holders of the bonds of the loans of 1824 and 1825 have protested, as the property in question is already mortgaged to them. And he was also pleased to transmit the correspondence which passed on a similar occasion in 1853 and 1854; and to request that I would take these papers into consideration, and furnish your Lordship with my opinion as to the steps which Her Majesty's Government should now take in the matter.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That by the 6th paragraph of the XIIth Article of the Convention of 1832, the Sovereign of Greece and the Greek State are bound to appropriate to the payment of the interest and sinking fund of such instalments of the loan as may have been raised under the guarantee of the three Courts (Great Britain, France, and Russia), the first revenues of the State, in such manner that the *actual receipts of the Greek Treasury* shall be devoted, *first of all*, to the payment of the said interest and sinking fund, and shall not be *employed* for any other purpose *until* those payments on account of the instalments of the loan raised under the guarantee of the three Courts shall have been completely secured for the current year. It is, moreover, stipulated that the Diplomatic Representatives of the three Courts in Greece shall be specially charged to watch over the fulfilment of the last-mentioned stipulation.

I assume that the payments in question have not been completely secured for the current year. If this is so, and if the Representatives of the three Courts have reasonable grounds for suspecting that any of the actual receipts of the Greek Treasury are about to be employed for any other purpose (as, for instance, in raising or guaranteeing a fresh loan), they will be perfectly justified in insisting upon receiving full information from the Greek Government as to its intentions with reference to any such prospective disposition of the actual receipts of its Treasury.

Inasmuch as the information in question appears to have come from a Director of the Bank, who stated to M. Bourée, before February 27th ultimo, that the Government had made an application for a loan, and had offered as a security portions of the national lands, and a certain amount of the proceeds of the Customs; and as M. Conduriotti's note of $\frac{\text{March 22}}{\text{April 3}}$, in reply to two notes of the Sir T. Wise on the subject, only states that he has referred the question to the Minister of Finance, and does not deny any such intention as suggested to to be entertained by the Government of Greece, so that Sir T. Wyse's inquiries are in effect unanswered, it appears to me that they have grounds for suspecting that there may exist an intention of violating the Convention.

It is, of course, desirable that the Representatives of the three Courts at Athens should act conjointly; and I would suggest that they should address to the Greek Government a joint note containing a categorical demand for information, within a short definite period (say ten days), as to the intentions of the Greek Government to raise a loan, and to offer as a security for it some portion of the receipts of the Treasury, with reference to the peculiar stipulations of Article XII of the Convention.

With respect to ulterior measures, these must, to some extent, depend on the answer which may be given by the Greek Government to this demand.

With respect to the protest of the bondholders, I am not sufficiently informed of the precise grounds of that protest to express any opinion on this subject. This protest should not be adverted to in the joint note. "The hypothecation of lands or any other of the national property of Greece" (to which the protest is apparently confined) is not expressly mentioned in the Convention; but "the proceeds of the Customs," mentioned by M. Stavros to M. Bourée (see Sir T. Wyse's No. 39), as offered to the Bank by the Government by way of

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security for the loan, seem clearly to be "actual receipts of the Greek Treasury," within the letter and spirit of the Convention.

I have, &c.

(Signed) J. D. HARDING.

No. 109.

The Queen's Advocate to Earl Russell.—(Received May 15.)

UNITED STATES.

Claim of Mr. McClure for damage done by United States' troops on his farm near Alexandria.

Doctors' Commons, May 13, 1862.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 7th May instant, stating that he was directed by your Lordship to transmit to me a letter dated the 1st of May instant, and its inclosures, from Mr. James H. Leekie, relative to a claim made by Mr. McClure, a British subject, upon the Government of the United States, for damage done by their troops to a farm belonging to him near Alexandria; and to request that I would take the same into consideration, and furnish your Lordship with my opinion as to any steps that can be taken in the matter.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I cannot advise that any formal steps should be taken by Her Majesty's Government in this matter, at all events without further information.

The facts are imperfectly stated; but it would seem that Mr. McClure, a British subject, is domiciled in Virginia, where he only registered himself as a British subject when that State seceded from the United States. It is not stated whether he had ever done any act inconsistent with his British allegiance, as by holding any office, taking any other oath of allegiance, &c.

He complains in the character of mortgagee (as would seem) of damage done to landed property in which he is interested in Virginia, by the military forces of the United States, in taking timber therefrom for military purposes, and of some personal property, not specified, having been forcibly taken by them from him; the whole claim is for 100*l*. The "items" are not forthcoming, but were transmitted to the United States' Secretary of War.

The date of the acts complained of is not given, but must have been previously to February ultimo.

As regards the United States' Government, Mr. McClure can only claim to be placed in the same position as that then occupied by the native citizens resident in Virginia. At that date I presume that the State of Virginia (as one of the Confederate States) may have been regarded as "enemy's territory" in the military occupation of the United States' forces. If so, foreigners domiciled therein would only be entitled to the same rights as native citizens there resident, who may not be considered by the United States' Government as entitled to compensation for timber taken for military use by its military forces on the spot.

Lord Lyons appears to have advised Mr. McClure to apply to the United States' Secretary of War for compensation, which he did, and the answer returned to his application from the Quartermaster-General's Office, to which it was referred, dated February 24th, is unsatisfactory. It does not impugn or question the facts suggested, but merely states that there is no appropriation by Congress out of which damage of this description can be paid by that Department. This would seem to amount to an implied admission that the facts were as suggested, and that Mr. McClure's claim was well founded.

It does not, however, appear whether Mr. McClure has communicated with Lord Lyons since he received this answer, or has taken any other steps in support of his claim, if such are open to him. If other claims have been admitted by the United States' Government, under the same circumstances, this claim should be supported; but there is no information on this point. There is nothing forthcoming from Mr. McClure himself; nor does it appear in what character Mr. Leekie, of Enfield House, Southampton, applies on his behalf.

Under these circumstances I can only suggest that the case should be referred to Lord Lyons, for the exercise of his discretion thereon, with reference to its peculiar circumstances.

I have, &c.

(Signed) J. D. HARDING.

No. 110.

The Law Officers of the Crown to Earl Russell.—(Received May 15.)

UNITED STATES.

Interference of United States' cruizers with the "Lion," "Florida," and "Southport," while in the Gulf of Mexico.

Doctors' Commons, May 14, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 8th May instant, stating that he was directed by your Lordship to transmit to us therewith a despatch and its inclosures from Lord Lyons (No. 256, April 21, 1862), relative to the interference on the part of the United States' cruizers with the British merchant-vessels "Lion," "Florida," and "Southport," while pursuing their respective voyages in the Gulf of Mexico, and to request that we would take the same into our consideration, and favour your Lordship with any observations which we might have to make thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That it is scarcely necessary for us to observe that, in every case in which a complaint is made of interference by the United States' ships of war with British ships, Her Majesty's Government must have full and accurate information of all the material facts before it can determine upon the course which it may be disposed to adopt. No sufficient particulars are forthcoming in either of the cases of the "Lion" or the "Florida" to enable Her Majesty's Government to interfere, or to take any steps, internationally, on behalf of the parties interested. There is no "protest" or statement of the precise facts in either case from the owners of ship or cargo, or their agents, or from the masters; and if (as would appear to be the case, from Lord Lyons' statement that Consul Crawford states that the masters of the "Lion" and the "Florida" "complain exceedingly of the conduct of Mr. Welch," Acting Vice-Consul at Key West, to which port these vessels were sent by their captors), the Consul has not received any written communications from the masters since their capture, containing the necessary particulars, these have not been transmitted.

We observe that the facts of each case, as far as known, have been brought to Mr. Seward's cognizance by Lord Lyons, and that Mr. Seward promised that he would request the Secretary of the Navy to cause an inquiry to be made concerning them. We do not consider that any further steps can, at present, be taken by Her Majesty's Government.

With respect to the "Lion," no particulars are given as to the port from which she sailed, her destination, cargo, or place of capture.

With respect to the "Florida," bound from Havana to Matamoros with "lawful goods," her capture would appear to be unjustifiable, but no particulars are given as to her cargo. It appears, from Lord Lyons' despatch, that an active trade is kept up between Havana and the blockaded ports of the Confederate States, notwithstanding the blockade. Bearing in mind the situation of Matamoros, and that vessels intending to break this blockade will probably clear out with their papers in order and with false destinations (not improbably, in some cases, to this and other Mexican ports), it cannot be safely assumed that the captures of such vessels, on the high seas, are unjustifiable merely because their cargoes are not contraband, and that they are captured at a considerable distance from any blockaded port, and that their ostensible destination is a neutral port. None of these cases approaches that of the "Labuan," in the total absence of any justification for the capture, and neither in that nor in any other case of which we are aware have the friendly remonstrances of Her Majesty's Government been attended with any success.

As regards the case of the "Southport" nothing further can be done, at all events until the promised explanation is forthcoming.

The propriety of forthwith sending a properly qualified person as Vice-Consul to Key West seems apparent, more especially if (as is suggested) the present Acting Vice-Consul is the Marshal of the United States' Prize Court established there. This, however, is entirely for your Lordship's consideration.

We have, &c.

(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

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No. 111.

The Queen's Advocate to Earl Russell.—(Received May 15.)

ARGENTINE CONFEDERATION.

As to sons of British subjects born in one part of the Argentine Confederation being exempt from military service in the other during war against the territory in which they were born.

Doctors' Commons, May 14, 1862.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 10th May instant, stating that, with reference to my Report of the 27th of November last,* he was directed by your Lordship to transmit to me a despatch from Mr. Thornton (No. 18, March 24, 1862), inclosing a copy of the Argentine Law of Nationality alluded to in my Report, and to request that I would take this paper into consideration, together with Mr. Thornton's previous despatch, and to report to your Lordship my opinion on the question put by Mr. Thornton, namely, whether in case of war between two portions of the Argentine Republic, and of belligerent rights being accorded to both, the sons of Englishmen, born in one part of the Confederation, could be forced to take up arms within the other, and to assist in hostilities against the place of their birth.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I conceive that the previous Report alluded to is that of the 14th (and not 27th) November, 1861.

Although in the case supposed the peculiar circumstances of hardship to the persons in question, and the serious international difficulties likely to arise from the Government of one State or portion of the Confederation compelling them to bear arms in a civil war with another State or portion thereof, might justify, and even require, the strongest remonstrances of Her Majesty's Government against the adoption of such a course (see my Report of November 17, 1857), yet I cannot say that its adoption would constitute a breach of international law. In the absence of any Treaty stipulation, even aliens may be rendered liable to military service in the country of their domicil, without any violation of international law (see Law Officers' Reports, 31st July, 1860, and 30th September, 1861, on this question in the United States), and it is to be remembered that the persons in question are not "aliens" in the Argentine Confederation, but Argentines by birth, *ratione loci nativitatis*, both internationally and by the Municipal Law of the Republic (see the Law of October 7, 1857, Article 2.)

It is to be further observed that although Her Majesty's Government might recognize both the "parts of the Republic" (or the contending parties in a civil war) as belligerents, yet that one (if not both) of such parties (as for instance the Federal Government, or that of the majority of States in the event of a single State revolting against or separating from the Confederation) would probably treat the separate State or States seceding as rebels, and would not admit that the accident of birth in that portion of the Confederation which might thus be in revolt should, of itself, exempt all the persons so born from the obligation of military service to the *de facto* Government within whose territory they were domiciled; the question would, moreover, not be confined to the sons of *foreigners* born in the Republic, but would extend to the sons of native citizens born in the territory of the opposite party.

The Law of September 29, 1857 (according to my construction of it), in effect allows the children of foreigners (wheresoever born) who prefer the nationality of their fathers, the right, on manifesting this preference, to be treated as foreigners of their father's nationality, and not as Argentines. If this be the effect of the law, it will enable the Argentine Government to contend that the persons in question, who have not exercised the preference thereby permitted, are to be considered as "Argentine" by their own deliberate consent or admission.

If the exemption of foreigners generally, or of British subjects, from military service, could be secured (as to the grounds for which I beg to refer again to my Report of November 17, 1857), the sons of British subjects born in the Republic might, apparently, by the exercise of their "preference" under this Law, claim such exemption as not being "Argentines," but "British subjects" by the nationality of their paternal "origin." This point may be kept in view with reference to the probable repeal of the Law in question, suggested by Mr. Thornton; a measure which, unless accompanied by some fresh arrangements, will render the position of the sons of Her Majesty's subjects born in the Argentine Confederation even worse than it now is in relation to military service, and which would seem to call for some settlement of this question by negotiation.

I have, &c.

(Signed) J. D. HARDING.

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* See Reports for 1861, page 285. The Report is dated the 14th November, 1861, and not the 27th.

No. 112.

The Law Officers of the Crown to Earl Russell.—(Received May 22.)

UNITED STATES.

Case of the "Emily St. Pierre," captured for breach of blockade, but subsequently retaken by the master.

Doctors' Commons, May 20, 1862.

My Lord,

WE were honoured with your Lordship's commands signified in Mr. Hammond's letter of the 12th May instant, stating that with reference to our Report of the 3rd instant* he was directed to transmit to us a further letter from the United States' Minister at this Court, dated the 10th instant, relative to the case of the "Emily St. Pierre," and to request that we would take the same into consideration, and furnish your Lordship with our opinion thereupon. And he was also pleased to annex the former papers.†

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we observe that Mr. Adams does not attempt to dispute or question the general principles of international law relied on by your Lordship in your note of the 7th of May, nor does he adduce any additional arguments in support of his demand for the restoration of the "Emily St. Pierre;" the only authority cited or referred to by him in his note of May 10th is a passage from the Judgment of Lord Stowell, in the case of the "Catherina Elizabeth," reported in 5 C. Robinson's Reports, p. 232. Mr. Adams must either completely misunderstand the effect of this Judgment, or he is citing it in support of a position to which it has no application. It is obvious that Lord Stowell was there speaking, as the Judge of the Prize Court of a belligerent captor, of the consequences incurred in such a Court (exercising a peculiar and exclusive jurisdiction by the law and consent of nations), by a violation of, or resistance to, the rights of a belligerent captor, on the part of a neutral master; as, by an attempted rescue. Doubtless the master of the "Emily St. Pierre" may have (to adopt Mr. Adams' phrase) "brought himself within the scope of the condemnation expressed in these words of Lord Stowell;" if by that it be meant, that a Prize Court of the United States might have lawfully condemned the ship if the attempt at rescue had failed, and she had been brought within the jurisdiction of such Court: but the Judgment of Lord Stowell is no authority (and Mr. Adams has not referred to any other) for contending that the Municipal Law of a neutral country is under any obligation, or has any jurisdiction, to enforce, or to aid in enforcing or carrying into effect, the belligerent right of capture; or, in effect, to exercise Prize jurisdiction, as between captors and claimants. The absence of any such obligation on the part of neutral States, or of any such jurisdiction on the part of their Municipal Law or Courts, so far from being (as Mr. Adams suggests) "a purely technical ground," is a leading principle of international law, established and confirmed by the unanimous consent and uniform practice of all civilized nations, but more especially by the United States. "A neutral," says Kent,‡ "has no right to inquire into the validity of a capture, except in cases in which the rights of neutral jurisdiction were violated; and in such cases the neutral Power will restore the property, if found in the hands of the offender, and within its jurisdiction, regardless of any sentence of condemnation by a Court of *a belligerent captor*." And so Wheaton:§ "This jurisdiction of the national Courts of the captor to determine the validity of captures made in war, under the authority of his

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* Page 111.

† Mr. Adams, April 24, 1862; Consul Archibald, No. 38; to Mr. Adams, May 7, 1862.

‡ "Commentaries," vol. i, p. 121. (Citing the cases of the "Arroganti Barcelones," 7 Wheaton's "Reports," p. 496; and the "Amistad de Rues," 5 Wheaton's "Reports," p. 390.)

§ Wheaton's "Elements of International Law," part iv, cap. 2, s. 14.

Government, is exclusive of the judicial authority of every other country, with two exceptions only; (1) where the capture is made within the territorial limits of a neutral State; (2) where it is made by armed vessels fitted out within the neutral territory."

We observe that Mr. Adams does not deny or question this position, nor does he suggest that, if the circumstances of this case, as between Great Britain and the United States, were reversed, the Municipal Law of the United States would operate differently from that of this country, or that its Executive Government could interfere either to any such extent as Her Majesty's Government is now required to do by Mr. Adams, or to any extent whatsoever. Mr. Adams has thus entirely failed to support his demand by judicial authority, by the admitted law and usage of nations, or even by the principle of reciprocity in a similar case on the part of his own Government,

The only other topic alluded to by him is the Queen's Proclamation of May 13, 1861, which he describes as "being most unfortunately worded," and from the language of the concluding paragraph of which he seeks to infer that it is to be implied "that there is a jurisdiction in Great Britain capable of taking cognizance of cases arising under the Law of Nations, and *beyond the range of the Municipal Law*." We need scarcely point out that Mr. Adams does not suggest that this very peculiar jurisdiction exists, or is exercised by the Courts of the United States, or of any other civilized country: the non-existence in this country of any such jurisdiction ("beyond the reach of the Municipal Law"), as is alluded to by Mr. Adams, must have been always legally notorious to all persons in any degree conversant with the law, but more especially to citizens of the United States, whose legal system is, to so great an extent, founded on and identical with that of England.

"Capture" alone does not divest a neutral of his property; this can only be done by the sentence of "condemnation" of a competent Prize Court. The "Emily St. Pierre" did not by her capture become the property of the captor, or cease to be the property of her British owner, and no British Court is competent to pronounce on her a "sentence of condemnation," which is a technical expression peculiar to Prize Law and practice, and in this sense used by Lord Stowell. "But by the modern usage of nations," says Chancellor Kent,* "neither the twenty-four hours' possession, nor the bringing the prize *infra præsidia*, is sufficient to change the property in the case of a maritime capture. A judicial inquiry must pass upon the case, and the present enlightened practice of commercial nations has subjected all such captures to the scrutiny of judicial tribunals, as the only sure way to furnish due proof that the seizure was lawful. The property is not changed in favour of neutral vendee or re-captor so as to bar the original owner, until a regular *sentence of condemnation* has been pronounced by some Court of competent jurisdiction belonging to the Sovereign of the captor." "*Now*, the right is everywhere understood to continue until sentence of condemnation, and no longer."†

With respect to the wording of the Proclamation, we need only observe that it refers to and recites the material portions of the "Foreign Enlistment Act," and then proceeds to warn persons acting in violation thereof (viz., by committing the particular acts therein specified), "or by carrying officers, soldiers, despatches, arms, military stores, or materials, or any article considered and deemed to be contraband of war, according to the law or modern usage of nations, for the use or service of either of the said contending parties; that all persons *so offending* would incur and be liable to the several penalties and *penal consequences by the said statute or by the law of nations* in that behalf imposed or denounced." This concluding clause would be read (as is done in all similar cases) *reddendo singula singulis*; it could not reasonably be understood as meaning or implying that persons violating the *statute* would incur the peculiar penalties denounced by the *law of nations* for the violation of such law, or that persons violating the law of nations would incur any penalty imposed only by the *statute*; the meaning of the Proclamation being obviously that any breach of the statute would be punished thereunder by the same national authority which enacted that statute, whilst any breach of the law of nations (which was not also a breach of the statute) would be left to the determination of the Courts entitled to enforce that law, which Courts have, by the consent and usage of

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* Kent's "Commentaries," vol. i, p. 102.

† Ibid., vol. iii, p. 119.

nations, exclusive jurisdiction to enforce the penal consequences consequent upon its violation.

Mr. Adams cannot mean seriously to contend or even to suggest that the wording of the Proclamation induced him to believe that the peculiar offences therein mentioned as being "against the law of nations" (such, for instance, as breach of blockade) would be visited with penalties by any English Court "exercising a jurisdiction beyond the range of the Municipal Law," or that "the Government of the United States" (as a belligerent) "had any just right" (as he suggests) "to infer from it that Her Majesty's Government (as a neutral) had the power to shelter it" against acts, which although described as "wrongful and fraudulent" are only in breach "of the peculiar rights conceded by international law to belligerents exclusively, and which are done neither in violation nor in fraud of any English (or neutral) law or jurisdiction."

Under these circumstances, we do not see any sufficient justification for what he describes as "the very natural mistake" into which he admits that he has fallen.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 113.

The Law Officers of the Crown to Earl Russell.—(Received May 21.)

FRANCE.

Writ served on Count Persigny, French Minister for the Interior, Count Billault, Ministre sans Portefeuille, and M. Meygret, at the suit of Serjeant Glover.

My Lord, *Doctors' Commons, May* 21, 1862.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 20th May instant, stating that he was directed by your Lordship to transmit to us a private letter from Lord Cowley inclosing a writ which has been served on Count Persigny, the French Minister for the Interior, Count Billault, Ministre sans Portefeuille, and M. Meygret, formerly in the Department of Police, at the suit of Serjeant Glover, and in regard to which M. Thouvenel has requested Lord Cowley to ascertain what course the parties should adopt; and to request that we would take the same into consideration, and furnish your Lordship with our opinion thereupon at our earliest convenience. And he was also pleased to add that Serjeant Glover, not long since, served a writ on the French Ambassador in this country, but on being cautioned as to his Excellency's privileges he desisted from proceeding in the matter.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That the proceedings of Mr. Serjeant Glover are taken under the 19th section of the "Common Law Procedure Act, 1852," being the 15th and 16th Vict., cap. 76. Under that section, a person residing out of the jurisdiction of the English Courts, and not being a British subject, may be served with such a notice of action and proceeding as that which has been addressed to, and, we presume, served upon, Count Persigny, Count Billault, and M. Meygret; such notice being founded on a writ of summons issued out of the Court to which the notice refers (in the present case, the Queen's Bench). Moreover, should a person served with such notice not cause an appearance to be entered in the English Court, that Court, or a Judge, upon being satisfied by affidavit that there is a cause of action which arose within the jurisdiction, or in respect to the breach of a contract made in the jurisdiction, and that the notice has reached the defendant, who wilfully neglects to appear, may direct from time to time that the plaintiff shall be at liberty to proceed in the action in such manner and subject to such conditions as may seem fit, regard being had to the circumstances of the case (see sections 18 and 19 of the same statute). In the present case, if, the defendants not appearing, Mr. Serjeant Glover should succeed in obtaining an order to proceed, and should proceed accordingly, and obtain judgment, he would still be bound to prove, by satisfactory evidence, the amount of the debt or damages before he could obtain execution; and such execution, if obtained, could be only available against goods of the defendants, or some or one of them, being within English jurisdiction, or against the persons or person, being also within that jurisdiction, and unclothed with any character of privilege, such as that of Ambassador, and the like.

With reference to the course to be adopted on behalf of the defendants, under the circumstances, we are not in possession of sufficient information as to what, if anything, has at any time taken place between Serjeant Glover and the defendants, or any of them, and *where* (that is, in England or in France) the matters occurred. It is most desirable that, with as little delay as possible, we should be furnished with this information. In the meantime, we would recommend the placing of the papers in the hands of the Solicitor to the Treasury, who should be directed to put himself in communication with Messrs. Chapman and Clarke, the attorneys for Mr. Serjeant Glover, and to ascertain from them the exact state of the proceedings. Care must be taken *not*, for the present at least, to enter any appearance, as that would operate, in itself, as a waiver of all objection to the jurisdiction.

In the end, it may probably become desirable to apply to the Court to set aside the proceedings; but this would depend upon the facts, when fully ascertained. It will be observed, that the period of the arising of the plaintiff's alleged claim is from the 9th of May, 1857, to the 23rd of October, 1858; and it will be material to learn whether the defendants, or any of them, were within the jurisdiction of the English Courts during any and what portion of that period, and, if so, whether they were residing within such jurisdiction in any and what diplomatic character.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 114.

The Law Officers of the Crown to Earl Russell.—(Received May 22.)

SWITZERLAND.

Question as to navigating merchant-vessels on the seas under the flag of the Swiss Confederation.

Doctors' Commons, May 22, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 14th May instant, stating that he was directed by your Lordship to transmit to us a despatch from Lord Lyons (No. 280, 26th April 1862), inclosing a copy of a letter which has been addressed by the Department of Commerce and Tolls at Berne to the Swiss Consul-General at Washington, directing him to furnish a report on the question of navigating merchant-vessels on the seas under the flag of the Swiss Confederation; and to request that we would take the same into our consideration, and furnish your Lordship with any observations we might have to offer thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we observe that it does not appear that the letter in question has been diplomatically or formally communicated either to Her Majesty's Government or to that of the United States, or even that it was ever intended to be so communicated; it was not officially communicated by Mr. Seward to Lord Lyons; and Mr. Seward did not state that he had received a copy of it from the Swiss Consul-General (to whom it is addressed); nor did he give Lord Lyons any intimation of the view which the United States' Government is disposed to take on the question therein raised.

The question whether the Swiss flag could be hoisted at sea, and how the maritime Powers would regard its appearance, is, as far as we are aware, *primæ impressionis*; and in principle is not confined to Switzerland, but extends to and includes all other civilized Governments in the same condition, in not being possessed of any seaport or communication with the sea; and is therefore to be regarded, in some respects, as a question of policy, and not one of pure international law.

It will be for your Lordship to consider, under these circumstances, whether any, and what, notice should be formally taken of the letter in question.

Subject to these remarks, and viewing the question merely on abstract principles of international law, we think that, *jure naturæ et gentium*, no State destitute of communication with the ocean can claim any right to be recognized by other nations as a maritime Power; and that the degree to which, and the conditions upon which, such recognition may be accorded, must be left to the determination of every separate nation.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 115.

The Law Officers of the Crown to Earl Russell.—(Received May 24.)

JAPAN.

Claim of Mr. M. Moss for compensation for arrest and ill-treatment by Japanese police.

My Lord, *Doctors' Commons, May* 23, 1862.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 15th May instant, stating that he was directed by your Lordship to transmit to us a letter, dated the 1st May instant, which has been addressed to Lord Palmerston by Mr. Michael Moss, stating the grounds upon which he considers himself entitled to receive compensation from the Government of Japan; and to request that we would take the same into our consideration, and furnish your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken this paper into consideration, and have the honour to report—

That we are not aware whether any, or what, communications have passed between Mr. Alcock and the Japanese Government on the subject of Mr. Moss's arrest and ill-treatment by the Japanese police. We can scarcely suppose that Mr. Alcock has suffered the conduct of the police to Mr. Moss to pass in silence, and without some remonstrance or demand for reparation; or if so, on what grounds he has abstained from making any such demand; but without full information on this subject, it is impossible for us to offer any practical suggestions to your Lordship as to the steps to be taken by Her Majesty's Government.

We beg to refer to the Law Officers' Report of April 26, 1861,* in which we pointed out that Mr. Moss had not committed any act which, according to the terms of the Treaty, was criminal in him; and that the Japanese police officers had no legal authority to apprehend him. We also invited the attention of Her Majesty's Government to the treatment of Mr. Moss by the Japanese police officers, and to the necessity of a stipulation that any British subject arrested by Japanese authority should be immediately brought and delivered to the custody of the Consul. The unfortunate omission of any express stipulations on these points in the Treaty, taken in conjunction with the subsequent Consular proceedings and sentences in Mr. Moss's case, may probably cause the Japanese Government to resist payment of any compensation to Mr. Moss.

We observe that this gentleman, in his Memorial (p. 7), states that "the Treaty, wisely foreseeing difficulties and complications that might arise, should no provision be made for personal misconduct or disturbance, determines that a British subject, unless in the open commission of an offence or misdemeanour, cannot be seized or arrested by Japanese officials without a warrant from a British Consul; that in all cases, whether a prisoner has been so apprehended by warrant, or *flagrante delicto* without one, in every case are the Japanese officials at once, and without delay, to take him before his Consul, to whom they will state the nature of his offence, and their complaint; and that such offender will be judged by the law of England, as if the offence had been committed in England. These Treaty regulations are clear, full, and bear no misinterpretation."

We are not aware of any Treaty regulations binding on the Japanese Government to the above effect. There are none such in the body of the Treaty of Yeddo (ratified June 11, 1859), or in the Regulations annexed thereto, and incorporated therein by Article XX; by this Article, however, provision is made for the "making of such rules as may be required to carry into full and complete effect the provisions of the Treaty and Articles by the Diplomatic Agent of Great Britain in Japan, in conjunction with such person or persons as may be appointed for that purpose by the Japanese Government."

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* See Reports for 1861, page 79.

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Under these circumstances we must request further information, and reference to any such rules as are apparently alluded to by Mr. Moss; and especially as to whether they were in force at the date of his seizure, November 26, 1860.

As at present advised, we can only say, generally, that he appears to have been barbarously and unjustifiably treated; and if the transaction were recent, and if the Consular authority on the spot had not dealt judicially with the case, as one in which Mr. Moss was guilty of criminal misconduct, we should have been disposed to recommend a demand of adequate compensation; but, under the circumstances of the case, and remembering that Mr. Consul Alcock's judgment was only set aside on technical grounds, not involving any review of the merits of the case, it will be for your Lordship to judge how far it may be consistent with sound policy now to insist on any such demand.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 116.

The Law Officers of the Crown to Earl Russell.—(*Received May* 24.)

UNITED STATES.

Capture of the British steamer "Bermuda" by United States' blockading ship "Mercedita."

Doctors' Commons, May 23, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 21st of May instant, stating that he was directed by your Lordship to transmit to us, therewith, a despatch from Her Majesty's Consul at Philadelphia (No. 21, 6th May, 1862), relative to the capture of the British steamer "Bermuda," while on a voyage from Bermuda to Nassau, New Providence by the United States' blockading ship of war "Mercedita;" and to request that we would take the same into our consideration, and favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have considered the papers submitted to us, and have the honour to report—

That although it is alleged that this vessel was captured in British waters, the facts stated by the master seem to show that this was not the case, but that, on the contrary, she was captured on the high seas.

It appears from the master's letter to the owner (Inclosure 2 in Mr. Haigh's Memorial) that at 4·30 A.M. of the 27th April, Abaco light bore south-west half south, distant not more than eighteen miles; that at 5 A.M. the United States' steamer "Mercedita" was seen; that the "Bermuda" was brought to at twenty minutes before 6, "Abaco lighthouse bearing about south-west half south distant, in the opinion of all on board between seven and eight miles at most." Mr. Haigh, in his "Memorial," states that the vessel was captured "near the land, and within the bay at Abaco;" but this information can only be founded on the master's statement, and we do not, therefore, see how it can be established that she was captured in British waters.

Assuming that she was, in fact, captured on the high seas, and not in British waters (as to which, if we should be in error, we request further information), we cannot advise Her Majesty's Government to make any application to the United States' Government on behalf of her owner.

We proceed to point out some circumstances appearing in the papers, which, although not by any means decisive as to the legality of the capture, appear to us to be not undeserving of consideration in relation to the question of the propriety, and probable result, of any intervention on the part of Her Majesty's Government in favour of Mr. Haigh. Nothing is stated as to the ownership or ultimate destination of the cargo, which was shipped "by several different parties" at Liverpool, from which port she sailed for Bermuda on the 1st March, and part of which consisted of cannon and gunpowder, in what quantities does not appear (see affidavit above cited), but which was consigned to Mr. Butterfield at Bermuda, to whom, according to Mr. Haigh's affidavit (Inclosure 1 in his memorial), the master "had instructions to *deliver her cargo, and, thereupon, to ship a homeward cargo for one of the ports of Great Britain.*" She arrived at Bermuda, 19th March, and "lay there five weeks for orders," without apparently attempting to deliver her cargo, or to ship that which she was to bring from thence back to England (see sworn statement of master, chief officer, and seamen, inclosed in Consul Kortright's No. 21. According to Mr. Haigh's affidavit, Mr. Butterfield, "being desirous that the said cargo should be carried on to Nassau, made an arrangement with the master that the cargo, instead of being discharged at Bermuda, should be carried on to Nassau in the Bahamas, together with some additional cargo shipped at Bermuda for Nassau." In his memorial, Mr. Haigh states that, upon the ship's arrival at Bermuda, "Mr. Butterfield, as the consignee of the said cargo, made a new contract with the captain to carry on the said cargo to the port of Nassau, together with certain additional cargo shipped at Bermuda for Nassau." The master in his sworn statement (above cited) merely states that, "on the 23rd, he left Bermuda for Nassau under orders from N. T. Butterfield *to report to* Messrs. Adderley and Co., Nassau," thereby meaning (as we presume) to follow their orders as to subsequent destination. Thus nothing appears as to the beneficial interest in, or the ultimate destination or intended disposal of, the cargo (including cannon and gunpowder) originally shipped at Liverpool; and we must observe that Mr. Haigh does not distinctly state (although he implies) that the change of destination at Bermuda, and the abandonment of the design of returning thence with a cargo to a British port was wholly contrary to his intentions, and not within his contemplation (as a contingency) when the "Bermuda" left Liverpool, nor does he state anything as to his belief with respect to the destination of the ship or cargo, in case it had arrived at Nassau, where apparently it was not sent to be sold or landed, but only "for orders" from Adderley and Co.

It is apparent that the "Bermuda" had contraband of war on board, of direct and exclusive use in war; that she had changed her original destination in the course of her voyage, although in a manner apparently not originally contemplated by her owner; a cargo partly of cannon, not for Her Majesty's service, is a somewhat singular cargo for Bermuda, or for Nassau, and she was in waters not remote from blockaded ports, where the contraband portion of her cargo would have proved of great value, with five Confederate passengers on board, of whom no particulars are given; and no information is forthcoming as to the ownership, interest in, or ultimate intended destination of cargo, or of the destination of the ship, which, on her arrival at Nassau, was to follow the orders there to be given.

It will be for the captor to establish a hostile destination, or intention to break blockade, in order to justify condemnation; but we cannot say that, under these circumstances, a total absence of all possible justification for the capture is apparent, or that it amounts to a breach of international law: and it is to be borne in mind that none of the friendly remonstrances of Her Majesty's Government to that of the United States, in cases of capture, have hitherto been successful.

We observe that the captor stated that he had particular instructions to capture the "Bermuda." If this vessel has previously broken the blockade, or carried contraband to a Confederate port, this would make it more useless for Her Majesty's Government to interfere.

With respect to Consul Kortright's question about the passengers (five of whom he states to be natives of the so-called Confederate States, the sixth being a subject of Her Majesty, but as to whose occupation, or design, or reason for going from Bermuda to Nassau he gives no particulars), the Consul cannot interfere on behalf of the "Confederates;" he should refer to Lord Lyons, if necessary, as to the British subject.

We beg to refer to our Report of the 3rd March ultimo, on Lord Lyons' question on this subject in connection with the case of the schooner "M. S. Perry," or "Salvor," captured by a United States' cruizer.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

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No. 117.

The Law Officers of the Crown to Earl Russell.—(*Received May* 26.)

TURKEY.

Claim of Ionian, Dionisius Focca, for illegal proceedings of superior administrative authorities of Moldavia.

Doctors' Commons, May 23, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 19th May instant, stating that he was directed by your Lordship to transmit to us a despatch and its inclosures from Her Majesty's Agent and Consul-General at Jassy (No. 14), respecting an indemnity claimed by Dionisius Focca, an Ionian, in consequence of the alleged illegal proceedings of the superior administrative authorities of Moldavia towards him.

Mr. Hammond was also pleased to transmit a despatch from Her Majesty's Ambassador at Constantinople (No. 236), inclosing the observations made by the Judge of the British Consular Court upon this case, and to request that we would take these papers into our consideration, and report to your Lordship our opinion as to the course which it would be right and proper for Her Majesty's Government to pursue in this matter.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That the claimant's case appears to us to be fully substantiated and supported by the papers transmitted, more especially by the despatch of the Moldavian Minister of Justice to Her Majesty's Consulate of the 19th September, 1857 (Inclosure No. 6 in Consul Churchill's No. 14 of 1862), and the Legalized Statement (or Report) of the three Law Officers (Inclosure No. 2 in the same despatch).

We concur generally with the view of the case taken by Sir E. Hornby in his despatch No. 36 to Sir H. Bulwer, May 2, 1862. Sir E. Hornby points out that the claimant being entitled to British protection, it was a breach of Treaty on the part of the Moldavian authorities to decide the case in the absence of the British Consul or dragoman.

Under these circumstances we are of opinion that the claimant is entitled to the support of Her Majesty's Government on this ground, in addition to the grounds relied on by himself and Consul Churchill.

We observe that the contract is dated 1854; the date of the claimant's first eviction or ejectment is not supplied; it apparently was in or after 1855; nor is the correspondence with the Moldavian authorities, on the part of the Consulate, forthcoming.

It does not appear whether the objection, on the ground of Treaty stipulations (pointed out by Sir E. Hornby) was ever, or when, taken by the Consulate, either on the claimant's first or second eviction, or if not, why not.

He was, apparently, reinstated in the possession of his rights under the contract in the beginning of 1858, by the Government of Prince Vogorides, upon the letter of the Minister of Justice, 19th September, 1857, pursuant to the Report of the Law Officers, and (we presume) remained unmolested until 1859; and on the 28th May of that year he seems to have been again evicted illegally by the "Divan Princier." This seems to have been done *not* on the application of the peasant proprietors, his former opponents, but at the instigation of Mr. Manolaki Kostaki Tepoureano, then Prime Minister and President of the Council, who had been previously, on the occasion of the first attempts to disturb the claimant, been irregularly appointed to report on the case, and who is alleged by the claimant to have originated or instigated the first opposition to him in 1855. On this second illegal eviction the Moldavian Government now relies. The last communication from that Government is apparently dated June 1861 (Inclosure No. 4 in Consul Churchill's No. 14), but it would seem that Consul Churchill has since this date made some efforts to obtain redress for the claimant, the precise dates and particulars of which are not forthcoming.

We would suggest that the point of violation of Treaty (suggested by Sir E. Hornby) should be adverted to, and the different representations made by the Consulate to the Moldavian Government, on behalf of the claimant, should be referred to, and that thereupon a formal representation should be addressed to the proper quarter in support of the claim.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 118.

The Law Officers of the Crown to Earl Russell.—(*Received May* 24.)

UNITED STATES.

Capture of the "Bermuda" by United States' blockading ship "Mercedita."

Doctors' Commons, May 24, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 22nd May instant, stating that, with reference to his letter of the 22nd instant, he was directed to transmit to us the accompanying despatch from Her Majesty's Minister at Washington (No. 308) respecting the case of the "Bermuda;" and to request that we would take the same into our consideration, together with the other papers which have been submitted for our opinion.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That adverting to our Report of the 23rd May instant,* on this case, these papers do not require any additional observations from us.

With reference to the Confederate passengers, we see that Lord Lyons has, in his instructions to Consul Kortright, not to intervene in any way on their behalf, anticipated our suggestion to that effect.

With reference to the vessel, his Lordship's statement that she ran the blockade of Savanah with a cargo of arms for the Confederate Government in the month of September last, confirms our previous impression of the impropriety of any official intervention in the case on the part of Her Majesty's Government.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 119.

The Law Officers of the Crown to Earl Russell.—(*Received May* 24.)

TURKEY.

Liability of Admiral Slade to be proceeded against in British Consular Court at Constantinople, as a British subject in the service of the Porte, at the suit of an Austrian subject.

Doctors' Commons, May 24, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 19th May instant, stating that he was directed to transmit to us a despatch from Sir E. Hornby, Judge of the Supreme Consular Court at Constantinople, requesting to be informed whether Admiral Slade is amenable to Turkish or British Consular jurisdiction in the matter of a suit brought against him by an Austrian subject; and he also stated that Admiral Slade is a Captain in the Royal Navy, but employed with the rank of Admiral in the Turkish service, where he is chief of the "Liman Odassi," under the name and title of "Munchauer Pasha," and to request that we would take Sir E. Hornby's despatch into consideration, and report to your Lordship at our earliest convenience our opinion as to the instructions which should be given to Sir E. Hornby in this matter.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That it appears to us that the real question now in this case is, "Is Admiral Slade a 'British subject' within the letter and spirit of the Order in Council?" And this question cannot, in our opinion, be answered by determining whether in case of a difference with the Turkish Government, he would be entitled to the benefit of diplomatic interference on his behalf by Her Majesty's Government or Representative; for we apprehend that assumed foreign citizenship may disentitle to such interference, without withdrawing the individual from a jurisdiction based on his inalienable character of "British subject." We can discover nothing in the position of Admiral Slade to take him out of the category of "British subject;" and, expressing no opinion as to what would be the duty of the Supreme Consular Court if proceedings were therein commenced with reference to the Admiral's conduct in his character of a naval officer of the Porte, we think that in a matter (such as has been raised) of alleged debt, incurred by Admiral Slade in his private capacity, and within the territorial jurisdiction of the Court, he is, as a "British subject," liable to be proceeded against, and ought to answer in that Court.

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* Page 136.

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At the same time, it appears to us that the question can be entertained by Sir E. Hornby *judicially* only, and that the process of the Court having been served on Admiral Slade, the case should be allowed to take its course; the defendant being heard, if he objects to the jurisdiction, and the Judge deciding according to the effect on his own mind of the pleas and arguments on the one side and on the other: and in the event of non-appearance, judgment being given against the defendant by default, unless Sir E. Hornby, without argument, feels satisfied that he is without jurisdiction. Such does not appear to us to be his impression; nor do we think that such a view ought to be taken.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 120.

The Law Officers of the Crown to Earl Russell.—(Received May 26.)

PERU.

Claim of Captain Carvell to administer to property of late Mr. Winder.

My Lord, *Doctors' Commons, May* 24, 1862.

WE are honoured with your Lordship's commands, signified in Mr. Hammond's letter of the 16th April instant, stating that, with reference to our Report of the 15th of January ultimo, he was directed by your Lordship to transmit to us a despatch from Mr. Barton, inclosing a statement of Captain Carvell's case, together with the opinions of the Peruvian lawyers on the question of the legality of the proceedings of the Peruvian authorities in this case. And he was also pleased to inclose two despatches that have been received from Mr. Barton on this subject since the date of our last Report; and to request that we would take these papers into our consideration, and furnish your Lordship with our opinion whether the circumstances of the case are such as to justify Her Majesty's Government in further interfering on behalf of Captain Carvell, and, if so, to what extent. And he was also pleased to annex the former papers.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we are unable to say with confidence (in the present defective state of our information as to the real character of the legal proceedings in Peru, and the legal grounds upon Captain Carvell relies as against them), that Her Majesty's Government will be justified in further interference on his behalf, or, if so, to what extent it can properly interfere.

Captain Carvell began by refusing to admit that the Peruvian Courts had any jurisdiction over him in the matter in question (the will of his late father-in-law, Mr. Winder, who had died in England, leaving property in Peru, of which will he had obtained probate in England as one of the executors). He has taken refuge, first in the French, and subsequently in the British Legation at Lima, to avoid submitting to the jurisdiction of the Peruvian Courts; and we fear that by this mistake he has, in effect, enabled the adverse parties to obtain certain acts and orders from the Peruvian Courts, "in his default" as it were, and without contest or objection on his part; which, however injurious to his interest, or questionable if they had been contested by him, may not now be capable of being treated as "null and void," or amounting to such violations of natural right and justice as to justify the interference of Her Majesty's Government.

We are still uncertain whether the legal ground of Captain Carvell's restraint is not, in effect, his omitting or refusing to acknowledge the jurisdiction, or give security according to the practice of the Peruvian Court, as we understood it to have been at first; and whether the acts of the Courts of which he complains are not attributable to some extent to his deliberate "non-appearance" or "default" consequent upon his (erroneous) notion of his exemption from their jurisdiction. If, owing to any such omission or refusal, the case has been taken in the absence of any one representing Captain Carvell, and, in effect, as an "undefended cause," we do not see that Her Majesty's Government can properly interfere. If an opportunity was, however, afforded for the Counsel for Captain Carvell being heard, *then* we do not see why the arguments of the lawyers, who have now written opinions favourable to Captain Carvell, were not addressed to the tribunals. If, however, these gentlemen or others were really intimidated from appearing by officers of the Courts or persons in the service of the Government (such appearance being, under the circumstances, legally permissible), then we think that from such conduct, when taken in conjunction with that of Judge Ponce, a fair ground of complaint and remonstrance by Her Majesty's Government may have arisen. (See our Report of July 15, 1861,* and the inclosures in Mr. Jerningham's No. 22, May 28, 1861, therein referred to.)

We cannot ascertain from the papers the precise nature and state of the proceedings, particularly whether they are only "interlocutory" or otherwise; and whether the irregularities and excesses of jurisdiction relied on in the legal opinions now forwarded were committed by the Courts notwithstanding objection and argument on behalf of Captain Carvell, or in his absence and default, by reason of his refusing to appear, or admit the existence of any jurisdiction in the Courts over him. In this event, we fear that so long as Captain Carvell shall persist in contesting the jurisdiction of the Peruvian Courts, and declines to appear and support his case before them, it will not be possible for Her Majesty's Government to interfere with effect for his liberation from personal restraint, or to address to the Peruvian Government any effective remonstrances as to the treatment he has received from the Peruvian Courts of Law.

We can only suggest that Mr. Barton should be directed to satisfy himself to the best of his ability:—

1st. Whether by the intimidation or undue influence of the Peruvian Government, or of the Judges of its Courts, Captain Carvell has been really disabled from having the assistance of Counsel to argue his case; bearing in mind that three advocates have recently given a strong written opinion in his favour, and against the proceedings and acts of the Courts, in decided terms (see our Report of 25th June, 1861,† and the letters of Captain Carvell therein referred to).

2nd. Whether the irregular or illegal acts of the Courts (adverted to in the opinion of the three advocates) have been done in his absence from the Courts by reason of his refusal or omission to "appear" therein, or notwithstanding his having "appeared" and contested the validity and legality of such acts?

3rd. Whether the acts of the Courts are not, hitherto, only "interlocutory" (as opposed to "final"), and whether they are open to further question, as by appeal, re-hearing, application to set them aside, and so forth, on the part of Captain Carvell. And whether it is or is not still open to Captain Carvell to be heard before the Courts upon the real substance and merits of the case, before any final decree is made as to the validity or operation of the will, or as to the title to the property of the deceased Mr. Winder?

4th. With reference to our Report of November 8, 1861,‡ whether Captain Carvell has, in effect, admitted the Peruvian Courts to have jurisdiction in several other suits or proceedings arising out of the same matter, whilst he continues to deny it in the particular suit in which the "arraigo" has issued against him, which led to his taking refuge in the Legations.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 121.

The Queen's Advocate to Earl Russell.—(Received May 28.)

TURKEY.

Questions to be submitted to the Judge of the British Consular Court at Constantinople as to British Consular jurisdiction in cases of offences committed by British subjects.

Sir, *Doctors' Commons, May* 27, 1862.

WITH reference to several cases which have occurred, and which may be expected to recur, of British subjects committing offences, either against other British subjects, or against foreigners, or against natives in Pagan or Mahometan countries in which British Consular Jurisdiction exists under Treaty (*e.g.*, Turkey, Japan, China), I find it necessary to request information as to the existing procedure and practice in Turkey, where from the existence of a Supreme Consular Court, and of Legal Vice-Consuls, and fully drawn Rules, and other circumstances, the course of procedure in such cases may be considered as more formal, better regulated, and reduced to a sounder practical system than elsewhere. I have accordingly to request that Sir E. Hornby may be desired to furnish the following information, either in direct answers to the questions, or in whatsoever shape he may find most convenient with a view to clearness and conciseness.

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* See Reports for 1861, page 149. † Ibid., page 133. ‡ Ibid., page 274.

1. In case of a British subject committing any crime or offence, of whatever character, against a Turkish subject (say assault, or say murder), what is practically done, by what authority, and by what officers? (1) As to his arrest; (2) detention; (3) preliminary charge or hearing; (4) final trial, judgment, and sentence—as, for instance, who is authorized to arrest him, British or Turkish officers? both, or which exclusively? with or without formal warrant, in any and what cases, and issued by whom, within that time? and before whom must he (and by what stipulation or rule) be brought up for hearing or committal? under whose custody is he retained until tried? and by or before whom tried and sentenced? and in whose custody imprisoned or punished? distinguishing particularly what intervention is permitted throughout, or in any part of the proceedings, to the Turkish, and what is reserved exclusively to the British jurisdictions and officers respectively.

2. Explain the difference on the above points in cases where the crime or offence is committed. (1) against a foreigner, also subject to his own Consular jurisdiction; (2) against another British subject.

3. Annex any forms, as of summons, warrant, commitment, judgment or sentence, and so forth, in use in Turkey.

I have, &c.
(Signed) J. D. HARDING.

No. 122.

The Law Officers of the Crown to Earl Russell.—(Received May 28.)

Doctors' Commons, May 27, 1862.

TURKEY.

Demand of Moldo-Wallachian Government that an Ionian sailor be given up to local authorities at Bucharest for assault on a Moldavian on board a British vessel.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 20th May instant, in which he stated that he was directed by your Lordship to transmit to us the accompanying two despatches from Her Majesty's Agent and Consul-General at Jassy (Consular, No. 17, April 2, and No. 21, April 26, 1862), relative to a demand made by the Minister of Foreign Affairs of the Moldo-Wallachian Government, that an Ionian sailor charged with committing an assault on a Moldavian should be given up to the local authorities at Bucharest, notwithstanding it had been settled at Jassy through the Director of the Moldavian section of the Ministry of the Interior, that the assault having occurred on board a British vessel should be left to be decided by Her Majesty's Consul at Galatz; and requested that we would take the accompanying despatches from Mr. Churchill into our consideration, and favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That the principal question for consideration is, whether, adverting to the Convention between the European Powers and Turkey of August 19, 1858, the Treaties and Capitulations in force between Great Britain and Turkey are to be considered as still extending to and having full operation in the Principalities, especially Moldavia, in which (at Galatz) the incident in question occurred.

Adverting to what has transpired in some former cases (see Queen's Advocate's Report on Dr. Barbieri's case, December 20, 1860; Law Officers' Report, September 25, 1861, on a communication from Consul Green on the resistance offered by the Wallachian authorities to the operation of the Capitulations; and Sir E. Hornby's Report on the case of Focca, see our Report thereon of May 23), we should have had no doubt but that this question was to be answered in the affirmative; but we do not observe that this important point is insisted on by any of the Consular authorities whose despatches are with these papers.

If this question is to be answered in the affirmative, then it is obvious that the demand for the "surrender of the accused into the hands of the local authorities" made (apparently for the second time) by M. Arsaky in his note to Mr. Green of the $\frac{\text{2nd}}{\text{14th}}$ April, is in breach of the Treaty stipulations with Turkey (as we understand them), and that compliance with this demand ought to be refused, and an explanation required of the grounds on which it was made. The case must, in this view, be proceeded with as if it had occurred in Constantinople; where, although we are not precisely aware of the steps which would be taken, yet the accused would certainly not be given up by the Consulate to the local (Turkish) authorities, to be disposed of at their absolute discretion by their own law and jurisdiction exclusively; but the Consul would, if he did not deal with the case exclusively, at least have the right, by himself or his Dragoman, of assisting at the trial, and concurring in the sentence. This is really the important question in the case; and upon its determination the course to be taken by Her Majesty's Government must chiefly depend.

There is, however, a secondary or subsidiary question, as to the effect upon the question of jurisdiction, of the assault having taken place on board a British vessel, on which (secondary) ground, apparently, it was arranged between Consul Churchill and the Director of the Moldavian section of the Interior Department (see Inclosures 5 and 6 in No. 17) that the case should be left to the exclusive disposal of the British Consulate. This question will only become of any importance if the Capitulations and Treaties with Turkey should be held *not* to be in force in Moldavia; in which case, the circumstance of the assault having taken place on board a British vessel, in the Moldavian waters, cannot be relied upon by Her Majesty's Government as giving jurisdiction over the accused to the British Consulate, unless this should be in accordance with the Municipal Law of Moldavia (which is not stated).

It will be observed that the demand for the surrender of the accused made by M. Arsaky at Bucharest on Mr. Green (Inclosure 3 in No. 21), is directly at variance with this previous "arrangement" entered into at Jassy, between Consul Churchill and the Moldavian Minister of the Interior. M. Arsaky disavows the arrangement, and alleges that the Minister of the Interior at Jassy had exceeded his powers in entering into it.

We are not able to offer any material observations on this portion of the case, from not being acquainted with the facts and circumstances bearing thereon. We observe, from Consul Churchill's No. 17 and Consul Green's Inclosure No. 1 therein, that this subject requires attention.

With regard to the alleged violation of Moldavian territory by the marines of Her Majesty's ship "Weser," the telegram from Mr. Ward to Consul Churchill of March 24 (Inclosure 4 in No. 17), and the order of the Director of the Ministry of the Interior to the Prefect of Galatz, March 15 (Inclosure 6 in No. 17), clearly show that that there is no foundation for any such charge on the part of the Moldavian authorities.

We need scarcely observe that the question of who is to exercise jurisdiction over Her Majesty's subjects in the Principalities (more especially in criminal cases, and where a British subject is charged with committing acts of personal violence on natives of the Principalities) is one urgently requiring prompt and conclusive settlement; if loss of life should happen in such cases, the international difficulties ensuing from the present state of things may become very serious.

We would suggest that directions should be sent by telegraph not to surrender the accused, without further instructions.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 123.

The Queen's Advocate to Earl Russell.—(Received May 30.)

Doctors' Commons, May 28, 1862.

UNITED STATES.

Capture off Mobile of the "Andreita," purchased at Havana by Mr. Dexter from Confederate broker.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 23rd May instant, stating that with reference to the suggestion

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contained in my Report of the 14th of March ultimo,* that Her Majesty's Consul-General at Havana should be instructed to furnish all the information in his power as to the circumstances attending the purchase of the vessel "Andreita," which was captured by the United States' blockading squadron off Mobile, in January last, he was directed by your Lordship to transmit to us a despatch from Her Majesty's Minister at Washington (No. 307, 8th May, 1862), forwarding one from Consul-General Crawford (No. 19) containing such information as he has been able to procure on the subject; and to request that I would take the same into consideration, and furnish your Lordship with any further observations that I might have to offer thereupon. And he was also pleased to inclose the former papers.†

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That these papers confirm the opinion which I expressed in my former Report (March 14th) of the inexpediency of any intervention by Her Majesty's Government in favour of the alleged owner of this ship (Mr. Dexter of the Havana), from whom no application is forthcoming, and as to whom Consul Crawford supplies no information.

No material information is given by the Consul as to the real circumstances of the alleged purchase at Havana, on the 8th of January last, and the change of nationality (from "Confederate" to "British") consequent thereon.

Francisco Capella, of Mobile (her former "Confederate" sole owner, who was the apparent vendor), acted as master, after the sale, and up to the capture; and he is the only person who has applied to Her Majesty's Government for its intervention, although he professes to apply on behalf of Mr. Dexter; it is observable that he signed the bill of sale (8th January) by mark, although his signature to the Memorial to your Lordship (dated Mobile, 7th February) is legibly written.

I do not see any distinct statement in the papers as to what has been done with the ship; but prize proceedings are pending against the cargo (which is apparently Spanish property), and possibly against the ship also at New York (see Consul Archibald's despatch to Lord Lyons of March 24th).

Under these circumstances, and adverting to the peculiar occurrences attending her capture (more particularly alluded to in my former Report) which show that it was not *primâ facie* unjustifiable, Her Majesty's Government cannot properly interfere with the United States' Government, on behalf of her alleged British owner; more especially seeing that, although she was captured in January, he has not made any application to any British authority.

I have, &c.
(Signed) J. D. HARDING.

No. 124.

The Queen's Advocate to Earl Russell.—(Received June 2.)

MEXICO.

Claim of Mr. Otto Rotton to property withheld from him in Mexico.

Doctors' Commons, May 31, 1862.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 28th May instant, stating that he was directed to transmit to me, therewith, a letter dated May the 22nd instant, from Admiral Sir F. Moresby, inclosing a petition from Mr. Otto Rotton, praying for the interference of Her Majesty's Government on his behalf, to recover certain property alleged to be improperly withheld from him in Mexico; and to request that I would take the same into consideration, and favour your Lordship with my opinion thereupon.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That the applicant, Dr. Otto Rotton, a natural-born British subject, is domiciled and resident and has purchased landed property in the United States; to which country he appears to have gone from Mexico (where he was previously resident) in the year 1846. At some date (not stated) he has been naturalized

as a citizen of the United States (Memorial, p. 6). In order to obtain such naturalization, he must not only have taken an oath of allegiance to the Federal Government, but must have expressly renounced his British allegiance. His claim against Mexico arises in respect of judgment recovered by him and certain Mexican and British partners, in respect of the purchase money (about 12,000 dollars) of certain works and manufactures carried on in Mexico, under a Mexican patent, which the firm sold to a Mexican citizen, named Alvarez; this judgment was recovered in 1845 or 1846, in an action brought by the firm against Alvarez, for the purchase money, in some Mexican Court, "the name of which he has forgotten" (see Memorial, p. 4). He suggests that Alvarez (who had, according to his information and belief, some months after the recovery of this Judgment, paid into the Court "a large portion of the money" adjudged to be due from him) afterwards abstracted from the possession of the Court (Memorial, p. 5) the money so paid in (which was a penal offence), and that his wife "in order to absolve him therefrom" afterwards gave the said Court "responsible guarantees or securities" (the particulars of which he cannot state) for the satisfaction of the Judgment. He further states that he made numerous applications by letters and friends, but has never been able to obtain any information concerning the Judgment or any part of the money; and that the Judgment remains wholly unpaid.

This appears to be his first application on the subject to Her Majesty's Government, or to any British authority, and no reason is assigned for his long delay in making any such application. The claim (if any) arose in 1845 or 1846; and whilst he remained entitled to British protection and support, he made no application in respect thereof to Her Majesty's Government; he has never made any such claim until now, when he has renounced his allegiance, and become a citizen of the United States, where he is domiciled and resident.

I observe:—(1.) That *non constat* that he ever had any *bonâ fide* claim against the Executive Government of Mexico. (2.) That he does not appear to have made any effort to obtain any legal redress, or even to have changed his agent (Macedo), from whom he received no information, or to have employed ordinary diligence in enforcing his alleged claim. (3.) That he has not explained or accounted for his long silence. (4.) That he has renounced his British allegiance, and is a domiciled citizen for the United States.

Under these circumstances I cannot see any ground or reason for the intervention of Her Majesty's Government with that of Mexico in support of this claim.

I have, &c.
(Signed) J. D. HARDING.

No. 125.

The Law Officers of the Crown to Earl Russell.—(Received June 2.)

UNITED STATES.

Status of British subjects naturalized as citizens of the United States, and residing in States that have seceded from the Federal union.

Doctors' Commons, May 31, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 28th instant, stating that he was directed by your Lordship to transmit to us therewith, a despatch and its inclosure from the British Acting Consul at New Orleans (No. 14, March 22), containing certain questions as to the status of British subjects who had become citizens of the United States by naturalization, and who were residing in States that had seceded from the Federal Union, and requested that we would take the same into our consideration, and favour your Lordship with our opinion thereupon—

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

1. That a natural-born British subject, in order to obtain naturalization in the United States, must not only take an oath of allegiance to the United States, but must, in express terms, renounce and abjure his British allegiance (see 2 Kent's Commentaries, p. 65, 27th Edition, 1851). Whilst he remains in the United States he will not be recognized by Her Majesty's Government as a British subject; but on returning to his native country with a view to permanent residence there, his status as a natural-born British subject revives, or, rather, adheres to him: and in the Queen's dominions he always remains a

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* Page 59.

† Lord Lyons, No. 114; Acting Consul Magee, January 31; Lord Lyons, No. 135, February 24; Mr. Capella, February 7; to Consul-General Crawford, No. 4, March 21; Lord Lyons, Nos. 126 and 234.

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natural-born British subject. The law of England knows nothing of that which in some countries is recognized as "de-nationalization," and considers the status of "natural-born subjects" as permanent and indelible, and applying to them whenever they are within its jurisdiction; and the natural allegiance due from them, as a permanent and indelible obligation, of which they cannot divest themselves by any act of their own.

2. In the event of a natural-born British subject, subsequently naturalized in the United States, remaining resident in the so-called "Confederate States." and in the event of those States succeeding in severing themselves from the United States, and such severance being internationally recognized by Great Britain, the question of his status and allegiance must be left to the determination of the Government of the Confederate States. Her Majesty's Government would not interfere in favour of those who had expressly renounced their British allegiance, nor consider them as "British subjects," whilst they remained in a foreign country. It is impossible for us to anticipate the view which the United States' Government might take of the status and allegiance of such persons in the event of their being found within its jurisdiction, and supposing it to have recognized the independence of the so-called "Confederate States;" but in such an event, foreigners who had become naturalized would have the right to claim to be treated on the same footing as native citizens, and to be, with them, practically released from their allegiance to the United States. Until the United States' Government shall have recognized the "Confederate States," it may enforce, as against all persons resident therein, the obligations of the oath of allegiance which they have taken to it.

3. This question is answered by our answer to the first question. Whether the person in question acquired any second right (as of Confederate citizenship), *passively* or *actively*, would be immaterial on his return within British territory, where he will be considered a natural-born subject owing allegiance to Her Majesty, *virtute loci nativitatis*.

With regard to the question put, and the opinion given thereon by the Consul (as stated in his letter of March 22), we have to observe that although it must remain with Her Majesty's Government to determine whether, in the event of the recognition of the independent sovereignty of the Confederate States, it would recognize as British subjects in the Confederate States, those who, having been originally natural-born subjects, had subsequently renounced their allegiance and been naturalized in the United States, and then remained domiciled in the Confederate States, on an application from such persons to this effect,—yet we cannot advise that this should be done. Nor, in our opinion, would the Government of the Confederate States be called on to recognize them as British subjects, unless by virtue of some special stipulations to this effect. Such persons having for their own objects renounced British allegiance, and acquired United States' nationality, and taken an oath of allegiance to the United States, must be considered, while resident there, as having the same status, and owing the same allegiance, as citizens of the United States in the same condition and circumstances. Their mere return within British jurisdiction, and making a declaration that they were British subjects by birth, would not in law have any effect, and ought not in practice to entitle them to the privileges and protection of British subjects in "the Confederate States," supposing those States to be recognized as sovereign and independent.

We have, &c.

(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 126.

The Queen's Advocate to Earl Russell.—(Received June 2.)

RUSSIA.

As to right of British subjects under Treaty of 1859 to navigate a river which, after leaving British territory, flows through Russian territory to the sea.

Doctors' Commons, May 31, 1862.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 29th May instant, stating that he was directed to transmit to me a letter from the Colonial Office dated the 2nd May instant, inclosing a despatch from the Governor of British Columbia, in which the question is raised

as to the right of navigating a river which, after leaving the British territory, flows through Russian territory to the sea; and to request that I would take these papers into consideration, and furnish your Lordship with my opinion as to the rights of navigation, under the circumstances mentioned by the Governor of British Columbia, which can be claimed for British subjects by the terms of the Treaty with Russia of 1859. And he was also pleased to inclose a Memorandum on the subject, together with a copy of the Treaty.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That by the last clause of the XIXth Article of the Treaty of St. Petersburgh of 1859 it is stipulated that, "in regard to commerce and navigation in the Russian possessions on the north-west coast of America, the Convention concluded at St. Petersburgh on the $\frac{16}{28}$th February, 1825, shall continue in force. The VIth Article of this Convention of 1825 is in the following words: "It is understood that the subjects of His Britannic Majesty, from whatever quarter they may arrive, whether from the ocean or from the interior of the continent, shall for ever enjoy the right of navigating freely, and without any hindrance whatever, all the rivers and streams which, in their course towards the Pacific Ocean, may cross the line of demarcation upon the line of coast described in Article III of the present Convention."

The Stickeen River clearly appears to be one of such rivers, and Russia appears, with reference to the expedition fitted out in 1834 by the Hudson's Bay Company, for the purpose of forming a trading establishment on that river (mentioned in the Foreign Office Memorandum transmitted with these papers), to have admitted this to be the case.

Under these circumstances, I am of opinion that the rights of navigation which can be claimed for British subjects by the terms of the Treaty with Russia of 1859, as regards the Stickeen River, and all other rivers in the same position geographically, with reference to the line of demarcation between the British and Russian possessions and the line of coast in question, are precisely those contained in the VIth Article of the Convention of 1825, *i.e.*, the right of navigating such rivers, either from the ocean or from the interior, freely, and without any hindrance whatever.

With reference to the further rights of commerce and navigation within Russian territorial limits, either on land or water, on the north-west coast of America, which may be claimed by British subjects, I can only say, that these will be the general rights of commerce and navigation secured to them by the Treaty of 1859, modified, however, as to the particular territory now in question, by the special stipulations relating thereto which are contained in the Convention of 1825 (see more particularly the Articles from the Vth to the XIth thereof inclusive).

With reference to the 13th paragraph of the Governor's despatch, Article X of the Convention will apply as to taking shelter and refitting in Russian "ports" in case of "storms or accident." With reference to the remainder of that paragraph, I can only say, at present, that I do not see how the Russian Government can claim, consistently with the Convention, to levy duties on goods *in transitu* to the British possessions in the interior, assuming that vessels conveying such goods do not put into Russian ports unless "compelled by storms or accidents" so to do; but, adverting to Articles VII, IX, and X of the Convention, it may rightfully claim to place certain restrictions on vessels resorting to the "bays and harbours of the coasts, as well as at the mouths of creeks and rivers," *without* being thereto "compelled by storms or accidents."

The 11th paragraph of this despatch appears to be perfectly correct.

Adverting, however, to the peculiar character of the stipulations of the Convention on the subject in question, I venture to submit that, until some specific cases or facts are stated, or are at least assumed hypothetically, it is scarcely practicable to define beforehand (and, as it were, "in the abstract") the precise character, nature, and extent of the rights which may be claimed, in regard to commerce and navigation, by Her Majesty's subjects in the Russian territories on the north-west coast of America under the Treaty of 1859, as modified by the Convention of 1825.

It may be found expedient, in view of the state of things which may be expected in the locality in question, in connection with the recent discoveries of gold and coal alluded to by the Governor, for the Governments of Great Britain

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and Russia to agree upon some further and more specific arrangements for giving complete effect to the stipulations of the Treaty and Convention (taken together), and for avoiding, as far as practicable, international complications or collisions in relation to the very peculiar circumstances of the locality in question, and to the possible results of the recent discoveries of gold and coal in the British territory communicating with the ocean by navigable rivers whose mouths are in the Russian territory.

I have, &c.
(Signed) J. D. HARDING.

No. 127.

The Queen's Advocate to Earl Russell.—(Received June 2.)

Doctors' Commons, June 2, 1862.

FRANCE.

As to legality of detention of British schooner "Fuen Santa" by Custom-house authorities at Oran.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 31st May ultimo, stating that he was directed to transmit to me a despatch from Her Majesty's Ambassador at Paris (No. 717, May 30, 1862), relative to the detention of the British schooner "Fuen Santa," by the French Custom-house authorities at Oran, and to request that I would furnish your Lordship, at my earliest convenience, with my opinion as to whether the detention was justifiable, and, if not, whether any claim for indemnity can be sustained.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That, according to the best opinion which I can form upon the papers transmitted, although the legality of the detention of this vessel is open to some question (see more particularly Inclosures Nos. 24 and 25 in Consul Bell's No. 1), yet it cannot be assumed, or confidently insisted on, by Her Majesty's Government that such detention constitutes or amounts to a breach of international law; and I do not see how a claim to indemnity can, at present, be made.

In an international point of view it is to be observed that the seizure was made in a French port, for an irregularity, or fiscal default or offence, committed in French jurisdiction; the charge was formally made and prosecuted under the French law before a magistrate ("Juge de Paix"); the master made (or might have made) his defence; and I presume has some remedy, as by way of appeal (see the "*Procès-verbal*," Inclosure No. 9, and "Deductions" or "Conclusions pour le Capitaine," Inclosure No. 25, in Consul Bell's No. 1). The master brought himself into trouble by his own irregular acts; and the British Consul fruitlessly recommended him to submit, and to arrange the matter, which the French authorities were willing to do; and, in this state of things, the first object should be to endeavour to obtain the release of the vessel on reasonable terms, keeping open the legal merits of the case for further consideration.

There are, however, certain questions of French law, the answers to which may have an important bearing, but on which (from the text of the French law not being supplied) I can form no opinion. Possibly a good French legal opinion may be promptly obtained in Paris by Earl Cowley upon these questions for the guidance of Her Majesty's Government, which can only insist upon such points as are material, and clearly in favour of the vessel.

It is suggested in Inclosure No. 25 (above cited) that Article 4 of the Law of the 9th and 12th February, 1832 (and see page 7 of the "*Procès verbal*," Inclosure 9), only applies to the territory of *continental France*, and to *prohibited merchandize*; and that no merchandise is *prohibited* in Algeria. There is, however, another law, viz, Article 4, titre 2, of August 22, 1791 (as to the manifest), also adverted to in the *Procès-verbal*, page 4. See also a legal question suggested as to the effect of the "visa" on the manifest, in Inclosure No. 26, which does not strike me as so decisive. If it should turn out that these objections, or any of them, are legally valid, and that the seizure or detention was contrary to or in excess of the French law, or not warranted by such law, then the case may ultimately justify or require different treatment.

I proceed to extract from the forty-one inclosures in the Consul's No. 1, some of the principal facts and considerations which apply to the case, as to

which a connected Memorandum or narrative from the Consul would have been desirable.

The "Fuen Santa," a small Gibraltar schooner, would appear to have sailed thence on the 23rd March, with a cargo of cotton, linen, and woollen goods, much of which was French property, and which seems to have had an "alternative destination," viz., to be smuggled into Spain direct, or by transhipment at sea, or to be conveyed to Oran; but there was no intention of smuggling it into the *French* (African) possessions, and this is admitted by the French Director of Customs at Algiers. (See page 16 of Consul Bell's No. 1.) Having (as alleged by "stress of weather") been driven into the Halibas Isles (a small French post on the coast of Africa), she produced there her original "manifest," which was apparently correct as to the cargo then on board, and which was duly visé by the French officers on the 28th March. She subsequently, instead of going direct to Oran or some French port, as she apparently ought to have done by the French Customs' regulations, transhipped eighty bales of her cargo, which appears to have been owned by French subjects, into Spanish vessels at sea, and this portion has since reached Spain. After doing this, she arrived at Mers-el-Kebir on the 8th April, and the master there presented to the French Custom-house officers, *not* the original, but some *new or altered "manifest,"* corresponding with the then state of his cargo (viz., *minus the eighty bales transshipped*), and went on to Oran, where he arrived the same day. This manifest was duly visé at Oran on the 9th April. The preparation and presentation of this new manifest appears a transaction open to question; it apparently contained no reference to the transhipment. On the 10th April, during the temporary absence of the master, the Custom-house officers went on board, and obtained from the mate the *original manifest* (visé at the Halibas Isles), by which it appeared that the goods transhipped as above-mentioned were then actually missing and unaccounted for. Thereupon the French Custom-house officers seized the vessel, apparently on the ground of her having presented a false manifest, under some French laws or regulations, the text of which is not furnished, and which the owner contends do not apply to the case.

The seizure, however, seems to have been made (*in effect*) for violation of French Custom-house regulations; and on the suspicion of having smuggled the missing goods into the French territory.

It would seem that the French Custom-house authorities were disposed to settle the case by "transaction"* (*i. e.*, I presume, by inflicting a moderate fine for the sake of regularity), being apparently satisfied that there was no real contraband act or design as against France; but the master and owner stood upon their rights, and contended that the seizure was illegal, and that France was responsible to them for all losses consequent thereon. It would seem that bail to the amount of 95,000 francs was demanded as a condition of her release.

The British Consular authorities, without contending that the seizure was altogether illegal, have exerted themselves to the utmost to explain and arrange matters, but without success; the owner's agent was advised by Consul Bell to submit, and come to terms with the Custom-house,† but he refused to do so. The French authorities (apart from the strictly legal questions) appear to me to have had a *primâ facie* case of suspicion, fairly arising from the master's conduct; but on further investigation this suspicion was cleared up; and they were not morally justified in detaining the ship, or requiring such an amount of bail.

Under these circumstances, I can only suggest that a friendly representation should be made by his Lordship to the French Government of the peculiar circumstances, and of the grievous practical hardship of the case to the shipowner; the missing cargo being now accounted for, being French property, and having actually arrived in Spain, and the French authorities having admitted that there was no intention of smuggling into French territory.‡

As regards *France*, therefore, it is apparent that the master has only been guilty of a formal or technical error, to be adequately punished at the utmost by a fine; and which cannot, in reason, require or justify the confiscation of the vessel, or her detention until bail or security in 95,000 francs is given for her, even if this course should be technically warranted by law. This should, in my opinion, be pressed on the French Government by Earl Cowley, with a reserva-

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* See Consul Bell's No. 1, Inclosures Nos. 12, 35, and 29.

† Ibid., Inclosure No. 15.

‡ Ibid., No. 41.

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tion as to the technical question of the legality of the seizure, for further consideration.

I have, &c.
(Signed) J. D. HARDING.

No. 128.

The Law Officers of the Crown to Earl Russell.—(Received June 7.)

UNITED STATES.

Bill to be presented to Congress providing for the establishment of naval depôts on Lakes Michigan, Erie, and Ontario.

Doctors' Commons, June 6, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 30th May ultimo, stating that he was directed by your Lordship to transmit to us a despatch from Her Majesty's Minister at Washington (No. 314, May 8), reporting a conversation which his Lordship had had with Mr. Seward, relative to a Bill which had been prepared for presentation to Congress by the Select Committee on River and Lake Defences, which provides for the establishment of naval depôts on Lakes Michigan, Erie, and Ontario, and requested that we would take the same into our consideration, and favour your Lordship with our opinion as to the bearing, on such Bill, of the Treaty engagements between Great Britain and the United States.

In obedience to your Lordship's commands we have taken the same into our consideration, and have the honour to report—

That no copy of the Bill in question for the establishment of Naval Depôts on Lakes Michigan, Erie, and Ontario, is with the papers; and that as regards Lord Lyons' suggestion that "such naval establishments on the lakes would be inconsistent with Treaty stipulations" (which does not seem to have been disputed by Mr. Seward), we must observe that the only document to which we are referred, on this head, is the Proclamation of President Monroe of the 28th April, 1818, which recites that an arrangement was entered into at Washington in April 1817, between Mr. Rush (at that time acting as Secretary for the Department of State of the United States), for and on behalf of the Government of the United States, and the Right Honourable Charles Bagot (His Britannic Majesty's Envoy Extraordinary and Minister Plenipotentiary), for and on behalf of His Britannic Majesty; which arrangement is in the words following:—

"The naval force to be maintained upon the American lakes, by His Majesty and the Government of the United States, shall henceforth be confined to the following vessels on each side, that is,—

"On Lake Ontario, to one vessel not exceeding 100 tons burden, and armed with one 18-pound cannon.

"On the waters of Lake Champlain, to one vessel not exceeding like burden, and armed with like force.

"On the Upper Lakes, to two vessels, not exceeding like burden each, and armed with like force.

"All other armed vessels on these lakes shall be forthwith dismantled, and no other vessels of war shall be there built or armed.

"If either party should hereafter be desirous of annulling this stipulation, and should give notice to that effect to the other party, it shall cease to be binding after the expiration of six months from the date of such notice.

"The naval force, so to be limited, shall be restricted to such services as will, in no other respect, interfere with the proper duties of the armed vessels of the other party."

The Proclamation proceeds to recite that the Senate of the United States have approved of the said arrangement, and recommended that it should be carried into effect, and that the same has received the sanction of His Royal Highness the Prince Regent, acting in the name and on the behalf of His Majesty, and then "makes known and declares that the arrangement aforesaid, and every stipulation thereof, has been duly entered into, concluded, and confirmed, and is of full force and effect."

The arrangement (as thus recited in the Proclamation) is confined to the naval force in national vessels of war to be maintained (in effect) *afloat* upon the "American Lakes," as therein mentioned; it contains no stipulation as to naval depôts or establishments *on shore;* and we are therefore of opinion that there is

nothing in the arrangement, as recited in the Proclamation, which would render the establishment of such depôts, or the formation of naval establishments *on shore*, a breach thereof.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 129.

The Queen's Advocate to Earl Russell.—(Received June 7.)

MEXICO.

French blockade of ports of Tampico and Alvarado. British packet-vessel not to be interfered with on captain declaring that he carries no contraband of war.

Doctors' Commons, June 7, 1862.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 5th June instant, stating that he was directed by your Lordship to transmit to me the accompanying despatch from Her Majesty's Minister in Mexico (No. 63, April 21), inclosing a copy of a note which he had received from the French Admiral, announcing that the ports of Tampico and Alvarado would be blockaded from the 1st of May, but that orders would be given that the British packet-vessel should not be interfered with, on the captain making a declaration that he did not carry contraband of war; and to request that I would take this note into my consideration, and furnish your Lordship with my opinion thereupon.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I observe that the letter of the French Admiral Jurien to the British Plenipotentiaries is dated "Orizaba, April 20th," and states (in effect) that having taken measures to insure, as on and from the 1st May ensuing, the blockade of the ports of Tampico and Alvarado, he has given orders that, on the mere declaration of the master that his ship is not transporting contraband of war, the communication with the port of Tampico of the British packet should be free from any impediment whatsoever.

I observe, 1st, the suggested declaration of the master as to not transporting contraband of war, must be taken to mean "for the service of the enemy," although these words are wanting; and although nothing is said as to officers or despatches for this service, the British packet ought not to venture to carry either under the circumstances.

2nd. As to the notice of blockade. It is obvious that this letter is not a notification of any existing blockade, in the ordinary international sense; it is only a notice of the Admiral's intention to establish a blockade of the two ports named, at the future date indicated; and further that, on the 20th April, he had a competent force on the spot, and had taken measures to secure the establishment thereof, as on and from the 1st May then ensuing.

The special exception, stated in his letter, as to the British packet to and from Tampico, seems necessarily to imply that the Admiral's intention was to establish, on and from the 1st May, a complete blockade of the two ports named, and to enforce it by the ordinary methods sanctioned by the law of nations (including, for instance, the capture and condemnation as prizes in Courts of competent jurisdiction. and administering the Prize Law of nations, all ships and cargoes attempting to break it by ingress and egress), without any other exceptions; such a measure (especially as against neutrals) is founded on a belligerent right (exclusively), and in connection with the mention of "contraband of war," implies the existence of war between France and Mexico, at all events, as on and from May 1st, always supposing the Admiral's conduct to be ratified and adopted by the Imperial Government, and the measure to be practically carried out.

Unless as a "belligerent," France cannot, by international law, enforce a blockade of Mexican ports, at all events as against neutrals. The existence of a state of war between France and Mexico also infers and carries with it the right of France to prevent and punish by capture and by condemnation, in such a Court as above-mentioned, in accordance with the law and usage of nations, the conveyance by neutral ships of "contraband of war" to Mexico, for the service of the Government hostile to France, or, in technical language, "with a hostile destination" in relation to France.

In view of this state of things, and of the probability that the intended blockade in question will have been practically carried out as on and from May 1st ultimo, many serious international questions suggest themselves, which may possibly be susceptible of amicable arrangement, at least to some extent, between the Imperial Government and that of Her Majesty.

I am not in a position at present to offer any useful observations as to the bearing upon this matter of the Convention of London of October 31, 1861, between Her Majesty, the Queen of Spain, and the Emperor of the French, or of the recent events in Mexico. I remark that your Lordship makes no allusion thereto.

I observe that (in No. 125, to the Admiralty, dated May 17th, at page 131 of Part II of the printed "Correspondence relating to the affairs in Mexico," presented to Parliament by command of Her Majesty, 1862), your Lordship states "that the execution of this Convention must be suspended."

I observe also that (in No. 29 to Sir J. Crampton, printed at page 5, Part I of this Correspondence), your Lordship states that "certain rights on the Customs of Vera Cruz and *Tampico* have been secured to Her Majesty's Government by Convention" (I presume with Mexico).

Upon general principles, and apart from all the peculiar circumstances arising out of the existing state of things as between Her Majesty's Government, that of France, and that of Mexico, I would suggest:—

(1.) That this blockade, when actually established, should be formally and diplomatically notified by the Imperial Government to that of Her Majesty, in the ordinary form, and in such precise terms as that Her Majesty's Government may thereupon insert the usual notification in the "London Gazette."

(2.) That a reasonable time should be allowed and announced, for the egress from the blockaded ports, of British and other neutral vessels, with cargoes laden or afloat for lading before the actual establishment of the blockade; and those previously in the ports should be allowed egress *in ballast* at any time, notwithstanding the blockade.

(3.) That clear and formal notice should be given whether the French Government will in this instance adhere to what (I believe) has hitherto been its practice, viz., the principle of giving actual notice by visit and endorsing the papers of each and every ship not to enter, as a condition precedent to her capture; or how otherwise?

Your Lordship is aware that British and United States' Prize Law does not require this condition, and considers it sufficient to prove that the master (in effect) had notice of the blockade, even constructively, or by any sufficient means of knowledge, considering this as a question of evidence.

(4.) It should also be ascertained where the French Courts exercising prize jurisdiction will be established, before which vessels captured for breach of the blockade, or for carrying contraband of war to a hostile destination, will be sent for adjudication. These should be the "most convenient" ports in French territory with regard to their geographical position, in relation to the ports blockaded.

(5.) The definition of "contraband of war," especially as regards the communication of the British packet to Tampico, and in relation to possible questions as to passengers and despatches on board of her, should be clearly arranged and laid down.

(6.) The serious question of the effect upon Her Majesty's subjects settled in Mexico, of the doctrine of "domicil in the enemy's territory," as applied in Prize Courts, will also require consideration.

Upon these and other similar questions a prompt and explicit arrangement with, or a distinct announcement on the part of, the Imperial Government will be obviously desirable; more especially with the view of obviating beforehand (as far as may be found practicable) the risk of serious international difficulties in connection with the state of war existing, or imminent, as between France and Mexico, and its effect on the position and rights of Her Majesty's Government and of British subjects, ships, property, and interests in connection therewith.

I have, &c.
(Signed) J. D. HARDING.

No. 130.

The Law Officers of the Crown to Earl Russell.—(Received June 7.)

UNITED STATES.

Case of the "Emily St. Pierre," captured for breach of blockade, but subsequently retaken by the master.

My Lord, *Doctors' Commons, June 7, 1862.*

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 2nd June instant, stating that he was directed to transmit to us a further letter from the United States' Minister at this Court, dated the 28th May ultimo, in answer to the one which was forwarded on our Report of the 20th of the same month,* relative to the case of the "Emily St. Pierre," and to request that we would take the same, together with the previous papers,† into our consideration, and furnish your Lordship with such observations as we might have to offer thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we observe that Mr. Adams in this letter professedly "re-examines" the whole case of the United States in support of the original claim for the restoration of the vessel. He cites no new authorities, excepting only some further Judgments of Lord Stowell, when sitting (as we have explained in our former Report) as Judge of the Prize Court of a belligerent captor; he does not allege or suggest that, if the circumstances of the case had been reversed, the Government of the United States (as a neutral Power) would have had either the will or the power to do in favour of Her Majesty's Government (as a belligerent) that which it now requires at the hands of Her Majesty's Government; he does not refer to any one case in the nature of a precedent, or allege that a similar demand to that now made by the Government of the United States upon that of Her Majesty has ever been acceded to or even made by any belligerent upon any neutral Government either in ancient or modern times. Subject to these general observations, we proceed to offer some remarks upon certain more prominent portions of his letter.

Mr. Adams commences with observing, "I do not permit myself to imagine that your Lordship will deny that whenever the subjects of one nation knowingly and wilfully commit an act described by the highest authorities of that nation both as hostile, wrongful, and fraudulent, as well as in direct contravention of the laws of another nation with which they are connected by the highest obligations of Treaties to maintain friendship and goodwill, they do to a certain extent involve the Government of their country in a responsibility for that act, provided that Government do not, by positive measures of its own, manifest either the will to repress the commission of such an act, or the desire to repair it after it is done. It is bound to inflict its own penalty upon its own subjects, and not merely to leave the infliction of that penalty to chance, or to the possibility that the nation receiving the injury may have an opportunity of doing it, provided it can catch the offenders within its jurisdiction."

To this we would reply that the reasoning here attempted is unsound, and unfounded upon principle, precedent, authority, or analogy.

It is not, for instance, correct to contend that foreign nations involve their Governments in responsibility for wrongful and fraudulent acts committed by their subjects against friendly nations, unless they take positive measures of their own manifesting either the will to repress the commission of such acts, or the desire to repair them after they are done. On the contrary (as a general principle, and in the absence of express Conventions) each nation only assumes to deal with offences against *its own laws*; it does not carry into effect, or aid in carrying into effect, foreign law (*i. e.*, the laws of other nations) as against those violators of them who may be found within its territory.

Thus, "France, Russia, England, and the North American United States have constantly, either by diplomatic acts or decisions of their tribunals, expressed their opinion that upon principles ~~of~~ international law, irrespective of Treaty, the surrender of a foreign criminal cannot be demanded."‡ Such a criminal has not offended against the law of the country in which he is found; and that country is not bound to take notice of his having violated a foreign law; nor, therefore, *pari ratione*, are neutral nations bound to punish their

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* Page 121.

† Consul Archibald, No. 38; Mr. Adams, April 24; to Mr. Adams, May 7; Mr. Adams, May 10; Lord Lyons, No. 309; to Mr. Adams, May 24.

‡ Phillimore's "Commentaries," vol. i, p. 410.

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subjects for offences committed only against the laws of war as enforced by belligerents, or to restore property rescued by them from their "captors." Mr. Adams refers to no instance where this has ever done; *et non adhuc placuit gentibus.*

Another familiar illustration of this principle is the notorious fact that one nation takes no notice of offences either begun, or committed, or carried out and concluded within its territory against the fiscal laws of other nations; it lends such nations no aid in enforcing these laws, or in apprehending or punishing those who break them; it does not restore property brought into its territory out of a foreign State by smuggling; it does not interfere with property in its territory, or on board its vessels *in transitu* (as contraband), to be smuggled into a foreign State. It adopts the very course denounced by Mr. Adams; it incurs no international responsibility by tolerating their acts; it attempts not by any "positive measures of its own," to manifest "either the will to repress the commission of the act, or the desire to repair it after it is done."

The principle of the Foreign Enlistment Act (to which Mr. Adams refers) is broadly distinguishable from and a plain exception to that which is here stated. Attempts on the part of subjects of a neutral Government to take a part in the war, to make use of the neutral territory as an arsenal or a barrack for the preparation and inception of direct and immediate hostilities against a State with which their Government is at peace—as by enlisting soldiers or fitting out ships of war, thus, in effect, converting neutral territory into a hostile post or depôt, in order to carry on hostilities therefrom—have an obvious tendency to involve any neutral Government which tolerates them in the war; if unchecked, they might imply at least an indirect participation in hostile acts, and are therefore, consistently, treated by the Government as offences against the public policy and safety of the neutral State which may be thereby implicated. These acts are widely different from such offences against the *laws of war exclusively*, as attempts by merchant-ships to break blockade, or even the rescue of an individual ship from her prize crew.

Not only, therefore, in the case of neutrals in war, but in all cases falling within the same general principle, the nation to whom the so-called "offenders" belong, adopts towards other nations who may suffer by their acts, precisely the conduct objected to by Mr. Adams, viz., it "leaves the infliction of the penalty to chance, or to the possibility that the nation receiving the injury may have an opportunity of doing it, provided it can catch the offenders within its jurisdiction; and Her Majesty's Government, in adhering to this line of conduct, are therefore acting in accordance with reason, policy, and the common universal usage of nations *in pari casu.*

With respect to Mr. Adams' arguments as to the rescue being "a fraud" by the law of nations, it may be sufficient to observe that whether the act of rescue be viewed as one of fraud or of force, or as partaking of each character, the act is done only against the rights of a belligerent under the law of nations relating to war, and in violation of the law of war, which, whilst it permits such belligerents to exercise and enforce such rights against neutrals by the peculiar and exceptional right of capture, at the same time casts upon such belligerent *alone* the duty and power of vindicating such rights, and of enforcing such law, reserving to all neutral Powers their strictly neutral character, and not requiring or even permitting them to carry out "belligerent rights," or to enforce the "law of *war*," to which they are not parties, as contrasted with that of peace or neutrality, of which alone all nations, not "hostile," take cognizance, *etiam flagrante bèllo inter alios.*

As regards the conduct of the United States' Government in the case of the "Trent," alluded to somewhat strangely by Mr. Adams, it is to be observed that the flagrant wrong done in that case was done by a naval officer of the United States; the prisoners were in the direct custody and keeping of the Executive Government; and the Government of the United States had actually the power to deliver up Messrs. Mason and Slidell to Her Majesty's Government, which it wisely and happily did.

The "Emily St. Pierre" is not in the power of Her Majesty's Government. The law of England, as well as the law of nations, forbids its interference in the manner requested by Mr. Adams, and prevents it from taking the ship from its legal owner.

With respect to Mr. Adams' remarks (repeated in this letter) on the terms of Her Majesty's Proclamation, and on the construction put thereon by Her Majesty's Government, more especially as to the suggestion of such construction "detracting from the dignity with which he had regarded Her Majesty to be surrounded," it may suffice to say that Her Majesty's Government must reserve to itself the right of construing and enforcing it consistently with the Sovereign's dignity. Her Majesty's Government must entirely decline to advise Her Majesty (as suggested by Mr. Adams) to visit the act in question with some "mark of Her Majesty's righteous indignation," a feeling which Her Majesty's Government cannot affect to entertain towards Mr. Wilson, under the peculiar circumstances of the case, and which they have not any intention of advising Her Majesty to express. Any such expression would (even if attempted) be perfectly ineffective, and would, in its inevitable result, instead of affording any effectual reparation or satisfaction to the Government and people of the United States in this matter, only excite feelings amongst the British people towards those of the United States which their Government, acting in its strictly neutral character, particularly desires to avoid exciting in connection with this or any other exceptional case of international difference of opinion.

We have, &c.
(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 131.

The Queen's Advocate to Earl Russell.—(Received June 7.)

UNITED STATES.

Interrogatories to which masters of vessels seized for alleged breach of blockade are subjected in the Prize Courts of the United States.

My Lord, *Doctors' Commons, June 7*, 1862.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 3rd June instant, stating that he was directed to transmit to me the accompanying despatch from Her Majesty's Consul at Philadelphia (No. 22), inclosing a statement of the interrogatories to which masters of vessels seized for alleged breach of blockade are subjected in the Prize Courts of the United States; and to request that I would take these papers into consideration, and furnish your Lordship with any observations that I might have to offer thereupon.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I am not aware of any complaint having been made, since the breaking out of hostilities between the United States and the Confederate States, on the subject of these interrogatories; and I do not observe that Consul Kortright complains of, or directs attention to, any portion of them. I am not, under these circumstances, aware of the point (if any) upon which my opinion is desired.

They are of the same general character, but much shorter and less searching than those made use of by British Admiralty Courts exercising prize jurisdiction in war; and they do not appear to me to require any observations.

I have, &c.
(Signed) J. D. HARDING.

No. 132.

The Law Officers of the Crown to Earl Russell.—(Received June 9.)

SPAIN.

Protestant worship compulsorily suspended by authorities at Seville.

My Lord, *Doctors' Commons, June 7*, 1862.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 31st May last, stating that he was directed by your Lordship to transmit to us the inclosed despatch from Her Majesty's Minister at Madrid (No. 207), reporting the circumstances under which the authorities at Seville had compelled a suspension of Protestant worship at that place. He also inclosed a Memorandum drawn up in the Foreign Office as to the bearing of Treaty stipulations on the case; and requested that we would take these papers

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into our consideration, and report to your Lordship such observations as we might have to make thereupon, as well as our opinion regarding the extent of privileges which British subjects are by Treaty entitled to claim, of attending religious worship in Spain.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That the first question for determination is, "What, if any, are the rights or privileges secured by Treaty to Her Majesty's Protestant subjects in Spain, as regards the exercise of their religion? and more especially the celebration of, and the attendance on, Protestant religious services on Sundays and sacred festivals within the walls of a British Consulate?"

In the event of the enjoyment of any such rights or privileges being secured by Treaty stipulations to Her Majesty's subjects, the question of their conformity or compatibility with the law of Spain will be comparatively unimportant, it being the duty of Spain, internationally, in relation to this country, either to provide by her law, or otherwise howsoever, to secure practically to British subjects the enjoyment of all rights and privileges to which they are entitled by Treaty. "A Treaty, when ratified, is obligatory upon the Contracting States, independently of the auxiliary legislative measures which may be necessary on the part of either in order to carry it into complete effect" (Wheaton's "Elements," part iii, cap. 2, sec. 7). In this country special legislation by statute is constantly resorted to in order to enable Her Majesty to give full and practical effect to Treaty obligations.

The Treaty stipulations on the subject are very scanty; but we collect from the printed Memoranda A and B (transmitted with the papers) that the XIXth Article of the Treaty of Munster, 1648 (between Spain and Holland), and also the XXVIIIth Article of the Treaty of Peace of 1667 (between Spain and Great Britain), are still in force as between these two countries; inasmuch as they have been renewed and confirmed by the subsequent Treaties of Utrecht, 1713 (Article I); of Versailles, 1783 (Article II); and of Madrid, 1814 (Additional Article I). If this assumption be correct, then we observe that British subjects in Spain are "obliged, with regard to the public exercise of religion, to govern and behave themselves with all modesty, without giving any scandal in word or deed, or uttering any blasphemies" (by the Treaty of Munster, 1648, Article XIX); and moreover, "that none of them shall be molested or disturbed for their conscience so long as they give no public scandal or offence" (by the Treaty of 1667 between Spain and England, Article XXVIII). It results therefrom (in effect) that the right to "the public exercise of their religion" is secured to Her Majesty's subjects in Spain by Treaty, provided only they govern and behave themselves with modesty, and give no public scandal or offence in word or deed. Considering the circumstances under which, and the mode in which, the services were solemnized at the Consul's residence (as described in Sir J. Crampton's despatch No. 207, Confidential), viz., with closed doors, and with the outside blinds of the windows shut, Spaniards not being invited or permitted to attend, and even German Protestants requested not to do so; and considering that the Spanish authorities had been previously informed of what was intended, and had made no objection thereto, we are further of opinion that Her Majesty's subjects at Seville did, on the occasion in question, in fact "govern and behave themselves with all modesty;" and that they did not "give any public scandal or offence by word or deed" They can scarcely even be said to have "*publicly* exercised their religion" under these circumstances; and the conduct of Señor Escosura, in threatening that if upon the following Sunday the meeting took place, he would cause the Consulate to be surrounded by a police force, and would place all persons there found under arrest, and at the disposal of the Courts of Justice, was unjustifiable; and, if carried into effect, it would have amounted to a breach of the existing Treaty stipulations between Spain and this country, and would have been a grave international wrong.

Your Lordship's question as to the extent of privileges which British subjects are entitled to claim of attending religious worship, will be best answered by reference to the above Treaty stipulations, which speak for themselves, and secure to Her Majesty's subjects in Spain the right of "publicly exercising their religion," provided they, in so doing, govern and behave themselves with all modesty, and give no public scandal or offence—as, for instance, by attending divine service in a Consulate, or in a private house, with the doors

closed, and none but British subjects present, and after having given notice thereof to the authorities. No other observations appear to us to be requisite.

The state of things existing throughout the British dominions, and particularly at Gibraltar, with regard to the public exercise of the Roman Catholic religion (as described in the extract from the pamphlet or review "La Cruz," published at Seville in 1861, and transmitted with the papers), speaks strongly for itself, in favour of the British case, on the grounds of reciprocity and international comity.

(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 133.

The Queen's Advocate to Earl Russell.—(*Received June* 10.)

FRANCE.

As to inserting in the "London Gazette" a notification from the "Moniteur" of the French blockade of Tampico and Alvarado in the Gulf of Mexico, such notification not having been officially communicated.

Doctors' Commons, June 10, 1862.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 9th of June instant, stating that he was directed to transmit to me the accompanying copy of a notification, inserted in the "Moniteur" of the 7th instant, announcing the blockade of the ports of Tampico and Alvarado, in the Gulf of Mexico, by the French naval forces; and to request that, if this notice is sufficient, I would have the goodness to prepare, at my earliest convenience, the proper notification to be inserted in the "London Gazette."

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That the mere insertion of this notice in the "Moniteur" (a copy of which is transmitted by Earl Cowley) will not, in my opinion, of itself require or justify a "Gazette" notification.

A formal notification of the actual establishment of the blockade should, agreeably to the regular usage in such cases, be sent from the French Government to Earl Cowley, or from the French Legation here to your Lordship. I do not understand this to have been done.

If this is not actually done, or about to be done immediately, a suggestion, or confidential communication, may be given to the Legation here, or to the Government at Paris, to the effect that this is expected and required. This course was (I believe) followed in the case of the Turkish blockade of the coast of Albania (see my Reports of the 10th and 20th of April, 1861).

When a proper international notification is received (and not before), a "Gazette" notice may be prepared and published, in accordance with the ordinary and regular course in such cases.

To make my meaning clear, I would beg to explain that Her Majesty's Government cannot properly merely "copy the advertisement" from the "Moniteur;" but the Imperial Government must notify (internationally and formally) to that of Her Majesty the fact that this blockade is actually established, and thereupon Her Majesty's Government will publish a "Gazette" notice.

I have, &c.
(Signed) J. D. HARDING.

No. 134.

The Queen's Advocate to Earl Russell.—(*Received June* 11.)

FRANCE.

Points to be ascertained from French Government relative to the blockade of Mexican ports of Tampico and Alvarado.

Doctors' Commons, June 11, 1862.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 9th of June instant, stating that he was directed by your Lordship to acknowledge the receipt of my letter of the 7th instant containing certain observations on the subject of Mr. Wyke's despatch No. 63, inclosing a copy of a note from Admiral Jurien de la Gravière, announcing that the ports of Tampico and Alvarado would be blockaded from the 1st May last; and also stating that, with reference to those observations, and to my suggestion that it would be desirable to come to a prompt and explicit arrangement with, or to obtain a distinct announcement on the part of, the French Government on various points arising out of this blockade (as prospectively announced), he was to request that I would specify the questions which it might appear desirable that Earl Cowley should put to the French Government upon the various points at issue.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That it will be obvious that, in specifying the questions which Earl Cowley should put to the French Government upon the various points at issue in relation to this subject, many considerations of Imperial and international policy and expediency will suggest themselves to your Lordship and his Lordship, partly depending on the tone, and (if I may use the word) the "temper" or "mood" of the French Government in relation to the existing, and constantly changing, state of affairs in Mexico (in French I would say, "leur manière d'envisager cette affaire en ce qui regarde l'Angleterre"), which may have an important effect upon the substance, as well as on the form or "style," of Earl Cowley's questions or communications with the French Foreign Minister. I cannot, of course, enter upon this delicate ground, but (subject to these observations) I proceed to suggest the most material points as they now occur to me; others may hereafter arise.

I will endeavour to distinguish between (1) *Demands* (*i.e.*, points on which we have a right to insist by international law); and (2) *Questions*, on which we are ready to admit discussion, on which we want information, or may look for some relaxation of strict belligerent rights on the part of France in consideration of the very peculiar circumstances of the case as affecting British subjects and British interests.

Preliminary considerations.—Blockade, enforced against neutrals, implies and infers the existence of a state of "war" between France and Mexico; no French explanation can displace or shake this *basis*, or first principle, on which the whole rests. If France is not at war with Mexico she cannot exercise belligerent rights over us as neutrals; if she is, she may lawfully exercise such rights. Let Earl Cowley refer to "Pistoye and Duverdy," vol. i, p. 376 *et passim*, if the French Minister questions or demurs to this principle.

Hereupon arises—

Demand 1.—That France will strictly adhere to the "Declaration of Paris," April 16, 1856.

Hence it follows:—

Illustration 1.—The blockade is only binding when it is effective.

Illustration 2.—The British flag will cover Mexican cargo, not contraband of war, and when not breaking an effective blockade.

Illustration 3.—British ships may carry Mexican cargoes to and from all Mexican ports, excepting Tampico and Alvarado, *bello non obstante*.

Illustration 4.—British cargo will not be liable to capture (*sed quœre* to condemnation ("saisie") when captured?) under the Mexican flag.

Demand 2.—A reasonable time will be allowed, and notice of it given at each of the blockaded ports, for British vessels to come out, with all cargo, laden, or "water-borne for loading" (as in lighters, launches, or small craft), before the actual commencement of the blockade.

Demand 3.—All British vessels entering a blockaded port before the actual establishment of the blockade of that particular port may freely come out "in ballast" (*i.e.* empty), at any time during the blockade.

Demand 4.—That the French Government will, in this case, adhere strictly to its own law and well-established practice as to giving actual notice ("notification particulière ou spéciale") of the blockade to each and every ship, before capturing her for breach of blockade by *ingress*. (See Pistoye and Duverdy, vol. i, p. 370, and M. Molé's note, 17th May, 1838, p. 373; Hautefeuille's "Droits des Nations Neutres," vol. iii, p. 70, Note 2, p. 80, Note 1, and see p. 191.) And, if necessary, let Earl Cowley get the ablest French legal advice for precise authority on which this clear point of French prize law rests, which, in this case, is of such great importance as regards British interests.

Question 1.—In what "convenient" French "ports" will the French Prize Courts sit, before which British ships which may be captured will be sent for adjudication?

Possibly the French Government will renew its old and unfounded (or, at least questionable) pretensions, to send them before a French Consular Court, sitting in a Spanish or United States' port, or even in Mexico; if so, this answer can only be accepted by Earl Cowley *ad referendum* or *sub protestatione*. This point must be further considered, as and when requisite.

The port or ports of adjudication must obviously be "convenient," not merely geographically with relation to the blockaded ports, but with a view to the due administration of international law and justice by competent judges; and to the claimants having the means of competent legal assistance in conducting their cases before the Courts. I would (confidentially) suggest the principal town in the French West Indian Islands, whatever that may be.

Question 2.—What articles (especially those *ancipitis usûs*) (such as, *e.g.*, lead, steel, sulphur) will the French Government treat as "contraband of war?" A list should be published as soon as possible.

Question 3.—How is the French Government disposed to view the peculiarly "hard case" of Her Majesty's subjects long domiciled in Mexico, and carrying on so large a trade therewith and therefrom? Surely (all things considered) it will be disposed not to apply rigorously to them the belligerent principle of the "hostile domicil" of a neutral giving him a "hostile character," with all its severe consequences of individual hardship and commercial ruin. (See for explanations and illustrations of this doctrine, "Kent's Commentaries," vol. i, page 82, edition 1851; page 74 of Post edition), "If a person has a settlement in a hostile country," &c.

N.B.—This may be kept open, and treated as being, to a certain extent, susceptible of subsequent arrangement, in view of the special circumstances.

Question 4.—What will the French Government do, require, or permit (so as to avoid collision and dispute), as to such (possible) contraband of war as passengers, letters, papers, and despatches for the service of the (Mexican) enemy, conveyed in the British packet to Tampico, especially if so conveyed *optimâ fide*, or in "honest ignorance?"

It must be borne in mind that there is high authority for contending that Post-office packets ought not to be molested for carrying even "enemy's despatches" in their ordinary course, and the master being ignorant of their contents. (See Note *a*, page 567, Wheaton's Elements, 6th edition; and see Hautefeuille, vol. ii, titre 8, s. 2, page 462, "Du Transport des Dépêches;" and see also Law Officers' Report in the case of the "Trent," 15th January, 1862, conclusion).

I have, &c.
(Signed) J. D. HARDING.

No. 135.

The Queen's Advocate to Lord J. Russell.—(*Received June* 11.)

FRANCE.

Suggestions to prevent differences with France relative to their blockade of Mexican ports.

My Lord,
Doctors' Commons, June 11, 1862.

THE international consequences and questions which may arise in relation to the state of things existing or impending between France and Mexico are so important and peculiar, and of such serious consequence to British interests; and it is so desirable to avoid, if possible, all serious differences with France, that I venture (perhaps somewhat in advance of the strict line of my duty) to offer a few practical suggestions to your Lordship with reference thereto:—

1. Let my Report of the 11th of June instant (herewith*) be sent forthwith to the Admiralty, and the answer thereto when received from Paris, for instant (confidential) communication to the British Admiral in command in the Gulf of Mexico, and (possibly) to each Captain, R.N., on that station, and to Sir C. L. Wyke. Let each Captain be furnished with a copy of my Memorandum on Blockade to Admiralty, July 18, 1854 (printed); and also of the Declaration of Paris, April 16, 1856, and point out that this Declaration was agreed to since that Memorandum.

Let a British ship of war, the smaller her force the better (if her Captain has "brains" and discretion), be sent at once to Tampico, with orders to maintain a frank but friendly intercourse with the French Commanding Officer there; and to see that no wrongs or hardships are inflicted on British interests at the first "starting" of the war and blockade; and, in case of necessity, to warn and "protest," and report all *facts* with precision.

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* Page 147.

3. Let the ablest Advocate in Paris, familiar with international law (M. Hautefeuille, if possible), be retained, *generally*, as the adviser of Earl Cowley upon all questions of French Prize Law and practice.

4. Permit me (in confidence) to mention the name of Mr. G. M. Crawford, an English Barrister-at-law, No. 14, Rue de l'Ancienne Comédie, at Paris. This gentleman has been long and well known to me, and I have confidence in his honour, patriotism, and discretion. He is thoroughly familiar with the French language and law; knows most of the eminent French lawyers and politicians, especially of the "Opposition" or "Liberal" party; and may render great service by interpreting or communicating with them, *even indirectly*, ascertaining their views, &c., in case of need. I ought to add, that I have reason to believe that he writes French news regularly for the "Daily News;" I think also that he may not be unknown to Her Majesty's Legation in Paris.

I have, &c.

(Signed) J. D. HARDING.

No. 136.

The Admiralty Advocate to Earl Russell.—(*Received June* 17.)

Doctors' Commons, June 17, 1862.

MEXICO.

Notice for "London Gazette" of French blockade of Mexican ports of Tampico and Alvarado.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 16th June instant, stating that he was directed to transmit to me, in the absence of Her Majesty's Advocate-General, the inclosed despatch from Her Majesty's Ambassador at Paris (No. 793), forwarding a copy of a letter from M. Thouvenel, notifying the establishment of a blockade of the ports of Tampico and Alvarado, in Mexico, by the French naval forces; and to request that I would take the same into consideration, and, if satisfied of the sufficiency of the notification, that I would prepare a notice thereof for insertion in the "London Gazette" of to-day.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That it appears to me that the blockade of Tampico and Alvarado has been lawfully established by the officer in command of the French naval forces in the Gulf of Mexico, and that it has been duly recognized by the French Government at home; that it has been properly and sufficiently notified to Her Majesty's Government: I have therefore prepared, as directed, the notice thereof for insertion in the "London Gazette," which notice I have the honour to inclose.*

I have, &c.

(Signed) ROBERT PHILLIMORE.

No. 137.

The Queen's Proctor to Earl Russell.—(*Received June* 18.)

Doctors' Commons, June 17, 1862.

FRANCE.

Government grant towards British Church at Nice. Payment of salary to Curate as well as Chaplain.

Sir,

I HAVE the honour to acknowledge the receipt of your letter of the 7th ultimo, stating that a case had arisen at Nice which made it desirable to ascertain the true intent and meaning of the Act of the 6th Geo. IV, cap. 87, in so far as the same applies to the grant of assistance, on the part of Her Majesty's Government, towards the maintenance of British chapels abroad.

That the Act had hitherto been construed by the Foreign Office as limiting such assistance to a single church and to a single Chaplain at any one place; but in the case of Nice a special indulgence was conceded, by which during the winter months the employment of a Curate to be paid out of the Church funds was allowed. That it appeared from the Memorial of the Nice Church Committee of the 25th of April last, that the combined salaries of the Chaplain and Curate amount to 580*l*. a year, being 80*l*. in excess of the maximum sum allowed by the Act to be paid to a Chaplain in Europe, and it would be for the consideration of the Law Officers whether that sum in excess could legally be paid.

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* See "London Gazette" of 17th June, 1863.

That the case, however, of the Nice Chapel presented itself under a more general aspect. And it would seem that the sum collected on the spot, even without any contribution from Her Majesty's Government, would suffice to defray the whole expenditure of a single church and a single Chaplain; but that with the aid of the contribution of 200*l*. a-year paid by Her Majesty's Government, the Church Committee provide not only for the mother-chapel and its Minister and his Curate, but also for a chapel-of-ease and its Curate. That the question appeared to be, whether if assistance is sought from Her Majesty's Government under the Act for the maintenance of a chapel at any given place, the whole of the subscriptions and contributions raised from private sources at such places are not primarily applicable to the expenses of such chapel; and if they are sufficient to defray such expenses, whether, according to the spirit of the Act, Her Majesty's Government can properly give any assistance which is not required for the maintenance of such chapel, but which enables the Church Committee to set on foot also another chapel.

That another point was, whether a chapel may continue to be considered as a chapel under the Act, even though there may be no contribution from the Government towards its maintenance, and though there may be a chapel-of-ease attached to it.

That the question of the propriety of granting any aid to a chapel, the congregation of which, as that at Nice, is composed generally of persons in easy circumstances, collected together with a view to health or amusement, was one rather of policy than of law; but it would be desirable to know whether there is anything in the terms of the Act which might be construed to indicate the class of persons for whose benefit Government assistance in the maintenance of a chapel is more especially sought to be provided.

That with this general indication of the information sought to be elicited you were by Earl Russell's directions to transmit to me the whole of the correspondence relating to the Nice Church, and to request that I would prepare a case, and submit it to the Law Officers of the Crown for their consideration and opinion.

In obedience to Earl Russell's directions I submitted a case to the Law Officers of the Crown for their opinion accordingly, and have the honour to transmit the same herewith, with their opinion thereon.

I have, &c.

(Signed) F. H. DYKE.

Inclosure in No. 137.

Case for the Opinion of the Law Officers of the Crown respecting the British Church at Nice, and the Act of Parliament, 6 *Geo. IV, cap.* 87.

The Queen's Proctor received the following letter from the Foreign Office:—

"*Foreign Office, May* 7, 1862.

"Sir,

"A CASE has arisen at Nice which makes it desirable to ascertain the true intent and meaning of the Act of the 6th Geo. IV, cap. 87, in so far as the same applies to the grant of assistance on the part of Her Majesty's Government towards the maintenance of British chapels abroad.

"The Act has hitherto been construed by the Foreign Office as limiting such assistance to a single church and to a single Chaplain at any one place; but in the case of Nice, a special indulgence was conceded, by which, during the winter months, the employment of a Curate, to be paid out of the Church funds, was allowed.

"It appears from the Memorial of the Nice Church Committee of the 25th April last, that the combined salaries of the Chaplain and Curate amount to 580*l*. a-year, being 80*l*. in excess of the maximum sum allowed by the Act to be paid to a Chaplain in Europe. It will be for the consideration of the Law Officers whether that sum in excess can legally be paid.

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"The case, however, of the Nice chapel presents itself under a more general aspect. It would seem that the sum collected on the spot, even without any contribution from Her Majesty's Government, would suffice to defray the whole expenditure of a single church and a single Chaplain; but that with the aid of the contribution of 200*l.* a-year paid by Her Majesty's Government, the Church Committee provide not only for the mother-chapel and its Minister and its Curate, but also for a chapel-of-ease and its Curate.

"The question appears to be whether, if assistance is sought from Her Majesty's Government under the Act for the maintenance of a chapel at any given place, the whole of the subscriptions and contributions raised from private sources at such places are not primarily applicable to the expenses of such chapel; and if they are sufficient to defray such expenses, whether, according to the spirit of the Act, Her Majesty's Government can properly give any assistance which is not required for the maintenance of such chapel, but which enables the Church Committee to set on foot also another chapel.

"Another point is, whether a chapel may continue to be considered as a chapel under the Act, even though there may be no contribution from the Government towards its maintenance, and though there may be a chapel-of-ease attached to it.

"The question of the propriety of granting any aid to a chapel the congregation of which, as that at Nice, is composed generally of persons in easy circumstances, collected together with a view to health or amusement, is one rather of policy than of law; but it would be desirable to know whether there is anything in the terms of the Act which may be construed to indicate the class of persons for whose benefit Government assistance, in the maintenance of a chapel, is more especially sought to be provided.

"With this general indication of the information sought to be elicited, I am by Earl Russell's directions, to transmit to you the whole of the correspondence relating to the Nice church; and I am to request that you will prepare a case, and submit it to the Law Officers of the Crown, for their consideration and opinion.

"I am, &c.
(Signed) "E. HAMMOND."

The origin and history of the church at Nice, so far as they bear on its present position, are as follows:—

The British residents at Nice in 1820, desirous of procuring the services of a Minister of the Church of England, applied, through the Consul, to the Sardinian Government, for permission to build a place of worship. This permission was with some difficulty obtained, on the understanding that the building should have no outward appearance of a church.

Accordingly sums were subscribed for this purpose by individuals on the spot, and by other persons resident in England.

The amount raised was applied to the purchase of a plot of ground and the erection of a building thereon.

In deference to the parties in England who had contributed part of the funds, the chief management of the establishment, and the right of nominating a clergyman, were assigned by the then residents to a certain number of the before-mentioned persons *in England*, who were, conjointly with Her Majesty's Minister at *Turin*, to be trustees under a deed for administering the Church affairs at Nice.

The deed of trust, not having been regularly executed, only one of the parties, the Rev. Mr. Obins, acted, and he nominated the clergyman who went to Nice.

The title to the ground upon which the church was built was vested in the names of the parties who were to be joined in the trust.

These arrangements, however, occasioned constant disputes and misunderstandings among the British residents, many of whom became domiciled at Nice since the building of the church, but who, as subscribers to the current expenses, claimed a right to part management in Church affairs. The arrangement, nevertheless, remained in force until 1835.

In that year Her Majesty's Government were asked for the usual support under the Act 6 Geo. IV, cap. 87, under the following circumstances:—

The Sardinian Government, fearful lest an indiscriminate appointment of Protestant clergymen would lead to an attempt to interfere with the religion of the country, decided that no British Chaplain should be allowed to officiate unless he received his appointment from Her Majesty's Government.

Her Majesty's Government have accordingly appointed the Chaplains from time to time, in accordance with the provisions of the Act of Parliament on the recommendation of the Bishop of London, in whom the nomination of the chaplaincy has been vested for ever, at the request of the British residents at Nice, in order to put an end to the disputes and misunderstandings amongst them.

In the year 1836 Her Majesty's Government commenced an annual grant of 100*l.* in aid of the Church establishment, which continued till 1850, when an application was made to Lord Palmerston, then Secretary of State for Foreign Affairs, by Her Majesty's Consul at Nice, on behalf of the trustees of the church, for an increase of the grant of 100*l.*, on the ground that the remuneration awarded to the Chaplain was inadequate to his arduous exertions, and that they were unable to raise the amount of voluntary subscriptions sufficiently.

In 1852, *therefore*, Her Majesty's Government raised the annual grant to 200*l.*, which has continued until the present year.

In 1856 an application was made by Mr. Walbanke Childers, inquiring whether there would be any objection on the part of Her Majesty's Government to the Consular Chaplain at Nice employing, during the winter months, a Curate who should be paid out of the church fund, which was made up from the subscriptions of the residents and the annual contribution of Her Majesty's Government.

This application was submitted to Her Majesty's Advocate, who gave the following opinion thereon (August 6, 1856):—

"That under the circumstances of this case the remuneration to the reverend gentleman officiating as Curate appears to me to come fairly within the words, 'or for or towards defraying the expenses incident to the due celebration of Divine service in any such chapels' (6 Geo. IV, cap. 87, sec. 6), and it appears to me that it will not be illegal for your Lordship to consent to the payment of such remuneration out of the Church fund."

Lord Clarendon accordingly, on the 16th of August, 1856, notified to Mr. Childers his sanction to the payment of such remuneration out of the Church fund.

In 1858 an application was made to the Earl of Malmsbury that Her Majesty's Minister at Turin should be authorized to give his consent to the pulling down of the existing Protestant Chapel, with the view to another and more commodious one being erected on its site. This application was submitted to the Law Officers of the Crown, who gave the following opinion thereon (September 9, 1858):—

"That, having regard to the particular nature of the trust upon which Her Majesty's Minister at Turin holds the property in question, and to the present circumstances of the building upon it, we are of opinion that Her Majesty's Government may sanction the pulling down of the church without being satisfied that the co-trustees are consenting parties, provided there exists a reasonable security that the present building will be replaced by another equally suitable for the purpose originally intended.

"We think that, under all the circumstances of the case, a sufficient security for this would exist if a suitable plan for the new church were adopted by the Committee of English Residents, and a contract made, and a sum equal to three-fourths of the contract-price shown to be in hand, and available for the expesne of building.

"We think that if this be done, it will not be incumbent on Her Majesty's Government to require any further guarantee as to the money being actually in hand, or that it will be forthcoming when required.

"We may further observe that, in strictness, Her Majesty's Government have not assumed, and are not bound to incur, any responsibility in this matter; but we assume that inasmuch as it would appear that Her Majesty's Minister at Turin, for the time being, was appointed *quasi ex-officio* trustee of the property, the Government would desire to give Sir J. Hudson such advice as would be properly given to a trustee similarly circumstanced."

(Signed) "J. D. HARDING.
"FITZROY KELLY.
"H. McC. CAIRNS.

There being some difficulty in obtaining a contract for the new church, Her Majesty's Minister at Turin was authorized (with the approval of the Law Officers), to accept as sufficient security the estimate of the architect, instead of a signed contract as suggested.

It appears that during the long period (twenty-six years) Her Majesty's Government have continued pecuniary aid to the establishment, annual accounts have been regularly transmitted to Her Majesty's Foreign Secretary of State pursuant to the Act of Parliament, the last account showing a balance in hand of 395*l.* 11*s.* 8*d.*; and the accounts themselves not containing any reference as to how the annual grant from the British Government was appropriated, the Foreign Office, on the 15th March last, applied to the British Consul at Nice upon the subject, and received the following reply thereto:—

"My Lord, "*British Consulate, Nice, March* 24, 1862.

"I have the honour to acknowledge the receipt of Mr. Murray's despatch No. 2 of the 15th instant, requesting information how the Government grant of 200*l.* a-year towards the support of the British Church Establishment at Nice is appropriated, and whether any part of it is applicable to the chapel-of-ease at Carabacel.

"In reply to your Lordship's inquiries I beg to state that the whole amount of the 200*l.* received from Her Majesty's Government has uniformly been paid to the chaplain, and has formed part of the salary of 500*l.* annually voted to him by the public meetings held on the 31st of December of each year.

"The accommodation of the church at Croin-de-Mabre having been found insufficient for the increasing numbers of the congregation, the Chaplain, the Rev. Charles Childers, borrowed money, purchased land in the quarter called Carabacel, and thereon built a chapel, of which he undertook the duties.

"This ground and chapel have been consigned to the management of the trustees of the British Church Establishment, who take the pew-rents, pay the incidental expenses, as well as the salary of an extra Curate, whose services have been found to be indispensable, and are completely under the control of the Committee appointed to carry into effect the resolutions of the public meetings; and moreover, the sum received for the sittings therein are brought into the general accounts of the establishment.

"The ground and chapel at Carabacel will become a constituted part of the British Church Establishment, as soon as the money actually expended upon it is raised and repaid; the Chaplain in the mean time rendering himself personally liable for the interest of the money borrowed, at 3½ per cent.—which interest, however, Mr. Childers receives in the shape of rent, to the same amount—the chapel being hired year by year under authority of votes of the qualified subscribers at the annual public meetings.

"As the Chaplain's salary cannot be increased beyond what it previously was, namely, 500*l.* a-year, and he receives as hire for the use of the Carabacel Chapel the bare interest of the money borrowed, for which he is personally responsible, and is bound to keep the chapel in proper repair, the Chaplain is far from deriving any emolument from this chapel, and, in fact, has incurred considerable expense, which has been defrayed by him.

"The reason why so large a balance generally remains in the Treasurer's hands on the 1st of January is, that the seats of both the church and the chapel are let by the season, which extends from October to May, a very large proportion of which is paid for in November and December.

"It follows that in December the Treasurer must be provided with a sufficient sum of money to meet nearly the whole of the expenses of the ensuing nine months, both of the church and chapel, including the salaries of the Chaplain and Curates.

"If the accounts could be made up from the 1st of October to the 30th of September, instead of from the 1st of January to the 31st of December of

each year, the balance in hand would appear trifling, showing the necessity of Government aid in this very important establishment."

The above reply, tending to confirm the doubt which Lord Russell entertained of the legality of making any further grant under the Act, which his Lordship considered contemplates assistance being rendered by the Government to one Chaplain and one church (at Nice there being now three clergymen and two churches), and that, inasmuch as the Act specifies that not more than 500*l.* a-year shall be given for clerical assistance, his Lordship determined to withdraw the Government support from the Church Establishment.

Extract of a Despatch from the Foreign Office, dated the 17*th April*, 1862, *withdrawing Government aid.*

"Under these circumstances Lord Russell desires me to state that he must in future withdraw the Government support to the Church Establishment at Nice, which can no longer be placed under the Act above-mentioned,* and from all official connection with which you will immediately abstain.

"His Lordship, however, feels himself bound to make the grant previously promised for the year past, but must necessarily limit the grant to 198*l.*, inasmuch as you distinctly state that the amount of the grant will be paid to the Rev. Mr. Childers, who, having already received 302*l.*, cannot by law receive a total amount exceeding 500*l.*"

The above despatch having been communicated to the Trustees and Treasurer of the British Church at Nice, they addressed the following Memorial to Earl Russell:—

"To the Right Honourable the Earl Russell, Her Majesty's Secretary of State for Foreign Affairs.

"My Lord, "*Nice, April* 25, 1862.

"Mr. Consul La Croix has communicated to us the purport of your Lordship's despatch of the 17th instant, in reply to his of the 24th of March, in which you intimate your intention to withdraw from the Church Establishment at Nice the Government support and protection it has hitherto enjoyed from being placed under the 6 Geo. IV, cap. 87; as also you desire that he (the Consul) shall henceforth abstain from all official connection with the same.

"As the Trustees and Treasurer of the said Church elected by the body of qualified subscribers to be a Committee of Management of the Church Establishment under the above-named Act, and the Regulations of the Secretary of State based thereon, and as the only parties authorized to act in this matter, we beg respectfully to address your Lordship, in the name and on the behalf of the British community at Nice, and, we may add, in the high interests of religion.

"In doing so we would earnestly solicit your patient consideration of the facts which it is our duty to lay before you in detail, even at the risk of encroaching longer than we desire on your time.

"The Consular Chaplaincy of Nice has been, for more than a quarter of a century, under the protection and receiving the pecuniary aid of the British Government. In the year 1843 the Rev. Charles Childers was appointed Chaplain, on the nomination of the Bishop of London, by Lord Aberdeen, then Foreign Secretary, with an annual grant from Government of 100*l.*, which, in the year 1850 was raised to 200*l.*, towards the support of the Church Establishment.

"During the nineteen years of Mr. Childers' incumbency, and the twenty-six years in which the affairs of this Church have been administered under the Act above-mentioned, the accounts have been regularly forwarded to the Foreign Office to the entire satisfaction of your Lordship and your predecessors, all the requirements of the Act and Regulations have been undeviatingly fulfilled, and no word of censure or dissatisfaction has ever been addressed by any in authority to the local managers of the Church, nor to the Chaplain, whose blameless character and indefatigable labours commanded the respect and regard of his congregation.

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* 6 Geo. IV, cap. 87.

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"The reason assigned for thus suddenly and unexpectedly depriving the Church establishment at Nice of the aid and support which it has so long enjoyed, appears to be a doubt in your Lordship's mind as to the legality of making any further grant under the Act above named.

"That Act we understand your Lordship regards as contemplating assistance being rendered by Government to only *one* Chaplain and *one* Church, and this only in cases where the whole amount paid for clerical duties does not exceed 500*l.*, while at Nice these conditions appear to you not to be fulfilled.

"We are not surprised that the mention in the accounts of a church and a chapel, and of 662*l.* paid to three clergymen, should have attracted your Lordship's notice, and we avail ourselves of this opportunity of submitting an explanation of the same; nor can we doubt that, when the real facts of the case are laid before you in all the simplicity of truth, you will perceive that nothing has been intentionally done in opposition to the Act of Parliament, and will be willing to meet the anxious desire of the British community here, by continuing to our *one* church and Chaplain the support and protection which they have so long enjoyed, and under which they have proved an incalculable blessing to thousands of British subjects visiting Nice.

"We frankly admit that we are ourselves to blame for having, however unintentionally, misled your Lordship, by inserting, in the accounts transmitted to you, items extraneous to the establishment more strictly under the cognizance and protection of Government. We did so from a desire to fulfil to the uttermost every requirement of the Act and Regulations, and to err on the side of too much, rather than too little, explicitness. But, whatever may have been done in the past year which may deemed undesirable, your Lordship has only to name it, to insure its non-recurrence.

"During the last few years the British population of Nice has more than doubled itself, and the church accommodation, which was sufficient for the congregation in 1836, would be proportionately inadequate to the wants of the present increased numbers.

"In 1856 it was resolved, with the approval of the Foreign Secretary, to build the present large church, as a substitute for the original small chapel, and this has been done at a heavy cost of 5,000*l.*, raised by indefatigable exertions, without any aid whatever from our own Government.

"Up to the date last named the amount appropriated for clerical assistance had never exceeded 500*l.* to the Chaplain, including 100*l.* (or, since 1850, 200*l.*) a-year granted by Government.

"The duties of the clergyman had, however, increased to such an extent that it was physically impossible for one person to perform them. At the same time, the larger influx of visitors had augmented the funds in the hands of the Treasurer, and an application was made to Lord Clarendon (then Foreign Secretary) requesting that he would sanction our predecessors, the managing Committee of that day, in paying the stipend of a Curate out of the funds provided by the congregation, should they be sufficient for that object, without further aid from Government.

"The permission solicited was granted, and conveyed in a letter from Lord Clarendon, bearing date the 16th August, 1856, from which time the amount annually paid to the Chaplain and Curate of the one church has been 380*l.* collected as pew-rents and 200*l.* granted by the British Government.

"Your Lordship will not fail to observe that in allotting as above the sum of 580*l.*, our predecessors acted with the express permission of the Foreign Secretary, given (as stated in his despatch) in accordance with the opinion of the Law Officers of the Crown.

"Nevertheless, should you consider that the additional 80*l.* ought now to be withheld, and that the Chaplain ought to have no pecuniary assistance afforded him out of the funds provided by his largely increased labours, your instructions for the future shall be obeyed.

"It remains that we explain the difference between the 580*l.* and 662*l.* entered in last year's account as having been paid for clerical assistance.

"The remittance to Nice of the Government grant of 200*l.* costs 1 per cent. for commission, discount, &c.; consequently it reaches the Chaplain as only 198*l.* net, and the Managing Committee, therefore, make up to him the difference by paying him the 2*l.* from the general account.

"The remaining 80*l.* for clerical assistance which appears in the accounts for 1861, was paid to the officiating minister at the Chapel of Carabacel for fourteen months, from November 1860 to 31st December, 1861.

"This was done under the following circumstances, of which we trust the explanation will prove satisfactory to your Lordship.

"At the time when a vast increase in the British population of Nice necessitated the erection of a new and much larger church in the town, the growing population of the suburb of Carabacel equally demanded a place of worship for the English in that distant quarter, but while the public were pressed for subscriptions for the new church, the collection of funds for a smaller chapel at Carabacel was found to be impossible.

"At this juncture, a benevolent lady volunteered to lend 1,500*l.* for that purpose, provided some suitable person would make himself responsible for the payment of a moderate interest till the capital should be repaid.

"It was under these circumstances that the Rev. Charles Childers, the Chaplain, actuated by the most disinterested motives, and with an apparent certainty of entailing on himself annnual loss, volunteered to bear the burthen rather than suffer the spiritnal wants of a large portion of his flock to remain unsupplied.

"The chapel was accordingly built, and opened for public worship in November 1860.

"To meet the wishes of the community, Mr. Childers, with great liberality (for by so doing he precluded himself from the possibility of pecuniary profit), offered to the Managing Committee of the Consular Church to make over to them the administration of the chapel and the *whole* of the *pew-rents*, in consideration of their paying merely the interest of the capital with which the chapel was built, or 52*l.* 10*s.* a-year.

"No condition was even suggested by him as to any aid towards the salary of the second Curate required for the duties of the new chapel. He proposed and expected to pay *that*, as he had paid various incidental expenses to a large amount.

"Nor was it till the trustees, after paying the interest above-named, found that they still had in hand a balance from the pew-rents of the chapel, that they could persuade Mr. Childers to allow them to contribute 80*l.* towards the salary of the minister whom he had engaged expressly to officiate at Carabacel.

"As the Managing Committee, who had accepted the charge of the chapel, received all the pew-rents, they felt it would be unjust not to defray the expenses so far as their means allowed, and with a laudable desire that your Lordship should be fully informed of everything connected with their proceedings they entered on one side the receipts of the chapel in the general account, and on the other the disbursements for the same.

"And here we would beg leave to observe that we had *reason* to believe that our proceedings in regard to this chapel were not disapproved by your Lordship; because the Minutes of everything done under the orders of the general meetings of qualified subscribers, under whom we act, were regularly transmitted to the Foreign Office at the close of each year, including all the details above given, together with many others of a preliminary nature, as to the proposed building of the chapel in 1858. Yet we received no intimation from the Foreign Office, nor from Her Majesty's Consul at Nice, that any of our proceedings were open to objection.

"A word would have sufficed to effect an alteration in anything which might have appeared to your Lordship to be out of course.

"The pecuniary aid of Her Majesty's Government is in no small degree promotive of the efficiency of the clerical ministrations of this church; but its protection, and the operation of the Act 6 Geo. IV, cap. 87, would seem to be indispensable to the very existence of the Church Establishment itself in Nice, which is one of the most-frequented and important of all the winter resorts of our countrymen; and we cannot too strongly express our regret that the mistake of amalgamating the two accounts—a mistake emanating only from an excess of desire to do right—should have given rise to misapprehension, and have risked the continuance of that aid and protection.

"While touching on this subject we would advert to an observation which, as we understand from Mr. Consul La Croix, he made in his letter to your Lordship under date the 24th ultimo, to the effect that the chapel at Carabacel might hereafter be united to the Consular church as a chapel-of-ease.

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"We beg to remark, that while there were parties who spoke of this union as a desideratum, it was well known to those better acquainted with the facts of the case that such a union could not take place without the permission of your Lordship, as well as the concurrence of the Chaplain and the qualified subscribers.

"Now that it is intimated to us that the Act of Parliament contemplates the connection of the Government with only *one* church in each port, such an annexation cannot, of course, for the future be regarded even as a possibility while your Lordship's protection is extended to this establishment.

"No aid on behalf of the chapel shall be sought; and as far as concerns the accounts of the Nice church with the British Government, the chapel at Carabacel shall be as though it did not exist.

"We beg to submit to your Lordship that Mr. Childers has served his country under the appointment of Her Majesty, not only without censure, but with exemplary zeal, for nineteen years; that during that period he has commanded the esteem and respect of successive series of visitors, from whom he has on various occasions received substantial testimonials of their high appreciation of his ministerial labours; that his domestic arrangements have been, for the long period of his residence at Nice, and are now, based on the expectation that the Government allowance attached to his appointment would be continued, as in all other similar cases, *quamdiu se bene gesserit*; that the expenses of house-rent and living at Nice have more than doubled since the date of his appointment; and that to displace him suddenly from the position of Consular Chaplain, and to withdraw the allowance which constituted two-fifths of his professional income, without the allegation of any fault or incapacity on his part, would be to cast, by implication, a slur on his character yet more painful than the severe pecuniary loss of 200*l*. a-year. Such a result, we are certain, can never be sanctioned under your Lordship's just administration.

"Nor will it escape your observation that the Consul and trustees, and general body of qualified subscribers, in whom has hitherto been vested the management of the Church Establishment at Nice, will be placed in a position of no ordinary difficulty, unless your Lordship see fit to restore to that establishment the protection and aid it has hitherto enjoyed; for on the strength of the 200*l*. a-year guaranteed by Government, and of the permanent character of Mr. Childers' appointment by Her Majesty, as Chaplain, we have actually contracted (as it were) with him to fulfil the duties of his office on a salary of 500*l*. a-year.

"After an exemplary service of nineteen years it seems to be hardly open to us to ask him to serve on a reduced stipend, and we have no authority to dismiss him; while, as regards the current year, of which more than a quarter has already elapsed, his legal claims on us cannot be ignored.

"The same remark applies to the Curate of the Consular church, sanctioned by Lord Clarendon's despatch, and to various other parties necessarily connected with a Church Establishment with whom contracts of minor importance have been made, and to whom we have incurred legal responsibilities.

"But the point which we desire above all others to press respectfully but most earnestly on your Lordship's consideration is this: that the withdrawal of the protection of Government and the operation of the Act 6 Geo. IV, cap. 87, will suspend the entire machinery by which the church and its affairs have been administered for twenty-six years, and will place the church and the whole English community at Nice in a condition of the greatest perplexity and embarrassment, such as we feel sure your Lordship has not contemplated and would never willingly allow.

"We are advised by high legal authority that the land purchased by the English in 1821, and on which they have lately, in reliance on your Lordship's continued aid and support, constructed a church at a cost of 5,000*l*., vests in a gentleman of ninety years of age, who has refused to act ever since Nice was placed under the Government, and in Her Britannic Majesty's Minister at Turin *ex officio*; that from the peculiar circumstances of the case, all of which, with the original deeds, we shall be happy to submit to your Lordship, no legal title to this valuable property can be made perfectly secure except through the instrumentality of Her Majesty's Minister at Turin, who will of course refuse to act except under the authority of your Lordship; that the fact of this property having been administered for twenty-six years by the qualified subscribers and trustees, constituted under the Consular Act and Regulations, which bodies have assumed and exercised the rights of the original deceased or repudiating trustees, is inconsistent with the introduction of any new managing or proprietary body, without the express action of Government, whether through the British Minister at Turin, or otherwise; that consequently the withdrawal of the establishment at Nice from the protection of the Act 6 Geo. IV, cap. 87, leaves matters in such a condition that no right or authority exists, at this moment, in *any one* to sanction the expenditure of a shilling for the performance of Divine service, or for the repair or cleaning of the church, or any other object connected therewith, however indispensable, nor has any one legal authority to collect the pew-rents, or to order the breaking of the ground for the interment of a corpse, inasmuch as the church is left, by the withdrawal of the operation of the Act of Parliament, without legal owner, trustee, or managing body.

"From this statement your Lordship will see the apparently inextricable confusion into which the affairs of the Church establishment at Nice will be plunged, in case you should not be pleased to restore the *status quo*, as it existed before your despatch of the 17th instant.

"We are advised that it is impossible to exaggerate that confusion, the result of which might be to throw our costly new church, with the cemetery, endeared to many of our countrymen by the associations of forty years, into French Courts of law, and altogether to put an end to, or indefinitely suspend, the celebration at Nice of divine service according to the ritual of the Church of England.

"With this explanation we appeal with confidence to your Lordship's justice and to your well known consideration for the interests of Her Majesty's subjects, from whom the ægis of her protection and support is never withdrawn, after being once granted, without the most imperious necessity; and we earnestly solicit your re-consideration of the subject of your despatch of the 17th instant to the British Consul at Nice, and the restoration to the Consular Church and Chaplain of the privileges they have enjoyed ever since the year 1836.

"We have, &c.
(Signed) "W. HUTT,
"C. B. ELLIOTS, F.R.S.,
"*Trustees of the British Church at Nice, under the Consular Act and Regulations.*
"J. HENNEN, M.D., *Treasurer of ditto.*"

A copy of the Act of 6 Geo. IV, cap. 87, is left herewith, and the opinion of the Law Officers is requested:

1. Whether the sum of 80*l*. in excess of the maximum sum allowed by the Act to be paid to a Chaplain in Europe can be legally paid.

2. Whether, if assistance is sought from Her Majesty's Government, under the Act, for the maintenance of a chapel at any given place, the whole of the subscriptions and contributions raised from private sources at such place are not primarily applicable to the expenses of such chapel, and if they are sufficient to defray such expenses, whether, according to the spirit of the Act, Her Majesty's Government can properly give any assistance which is not required for the maintenance of such chapel, but which enables the Church Committee to set on foot also another chapel.

3. Whether a chapel may continue to be considered as a chapel under this Act, even though there may be no contribution from the Government towards its maintenance, and although there may be a chapel-of-ease attached to it.

4. Whether there is anything in the terms of the Act which may be construed to indicate the class of persons for whose benefit Government assistance in the maintenance of a chapel is more especially sought to be provided.

Opinion.

1. WE understand that the Chaplain, Mr. Childers, only receives, in the whole, a salary of 500*l*. per annum, and that the sum here referred to (80*l*.) is paid not in augmentation of the stipend of Mr. Childers, but as the salary of an assistant Curate, hitherto provided out of the church fund by the Managing Committee, with the sanction of Her Majesty's Secretary of State, and treated

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(according to the opinion of the Queen's Advocate of 6th August, 1856), as part of the "expenses incident to the due celebration of Divine Service." We do not think that this is (as the question seems to assume) a payment to the Chaplain, within the meaning of the Act of Parliament, and it is not, in our opinion, illegal to make this payment, ultra the 500*l.* per annum to Mr. Childers.

2. This question, so far as it involves matter of law, and not of discretion, must be answered in the negative. Section 10 of the Act recites, that it is expedient to afford encouragement for the support of the churches and chapels "so erected as aforesaid," and both the chapels at Nice come within this description. There is nothing in the Act to disable Her Majesty's Government from contributing to the maintenance of a chapel, in a port or place in which there are more churches or chapels of the English or Scotch establishment than one, with separate funds for each church or chapel; nor do we see anything in the spirit of the Act to fetter the absolute discretion of the Secretary of State, under the circumstances here supposed.

3. We are of opinion, on consideration of the Act and of all the circumstances which it must be taken to have had in contemplation, that this question must be answered in the affirmative.

4. We find nothing, in the terms of the Act, to show that any particular class of persons is to be regarded with favour, or the contrary. Probably, in the exercise of a sound discretion, Her Majesty's Government (except where engagements have been entered into, or reasonable expectations have been raised) may consider persons who, without assistance, are not likely to be able to provide stated religious ministrations for themselves, to be those for whose encouragement provision was especially intended to be made by the Act. But, in cases in which the English residents or visitors may be wholly or principally of the more affluent classes, the assistance of the Government may, without impropriety, be given for a limited period, or on a reduced scale.

Doctors' Commons, June 10, 1862.

(Signed) J. D. HARDING.
WM. ATHERTON.
ROUNDELL PALMER.

No. 138.

The Attorney and Solicitor-General to Earl Russell.—(Received June 21.)

UNITED STATES.

Right of President of United States to issue a Proclamation for the re-opening of the port of New Orleans.

My Lord, *Temple, June* 19, 1862.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 5th June instant, in which he stated that he was directed by your Lordship to transmit to us a letter, dated the 31st May ultimo, from Mr. James Haig, in which he alleged that the Proclamation recently issued by the President of the United States for the re-opening, under certain restrictions, of the port of New Orleans was inconsistent with the provisions of the Treaty of 1783, and contrary to international law; and requested that we would take the question thus raised by Mr. Haig into our consideration, and favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken this question into our consideration, and have the honour to report—

That the stipulations as to the navigation of the Mississippi contained in the Treaty of 1783 were, in our opinion, terminated by the subsequent war between the United States and Great Britain, after which those stipulations were not again renewed.

The Mississippi being a river, the whole course of which is within the territory of the United States, we cannot look upon these stipulations as forming part of the permanent territorial arrangements made between the two Powers upon their final separation. It is clear that Great Britain cannot have any territorial right or interest in the navigation of a river, on the banks of which no part of her own territory is situate.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.

No. 138*.

The Attorney and Solicitor-General to Earl Russell.—(Received June 24.)

PERSIA.

As to preparation of Order in Council respecting British Consular jurisdiction in Persia.

My Lord, *Temple, June* 23, 1862.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 10th June instant, stating that he was directed by your Lordship to transmit to us the accompanying despatch from Her Majesty's Minister in Persia (No. 55 of the 29th April), suggesting whether it would not be advisable to extend to Her Majesty's Consuls in Persia the power granted to Consuls in Turkey in exercising jurisdiction over British subjects.

Mr. Hammond was also pleased to inclose copies of the Treaties between Persia and Great Britain, and between Persia and Russia; and to request that we would favour your Lordship with our opinion whether Her Majesty holds under those Treaties such jurisdiction as to admit of an Order in Council being passed under the Foreign Jurisdiction Act, and, if so, whether a short Order, "authorizing the application of the Levant Order to Persia, as far as circumstances admit," would not be the best course of proceeding for the purpose of attaining the proposed object.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That, under the Treaties referred to, Her Majesty does, in our opinion, possess such jurisdiction as to admit of an Order in Council being passed for Persia under the Foreign Jurisdiction Act. But, adverting to the structure and terms of the Levant Order, it does not appear to us that it would be a convenient course to attempt to apply that Order to Persia merely by a reference thereto in general terms, "as far as circumstances admit." We think that an Order in Council should be framed, with reference to the actual circumstances of the British Consular Establishment in Persia, and to the terms of the Treaty between Russia and Persia, which will constitute the basis of the jurisdiction to be exercised. So many of the provisions and Articles of the Levant Order as may be found applicable, having due regard to these conditions, may be adopted; but we think it would be likely to give occasion to difficulties and questions which had better be avoided, if the duty of adjusting the machinery of the Levant Order to the circumstances of the Consular Establishment in Persia, and of separating the applicable from the inapplicable parts of that Order, were left entirely to the Consuls themselves.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.

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No. 139.

The Attorney and Solicitor-General to Earl Russell.—(*Received June* 24.)

Terms of a Commercial Treaty to be arranged between Turkey and Austria.
As to whether Great Britain can claim from Turkey the same terms to be granted to Austria.

My Lord, *Temple, June* 23, 1862.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 26th May ultimo, stating that he was directed by your Lordship to transmit to us the accompanying despatch from Her Majesty's Ambassador at Constantinople (No. 227), reporting the terms upon which a Commercial Treaty is likely to be arranged between Turkey and Austria.

Mr. Hammond was also pleased to transmit to us a copy of the late Commercial Treaty between this country and Turkey, and to state that he was directed by your Lordship to request that we would inform your Lordship whether, in our opinion, Her Majesty's Government can under this Treaty claim any terms but those which affect exports and imports by sea, and if so, whether under the most-favoured-nation clause they can claim from Turkey the same terms as those about to be granted to Austria.

We are also honoured with your Lordship's commands signified in Mr. Hammond's letter of the 4th June instant, stating that with reference to his letter to us of the 26th of May, he was directed by your Lordship to transmit a further despatch which had been received from Sir Henry Bulwer, Her Majesty's Ambassador at Constantinople (No. 311, June 3, 1862), on the subject of the new Commercial Treaty between Austria and Turkey.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That upon the construction of the late Commercial Treaty between this country and Turkey, we think that the subjects of Great Britain are entitled to the same rights, privileges, and immunities in respect of their commerce, whether by land or sea, which have been, or may be, granted by the Sublime Porte to the subjects of any other nation; and that the terms of the Treaty cannot be restricted to exports and imports by sea. And, if any terms are granted, or about to be granted, by Turkey to Austria, which are capable of being extended, on the principle of the "most favoured nation" clause, to the commerce of Great Britain, we think that, under that clause, such extension might properly be claimed.

It is desirable that we should see a full copy of the Austrian Treaty, when such copy can be obtained. In the mean time, we assume that its stipulations will be such only as are to be collected from the terms of Sir H. Bulwer's despatch of the 30th April last.

If this be so, then we think that, practically, no terms have been, or are about to be, granted by Turkey to Austria, which are capable of being extended to the commerce of Great Britain. Except as to the article of salt (with respect to which Great Britain has, by the XIVth Article of the Treaty of Kanlidja, consented to such a limitation of her rights as would preclude her from claiming the benefit of the proposed stipulation with Austria), these stipulations seem to apply only to direct imports by land from Austria into Turkey. Great Britain, having no land-frontier conterminous with any part of the Turkish dominions, cannot import any goods into Turkey by land, except indirectly, through other countries; and we think that the Ottoman Government would be entitled to consider all goods so introduced into their territory (whether by British or by any other merchants) in the light of importations from the conterminous territory (*e.g.*, Austria, Russia, Greece, or Persia) out of which they immediately came, and not in the light of imports from Great Britain.

If Great Britain were ever to acquire any territory in respect of which she would have a land-frontier conterminous with Turkey, then we think that, on the principle of the most-favoured-nation clause, she would be entitled, during the subsistence of the proposed Treaty between Turkey and Austria, to import goods by land across the frontier so acquired into Turkey upon the same terms with those conceded by the Porte to Austria, with respect to goods imported into Turkey across the Austrian frontier.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.

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No. 140.

The Attorney and Solicitor-General to Earl Russell.—(Received June 25.)

TURKEY.

Liability of British Government to make good defalcations of Consular officers who may have appropriated to their own use sums deposited in British Consulates in the Levant.

Temple, June 23, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr Hammond's letter of the 7th June instant, stating that he was directed by your Lordship to transmit to us the accompanying papers* relative to the liability of Her Majesty's Government to make good the defalcations of Consular officers who may have appropriated to their own use sums deposited in British Consulates in the Levant; and to request that we would furnish your Lordship with our opinion upon this subject.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to rsport—

That in our opinion Her Majesty's Government is bound in honour and justice (all mere technical liability being, by the nature of the case, out of the question), to make good to depositors in the various Consulates in the Levant all moneys deposited, in the ordinary course of public and formal deposit, and which afterwards became the subject of private appropriation, or other defalcation, of Consular Officers. The various Consulates are the creatures of the British Government, sanctioned only by the Porte under Treaty; and under these circumstances it must be assumod that the depositor gives credit, not to the individual Consul, but to the Government whose Representative he is. In those cases (by far the greater number, it would seem) in which the deposit is a matter of legal compulsion or necessity, this is more particularly the case; the Government in such instances creating in the Consulate a Court of Justice, and acccpting there the deposit of suitors made in accordance with and in submission to the regulations of the Court. It appears to us, therefore, that, upon this point, Sir Edmund Hornby has taken a correct view in his despatch to your Lordship of the 29th April, 1862.

Having regard to the terms of Mr. Hammond's letter to us, we refrain from expressing any opinion as to the making of any allowance to Mr. Lane, or as to the adoption of measures, in the event of such allowance, for its appropriation in making good that officer's defalcations.

It may probably be thought worthy of consideration, whether in future and with reference to the public responsibility which we have above pointed out, measures ought not to be taken for speedy transmission of deposits to the Supreme Court; and also whether the security of third persons as bondsmen and the like, should not be required on the appointment of Vice-Consuls in the position lately occupied by Mr. Lane. These, however, are questions of practical policy, not of law, and as to which, therefore we would not seek to do more than throw out a suggestion.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.

No. 141.

The Attorney and Solicitor-General to Earl Russell.—(Received June 25.)

UNITED STATES.

Case of British vessels "Alliance" and "Gondar," captured at Beaufort and sent as prizes of war to New York.

Temple, June 25, 1862.

My Lord,

E are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 17th June instant, stating that he was directed by your Lordship to transmit to us a petition from Mr. Armstrong and Mr. Gerard, of Liverpool, praying for the interference of Her Majesty's Government on behalf of their vessels the "Alliance" and "Gondar," which were captured at Beaufort, in North Carolina, when that port fell into the hands of the United States' troops, and have been taken to New York as prize of war.

Mr. Hammond was also pleased to inclose despatches from Lord Lyons and other papers, among which was the protest of the master of the "Alliance," and to state that the case of these vessels, so far as they related to the refusal of the United States' blockading squadron to allow them to leave the port of Beaufort, was reported on by Her Majesty's Advocate-General in his Report of the 20th of November last,* to which he referred us; and acting upon that opinion, Lord Lyons was informed at the time that Her Majesty's Government could not properly take any further step in the matter.

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* From Sir H. Bulwer, No. 718, October 24, 1861; ditto, December 21, 1861; ditto, January 6, 1862; from Mr. Lane, January 20, 1862; to Sir H. Bulwer, January 22, 1862; from Sir H. Bulwer, February 7, 1862; ditto, No. 115, March 16, 1862; to Sir E. Hornby, No. 13, April 5, 1862; from Mr. Lane, April 30, 1862; from Sir E. Hornby, No. 57, April 29, 1862.

But having regard, however, to the late seizure of the "Alliance" and "Gondar," and to their being carried into New York as prize of war, he was to request that we would take the case of these vessels into our consideration, and favour your Lordship with our opinion as to whether Her Majesty's Government could properly interfere with the United States' Government to the effect suggested by Mr. Armstrong and Mr. Gerard, or in any minor degree.

In obedience to your Lordship's commands we have the honour to report—

That we have taken these papers into our consideration, and the conclusion at which we have arrived is, that although there does not appear to us to be any ground on which the seizure of the ships "Alliance" and "Gondar," or either of them, in the port of Beaufort can be justified, the circumstances are not such as to make it advisable for Her Majesty's Government to interfere, pending the investigation of those cases before the Prize Courts of the United States, and before the decision of such Prize Courts therein. When the legality of a capture depends on disputed questions of fact, and when these questions are regularly brought for adjudication before a Prize Court, it is not consistent with the principles of international law for the Government of a neutral country to which the captured ship belongs, either to decline that mode of investigation, or afterwards to make the case the subject of international remonstrance, unless the action of the Prize Courts should result in some manifest wrong. There have, also, been some circumstances of a suspicious character in the conduct of the "Alliance" before she entered the port of Beaufort, which were noticed in the former Report of the Queen's Advocate, and which constitute additional reasons for leaving the case of that vessel to be dealt with according to the ordinary course of maritime law, although those circumstances do not induce us to believe that any valid legal ground really existed for her capture.

The evidence afforded by Mr. Walker's letters to Consul Bunch of the 20th and 21st September, 1861, and by Collector Bell's letter of the 21st September, and Commander Hewett's letter of the 5th October, and by the inclosures referred to in those letters, appear to us to be very strong to show that there was no blockade of the port of Beaufort before the 6th or 7th of September, 1861. If so, it is clear that the ships in question, which entered that port on the 23rd and 28th of August, were not, in so entering, guilty of any breach of blockade, and there seems to be no ground whatever for imputing to them any subsequent attempt to go out in breach of the blockade, which was actually established on the 6th or 7th of September, and afterwards maintained. Upon this point, however, there appears to be some controversy as to the matter of fact. Captain Prentiss, of the blockading squadron, stated to Mr. Walker, on the 20th of September, that "the blockade commenced some time in June;" and Mr. Seward, not admitting that it began only on the 6th or 7th of September, appears to impute to these ships knowledge of a previously existing blockade, and an intention to run it, which might raise a question (depending upon the extent, nature, and causes of the intermission), whether they could or could not justify themselves by reason of an accidental and temporary intermission of such blockade at the time of their entrance. Our own conviction, derived from the papers before us, is, that no real blockade did exist before the 6th or 7th of September, but it is impossible to deny that this question is a proper one for the determination, in the first instance, of the Prize Courts of the United States.

We observe that Captain Prentiss also stated to Mr. Walker on the 21st of September, that he had special instructions to effect the capture of the "Alliance," "in consequence of her being engaged in the transport of guns and munitions of war from Europe to the Confederate States." If this accusation could be proved, with reference to the voyage on which the "Alliance" was engaged when she entered Beaufort, it would be a sufficient justification for the subsequent capture of that ship, and would authorize her condemnation, whether she was guilty of any breach of blockade, or not. But it seems clear from the evidence

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* See Reports for 1861, page 291.

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(and, particularly, from the certificate of the Controller of Customs at St. John's, dated 13th August, 1861), that there is no foundation for this charge. We also notice that it appears to have been commonly reported in New York, that this ship was really owned at Charleston, or elsewhere in the Confederate States (*see* Consul Archibald's letter of the 10th of September, 1861, and Admiral Milne's letter of the 11th October). For this rumour, also, there does not seem to be any foundation. These accusations and suspicions, which appear to affect the "Alliance" only (while they may probably explain the true motives for the seizure), are also proper subjects for investigation by the Prize Courts.

Upon the whole, our advice is, that these cases should be very carefully watched; but that Her Majesty's Government should not take any other action about them till the decision of the Prize Courts is known.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.

No. 142.

The Attorney and Solicitor-General to Earl Russell.—(*Received June* 25.)

UNITED STATES.

Claim of Messrs. Armstrong and Gerard for losses sustained by the "Alliance" being warned off the port of Charleston in May 1861.

My Lord,
Temple, June 25, 1862.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 18th June instant, stating that with reference to his letter of the 17th instant, respecting the case of the British vessels "Alliance" and "Gondar," he was directed by your Lordship to transmit to us the papers as marked in the margin,* relative to a separate claim preferred by Mr. Armstrong and Mr. Gerard on account of the "Alliance" having been warned off the port of Charleston in May 1861, at a time when no efficient blockade of that port was in operation; and to state that the Petition setting forth the facts of this case had been transmitted, together with its inclosures, in original, to Her Majesty's Minister at Washington, and could not therefore be laid before us, but we should learn from his Report of the 12th of April† the view of the case taken by Her Majesty's Advocate-General; and as the United States' Government denied its liability to compensate Messrs. Armstrong and Gerard, he was to request that we would take the inclosed papers into our consideration, and favour your Lordship with such observations as we might have to offer thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That it appears, from the protest of the master of the "Alliance" (inclosed in Lord Lyons' No. 356 of 1862), that, on the 27th May, 1861, the "Alliance," when about five miles off Charleston lighthouse, was "brought-to by the Federal cruizer 'Union,' and boarded by one of her officers, and informed that the port of Charleston was blockaded, and she was warned off."

Under these circumstances, we think that the question whether any claim can be established on behalf of the owners of the "Alliance" for the loss of her voyage to Charleston, depends entirely upon the existence or non-existence of an effective blockade of Charleston on the 27th May, 1861. And although we do not agree with Mr. Welles (see his letter to Mr. Seward of the 27th May, 1862) that the presence and action of the "Union," as above described, is alone sufficient evidence of the existence of an effective blockade of Charleston at that time, it seems to us to be *primâ facie* evidence, which justifies the United States' Government in assuming, in the first instance at all events, and until the contrary is shown, that there was such a blockade.

Upon the principle involved in this case we have to observe that, although a general notice that a whole coast is blockaded, is invalid and insufficient as to every part of that coast (whether actually blockaded or not) if there be not an effective blockade of the whole coast, it does not therefore follow that a particular notice given at the same time of a blockade established *de facto* at the port itself where the notice is given, will be thereby vitiated. We are not aware of any authority which can be referred to in support of such a proposition; and even if that proposition could be maintained, the utmost effect of it would be that if the same ship were afterwards met with by the blockading force while attempting to enter the same port, she ought to be treated as having received no previous notice of the blockade, and therefore as not liable to capture. The blockading force, although not entitled to make prize of her, would clearly have a right to prevent her from entering the port; and if so, we think it impossible to contend that a claim for compensation would arise against the Government of the blockading Power if she were prevented from entering, not by any subsequent interference of the blockading force, but by the mere effect of the invalid notice itself.

This case differs from that of the "Monmouth," which, when warned off Charleston, had an alternative destination to Savannah.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.

No. 143.

The Attorney and Solicitor-General to Earl Russell.—(*Received June* 26.)

SPAIN.

Request of Messrs. Tanqueray and Hanbury for facilities to obtain examination of witnesses at Madrid in the case of "Ross *v.* Green"

My Lord,
Temple, June 26, 1862.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 10th June instant, stating that he was directed by your Lordship to transmit to us the accompanying papers containing a request, dated the 6th June instant, which had been made by Messrs. Tanqueray and Hanbury, Solicitors, for facilities to obtain through the instrumentality of Her Majesty's Minister at Madrid the execution of an order of the Court of Queen's Bench for the examination of certain witnesses at Madrid in the case of "Ross *v.* Green," now pending before that Court.

Mr. Hammond was also pleased to state that before giving any instructions in the matter to Her Majesty's Minister at Madrid, your Lordship would be glad to be furnished with our opinion whether it would be right and proper to comply with their request.

In obedience to your Lordship's request we have taken these papers into consideration, and have the honour to report—

That, in our opinion, your Lordship may with propriety comply with the request contained in the letter of Messrs. Tanqueray and Hanbury of the 6th instant, in such diplomatic form as under the circumstances may be fitting. In the absence of Treaty obligation between Great Britain and Spain, it rests entirely with the President and other members of the Supreme Court of Justice at Madrid, whether they will take upon themselves the examination of the witnesses proposed to be examined, or will decline to do so. Upon this ground we presume it is that the Spanish authorities require that a "request" should be addressed to the Minister of State at Madrid.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.

No. 144.

The Attorney and Solicitor-General to Earl Russell.—(*Received June* 28.)

UNITED STATES.

Interference of United States' cruizers with British merchant-vessels in Gulf of Mexico.
Case of the "Circassian," "Henry Travers," "Lion," and "Florida."

My Lord,
Temple, June 27, 1862.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 3rd of June instant, stating that with reference to our Report of the 14th ultimo,* he was directed by your Lordship to transmit to us, together with the previous papers,† a further despatch from Her Majesty's Minister at Washington‡ respecting the interference of United States' cruizers with British merchant-vessels in the Gulf of Mexico.

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* Mr. Reed, April 2, 1862; Queen's Advocate, April 12; to Lord Lyons, No. 191; Lord Lyons, No. 387; Mr. Armstrong, June 10; to Mr. Armstrong, June 16; Mr. Armstrong, June 17.

† Page 93.

* Page 119.

† Lord Lyons, No. 256, April 21; No. 282, April 26; No. 299, May 5; and No. 306, May 8, 1862; to Lord Lyons, No. 237, May 24, 1862.

‡ Lord Lyons, No. 342, May 20, 1862.

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Mr. Hammond was also pleased to state that we should see from the statements contained in this despatch, that it is alleged that the boarding parties from the United States' ships of war have on some occasions refused to give the names of the vessels to which they belonged; and Admiral Sir Alexander Milne had, therefore, suggested that the name of the vessel of war by which the right of search is exercised, should on all such occasions be noted in the log-book of the ship boarded; and that he was directed by your Lordship to request that we would take this matter into our consideration, with more especial reference to this suggestion of Sir Alexander Milne, and furnish your Lordship with our opinion thereupon.

We are also honoured with your Lordship's commands signified in Mr. Hammond's letter of the 6th of June instant, stating that with reference to his letter of the 3rd instant, he was directed by your Lordship to transmit to us the accompanying despatch and its inclosures from Her Majesty's Minister at Washington (No. 352, May 23, 1862), containing further information respecting the search of British vessels by the cruizers of the United States in the Gulf of Mexico, and that he was directed by your Lordship to request that we would take the same into our consideration, together with the papers previously submitted for our opinion.

Mr. Hammond was also pleased to state that he was directed by your Lordship to add that your Lordship understood that the owners of the "Circassian," the vessel whose capture is referred to in the despatch inclosed, intended to address Her Majesty's Government on the subject, and that when their communication had been received your Lordship would call our attention more specifically to this case.

Mr. Hammond being further pleased to state, by way of postscript, that since writing the above, the letter inclosed had been received from the owner of the "Circassian," in regard to the case of which vessel he was therefore now enabled to ask our opinion.

We are also honoured with your Lordship's commands signified in Mr. Hammond's letter of the 11th instant, stating that he was directed by your Lordship to transmit to us a further letter from Mr. Pearson, together with a despatch from Her Majesty's Minister at Washington (No. 362), relative to the case of the vessel "Circassian," and to request that we would take the same into our consideration, together with the papers on the same subject submitted to us in his letter of the 6th instant, and furnish your Lordship with our opinion thereupon.

We are also honoured with your Lordship's commands signified in Mr. Hammond's letter of the 16th instant, stating that he was directed by your Lordship to transmit to us a further despatch (No. 385) and its inclosures, respecting the case of the "Circassian," and to request that we would take these papers into our consideration, together with those referred to us on the 6th and 11th instant.

We are further honoured with your Lordship's commands signified in Mr. Hammond's letter of the 19th June instant, stating that with reference to our Report of the 14th ultimo respecting the interference of United States' cruizers with British vessels in the Gulf of Mexico, he was directed by your Lordship to transmit to us a despatch from Her Majesty's Minister at Washington (No. 384, June 2, 1862), inclosing, with other documents, the sentences of condemnation pronounced by the Prize Court at Key West against the three vessels, "Henry Travers," "Lion," and "Florida," and to request that we would take these papers into our consideration, and furnish your Lordship with such observations as we might have to offer thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That before adverting to the facts of the various cases as to which our opinion is sought, we deem it right to observe, in general, that with reference to British vessels which become the subject either of capture or condemnation, or both, by the ships or Prize Courts of the United States, the presumption should always be in favour of the legality and justice of the belligerent proceedings. This appears to us to flow from the facts that the United States possess, as regards neutrals, the ordinary belligerent rights at sea; that the maritime war is carried on by regular cruizers under the national and acknowledged flag; and that Prize Courts are, so far as we know, regularly constituted, and properly

presided over. Under these circumstances, it manifestly belongs to such Prize Courts to determine on the questions of legality of capture and of condemnation; and it is only in cases of manifest wrong and injury, showing an abuse of the belligerent powers and rights, that the Government of a neutral State can properly be called upon to interfere with the Government of the United States, in favour of their own subjects, whose ships or cargoes have been the subject of capture or condemnation.

With reference to the "Circassian," we observe that in his letter to your Lordship of the 11th June, Mr. Pearson, the owner of the "Circassian," apparently on further information, gives up the allegation contained in his earlier communication of the 6th, that his vessel, when captured, was in "neutral waters," and now describes her as having been "about seven miles from the shore" of the Island of Havana, at the time of the capture. With regard, therefore, to the place of capture no ground of international complaint can arise; three miles being the well-understood extent to which the jurisdiction of any country extends from its shores out to sea. In other respects Mr. Pearson corrects the statements of his former letter as to the whereabouts of the "Circassian" when captured, and adopts the description which is to be found in the log—a description which may be accepted as probably accurate. Havana would also appear to have been the immediate destination of the ship, and the voyage would, of course, have been perfectly innocent, if such or any other neutral port had been the *bonâ fide* final destination. If, however, faith is to be given to the document which has been delivered to Mr. Consul Edwards (see Inclosures 2, 3, and 6 in Lord Lyons' No. 385) as being a true copy of the charter-party, under which the "Circassian" was actually sailing, it is plain that her intent was to run the blockade; in other words, she was destined for a blockaded port. Reasonable evidence of such being the case would justify her capture, and legal proof, before a Prize Court, her condemnation. For, by the laws of war, a belligerent, having notified and established an effective blockade, is not bound to delay capture until a neutral vessel is on the spot, and actually attempting to break the blockade at any particular point of the blockaded coast; but, on any part of the high seas, may capture and carry in a neutral vessel, which is, in fact and intention, on her way to the blockaded port, and to violate the blockade, if need be. A vessel sailing under such circumstances can have no claim on the good offices or interference of Her Majesty's Government, even should the capture have been made and a condemnation ensue without the real facts coming to light. For it can only be on the ground of substantial merit that the subjects of neutral States can claim the protection of their own Government against the consequences of belligerent capture or adjudication. We may further remark that Mr. Pearson's statement in his letter to your Lordship of the 6th June, as to the draught of the "Circassian" and the capacity of the harbours in possession of the Confederates is hardly reconcilable with the true destination of the ship, as shown by the charter-party. For the present, therefore, and unless the matter of the charter-party be satisfactorily cleared up, we think that the owner of the "Circassian" ought to be left to the ordinary course of the Prize Court, and certainly ought not to receive any assistance at the hands of Her Majesty's Government. The legal proceedings and the result may, however, be watched.

We entirely concur with Lord Lyons' opinion (see page 5 of No. 352) in the matter of the "parole" (see Inclosure 8 in No. 352) improperly exacted from the two British subjects (Messrs. Burrows and Coleman) captured on board the "Circassian." We now find that the American Government takes the same view, and that the "parole" is to be cancelled.

With reference to your Lordship's question as to Admiral Milne's suggestion that the name of the vessel of war, by which the right of search is exercised should, on all such occasions, be noted in the log-book of the ship boarded, we have to observe that, although it is obviously the duty of the officer of a vessel of war, searching or visiting a neutral vessel in time of war, not to conceal or refuse the name of the ship to which he belongs if asked for it, yet we are not aware that there is any General Order or Regulation in force in Her Majesty's navy directing Her Majesty's naval officers to enter in the log of every merchant-vessel which they may visit or search the name of Her Majesty's ship to which such officers may belong, nor does Admiral Milne state that such is the regular practice or usage of the Royal navy when Her Majesty's Government is a belligerent. or usage of the Royal navy when Her Majesty's Government is a Under these circumstances we cannot advise Her Majesty's Government is a

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belligerent. Under these circumstances we cannot advise Her Majesty's Government to apply to that of the United States to issue any General Order to this effect. The visit, or search, of vessels suspected of slave-trading, whether it takes place under Treaty or otherwise, is subject to different considerations, not being done by virtue of any belligerent right. The particular mode of visiting and searching such vessels is generally the subject of special national agreement (see, for instance, the confidential instructions agreed on by Great Britain and France on this subject), or is provided for by Slave Trade Suppression Treaties and the instructions appended thereto, or issued in conformity therewith. The attention of the United States' Government has, however, properly been called to the particular case of the "Amazon," wherein the boarding officer when asked by the master for the name of his ship refused to give it, with a view to prevent the repetition of such an irregularity.

We are further of opinion that, assuming the facts stated by Acting Volunteer Courthory, in his letter to the United States' Secretary of the Navy of the 4th March (Inclosure 3 in Lord Lyons' No. 297) to be correct, the capture of the "Lion" by the United States' cruizer "Kingfisher" was perfectly justifiable under the circumstances. To the subsequent condemnation of that vessel we will hereafter advert.

No further information is as yet forthcoming as to the "Southport," a vessel boarded but allowed to pursue her voyage, and reported on in our Report of 14th May, 1862.

In the cases of the "Dart" and of the "Amazon" (vessels boarded but allowed to pursue their voyages), Mr. Seward has promised Lord Lyons that a complete investigation shall be made without delay.

As regards the cases of the "Florida" and "Henry Travers:"—

In the former case we reported, on the 14th May, that no case for interference had then appeared, and no further information has been received until the account of the condemnation in Lord Lyons' despatch No. 384 and its inclosures. In the latter ("Henry Travers"), adverting to Consul Crawford's despatch to Lord Lyons of May 2nd (the only inclosure in Lord Lyons' No. 306), the capture did not, at the outset, seem to have been entirely without justification, or to afford any sufficient ground for interference by Her Majesty's Government.

As regards these two last-named vessels, the "Florida" and "Henry Travers," and a third, the "Lion," it now appears that proceedings have reached a further stage, and each has been condemned by a regularly constituted Prize Court of the belligerent by whose ships the captures were effected. We have read and considered Lord Lyons' despatch No. 384 and its inclosures, including copies of the sentences of condemnation of the respective vessels, and we fail to discover any sufficient grounds for the interference of Her Majesty's Government as regards any of the sentences in question. The "Florida" was condemned, with her cargo, as being enemy's property, and also on the ground that the vessel was on the way to violate the blockade with actual knowledge of its existence. The facts were for the Court to find; there was evidence on which to found a conclusion; and it is impossible to say that the conclusion arrived at is wholly without or contrary to reason. The law laid down in this case, with reference to the effect of the President's Proclamation as to "warning," &c., was also a matter for the Court, and the decision is not unreasonable or absurd. The "Henry Travers" was condemned as enemy's property, and appears to have been claimed by the captain for a person resident in the enemy's country. In the case of the "Lion" the double ground of enemy's property and intention to break the blockade was taken by the Prize Court as warranting the condemnation. The receipt for the purchase-money would not necessarily have affected the Judgment, as a question of its *bona fides* might have been raised. Whether an opportunity of producing this instrument as "further proof" was unjustly refused we have not sufficient information to enable us to judge. If it was, the refusal may be brought before the Court of Appeal, and unless it be so, could not in our opinion afford any sufficient ground for a remonstrance with the United States' Government, much less for any claim for compensation or damages.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.

No. 145.

The Attorney and Solicitor-General to Earl Russell.—(Received July 2.)

UNITED STATES.

Capture of the "Albert" for alleged intention to break the blockade of the Southern Coast.

My Lord,

Temple, June 30, 1862.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 26th June instant, stating that he was directed by your Lordship to transmit to us therewith a despatch and its inclosure which your Lordship had received from Her Majesty's Consul at New York (No. 61, June 4), reporting the circumstances under which the British schooner "Albert" had been captured by a United States' cruizer for an alleged intention to break the blockade of the Southern Coast: and to request that we would take these papers into our consideration, and favour your Lordship with such observations as we might have to offer thereupon.

We are also honoured with your Lordship's commands signified in Mr. Hammond's letter of the 26th June instant, stating that he was directed by your Lordship to transmit to us therewith a despatch and its inclosures which your Lordship had received from Her Majesty's Consul at New York, reporting the circumstances under which the British schooner "Maria" had been captured by an United States' cruizer for an alleged intention to break the blockade of the Southern Coast; and to request that we would take these papers into our consideration, and favour your Lordship with such observations as we might have to offer thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That the master's protest, in the case of the "Albert," not being inclosed with the papers submitted to us, we are unable to form any opinion as to the probable cause of the capture in that case; and although, if the facts are merely such as may be collected from Mr. Edward's letter of the 21st May, the case would appear to be one in which there was no legal ground for capture, and in which the vessel ought to be restored, we hardly feel ourselves in a position to advise Her Majesty's Government upon the subject without further information as to the history and ownership of the vessel, the place of and other circumstances connected with her capture, and the reasons for such capture assigned by the captors.

With respect, also, to the "Maria," no sufficient ground for the capture at present appears. But there are some circumstances on the face of the master's protest which raise a case for inquiry, and which may, probably, make it unadvisable for Her Majesty's Government to interpose any objection to the investigation of this case in the ordinary way by the Prize Courts of the United States. The "Maria" appears to have changed her register in Cuba not longer ago than March last, and no account is given of her previous ownership or history. If she was previously owned in the Confederate States (and the contrary does not appear), there may be *primâ facie* ground for suspicion that her British register was then obtained merely to protect her from capture, without any real and *bonâ fide* change of ownership, and this will be matter for inquiry in the Prize Court. It also appears that she was captured when sailing, intentionally, towards the blockading squadron off Charleston; and although, according to the master's statement, this was done *bonâ fide*, in consequence of stress of weather and want of water, it cannot be denied that this also is a proper subject for judicial inquiry.

The detention in prison of a portion of the crew of this vessel, who were not wanted for nor subjected to any preliminary examination, was, in our opinion, oppressive and unjustifiable. But on this subject we beg to refer to our Report to your Lordship, in answer to Mr. Layard's letter of the 26th June last.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.

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No. 146.

The Attorney and Solicitor-General to Earl Russell.—(Received July 2.)

United States.

Steamer reported to be fitting out at Liverpool as a Southern privateer.

Temple, June 30, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 25th June instant, stating that he was directed by your Lordship to transmit to us a letter from the United States' Minister at this Court, dated the 23rd instant, calling attention to a steamer reported to be fitting out at Liverpool as a Southern privateer, and inclosing a copy of a letter from the United States' Consul at that port, reporting the result of his investigations into the matter, and to request that we would take these papers into our consideration, and favour your Lordship with any observations we might have to make upon this question.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That if the representation made to Her Majesty's Government by Mr. Adams is in accordance with the facts, the building and equipment of the steamer in question is a manifest violation of the Foreign Enlistment Act, and steps ought to be taken to put that Act in force, and to prevent the vessel from going to sea.

The Report of the United States' Consul at Liverpool, inclosed by Mr. Adams, besides suggesting other grounds of reasonable suspicion, contains a direct assertion that the foreman of Messrs. Laird, the builders, has stated that this vessel is intended as a privateer, for the service of the Government of the Southern States. And if the character of the vessel and of her equipment be such as the same report describes them to be, it seems evident that she must be intended for some warlike purpose.

Under these circumstances we think that proper steps ought to be taken, under the direction of Her Majesty's Government, by the authorities of the Customs at Liverpool, to ascertain the truth; and that if sufficient evidence can be obtained to justify proceedings under the Foreign Enlistment Act, such proceedings should be taken as early as possible. In the meantime Mr. Adams ought, we think, to be informed that Her Majesty's Government are proceeding to investigate the case, but that the course which they may eventually take must necessarily depend upon the nature and sufficiency of any evidence of a breach of the law which they may be enabled to obtain, and that it will be very desirable that any evidence in the possession of the United States' Consul at Liverpool should be at once communicated to the officers of Her Majesty's Customs at that port.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.

No. 147.

The Attorney and Solicitor-General to Earl Russell.—(Received July 3.)

United States.

Harsh treatment to which crews of British vessels captured for breach of blockade are subjected.

Temple, July 3, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 24th June last, stating that he was directed by your Lordship to send us the despatches as noted in the margin,* respecting the harsh treatment to which the crews of British vessels captured for alleged breaches of blockade have been subjected in United States' ports, and to request that we would take these papers into our consideration, and report to your Lordship how far the facts disclosed would, in our opinion, justify Her Majesty's Government in addressing a remonstrance to the United States' Government on the subject.

We are also honoured with your Lordship's commands signified in Mr. Hammond's letter of the 28th June last, stating that he was directed by

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* Lord Lyons, No. 356, May 26 (referred to Law Officers, June 17); No. 407, June 5; and No 415, June 9; Mr. Edwards, No. 59.

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N° 146*

The Law Officers of the Crown to Earl Russell.—(Received July 4.)

Russia.

Inequality of Russian duties on goods imported by land and sea respectively.

Doctors' Commons, July 3, 1862.*

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 16th June last, stating that he was directed by your Lordship to transmit to us, therewith, a despatch which had been received from Her Majesty's Ambassador at St. Petersburgh in reply to an instruction which was addressed to his Excellency in August last,† calling his attention to the bad effects on British trade with Russia produced by the inequality of the rates levied on goods imported into that Empire by sea and by land respectively.

Question as to nature of instructions for placing British trade, as regards imports by sea, on a more satisfactory footing.

Mr. Hammond was also pleased to add that he was at the same time to transmit to us the other papers relating to this matter,‡ together with a copy of the Treaty of January 1859§ between this country and Russia; and to request that we would take the same into our consideration, and that we would favour your Lordship with our opinion as to the nature of any instructions which should be addressed to Lord Napier with the view of placing British trade with Russia on a more satisfactory footing as regards the duties on goods carried by sea.

In obedience to your Lordship's commands we have the honour to report—

That we have considered these papers, and, although it may be very desirable, in the interest of the trade of this country with Russia, to induce (if it be possible) a change in the relative rates of duty imposed by Russia on goods imported into that country by sea and by land respectively, we are of opinion that there is no ground for contending that the imposition of higher duties on goods imported by sea, than on goods imported by land, is contrary, either to the letter or to the spirit of the Treaty between Great Britain and Russia. No differential rate of duty is imposed by Russia either on British imports or on articles of British manufacture, by whomsoever imported; and there is no stipulation in the Treaty which can be reasonably contended to have the effect, directly or indirectly, of obliging the Russian Government to put on the same footing imports by sea and imports by land.

The question a matter for negotiation and not remonstrance, as infringement of Treaty.

We should, therefore, recommend that, in any instructions which may be addressed to Lord Napier on this subject, the matter should be treated as one for negotiation or representation only, with a view to induce the Russian Government either to enter into new engagements, or, in its own interest, to adopt a policy tending to put the maritime commerce of that country on as favourable a footing, with respect to duties, as the overland trade, and not as one for remonstrance on the ground of any actual or virtual infringement of the engagements contained in the existing Treaty between Great Britain and Russia.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.

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* See Report of October 10, 1862.
† Nos. 239 and 144 of 1861.
‡ Board of Trade, August 6, 1861.
§ Foreign Office No. 427.

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your Lordship to transmit to us the accompanying despatches from the Acting British Consul at New York (Nos. 63, 67, and 71), relating to the treatment of the crews of British vessels captured for alleged cases of breach of blockade, and to request that we would take the same into our consideration, together with the papers transmitted to us in his letter of the 24th instant.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That the circumstances disclosed in these despatches appear to us to be of a sufficiently grave and important character to make it proper for Her Majesty's Government to address a serious remonstrance to the Government of the United States, with reference to the treatment to which the officers and crews of British vessels, captured for alleged breach of blockade, have been, and are habitually, subjected.

To detain such persons for the purpose of giving evidence, and even to subject them to preliminary examinations before Prize Commissioners, without giving them the opportunity of previous communication with their own Consuls, is not inconsistent with the usages of international law. But it appears from those despatches that British officers and seamen have been, under these circumstances, confined (in some cases without any necessity, for they were never even examined, and in other cases for longer periods than could be justified on any plea of necessity) in military prisons and common jails, and treated, while there, as if they were criminals or prisoners of war. For treatment such as that which the officers of the "Mersey" were compelled to endure in Fort Lafayette, the usages of civilized nations, and the rules of international law, afford no justification or excuse. The Government of a belligerent Power has no right to treat such persons, being the subjects of a neutral State, either as offenders against its own laws or as prisoners of war: the appropriate penalty of a breach of blockade, when proved, is confiscation of the ship, and in some cases of the cargo; but the subjects of neutral States engaged in navigating a neutral vessel cannot lawfully be punished, or exposed to personal ill-treatment or indignity on this account.

The despatches also contain evidence of a system of robbery and plunder of the private effects of officers and of common seamen belonging to the captured vessels, which cannot be too strongly reprobated; and we think it would be proper for Her Majesty's Government, in every case of this kind which is brought to their knowledge, to require and insist upon prompt and adequate reparation. It is inconceivable that the Government of the United States should lend their sanction to such disgraceful practices, or decline to make amends to the unfortunate persons who have suffered by them.

We have further to observe that, in the case of certain coloured seamen of the "Mersey," an attempt appears to have been made to get them out of the way, so as to prevent their evidence from being forthcoming in favour of the owners. This, we think, ought to be brought to the notice of the United States' Government. And we cannot help observing that, in this and in some of the other cases which have been brought under our notice, the capture of British ships, which seem to have been engaged in the innocent prosecution of lawful voyages, has been effected with such an apparent disregard of law and justice as to make it necessary to examine, with more than ordinary jealousy and vigilance, the proceedings, whether preliminary or in the Prize Courts themselves, with which these captures have been or may be followed up.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.

No. 148.

TURKEY.

Interference of Turkish Government with a judgment given by the Mixed Court of the Tidjaret in the case of "Jovanoff and Missirie *v.* Ahmet Bey."

The Attorney and Solicitor-General to Earl Russell.—(*Received July* 3.)

Temple, July 3, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 18th ultimo, stating that he was directed by your Lordship to transmit to us a despatch from Sir Edmund Hornby, Judge of the Supreme Consular Court at Constantinople (No. 48, May 27, 1862), together with its several inclosures, relative to the interference of the Turkish Government with a judgment given by the Mixed Court of the Tidjaret in the case of "Jovanoff and Missirie *v.* Ahmet Bey," and to request that we would furnish your Lordship with our opinion as to the steps which should be taken by Her Majesty's Government in this matter.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That, as we understand this case, a British subject, M. Jovanoff, with a co-plaintiff, sued an Ottoman subject, Ahmet Bey, in the Court of the Tidjaret, a Turkish Court in which the proceeding was competent, according to the Capitulations, in the presence of the Dragoman Casolani. The plaintiffs, in order to establish a payment of 4,000*l.* to the defendant (being the sum which was, under the circumstances, sought to be recovered back) adduced, and, after various discreditable shifts on the defendant's part, established in evidence, a written receipt under his own hand, acknowledging the payment of the money. The defendant still denying that he had ever actually received the amount, the oaths of the plaintiffs to the fact of payment were taken; and various other proofs were brought forward: and at length (see Sir E. Hornby's despatch of the 18th January, 1861, page 11), "the Court decided in favour of the British subjects, upon their taking a decisory or rather suppletive oath in the Greek Church of the Fanar;" in other words, judgment was given for the plaintiffs, on the sole condition that they should take an oath of the kind and in the place mentioned in the Judgment. This course the plaintiffs appear to have been quite willing to adopt; but, after one ineffectual attendance for the purpose, they were informed that they need not attend again, "as a different course had been determined on." From that time to the present the Judgment so pronounced remains unexecuted; and the Turkish Government appears to us undoubtedly to have adopted the responsibility of this state of things. They seek to re-open the matter, on the ground that the Court, "contrary to existing regulations, decided the case in the absence of documentary evidence by administering the oath to the plaintiffs." Now, certainly the "receipt," fully established as it was, must be considered as "documentary evidence;" and, according to Sir E. Hornby's account (despatch of 27th May, 1862), oral testimony is to this moment received in the Court in question. The reasons pointed out by Sir E. Hornby against submitting this suit to the decision of the newly formed Court of Appeal (wholly Turkish, it is to be observed, in its constitution), appear to us to be satisfactory; and, on the whole, we are disposed to agree with him that the case is one which calls on Her Majesty's Government to interfere with the view of the Judgment of the Court being allowed to have its effect, either with or without the oath, which the plaintiffs have always been willing to take; and also of providing compensation for the losses which the unjustifiable delay has occasioned to the plaintiffs. The ground now taken, that the Tidjaret is a "concession" (if by this is meant that British subjects have no rights with respect to this Court under the Capitulations), lends an importance to this case, on public grounds, which might not otherwise have belonged to it, and adds force to the call for interference.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.

No. 149.

The Attorney and Solicitor-General to Earl Russell.—(Received July 3.)

TURKEY.

Claim of Mr. T. M. Hilpern, a Jew, under British protection at Jerusalem, against M. G. Gelat, a Spanish subject.

My Lord, *Temple, July* 3, 1862.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 19th ultimo, stating that he was directed by your Lordship to transmit to us a despatch from Her Majesty's Consul at Jerusalem (No. 51 of the 8th November, 1861), relative to the claim brought forward by Mr. Thomas Murad Hilpern, a Jew, under the protection of Her Majesty's Consulate at Jerusalem, for a debt of 156*l.* due to him by M. Gabriel Gelat, a Spanish subject.

Mr. Hammond was also pleased to inclose a Memorandum which had been

drawn up in your Lordship's Department dated the 2nd June ultimo, relative to the protection which Her Majesty's Consuls in Palestine are permitted to extend to foreign Jews in that country, and to request that we would take these papers into our consideration and furnish your Lordship with our opinion as to the degree of protection and assistance which Her Majesty's Government will be justified in extending to Mr. Hilpern in prosecuting his case before a Spanish Court of Law.

Mr. Hammond was also pleased to inclose further correspondence* on the subject of the nationality and birth of Mr. Hilpern.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That it appears to us that under no circumstances can Mr. Hilpern be entitled to look for, or the British Consul to exercise on his behalf, more than good offices with the Spanish or any other Consulate. He is not a British subject; and consequently he is not in a position to claim from the British Consul more than such favour and indulgence as he may be authorized by his own Government to grant. Other Powers and their Consuls at the same time, and for the same reason, are under no obligation to pay regard to representations or remonstrances coming from the British Consul on behalf of a person whom they are at liberty to regard as a mere stranger to British nationality. Such is the tenour of the instructions which Colonel Rose was directed to transmit to the Consular Officers under his jurisdiction in May 1847, and, under such circumstances, interference cannot in reason be carried further.

Any assistance which Her Majesty's Government may be disposed to extend to Mr. Hilpern in prosecuting his case before a Spanish Court of Law must, it follows, be of the same character, confined to good offices; such as obtaining legal assistance, endeavouring in a friendly manner to obtain for him a fair hearing, and the like.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.

No. 150.

The Attorney and Solicitor-General to Earl Russell.—(Received July 3.)

UNITED STATES.

Equipment of American ship "Nightingale" for Slave Trade at Liverpool, and subsequent capture on African Coast with 900 slaves on board.

My Lord, *Temple, July* 3, 1862.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 14th ultimo, stating that he was directed by your Lordship to transmit to us the accompanying papers, as marked in the margin,† relating to the case of the American ship "Nightingale," which arrived in Liverpool in the month of October, 1860, from New York, with a cargo of grain, bread, shooks, &c.

Mr. Layard was also pleased to state that it would appear that, after discharging her cargo and crew, certain portions of the cargo which were required for the voyage on which the "Nightingale" was about to be engaged were re-shipped, coppers and other equipments necessary for a vessel about to be employed in the Slave Trade were taken on board, a fresh crew was engaged, and the vessel proceeded to the African coast, where she was captured by an American cruizer with upwards of 900 slaves on board.

Mr. Layard was further pleased to state that it would be seen from the letter and its inclosures from Mr. Adams, the United States' Minister at this Court, who brought the case of the "Nightingale" to the notice of Her Majesty's Government, that the slave-traders—who, by the vigorous measures recently adopted by the United States' authorities, have been prevented from fitting out their vessels at American ports—are now directing their attention to the port of Liverpool as a place of equipment. It had become, therefore, highly important to ascertain whether the laws of this country reach cases that may occur of attempts on the part of foreign ship-masters to equip their vessels for the Slave Trade in British ports.

And accordingly that he was directed by your Lordship to request that we

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* To Mr. Finn, No. 4, February 28, 1862; Mr. Finn, No. 7, April 17, 1862.

† To Mr. Adams, November 6 and 11, 1861; to Treasury, November 9, 1861; to Board of Trade, November 15, 1861; Treasury, December 2, 1861: Board of Trade, February 10, 1862.

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would take the papers relating to the case of the "Nightingale" into our consideration, and furnish your Lordship with our opinion whether it would be practicable and advisable to take any, and if so what, steps against the parties in Liverpool who were connected as brokers, shippers, owners, or in any other capacity with this vessel; and further to request our opinion whether,—first, in the event of a foreign vessel in a British port being suspected of equipping for the Slave Trade, what evidence would be necessary to prove it to be the fact that she was so equipping; and second, if evidence is forthcoming, in what manner could a prosecution be instituted.

In obedience to your Lordship's commands we have taken these papers into our consideration and have the honour to report—

That, in our opinion the case specially referred to as having occurred at Liverpool is not one calling for the adoption of any proceedings against parties there under the Slave Trade Act, 5 Geo. IV, cap. 113. The facts stated do no more at the utmost than raise a suspicion that they must have known of and permitted what seems in the result to have been the true object of the equipment; and having regard to the actual destination of the vessel (the African Coast), and the character of the cargo as described in the Report of the Commissioners of Customs of the 28th November, 1861, we do not think that any proceedings against the parties so concerned could be taken with a reasonable prospect of success, and we could not recommend their adoption.

In reply to your Lordship's general questions, we answer that the equipment of a foreign vessel in British waters for the Slave Trade is an offence against British municipal law, and if proved would entail on foreigner and Englishman alike the penalties imposed by the Slave Trade Act above referred to. As regards the evidence requisite to support such a charge, all we can is, that it ought to be such credible testimony as would leave no reasonable doubt that the fitting out and equipment actually in progress or completed really were intended for the Slave Trade. As the evidence can hardly ever be other than circumstantial, it is not possible except in these general terms to describe its nature. We may add that the Act being highly penal in order to secure a conviction, the evidence would in all probability be required to be clear and, strong.

The forfeiture of ship and goods being the specific penalty attached by the Act to fitting out and equipment for the Slave Trade (section 4), the prosecution (or rather action) with the view to such forfeiture may be carried on "in any Court of Record in Great Britain" (section 51). Proceedings not *in rem* against persons implicated would be by ordinary indictment for misdemeanour in disobeying the Act of Parliament, to be preferred either at the Assizes for the County of the offence, or in the County of Middlesex (section 50). The proceeding to forfeit the ship is, in this particular case, of course out of the question.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.

No. 151.

The Attorney and Solicitor-General to Earl Russell.—(Received July 4.)

SPAIN.

Interference in favour of English creditors of Mr. Mould.

My Lord. *Temple, July* 3, 1862.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 23rd June ultimo, stating that he was directed by your Lordship to transmit to us the accompanying letter from Mr. Mackenzie, requesting the interference of Her Majesty's Minister at Madrid with the Spanish authorities on behalf of the English creditors of a Mr. Mould, who, it was stated, was about to realize a considerable sum of money in Spain. The previous correspondence in this case was also sent therewith, and a request that we would take these papers into our consideration, and report to your Lordship our opinion whether any, and if so what, steps Her Majesty's Government would be justified in taking in this matter.

Mr. Layard was also pleased to add that Mr. Mould's case had already been submitted to the Law Officers, who reported on it on the 3rd of November, 1859.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That, as a general rule, it is not desirable that questions of property arising abroad between private persons, and involving no question between Government and Government, should become the subject of intervention by Her Majesty's Ambassadors or Diplomatic Agents in foreign countries. But we conceive it to be consistent with this general rule that, in all cases in which the laws or usages of foreign countries require, in order to the official or judicial recognition of authentic acts of the English Courts of Justice, that such acts should be presented through a British Embassy or Ministry, the good offices of Her Majesty's Ambassadors or Ministers may be accorded for that purpose.

Having regard, therefore, to the statement contained in Mr. Mackenzie's letter, that the Supreme Court in Madrid has refused to acknowledge any Judgment of an English Court not presented through Her Majesty's Embassy, we think that, in the event of Mr. Mould being made bankrupt in this country (and on proper evidence of that fact being laid before Her Majesty's Government), Her Majesty's Minister at Madrid may properly be instructed so far to assist the assignees under such bankruptcy as to present, with his official authentication, an office copy of the adjudication, under the seal of the Court of Bankruptcy; with a request that the Spanish Government would recognize the assignees, as having, by virtue of such adjudication, all such authority as, according to the laws of Spain, can be possessed or exercised in that country by assignees duly appointed in England under the English Bankruptcy law. Her Majesty's Minister may also with propriety state, that the effect of such adjudication in the Courts of this country is to vest in the assignees all the moveable property and credits of the bankrupt, wheresoever situate, for distribution among all his creditors, and to entitle them to sue for such property, instead of the bankrupt, in their own names.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.

No. 152.

The Attorney and Solicitor-General to Earl Russell.—(Received July 5.)

UNITED STATES.

Capture of the "Bermuda" and "Ella Warley." Complaint of Messrs. Adderley and Co. respecting the alternative given to their schooner "Time" to discharge her cargo or give bonds for it.

My Lord, *Temple, July* 4, 1862.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 18th ultimo, stating that he was directed by your Lordship to transmit to us a letter from the Colonial Office dated the 11th June ultimo, inclosing copies of despatches from the Governor of the Bahamas, in which he requests instructions with reference to the circumstances attendant upon the capture of the steamers "Bermuda" and "Ella Warley" by United States' cruizers,* and also to the alternative given by the United States' authorities to the agents of the schooner "Time" of either discharging the cargo or giving bonds for it; and to request that we would take these matters into our consideration and furnish your Lordship with our opinion as to the answers which should be returned to the Governor of the Bahamas with reference thereto.

We are also honoured with your Lordship's commands signified in Mr. Hammond's letter of the 21st ultimo, stating that with reference to his letter of the 18th ultimo he was directed by your Lordship to transmit to us the accompanying despatches, and their inclosures, from Her Majesty's Minister at Washington (Nos. 365 and 405) respecting the complaint of Messrs. Adderley and Co. with regard to the restrictions imposed by the United States' Government in the case of the cargo on board their vessel "Time," and to request that we would take these papers into our consideration together with those already before us.

Mr. Hammond was also pleased to state that he inclosed, for our information, a despatch, and its inclosures, from Lord Lyons (No. 403), showing Messers. Adderley and Co.'s general connection with vessels running the blockade.

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* Vide Law Officers' Reports of the 23rd and 24th of May, pages 126 and 129.

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We are further honoured with your Lordship's commands signified in Mr. Hammond's letter of the 24th ultimo, stating that he was directed by your Lordship to transmit to us a despatch from Her Majesty's Consul at New York (No. 58 of the 3rd June) reporting the capture of the British steamer "Ella Warley," which case had been referred to us in his letter of the 18th June ultimo.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That as regards the capture of the "Ella Warley," mentioned in Governor Bayley's despatch of the 13th May, and more fully in the letter thereto annexed of Messrs. Adderley of the 12th May, and again brought forward in Acting Consul Edward's despatch of the 3rd June, no sufficient information is laid before us to enable us to form an opinion as to the reasonableness or unreasonableness of the capture. The place of capture, described by Messrs. Adderley as "100 miles north of Abaco," of itself decides nothing, except, probably, a fact in favour of the captor, namely, the capture on the high seas, and not in neutral waters. So the alleged ownership by a British subject, and the nature and destination of the cargo, are mere general *ex parte* statements, fit and proper for the consideration of the Prize Court, upon sworn testimony and full investigation. In this, as in other like cases, attention may properly be paid, for the information of Her Majesty's Government, to the proceedings which we presume will be taken in the Prize Court.

The statement in Acting Consul Edwards' despatch relating to the plunder by the American prize-crew of such members of the crew of the "Ella Warley" as are British subjects, if well founded, appears to us to call for the grave remonstrance of Her Majesty's Government, and a prompt demand for redress. Upon this part of the case of the "Ella Warley," as well as on the detention in Fort Lafayette, we beg to refer to our Report of the 3rd July instant, on the subject of the treatment of the crews of captured British vessels by the American authorities, as well as by the prize-crews of the capturing ships. To that Report we have nothing to add on these points.

The only statement with reference to the capture of the "Bermuda," is that a vessel, supposed to be the "Bermuda," was taken in tow by an American steam-ship on the 27th April, in view of the light-keeper at Abaco, from which circumstance Commander Mc Killop infers that the vessel so taken was, probably, captured "within five miles of the land;" but, assuming the inference to be correct in fact, such a capture would not be objectionable as occurring within British waters, which extend to the distance of three miles only from the shore. We have, with reference to other despatches and papers submitted to us, advised more than once on the case of the "Bermuda," which vessel has been carried in for adjudication before the Prize Court; and, with reference to the captures of that vessel and the "Ella Warley," we are unable to suggest any particular instructions or directions as proper to be given to the Governor of the Bahamas.

The question raised in the case of the "Time" is one of importance, and, as it appears to us, requiring prompt attention on the part of Her Majesty's Government. The principal matter of fact to be ascertained is, whether the restriction to which Messrs. Adderley have been subjected is one that is universally imposed on shippers under the like circumstances, or was exceptional in the particular case of those gentlemen. If the latter, and if it is not sanctioned by the letter of any general law in force at New York, the requiring of the bond was unwarrantable, and formal representations should be made on the part of Her Majesty's Government to that of the United States, and full explanations required. Should it be found, however, that the letter of law so in force sanctioned the act of the Customs authorities, or that such act was done in obedience to the directions of the Executive, applicable alike to all exporters of coal, and for the purpose of preventing military supplies from reaching the Confederates (and it is to be observed that coal is an article *ancipitis usûs*, which may or may not be destined to warlike purposes), then we think that no such ground of complaint exists as renders it the duty of Her Majesty's Government to interfere. We would add, that the intercepted letter of which a copy has been handed by Mr. Seward to Lord Lyons, and which would seem to implicate Messrs. Adderley in transactions with Confederates by means of their ships and cargoes, ought not, in our opinion, to be allowed to alter the course to be adopted towards those gentlemen by Her Majesty's Government.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.

No. 153.

The Attorney and Solicitor-General to Earl Russell.—(Received July 5.)

UNITED STATES.

Request of Mr. Haigh to obtain a stay of the proceedings before the Prize Court in the case of the "Bermuda."

My Lord,

Temple, July 4, 1862.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 20th ultimo, stating that with reference to our Reports of the 23rd and 24th of May last,* upon the case of the "Bermuda," he was directed by your Lordship to transmit to us a correspondence with Mr. Haigh,† who claims to be the owner of that vessel, and to request that we would take this correspondence into our consideration, and furnish your Lordship with our opinion as to whether Her Majesty's Government ought to comply with his requests, namely:—

1st. To interfere with the Government of the United States to obtain, for the reason stated by Mr. Haigh, a stay of the proceedings before the Prize Court. And,

2ndly. To procure a copy of the entry about the seizure of the "Bermuda" which may have been made by the keeper of the Abaco lighthouse.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That in our opinion Her Majesty's Government cannot with propriety accede to Mr. Haigh's request for an application to the Government of the United States, with a view of obtaining a stay of proceedings against his vessel, the "Bermuda," in the American Prize Court. If time be really required for the purpose of obtaining material evidence, and in order that all the facts may be truly before the Court, it is competent to the Court (and a part of its general duty) of itself to allow the requisite time; and it is quite beside the functions of a neutral Government to seek to control, or interfere with, the procedure of the properly constituted Prize Court of a belligerent. As we have had occasion to point out in other Reports, faith must be given to such Courts for proceeding according to rules of international law and justice; and the trust so reposed should be continued, unless, unfortunately, facts coming to the knowledge of the Government should lead to the conclusion that the Prize Courts set law and justice at defiance, and become a mere mask for the perpetration of wrong—a condition of things hardly to be looked for in any civilized State.

As regards Mr. Haigh's second request, we see no objection to Her Majesty's Government, if so disposed, exerting themselves to obtain for Mr. Haigh a copy of the entry (if any such shall be found to have been made) by the light-keeper at Abaco relative to the seizure of the "Bermuda." The admissibility and value of such a copy, and whether its contents would entitle Mr. Haigh to the opportunity of "further proof," will all be matter for the decision of the Prize Court.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.

No. 154.

The Attorney and Solicitor-General to Earl Russell.—(Received July 7.)

UNITED STATES.

Instructions of Secretary of Treasury of United States to refuse clearances to vessels laden with contra-

Temple, July 7, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 17th June ultimo, stating that he was directed by your

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* Pages 126 and 129.

† Mr Haigh, May 21; to Mr. Haigh, May 29; Mr. Haigh, June 10; to Mr. Haigh, June 17, Mr. Haigh, June 19.

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band of war or other specified articles, as well as to vessels believed to be bound to Confederate ports, or laden with merchandize likely to come into possession of the insurgents.

Lordship to transmit to us a despatch from Her Majesty's Minister at Washington (No. 389, June 2), inclosing copies, taken from a newspaper, of instructions given by the Secretary of the Treasury of the United States to refuse clearances to vessels laden with contraband of war or other specified articles, as well as to vessels which are believed to be in fact bound to Confederate ports, or which are laden with merchandize of whatever description, in cases in which there appears to be imminent danger of the cargoes coming into the possession of the insurgents; and to request that we would take these instructions into our consideration and favour your Lordship with our opinion as to whether there are any grounds upon which Her Majesty's Government would be borne out in directing Lord Lyons to remonstrate against them.

Lord Lyons' despatch No. 343, inclosing the President's Proclamation to which reference is made by the Secretary of the Treasury, was annexed for reference.

Restrictions of American authorities to trade between New York and the Bahamas.

We are also honoured with your Lordship's commands signified in Mr. Hammond's letter of the 21st June ultimo, stating that he was directed by your Lordship to transmit to us the accompanying despatches from Her Majesty's Minister at Washington (Nos. 364 and 404) respecting the restrictions interposed by the American authorities in the way of trade between New York and the Bahamas, and to request that we would take this matter into our consideration, together with the papers referred to us in his letter of the 17th June ultimo, and favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration and have the honour to report—

That, so far as relates to the instructions given by the Secretary of the Treasury of the United States, to refuse clearances to vessels laden with contraband of war, or other specified articles, as well as to vessels which are believed to be bound to Confederate ports, we think that there is no sufficient ground for any remonstrance. It is undoubtedly competent for a belligerent Power to protect herself, within her own ports and territory, by precautions of this nature; and so long as they are adopted equally and indifferently in all cases, without reference to the nationality or origin of any particular vessels or goods, they do not appear to us to afford any just ground of complaint.

But we are unable to understand how the refusal of clearances to vessels laden with ordinary merchandize can be justified, upon the mere assumption or surmise of some "imminent danger of the cargoes coming into the possession of the insurgents;" unless indeed there be reasonable ground for alleging and believing that the true destination of the vessels, or of their cargoes, is to Confederate ports. Under so vague and indefinite a pretext as this, any kind and amount of arbitrary restriction on British trade might be introduced and practised; and we think that Her Majesty's Government would be well warranted in remonstrating against such restrictions, as inconsistent with the Treaties now in force between the two countries.

With reference to the measures which appear by Lord Lyons' despatches of the 26th May and the 5th June last, and the inclosures therein, to have been taken by the Government of the United States, as to the trade with the Bahama Islands, we think that a distinction ought to be made between shipments of coal and other articles *ancipitis usûs*, the export of which may have been prohibited as contraband by general orders of the United States' Government to any places within certain geographical limits, and shipments of provisions, and other articles of innocent use, not prohibited or made contraband by any such general order, to the Bahamas, or any other part of the British dominions. The prohibition of the former class of shipments is public and general; it falls equally upon the shipping and commerce of all nations, and being justified in principle by the exigencies of a belligerent State in time of war, the most which any foreign Government can do on such a subject, is to offer reasons in the way of friendly representation, why it should be relaxed or confined within narrower geographical limits. The ultimate judgment as to the sufficiency of such reasons must rest with the belligerent State; and if they should not be deemed sufficient, the maintenance of the prohibition, even to an extent which may seem unnecessary for the objects of legitimate defence, cannot justly be made the subject of remonstrance, as inconsistent with the obligations of Commercial Treaties.

But we take a different view of the facts, as stated in Consul Edwards' letter of the 30th May last, with respect to the interference with ordinary exports of dry goods, plain and printed cotton fabrics, &c., shoes, medical drugs, flour and provisions, &c., to the Bahamas by the Custom-house authorities at New York. In the absence of any evidence that the destination of these articles was for the Confederate States, and on the supposition that the facts were consistent with their being truly and *bonâ fide*, as well as ostensibly, destined for the Bahamas, we think that such interference is contrary both to the letter and to the spirit of the existing engagements between Great Britain and the United States, and that it may very properly be made the subject of remonstrance on the part of Her Majesty's Government.

The Commercial Treaty of 1815 between Great Britain and the United States did not originally extend to the trade between the United States and the Bahamas. But in the year 1830 its stipulations were by the mutual acts of both Governments extended to that trade; and by the Proclamation of President Jackson, dated the 5th October, 1830, pursuant to the Act of Congress of the 29th May, 1830, it was expressly declared to be lawful for British vessels from the Bahamas to import into the United States, and to export therefrom, any articles which might be imported or exported in vessels of the United States. This engagement is still in force; and any prohibition of or interference with exports of ordinary commodities, not contraband of war, from New York to the Bahamas in British vessels, is plainly inconsistent therewith.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.

No. 155.

The Attorney and Solicitor-General to Earl Russell.—(Received July 7.)

SPAIN.

Right of sons of British subjects born in Spain to exemption from military service in Spain.

My Lord, *Temple, July* 7, 1862.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 20th June last, stating that with reference to the Queen's Advocate's Report of the 11th of December last,* he was directed by your Lordship to transmit to us the inclosed despatch from Sir John Crampton (No. 197) respecting the rights of the sons of British subjects, born in Spain, to exemption from military service in that country, and to request that we would take that despatch into our consideration, in connection with the papers noted in margin,† and report to your Lordship our opinion as to the instructions which should be addressed to Sir John Crampton regarding the cases of the persons alluded to in Inclosures Nos. 6 and 7 in his despatch No. 197.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we agree with the views expressed in the Report of the Queen's Advocate, dated the 11th December, 1861, in accordance with which instructions have already (as we understand) been addressed to Her Majesty's Minister at Madrid; and upon the general question of the status of the children and grandchildren born in Spain of natural-born British subjects, we do not think it necessary to add anything to what is there stated

The particular cases of Lieutenant Arguimban and his son Mr. Joseph Arguimban, and any other cases which may fall under the same category, must (we conceive) be determined with reference to the domicil of the parents at the time of the birth of the children within the territories of the Crown of Spain. If, at the time of the birth of Lieutenant Arguimban, his father was not only a natural-born British subject, but legally domiciled in the British dominions, we are of opinion that Lieutenant Arguimban himself, although born in Spain, was, at the time of his birth, a British subject, owing permanent allegiance to the British Crown and entitled to British protection. If, on the contrary, his father was then domiciled in the dominions of the Spanish Crown, he became, upon his birth, a Spanish subject, and he could not be entitled to claim British protection against any obligations resulting from his Spanish allegiance, although,

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* See Reports for 1861, page 320.

† To Sir J. Crampton, No. 146, 1861; Sir J. Crampton, No. 2, 1862; War Office, June 19, 1862; Admiralty, June 5, 1862; Queen's Advocate, December 11, 1861.

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by an English statute, he may have been also entitled to the privileges of a natural-born British subject in Great Britain. In like manner, the status of Mr. Joseph Arguimban will be Spanish if, at the time of his birth, his father was a Spanish subject domiciled in Spain, or owing permanent allegiance to the Spanish Crown; but English if his father was then a British subject, with a British and not Spanish allegiance and domicil.

The circumstance of Lieutenant Arguimban and one of his sons being officers in the Royal Navy tends, *primâ facie*, to show that the domicil of Lieutenant Arguimban, if originally English, did not afterwards cease to be so; but, even on this point, it would not be conclusive if the residence of that gentleman has been, during a long period of time, in the dominions of the Crown of Spain. And we do not think that any length of service in the army or navy of Great Britain would be material for the purpose of the present question, if the allegiance and domicil of the person engaged in such service were originally Spanish.

We think it proper to add, that even in the case of persons owing permanent allegiance to the British Crown, who may be domiciled and resident in Spain, the claim to exemption from the military service of Spain cannot justly be extended to any services required for the legitimate purposes of internal defence only, and which do not involve any acts at variance with the duties of British allegiance.

We should recommend that instructions in the sense of these remarks be addressed to Sir J. Crampton.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.

No. 156.

The Attorney and Solicitor-General to Earl Russell.—(*Received July* 12.)

UNITED STATES.

Liability of cotton purchased by foreigners in Confederate State being destroyed to prevent its falling into the hands of the enemy.

My Lord, *Temple, July* 12, 1862.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 24th ultimo, stating that he was directed by your Lordship to transmit to us therewith two despatches from Her Majesty's Consuls at Charleston and Savannah,* inclosing copies of a letter addressed by the Secretary of State for the so-called Confederate States to a mercantile firm, relative to the question as to whether cotton purchased by foreigners would be exempt from the law enjoining the destruction of cotton when it is about to fall into the hands of the enemy; and to request that we would take these papers into our consideration, and furnish your Lordship with our opinion thereon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That foreigners being the proprietors of cotton in the Southern States will have no ground of complaint against the *de facto* Government of those States, in the event of their property (cotton) being destroyed by the Southern Commanders, with the sanction of their own rulers, and for the purpose (really) of preventing its falling into the hands of the opposing forces. This is one of the liabilities to the consequences of war raging in any State within the limits of which the property of foreigners may happen at the time to be. At the same time, should the Confederate States hereafter attain to the position of a recognized and settled Kingdom or Confederation, the losses thus occasioned to foreigners might form a fair and reasonable ground of appeal to the equitable consideration of the authorities, with the view of obtaining compensation; and it may, therefore, be not unimportant to preserve the best and most authentic evidence of the true ownership of property which may be likely to be thus dealt with.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.

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* Consul Bunch, No. 73; Consul Molyneux, No. 16.

No. 157.

The Attorney and Solicitor-General to Earl Russell.—(*Received July* 12.)

UNITED STATES.

As to the validity of blockade of Virginia, the United States' Government having sent a vessel to the coast to purchase cotton-seed.

My Lord, *Temple, July* 12, 1862.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 21st ultimo, stating that he was directed by your Lordship to transmit to us a despatch and its inclosures from Her Majesty's Minister at Washington (No. 402), reporting the circumstance under which it had become known that the United States' Government had despatched a vessel to the coast of Virginia to purchase cotton-seed; and to request that we would take this proceeding into our consideration, and furnish your Lordship with our opinion as to its bearing upon the validity of the blockade enforced by the United States' Government.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That, in our opinion, the facts mentioned in the despatch of Mr. Consul Bernal to Lord Lyons of June 3, 1862, do not, as supposed by him, materially affect the questions of the validity of the blockade of the Southern ports, or of the legality of captures made on the ground of the violation thereof. It cannot, as it appears to us, be considered that the permission, or even procuring of the schooner in question (the "Reform"), to pass through the blockade, in order to obtain cotton-seed, amounted to a raising of the blockade. A succession and great number of such instances might raise and warrant the presumption that a *bonâ fide* blockade no longer existed, as such a blockade must undoubtedly be, if not universal, at least general and indiscriminate. But rare and solitary instances of indulgence or relaxation, whether for the sake of third persons or in the interest of the belligerent Government itself, cannot have this effect according to the rules of international law.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.

No. 158.

The Attorney and Solicitor-General to Earl Russell.—(*Received July* 14.)

MEXICO.

As to publishing in "Gazette" notification of French blockade of Tampico and Alvarado, there being no intention of establishing a blockade.

My Lord, *Temple, July* 14, 1862.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 8th July instant, stating that with reference to the letter from the Admiralty Advocate of the 17th ultimo,* inclosing for insertion in the "London Gazette" a notification of the blockade of the ports of Tampico and Alvarado by the French, which was to take effect from the 1st of May last, and the announcement of which had been published in the "Moniteur" and officially communicated to Her Majesty's Ambassador at Paris, he was directed by your Lordship to transmit to us for our information, a letter from the Admiralty inclosing a copy of a despatch from Commodore Dunlop dated the 30th of May, stating that the senior French naval officer had informed him that it was not his intention to establish a blockade of the ports in question.

Mr. Layard also stated that he was to add that Her Majesty's Government had received no intimation from the French Government of an intention not to carry out the blockade.

In obedience to your Lordship's commands we have considered these papers, and have the honour to report—

That inasmuch as it clearly appears from Commodore Dunlop's letter that the intention to establish a blockade of the ports in question has not been carried into effect, and (at the date of that letter) was not likely to be so, we think the proposed notification ought not to be inserted in the "Gazette." It will, however, be advisable to communicate with the French Government, in order to prevent the possibility of any misunderstanding on the subject.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.

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* Page 150.

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No. 159.

The Attorney and Solicitor-General to Earl Russell.—(Received July 14.)

VENEZUELA.

Communication to Messrs. Pemberton of information relative to resignation of Sir Belford Wilson, to be used in suit of "Wilson *v.* Saint."

My Lord, *Temple, July* 14, 1862.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 12th instant, stating that he was directed by your Lordship to transmit to us the inclosed letter from Messrs. Pemberton, Meynell, and Pemberton, dated the 12th July instant, asking to be supplied with certain information connected with Sir Belford Wilson's resignation of his post in Venezuela, for the purposes of suit of "Wilson *v.* Saint," pending in the Court of Chancery.

Mr. Layard was also pleased to inclose a paper which contains this information,* and to request that we would furnish your Lordship with our opinion as to whether this paper can properly be communicated to the applicants.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That the papers containing the desired information as to the circumstances connected with Sir Belford Wilson's resignation of his post in Venezuela may properly, in our opinion, be communicated to the applicants.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.

No. 160.

The Attorney and Solicitor-General to Earl Russell.—(Received July 21.)

JAPAN.

Claim of Mr. M. Moss for compensation for arrest and ill-treatment by Japanese police.

My Lord, *Temple, July* 19, 1862.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 16th July instant, stating that with reference to our Report of the 23rd of May,† he was directed by your Lordship to transmit to us, together with the previous papers,‡ a Memorandum by Sir Rutherford Alcock§ on the claim of Mr. Moss to be compensated by the Japanese Government, on the ground of ill-treatment sustained at the hands of the Japanese authorities; and to request that we would again take this matter into our consideration, and favour your Lordship with our opinion as to the course which Her Majesty's Government ought to take therein.

In obedience to your Lordship's commands we have the honour to report—

That we have further considered this matter with reference to Sir Rutherford Alcock's Memorandum of the 26th June last; and, having regard to the facts that, at the time when Mr. Moss's imprisonment took place, the demand made by Sir R. Alcock upon the Japanese Government was limited to the punishment of the chief offenders in the transaction, and that such demand was finally acceded to by the Japanese Government, we are of opinion that Her Majesty's Government cannot be advised to make, at this distance of time, any new or further demand upon the Japanese Government for pecuniary compensation to Mr. Moss.

We have the less difficulty in arriving at this conclusion, because it appears, from the reasons assigned by Sir R. Alcock for the course which he pursued (and which reasons, having regard to the peculiar circumstances in which he was placed, appeared to us sufficient to justify that course), that the ambiguous and indeterminate language of the Treaty might have furnished the Japanese Government with plausible grounds for maintaining that their own jurisdiction was not excluded in that particular case; and we should think it extremely unadvisable to raise, without necessity, and under circumstances of disadvantage, any question of this kind. The treatment of Mr. Moss, although very barbarous, was probably such as a semi-barbarous people cannot be expected to view in the same light as that in which it is properly regarded by ourselves; and the injury having been one of a personal rather than a pecuniary nature (for this question is not to be mixed up with that of the loss afterwards sustained by Mr. Moss, by reason of his subsequent deportation from Japan), we think it impossible to say that, having originally been treated as a case for the punishment of the offending parties, and not for pecuniary reparation, it ought now to be revived for the latter purpose.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.

No. 161.

The Attorney and Solicitor-General to Earl Russell.—(Received July 21.)

CHINA.

License to enable Mr. Lay and Captain Osborn to accept naval and military service under Chinese Government, to fit out and equip vessels for warlike purposes in China, and to enlist British subjects to serve in naval and military service.

My Lord, *Temple, July* 21, 1862.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 15th July instant, stating that he was directed by your Lordship to transmit to us a letter from Mr. Lay, applying for the Queen's license to enable him and Captain Osborn, R.N.:—

1. To accept naval and military service under the Chinese Government.
2. To fit out and equip vessels for warlike purposes in China; and
3. To enlist British subjects to serve in naval and military operations there.

And to add that on reference to the Act 59 Geo. III, cap. 69, it would be seen that the leave and license of the Crown to do these things might be signified either by Royal Sign-Manual, or by Order in Council, or by Proclamation, and it had appeared to your Lordship that the best course of proceeding in this case would be by the Royal Sign-Manual, but on inquiry at the Home Office it had been ascertained that there was no precedent for a license under the Royal Sign-Manual of the general character applied for by Mr. Lay.

That it appeared that a license to enter the service of a foreign Government was generally issued in the annexed Form marked A, while a license to equip and fit out vessels of war was generally drawn up in the form marked B; and on reference to the proceedings adopted at the time of the formation of the British Auxiliary Legion of Spain, it appeared that the permission to enlist British subjects, which had been applied for by the Spanish Minister at this Court, was signified by an Order in Council.

Mr. Layard added, that he was to request that we would take into our consideration the propriety of issuing a license, under the Royal Sign-Manual, to enable Mr. Lay and Captain Osborn to accept naval and military service under the Chinese Government, to fit out and equip vessels for warlike purposes in China, and to enlist British subjects to serve in naval and military operations there, and if we should be of opinion that there were no objections thereto, that we would at our earliest convenience furnish your Lordship with a draft of a License for the Queen's signature, embracing those several objects; and he was further to request that if we should be of opinion that there were objections to proceeding by Royal Sign-Manual in this case, we would advise your Lordship as to the best course to be pursued, it being understood that Her Majesty's Government were anxious to assist Mr. Lay, and to further his views so far as they could properly do so.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That, in our opinion, there can be no objection to issuing a license, under the Royal Sign-Manual, to Mr. Lay, and a similar license to Captain Osborn, authorizing each of those gentlemen, separately, to accept naval and military service under the Chinese Government, and to fit out and equip vessels for warlike purposes in China. Such a license being to individuals, and not concerning the public, we see no occasion for the publicity of a Proclamation, or even an Order in Council.

As regards a license to Mr. Lay and Captain Osborn to "enlist British subjects to serve in naval and military operations" in China, the question is different; it is no longer confined to the consideration of acts to be done by the persons applying for the license, but embraces the conduct of those also who may

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* Sir B. Wilson, November 30, 1852.

† Page 125.

‡ Mr. Moss, May 1; Law Officers, May 23.

§ Memorandum, June 26.

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be "enlisted" by the one or by the other. We understand that the proposed enlistment is an enlistment of British subjects in Great Britain, as well as in other parts of Her Majesty's dominions; and if it is the intention of Her Majesty's Government that such a general enlistment should be sanctioned, it appears to us that proper publicity should be given to the matter by an Order in Council, which we observe was the course adopted in 1835, when the "Foreign Enlistment Act" was suspended in favour of the Government of the Queen of Spain. It should also, in our opinion, be considered whether, if every British subject is to be at liberty to enlist himself, the license to procure and accept that enlistment (a power, it would seem, at present intended to be given to Mr. Lay and Captain Osborn only) ought not to be conferred generally, so that any one may enlist and any one be enlisted. If such a general permission be intended, moreover, we should doubt the propriety of singling out any gentlemen in particular for special license under the Sign-Manual.

In connection with this subject we would observe, that the first part of the second section of the "Foreign Enlistment Act" makes it a misdemeanour for any natural-born subject of Her Majesty to *enter into* any foreign military service without the leave and license of Her Majesty under the Sign-Manual, or signified by Order in Council or Proclamation, "for that purpose first had and obtained;" and that the latter part of the same section makes it absolutely a misdemeanour for any person within Her Majesty's dominions to engage or enlist others to enter into "any such service or employment as aforesaid;" the effect of which (as we understand it) is to make it necessary that Her Majesty's license, Order in Council, or Proclamation should be in such a form as to authorize, not the enlistment of other persons by those to whom permission is given, but the acceptance of the foreign service by the persons themselves who may be enlisted. It is not contemplated by the Act that permission should be given for the act of enlistment by the agents who may be employed for that purpose by a foreign Power; any such act is rendered absolutely unlawful, unless the persons who are enlisted have themselves Her Majesty's permission to enter such foreign service.

Under these circumstances we have not at present felt ourselves in a position satisfactorily to proceed to frame the draft of a license for the Queen's signature embracing the above several objects; and we await your Lordship's further directions in the matter.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.

No. 162.

The Attorney and Solicitor-General to Earl Russell.—(Received July 22.)

PERSIA.

Claim for reimbursement of sum expended in the purchase of two natives of British India as slaves, and liberated at the instance of the British Minister at Tehran.

My Lord, *Temple, July* 22, 1862.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 14th July instant, stating that he was directed by your Lordship to transmit to us a despatch from Her Majesty's Minister at Tehran, stating that two natives of British India, who had been sold as slaves, had been liberated in consequence of steps taken by him, and that the person who had purchased them had put forward a claim, through the Persian Minister for Foreign Affairs, to be reimbursed by the British Mission the sum which he had so expended; and to request that we would take these papers into consideration, together with the Treaty between this country and Persia for the suppression of the Slave Trade, and report to your Lordship our opinion as to the course which Her Majesty's Government should pursue in this matter.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That so far as relates to any argument against the demand of the Persian Government, founded on the two Firmans of the 12th June, 1848, and the Convention of Ispahan of August 1851, the Persian Minister for Foreign Affairs is perfectly correct in his assertion that the engagements embodied in those documents do not touch the present question. The sole purpose and effect of those engagements is, to prohibit "the importation and exportation of negroes into the Persian dominions by sea alone, but not by land." It is, indeed, expressly declared by the first of the two Firmans, that the importation and exportation of negroes by land "is by no means forbidden."

But the present case, as it appears to us, does not depend at all upon those Treaty stipulations, but rests upon a much higher principle. As we understand the facts, this is not a case of the importation of slaves, whether by sea or by land, into the Persian dominions; it is a case of British subjects, who were free men, entitled to be protected as such by Her Majesty's Government, at and after the time when they entered the Persian dominions; being ordinary retainers or hired servants, and not slaves, of the person or persons in attendance on whom they were travelling. Their employer having died in Persia, his fellow-traveller (or some person with whom he had become associated there) afterwards assumed a right to sell these persons, in Persia, as slaves; and a Toorkish slave-merchant bought and paid for them. We do not think that Her Majesty's Government can admit that such a transaction was capable, even for an instant, of depriving these British subjects of their right to freedom, or of creating any right or title whatever in the Persian subject who bought them, to be paid any ransom or redemption money as the price of their deliverance. If the seller had no right of property in these persons, as against themselves and against Her Majesty, their lawful Sovereign and protector, neither could the pretended purchaser acquire any such right by the payment of money to the seller; and, unless he acquired some right of property in them, he cannot have any claim on Her Majesty's Government for repayment of money so paid by him at his own risk and in his own wrong. He must be left to recover it back as best he can from the individual who undertook to sell and deliver that to which he had no title; and we think that Her Majesty's Government cannot but approve and adhere to the peremptory refusal, by Mr. Alison, of the demand of the Persian Minister.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.

No. 163.

The Attorney and Solicitor-General to Earl Russell.—(Received July 23.)

NEW GRANADA.

Rights and immunities of British subjects resident in New Granada.

My Lord, *Temple, July* 22, 1862.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 30th June ultimo, stating that he was directed by your Lordship to transmit us a despatch from Her Majesty's Chargé d'Affaires in New Granada (Separate and Confidential, 18th March, 1861), requesting instructions on certain points connected with the rights and immunities of British subjects resident in New Granada, and at the same time to inclose a despatch from Mr. Griffith (No. 38) explaining the regulations laid down by the Government of the United States as regards citizens of the United States domiciled in New Granada; and to request that we would take these papers into consideration and report to your Lordship our opinion as to the instructions which should be addressed to Mr. Griffith on the points to which he had called attention.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we think Her Majesty's Government may with propriety express their approval of the general views expressed by Mr. Grffiith in his despatches of the 18th March and 15th May last, which appear to us to be sound in principle, though of course requiring the exercise of an impartial discretion in their application to practice. It is certainly not desirable or proper in any way that advantage should be taken, for the political purposes of any of the contending parties in New Granada, of the claims of British settlers in that country who may interest themselves in the local politics, to British protection; and Mr. Griffith will, in our opinion, act in strict accordance with his duty if he continues (as he seems hitherto to have done) to refuse the sanction of his authority and influence, as Her Majesty's Chargé d'Affaires in New Granada, to any pretensions of such settlers to privileges and immunities which the native inhabitants of the country do not possess, and which are not in any way secured to such settlers by Treaty.

It is, we apprehend, perfectly clear that British subjects who may have become domiciled in New Granada must submit to the general operation of the laws and institutions of that country in the same manner as if they were natural-born citizens thereof, and that their right to British protection (though not forfeited, unless they have also taken steps to become naturalized, and to renounce their British allegiance in favour of the Government of New Granada) does not exempt them from the duty of rendering obedience to those laws and institutions while resident there, or from liability, in common with all the other inhabitants of that country, to the ordinary penalties of disobedience thereto, according to the course of the local law. They cannot (to use the words of Mr. Griffith) "place themselves in open opposition to the Government" (if, by open opposition, unlawful resistance to the lawful authority of the Government is intended), and at the same time lay claim to the assistance of Her Majesty's Legation "to extricate them from the difficulties they may thus wilfully incur."

In answer to the concluding inquiry of Mr. Griffith's despatch of the 18th March, whether it his duty "to afford the same protection to natives of Great Britain domiciled in New Granada as to those who repair to that country for a special purpose transient in its nature," and with reference to the regulations said to have been laid down by the Government of the United States as regards citizens of the United States domiciled in New Granada, we think it necessary to add that, unless British subjects domiciled in New Granada have (as above noticed) also renounced their British allegiance, we do not see anything in the mere fact of their being domiciled there to disentitle them to British protection, or to make it necessary or proper that they should be regarded, for the purpose of this question, in a less favourable point of view than those who may be there for some special purpose transient in its nature. Those who may be there for a special purpose, however transient in its nature, are under an obligation to respect the laws and to obey the constituted authorities of the country in all points not otherwise provided for by express Treaty stipulations; and the duty of those who may be permanently domiciled there is exactly the same. If, indeed, those permanently domiciled in the country have acquired lands and real property (other than houses and warehouses hired and occupied for the purposes of commerce), they must submit, in respect of such real property (which is not in any respect privileged by the Treaty of 1825), to all the burdens, including military exactions and requisitions, which the real property of the country generally has to bear: the exemption stipulated for by the IXth Article of the Treaty applying only to personal exactions, or exactions to be levied from personal property. But this is a liability arising, not from any distinction between domicil and transitory residence, but from the universal principle, which subjects land, in every country, to the *lex loci rei sitæ*.

We think that instructions in the sense of the above remarks may properly be addressed to Mr. Griffith.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.

No. 164.

The Attorney and Solicitor-General to Earl Russell.—(*Received July 23.*)

PERSIA.

As to Treaty obligations respecting the registry of contracts, bills of exchange, deeds, and other documents.

Temple, July 22, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 26th June ultimo, stating that he was directed by your Lordship to transmit to us a despatch from Her Majesty's Consul at Tabreez (No. 10, April 25, 1862), in which a question is raised whether Article IX of the Treaty of Peace between Great Britain and Persia* binds Great Britain to follow the course prescribed by Article II of the Russo-Persian Treaty of 1828,† in regard to the registry of contracts, bills of exchange, deeds, and other documents, and to request that we would furnish your Lordship with our opinion on that point.

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* Treaty of Peace between Great Britain and Persia, March 4, 1857.

† Extract of Commercial Treaty of Turcomanchia between Russia and Persia, February 10, 1828.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That, in our opinion, Article IX of the Treaty of Peace between Great Britain and Persia does not bind Great Britain to follow the course prescribed by Article II of the Russo-Persian Treaty of 1848, in regard to the registry of contracts, bills of exchange, deeds, and other documents. By the Article in question, the "treatment" of British and Persian subjects respectively, and their trade, are to be placed "on the footing of the treatment and commerce of the most favoured nation." But Article II of the Russo-Persian Treaty does not, in our opinion, provide what can be properly described as a favourable treatment either of subjects or commerce. The "favour" referred to must, we think, be necessary and universal, in order to come within the most favoured nation clause, and thereby to be applicable to Treaties containing such clause, in the absence of special stipulation. But the arrangements for registration of documents may or may not be a favour or benefit, or may be so to one nation and not to another. This is shown in the present case; as we collect that, to British merchants trading in Persia, the stipulation, if extended to them, would be felt as a burthen and not a relief. Such matters, we think, should be left to particular arrangement between the various parties to Treaties, and ought not to be insisted on under the general clause, as against those by whom they would be felt as a burthen, and not a relief.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.

No. 165.

The Attorney and Solicitor-General to Earl Russell.—(*Received July 23.*)

MEXICO.

As to publication of notification of French blockade of Mexican port of Mazatlan.

Temple, July 22, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 17th July instant, stating that he was directed by your Lordship to transmit to us a letter from the Admiralty dated the 15th July instant, inclosing a copy of a letter from Captain Miller of Her Majesty's ship "Clio," reporting that he had received a letter from Captain Mallet, commanding the French frigate "Bayonnaise," in which he stated that he had been forced to blockade the Mexican Pacific port of Mazatlan, and to request that we would take these papers into consideration, and favour your Lordship with our opinion as to the propriety of inserting a notice of this blockade in the Gazette.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That, in our opinion, the information which Her Majesty's Government have received of the blockade of Mazatlan by the French squadron, ought to be notified in the Gazette.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.

No. 166.

The Attorney and Solicitor-General to Earl Russell.—(*Received July 23.*)

GENERAL.

As to obtaining an injunction from the Court of Chancery to prevent Lady Jackson from selling or publishing diplomatic correspondence between Great Britain and Prussia from 1772 to 1806.

Temple, July 22, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 1st July instant, stating that he was directed by your Lordship to transmit to us a copy of a letter which your Lordship had received from Lady Jackson, widow of the late Sir George Jackson, who was employed for many years in the Diplomatic service of the Crown, and who was granted a superannuation allowance, and died in May 1861; and to add that we would perceive that Lady Jackson offered to sell to Her Majesty's Government a series of despatches between the Courts of London and Berlin from 1772 to 1806, and that your Lordship had no means of knowing what the precise nature of those

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papers were; but as Sir G. Jackson was brother of Mr. F. F. Jackson, who for many years filled the post of Envoy Extraordinary and Minister Plenipotentiary to the Court of Berlin, it was not improbable that, on the outbreak of the war with Prussia in 1802, Mr. Jackson might have removed a portion, if not the whole, of the archives of that period from Berlin, and retained them in his custody, and that at his death they fell into the possession of Sir G. Jackson.

That the original despatches, however, which were addressed by the various British Ministers who resided at Berlin between 1772 and 1806 to the Secretaries of State, as well as copies of the official instructions to those officers during the same period, were preserved in your office, and there was no intention, therefore, on the part of Her Majesty's Government to accept Lady Jackson's offer to purchase the papers in her possession; but as Lady Jackson stated in her letter that she could only part with them for a pecuniary consideration, she might possibly, on receiving what she might consider an unsatisfactory reply to her proposal, offer them for sale to some private individual, or attempt to publish them; and as the publication of so recent a correspondence might be injurious to the public interests, he was to request that we would favour your Lordship with our opinion as to the propriety of obtaining an injunction from the Court of Chancery to prevent Lady Jackson from selling or publishing the papers in question.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That it would be impossible, without knowing the particulars of which the documents in Lady Jackson's possession consist, to say that they would not be such as she would be entitled to retain, by virtue of some (qualified or absolute) right of property therein, which may have belonged to the person or persons under whom she claims. The publication, in recent times, of despatches and official correspondence of the Duke of Wellington, Lord Cornwallis, Lord Londonderry, and many other persons who have been employed in the public service of the State, is evidence of (what we believe to be) the ordinary practice of persons in such situations, to retain the originals or copies of many of the letters and papers which they write or receive in the course of their public employments, as their private property; and such a practice, although not, perhaps, always free from question, may in many cases, and to a great extent, be justified, by the analogy of the law relating to private letters, and by the right which every person so employed must have to retain in his own possession or power such documents as may be necessary at any future time to explain and justify his own conduct in case it should be impeached. In the present case it can hardly (we think) be presumed, after the lapse of a period of nearly sixty years, that the papers in question are such as can now be reclaimed as the *property* of the Crown; and it will, therefore, be prudent to consider the case upon the supposition that Lady Jackson has a right to retain them.

So viewing the case, we think that it follows, both from the principles of law applicable to the publication of private correspondence, and from the still clearer principles applicable, as between principal and agent, or master and servant (especially where the rights of the Crown and affairs of State are concerned), to correspondence which has passed in the course of, and with reference to, an employment of trust and confidence, that the Court of Chancery would interfere, by injunction, at the suit of the Crown, to prevent any unauthorized publication of papers of this nature; and, if an unauthorized publication would be prevented, it is not easy to distinguish from such publication any unauthorized communication whatever of the contents of these papers to any persons, unless under special circumstances. We are disposed, therefore, to think that, on proof of an intention or threat, by Lady Jackson, to publish or to part with and divulge the contents of these papers, without the permission of Her Majesty, an injunction might be obtained.

The mere fact that Lady Jackson has offered to sell these papers to Her Majesty's Government does not appear to us to be, in itself, such evidence of an intention or threat to publish or part with them as would make it safe or discreet to file an information without further proof of such intention. It would, we think, be more advisable, when declining the offer of sale, to intimate that Her Majesty's Government do not recognize the right of Lady Jackson to divulge or dispose of such papers without Her Majesty's permission, and that permission will not be given, if asked, for their sale or publication; but that, on the contrary, if it were understood that Lady Jackson had any purpose of that kind, it would be deemed necessary for Her Majesty's Government to take legal measures to prevent it. Such an intimation would, probably, answer the intended purpose; and, at all events, no sale by auction, or publication, could well take place without previous public advertisement, which would, doubtless, come to the knowledge of Her Majesty's Government in sufficient time to enable an information to be filed.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.

No. 167.

The Law Officers of the Crown to Earl Russell.—(Received July 25.)

MEXICO.

Notification of French blockade of port of Mazatlan.

My Lord, *Temple, July* 24, 1862.

THE Attorney and Solicitor-General having been honoured with your Lordship's commands signified in Mr. Layard's letter of this day's date, have availed themselves of your Lordship's general authority, given to them under existing circumstances, to request the assistance, in this case, of Her Majesty's Admiralty Advocate.

Mr. Layard was pleased to state that he was directed by your Lordship to return to them the inclosed papers, and to request that, in accordance with the opinion expressed in their Report of the 22nd instant, they would prepare for insertion in the "London Gazette" of to-morrow, the 25th instant, a notification of the information received by the Board of Admiralty respecting the blockade of Mazatlan.

In obedience to your Lordship's commands we have prepared the accompanying notification, to which we have affixed our initials, for insertion in the "London Gazette."

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

Inclosure in No. 167.

Draft Notification.

Foreign Office, July 25, 1862.

IT is hereby notified that the Right Honourable the Earl Russell, Her Majesty's Principal Secretary of State for Foreign Affairs, has received a communication from the Lords Commissioners of the Admiralty, inclosing a letter from Captain Miller of Her Majesty's ship "Clio," dated Acapulco, the 15th of June, reporting that the port of Mazatlan, on the west coast of Mexico, was blockaded on the 28th of May last by the frigate "Bayonnaise," belonging to the naval forces of His Imperial Majesty the Emperor of the French.

No. 168.

The Attorney and Solicitor-General to Earl Russell.—(Received July 29.)

UNITED STATES.

Claim of Messrs. Martin and Son for destruction by United States' cruizers of their vessel the "York," driven ashore on coast of North Carolina.

My Lord, *Temple, July* 28, 1862.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 14th July instant, stating that he was directed by your Lordship to transmit to us therewith a Memorial, with its inclosures, from Messrs. John Martin and Son, relative to the destruction, by United States' cruizers, of their vessel the "York," which had been driven ashore on the coast of North Carolina; and to request that we would take this case into our consideration, and favour your Lordship with our opinion thereupon.

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In obedience to your Lordship's commands we have taken this case into our consideration, and have the honour to report—

That we are of opinion that, under the circumstances appearing by the papers referred to in Mr. Layard's letter, Messrs. Martin have a just claim upon the United States' Government for compensation for the loss of such part of the property destroyed by the United States' cruizers as might otherwise have been saved; and that we think proper representations, with a view to obtain for them such compensation, ought to be made to the United States' Government.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.

No. 169.

The Attorney and Solicitor-General to Earl Russell.—(Received July 29.)

UNITED STATES.

Vessels being fitted out at Liverpool and Birkenhead for the service of the Confederate States.

My Lord,

Temple, July 29, 1862.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 23rd July instant, stating that with reference to our Report of the 30th ultimo* he was directed by your Lordship to transmit to us the accompanying papers, which had been received by the Board of Treasury from the Commissioners of Customs, containing further information respecting the vessel alleged to be fitting out at Liverpool for the service of the so-called Confederate States: and to request that we would take the same into our consideration, and favour your Lordship at our earliest convenience with our opinion thereupon.

The former papers on this subject were inclosed for reference, if required.

We are also honoured with your Lordship's commands signified in Mr. Layard's letter of the 23rd July instant, stating that with reference to his letter of that date, sending to us papers respecting the vessel stated to be preparing for sea at Birkenhead for the service of the Government of the so-styled Confederate States of North America, he was directed by your Lordship to transmit to us a further letter from the Commissioners of Customs, inclosing additional papers respecting this vessel, and to request that we would take these papers into our consideration, and favour your Lordship at our earliest convenience with our opinion as to the steps which ought to be taken by Her Majesty's Government in the matter.

We are further honoured with your Lordship's commands signified in Mr. Layard's letter of the 26th July instant, stating that he was directed by your Lordship to transmit to us the accompanying letter from the Board of Treasury, dated July 26, which your Lordship had received that morning, containing further information respecting the vessel stated to be fitting out at Liverpool for the service of the so-styled Confederate States; and to request that we would take the same into our consideration, together with the other papers on the same subject which were then before us.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That, in our opinion, the evidence of the witnesses who have made depositions (we allude particularly to William Passmore, Edward Roberts, Robert John Taylor, and Henry Redden), coupled with the character and structure of the vessel, makes it reasonably clear that such vessel is intended for warlike use against citizens of the United States, and in the interest of the (so-called) Confederate States. It is not and cannot be denied that the vessel is constructed and adapted as a vessel of war, being pierced for guns, the sockets for the bolts for which Passmore states are already laid down; and having a magazine, and shot and canister-racks on the deck, and a certain number of canisters being actually on board. It is also stated in the Report of the Commissioners of Customs of July 1, that Messrs. Laird, the builders, do not deny that the vessel has been built for some "foreign Government," although they maintain, apparently, a strict reserve as to her actual destination, and as to the "foreign Government" in particular for whose service she is intended. We do not overlook the facts that neither guns nor ammunition have as yet been shipped; that the cargo (though of the nature of naval stores in connection with war-steamers) may yet be classed as a mercantile cargo; and that the crew do not appear to have been, in terms and form at least, recruited or enrolled as a military crew. It is to be expected that great stress will be laid upon these circumstances by the owners and others who may oppose the condemnation of the vessel, if seized by the officers of the Customs: and an argument may be raised as to the proper construction of the words which occur in the 7th section of the "Foreign Enlistment Act," "equip, furnish, fit out, or arm," which words, it may be suggested, point only to the rendering a vessel, whatever may be the character of its structure, presently fit to engage in hostilities. We think, however, that such a narrow construction ought not to be adopted, and if allowed would fritter away the Act, and give impunity to open and flagrant violations of its provisions. We therefore recommend that, without loss of time, the vessel be seized by the proper authorities; after which an opportunity will be afforded to those interested, previous to condemnation, to alter the facts, if it may be, and to show an innocent destination of the ship. In the absence of any such countervailing case, it appears to us that the vessel, cargo, and stores may be properly condemned.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.

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* Page 170.

No. 170.

The Attorney and Solicitor-General to Earl Russell.—(Received July 29.)

GENERAL.

As to resignation of Sir J. Harding, Her Majesty's Advocate General.

(Confidential.)
My Lord,

Temple, July 29, 1862.

WE are honoured with your Lordship's commands signified in Mr. Murray's letter of the 26th instant, stating that he was directed by your Lordship to transmit to us the accompanying copy of the Patent by which Dr. John D. Harding was constituted and appointed Her Majesty's Advocate-General; and to request that we would take this document into our consideration, and that we would furnish your Lordship with our opinion whether the office now held by Sir John Harding can be resigned by him.

Mr. Murray was also pleased to state that it appears that that office is held by Patent during Her Majesty's pleasure, like the office of Secretary of State.

In obedience to your Lordship's commands we have taken these papers into our consideration and have the honour to report—

That in our opinion the office now held by Sir John Harding may be resigned by him, and such resignation being accepted by Her Majesty will be effectual.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.

Inclosure in No. 170.

Twenty-first Part Patents of the Fifteenth year of the Reign of Queen Victoria.

VICTORIA, by the Grace of God of the United Kingdom of Great Britain and Ireland, Queen Defender of Faith, to all to whom these presents shall come Greeting:

Whereas we did by our Letters-Patent under the great seal of the United Kingdom of Great Britain and Ireland, bearing date at Westminster the seventh day of November, in the first year of our Reign, constitute our trusty and well-beloved Sir John Dobson, Knight, Doctor of Laws, our Advocate General for all causes and matters Ecclesiastical and Maritime relating to our Crown, to have, occupy, and exercise the said office or function of our Advocate General during our pleasure, as by the same Letters-Patent (relation being thereunto had) may fully and at large appear: Now know ye that we have revoked and determined,

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and by these presents do revoke and determine the said recited Letters-Patent and all and singular things therein contained: And further know ye that we for divers good causes and considerations us hereunto especially moving, of our especial grace, certain knowledge, and mere motion, have ordained, made, and constituted, and by these presents do ordain, make, and constitute our trusty and well-beloved John Dorney Harding, Esquire, Doctor of Civil Law, our Advocate General for all causes and matters Ecclesiastical and Maritime relating to our Crown, to have, occupy, and exercise the said office or function of our Advocate General to the said John Dorney Harding for and during our pleasure, together with all and singular fees, rights, privileges, profits, emoluments, perquisites, and advantages to the aforesaid office, belonging or appertaining (save and except the yearly fee of twenty pounds of lawful money of Great Britain, payable half-yearly at the receipt of our Exchequer) in as full and ample manner and form as Sir John Dobson, Knight, or as any other person or persons heretofore having or exercising the said office hath or have had, held, and enjoyed, or ought to have held and enjoyed (except as aforesaid) in and for the exercise of the said office.

In witness, &c., witness, &c., the sixth day of March.

By Her Majesty's Command.

Examined with the Record in the Petty Bag Office in Her Majesty's High Court of Chancery, the twenty-sixth day of July, 1862.

(Signed) J. G. ABBOTT.

No. 171.

The Attorney and Solicitor-General to Earl Russell.—(*Received August* 1.)

UNITED STATES.

Claim of owners of American ship "Daring," for detention of a shipment of saltpetre at Calcutta.

Temple, August 1, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 16th ultimo, stating that he was directed by your Lordship to transmit to us a note from the United States' Minister at this Court, dated the 11th June ultimo, inclosing papers in support of a claim made by the owners of an American vessel the "Daring," on account of the detention of a shipment of saltpetre at Calcutta in the month of December last.

Mr. Layard was also pleased to state that he inclosed a letter from the India Office, dated the 11th July ultimo, in explanation of the circumstances under which the claim has been put forward, and that he was directed by your Lordship to request that we would take the case into our consideration and furnish your Lordship with our opinion thereon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That, in our opinion, the owners of the American vessel, the "Daring," have no just claim on Her Majesty's Government for compensation, on the grounds set forth in their protest, and referred to in the despatch of the American Minister of the 11th June last. We collect from Mr. Merivale's note of the 11th July, that the statement of the owners is so far correct that the saltpetre in question had been "shipped prior to that date," that is, prior to the 27th December, 1861, the date of the first Ordinance, and that, consequently, from that date up to the 3rd January, 1862, the date of the second Ordinance, no prohibition of export from Calcutta applied to the saltpetre on board the "Daring." But we are clearly of opinion that it was competent to the Executive in India to issue the further or second Ordinance bearing the latter date, and such Ordinance was in force until the 28th February, when it was formally withdrawn. The complaint made is, that the "Daring," with her cargo, was detained in the port of Calcutta by the Government from the 3rd January until the 28th February under the second Ordinance. The facts do not appear to be in dispute; and the question is one purely of international law; and the ground upon which, as it appears to us, the Government were justified in publishing and enforcing the Ordinance under which the detention took place, is the general right of every Government to resort, on the occurrence of a reasonable apprehension of hostilities, to all means of protection and self-defence not in themselves at variance with ordinary principles of justice, and impartially used; and we do not think the Ordinance in question open to any objection in principle or fairness.

We have, &c.

(Signed) WM. ATHERTON.
ROUNDELL PALMER.

No. 172.

The Attorney and Solicitor-General to Earl Russell.—(*Received August* 2.)

GENERAL.

Claim of James Castell and Eldrid Banen for losses sustained in consequence of their capture on board the "Laura," seized on suspicion of Slave Trade.

Temple, August 1, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 14th ultimo, stating that he was directed by your Lordship to transmit to us the accompanying letter from the Colonial Office, inclosing a copy of a despatch from the Governor of the Leeward Islands forwarding petitions from James Castell and Eldrid Banen, applying for compensation for their detention and the losses which they have sustained in consequence of their capture on board a vessel called the "Laura," which was seized by the Commander of Her Majesty's ship "Cadmus," on suspicion of being engaged in the Slave Trade.

Mr. Layard was also pleased to state that a Report from the Attorney-General at St. John's accompanies the Governor's despatch upon the case, and that he was directed by your Lordship also to inclose Reports from Her Majesty's Consul-General in Cuba, and from the Commander of the "Cadmus," showing the circumstances under which the "Laura" was captured; and to request that we would take these papers into our consideration, and furnish your Lordship with our opinion upon the claim put forward by the petitioners.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That in our opinion neither of the petitioners, Castell and Banen, has any fair ground for claiming from Her Majesty's Government compensation for the inconvenience and suffering to which they have been subjected, under the circumstances stated in the papers now submitted to us. Such inconvenience and suffering flowed from an ordinary and *bonâ fide* application of the criminal law, in connection with the Slave Trade, to a ship under the British flag, and on board which the petitioners were found at the time of capture; and we do not discover in the case any special circumstances to remove the petitioners, or either of them, from the category of persons against whom, on reasonable suspicion and in the usual manner, the criminal law is put in motion, and on whose part, as a general rule, claims for reimbursement and compensation are, and must be, disallowed by every Government.

We have, &c.

(Signed) WM. ATHERTON.
ROUNDELL PALMER.

No. 173.

The Attorney and Solicitor-General to Earl Russell.—(*Received August* 2.)

UNITED STATES.

Restrictions on trade with the Bahamas.

Temple, August 2, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 19th July ultimo, stating that with reference to our Report of the 7th July last,* he was directed by your Lordship to transmit to us, together with the former papers,† three despatches and their inclosures from Mr. Stuart, Her Majesty's Chargé d'Affaires at Washington,‡ respecting the restrictions imposed by the United States' authorities on trade with the Bahamas; and to request that we would take these further papers into our consideration, and favour your Lordship with such observations as we might have to offer thereupon.

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* Page 177.

† Lord Lyons, Nos. 343, 364, 389, and 404

‡ Mr. Stuart, No. 11, June 21; No. 32, July 1; No 33, July 1.

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Mr. Layard was also pleased to annex the draft of an instruction, founded upon our above-mentioned Report, which would be sent to Mr. Stuart that evening (No. 26, July 18).

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we regard the subject of these despatches, and their inclosures, as one of the utmost importance; and it appears to us to be impossible for Her Majesty's Government, however desirous they may be to make due allowance for the difficulties of the position in which the Government of the United States is placed, to acquiesce in such a system of interference with the legitimate trade, both of this country with her own Colonies by way of the United States, and of the British West Indies with the United States, as that described in these papers. It is, in our view, a grave violation, both of the existing Commercial Treaties between the two countries, and of the best established principles of international law, as has been very clearly and ably shown by Mr. Carlisle, in his confidential opinion, dated the 29th June last, inclosed in Mr. Stuart's No. 33. We are, indeed, so well satisfied with the treatment which this subject has received at Mr. Carlisle's hands, that we think it sufficient to refer to his arguments generally, without repeating them. On one point, indeed, his remarks seem to us to require qualification, viz., as to the interference with the cargo of the Royal mail-steamer "British Queen," which, however unjustifiable, cannot, we think, be brought into the same category with the case of the "Trent," the acts in question having taken place within the territorial jurisdiction of the United States. On the other hand, we think it proper to point out that the system of interference complained of cannot be justified, even by the terms of the Act of Congress (assuming it to have passed and become law), of which a copy was inclosed in Lord Lyons' despatch No. 326, which authorized the refusal of clearances to foreign vessels, only when the Secretary of the Treasury should "have satisfactory reason to believe," that the goods, &c., or some part thereof, were "*intended for ports or places in possession or under control of insurgents against the United States;*" and which authorized bonds to be taken, only to secure *the delivery* of the cargo at the destination for which it is cleared or permitted; and that no part should *be* "*used in affording aid or comfort* to any person or parties in insurrection against the authority of the United States."

If this latter condition is to be understood (as in reasonable construction it must) of any use, preceding *delivery at the specified destination*, it does not seem to be objectionable; but, if meant to make the master and owner of the ship responsible for any subsequent use of the articles constituting the cargo, after they have passed beyond their power or control, it is one to which no independent nation could for a moment submit.

With respect to the apprehension of "*imminent danger that goods, &c., may fall into the possession or under the control of the insurgents*" (upon which we observed in our former Report), the Act of Congress contains no provisions whatever, applicable to any *exports by sea* from the United States; the third section, which relates to that subject, being strictly confined to "*importations* into any port of the United States," and to "*transportation upon any railroad, turnpike or other road or means of transportotion within the United States;*" so that with respect to this point what has been done is not only contrary to Treaty and to international law, but is also without excuse even from the letter of the special and extraordinary enactments passed by Congress itself.

The question, however, is not what may be, at any given moment, the local law of the United States (as to which the Government of the United States may possibly be justified in declining to enter into discussion with Her Majesty's Government), but what are the international obligations of the United States towards this country; and on this point we have nothing to add to our former Report, and to the unanswerable remarks of Mr. Carlisle.

We have, &c.

(Signed) WM. ATHERTON.
ROUNDELL PALMER.

No. 174.

The Attorney and Solicitor-General to Earl Russell.—(Received August 2.)

UNITED STATES.

Complaint of Mr. R. G. Bushby of capture of his vessel "Lilla" by United States' cruizer.

My Lord, *Temple, August* 2, 1862.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 31st July ultimo, stating that he was directed by your Lordship to transmit to us the accompanying Memorial and its inclosures from Mr. R. G. Bushby, dated the 28th July ultimo, stating the circumstances under which his vessel, the "Lilla," was captured by the United States' cruizer "Quaker City;" and to request that we would take this case into our consideration, and favour your Lordship with our opinion thereupon at our earliest convenience.

In obedience to your Lordship's commands we have the honour to report—

That the papers in this case do not enable us to arrive at any satisfactory opinion as to the legality or illegality of the capture. It appears from the declaration of the master (Captain Applebee), that the destination of the ship was alleged by the captors to be "the coast of the United States," meaning, as we presume, some part of the Southern coast then under blockade. In the absence of any statement of the evidence (if any) relied upon by the captors, in support of this allegation, we can only at present observe that the account of the destination of the ship and cargo, contained both in the master's declaration and in the memorial of the owner (Mr. Bushby), is unsatisfactory and imperfect. The account which the master gives of the orders under which he was sailing, is only that the ship was "bound for Nassau;" and he relies on the fact that he was not, when taken, in the track which would lead him to the coast of the United States. But the real question may probably turn out to be, not whether the ship was then on her way to Nassau, but whether she had any ulterior or contingent destination, involving a breach of the blockade, with which an intermediate destination to Nassau, or an intention to call there for orders, would be in no way inconsistent. In like manner, Mr. Bushby states, that the ship was "bound for Nassau, and there consigned to Messrs. Adderley and Co.," and that she had on board a cargo (consisting of articles of which saltpetre was one, and all of which were such as might be well adapted for the belligerent purposes of the Confederate States; even drugs being useful for troops and military hospitals), "shipped by several different parties for Nassau, and consigned to order."

The house of Adderley and Co. has been (if we mistake not) known to be concerned on former occasions in the trade carried on, viâ Nassau, between the blockaded ports of the Confederate States and Europe. Although, therefore, no facts as yet appear sufficient to justify the capture, the facts which do appear are not in themselves sufficient to prove that it may not be justifiable, if made beyond the limits of British waters.

Upon the question whether it was made within or beyond the limits of British waters, we think much more weight is due to the captain's own statement, in his protest made immediately after his arrival at Boston, that the ship was boarded "when within *four* miles" of the Abaco lighthouse, than to the subsequent statement made at Liverpool by the passenger Lebby, that the lighthouse was then "distant *two miles and three-quarters, as ascertained by observation*, &c." If the latter statement were accurate, the capture would certainly be illegal, as made within British waters; but if the distance exceeded three miles, it was beyond the territorial jurisdiction of this country. It is not, we think, credible that, if an exact observation had been just before made by the captain himself, as Lebby pretends, it would not have been so stated in the protest. The captain was well aware of the importance of proving, if possible, that he was then within British waters; for he expressly insists in his protest that he was illegally seized "in waters which," he says, "I presume to be British, viz., *within four* miles of the Bahama Islands."

Under the circumstances of this case, it may be proper that some representation should, in the first instance, be made to the United States' Government, in order to ascertain the grounds on which (if at all) the capture is sought to be justified; but in the event of that Government determining to bring the case before a Prize Court for adjudication, we think that the proper course will be to

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watch that proceeding, and to await its result, before deciding whether any further steps ought to be taken in the matter.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.

No. 175.

The Attorney and Solicitor-General to Earl Russell.—(*Received August* 11.)

UNITED STATES.

Licenses granted exclusively to American merchants to trade with the port of Norfolk, that port being still under blockade as regards foreign vessels.

My Lord, *Temple, August* 11, 1862.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 21st July ultimo, stating that he was directed by your Lordship to transmit to us a despatch and its inclosures from Her Majesty's Chargé d'Affaires at Washington (No. 48), showing the manner in which trade was then being carried on at the port of Norfolk by means of licenses granted to American merchants, to their exclusive advantage, that port being still under blockade as regards foreign vessels; and to request that we would take this matter into our consideration, and favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That, in our opinion, a blockading Power is not altogether prohibited, by maritime law, from granting licenses to particular vessels to enter or depart from the blockaded port: and if such licenses are granted on special occasions and under exceptional circumstances, and without any partiality to particular flags, foreign nations not participating in them have no fair ground of complaint on account of the licenses. But if the facts be as stated in the despatch of Vice-Consul Myers of the 3rd July, and its inclosures, it would seem to be a necessary conclusion that the conditions of restriction which we have pointed out are violated and disregarded; and if the facts be that the blockade, being in form maintained, and being enforced against foreigners, it is habitually or systematically relaxed in favour of citizens of the United States, and their ships carrying general cargoes on private venture, we think that the blockade has ceased to be legally effective, and that captures of foreign vessels for attempting to break through such blockade would be illegal, and ought to be so declared by the Prize Courts to whose adjudication they may be referred.

The principles of law applicable to this subject, and the authorities bearing upon it, were ably and elaborately reviewed by the Judicial Committee of Her Majesty's Privy Council, in the recent case of "The Franciska" (Northcote *v.* Douglas, 10th Moore's Privy Council Reports, p. 37); and the decision in that case is of the highest authority, as having established the nullity of a blockade declared by this country, and having decided against the validity of a capture for breach of such blockade in the Supreme Court of the captors themselves. We also think that, independent of capture and adjudication, British merchants and ship-owners who may be deterred, by the apparent fact of blockade, from attempting to trade with the port of Norfolk, have good grounds of complaint, which claims may be properly urged by Her Majesty's Government on their behalf. We think that a sufficient case is established on the statements of the Vice-Consul to make it right for Her Majesty's Government to represent such facts to the Government of the United States; and to require, in the first instance, a full explanation of the grounds, if any, on which that Government may seek to justify, according to international law, the course which it appears to have adopted.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.

No. 176.

The Attorney and Solicitor-General to Earl Russell.—(*Received August* 11.)

UNITED STATES.

Oath of allegiance to United States exacted by General Butler from the subjects of foreign States.

My Lord, *Temple, August* 11, 1862.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 30th July ultimo, stating that he was directed by your Lordship to transmit to us the accompanying papers relative to a correspondence which has taken place at New Orleans between the British Acting Consul at that place and General Butler,* respecting the oath of allegiance to the United States exacted by the latter officer from the subjects of foreign States; and to request that we would take the same into our consideration and furnish your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we conclude from Mr. Stuart's despatch to your Lordship of the 25th June (Inclosure 2 in No. 20), and also from the despatch of the same date by Mr. Stuart to Acting Consul Coppell (Inclosure 8 in No. 20), that General Butler's General Order No. 41, dated the 10th June, 1862, has been "cancelled in so far as it affected foreigners; and that foreigners who had already taken the oath" were "dispensed from its obligations." Under these circumstances it appears to us that, at all events in the absence of direct and immediate pecuniary loss resulting to individuals from the consequences of their refusal to take either of the two oaths, so long as the Order in question was treated as in force (and no such injury is stated to have occurred), Her Majesty's Government are not called upon to make any demand for compensation or redress on the Government of the United States.

As regards the Order itself, in so far as it required the oaths therein specified to be taken by the subjects of neutral Sovereigns, who had not of their own will become naturalized and taken upon themselves the obligations of American citizens, we think that it was not only harsh and unreasonable, but in violation of common principles of justice, and of the ordinary and recognized rules by which civilized States, engaged in war, guide their conduct towards such foreigners, the subjects of friendly and neutral Governments, as may happen, during the existence of the state of war, to be abiding within their territories. The first oath, or oath of "allegiance," is imposed on persons "foreign born," who shall have been resident in the United States for the space of five years, and who "shall not have claimed and received a protection of their Government duly signed and registered by the proper officer, more than sixty days previous to the publication of this Order." It does not appear that any law or regulation promulgated at New Orleans had previously made it the duty of foreigners to claim and receive "a protection of their Government;" and it follows that, to a greater or less (and, as we gather, in fact to a very considerable) extent, this part of the Order was retrospective in its operation; and, being retrospective, was the more unjust, because, without taking the oath, foreigners not within the exception of "protected" were unable to obtain a "passport," or consequently, however much they might desire it, to leave the country.

The second oath appears to us to be, if possible, still more objectionable. In terms, it applies to "all foreigners" claiming any of the ordinary legal rights of residence (with the single exception of "protection from personal violence"); and it exacts an undertaking which is to be binding so long as the Government of the particular foreigner shall remain at peace with the United States, and without reference to the place or country in which, at any subsequent period during the continuance of the war, such foreigner may happen to be. But no Government can properly assume to itself the right of attempting to control, by the exaction of oaths or otherwise, the conduct of foreigners, at any time during which they shall not be residing within the limits of that State. If the State of which such foreigner is a subject thinks fit to enact or command neutrality during the continuance of the war, and everywhere, it has the power to do so; but it is to the laws of his own country only, or of such other neutral State under whose protection he may be living at the time, that a foreigner can be made responsible for breaches of neutrality committed by him beyond the confines of the belligerent State. This second requirement is also open to the objection of

* Mr. Stuart, No. 20; Inclosures 2 and 3 in Mr. Stuart's No. 34

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being practically retrospective, seeing that persons could not leave the country without "protection or favour from the Government;" and yet the oath must be taken previous to such "protection or favour" being extended.

We would further point out that the withdrawal of the State protection, which was to ensue upon the refusal by those upon whom the obligation was imposed to take either oath, left unabrogated the protection of life and limb only, and involved the abnegation of every form of the rights of property; such property being left exposed even to robbery and spoliation, without means of redress to the injured party. In short, every civil right, with the exception pointed out, was withdrawn, as the penalty of non-submission to the requirements of the Order.

We think the exaction of oaths of allegiance and of non-assistance to the enemy, without, at least, a full previous opportunity of leaving the country being afforded to foreigners, is altogether unjust, and contrary to the usages of civilized warfare; and, upon the whole, it appears to us that if the Order had not been withdrawn by order of General Butler's superiors, very grave and serious grounds of remonstrance with the United States' Government would have existed on the part of Her Majesty's Government; and furthermore that it would have been the duty of the Government to claim compensation for such loss or damage, in money's worth, as should have appeared to have been entailed, owing to the execution of the Order, on any British subjects residing at New Orleans.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.

No. 177.

The Attorney and Solicitor-General to Earl Russell.—(Received August 11.)

DENMARK.

Law of Great Britain respecting the exportation of contraband of war.

My Lord, *Temple, August* 11, 1862.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 8th August instant, stating that he was directed by your Lordship to transmit to us a note which had been addressed to your Lordship by the Danish Minister at this Court, asking for certain information as to the state of the law in this country with regard to the exportation of contraband of war; and to request that we would favour your Lordship, at our earliest convenience, with our opinion as to the answer which should be returned to M. de Bille's communication.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

1. That the circumstances of a contract having been entered into before the breaking out of war would not, in our opinion, make any difference in the case. That the English laws do not prohibit, under punishment, British subjects from exporting articles contraband of war to either belligerent in a war in which this country is neutral; nor is the effect of the customary Neutrality Proclamation to make the exportation of such articles punishable by English law. The proclamations do, indeed, give notice of the illegality of such exportation by the law of nations, and of the penalty of seizure and confiscation to which, by the law of nations, the exporters may be liable; but this is a penalty which can only be enforced by one of the belligerent Powers, in the exercise of those rights which are conceded to belligerents against the subjects of a neutral Power guilty of any violation of neutrality by international law.

2. That the British Government would not, under ordinary circumstances, deem itself bound to interfere of its own accord, to prevent the exportation of articles contraband of war to one of the belligerents, or even to do so on such interference being expressly asked by the other belligerent. But this answer must be understood under the reservation that Her Majesty's Government could never enter into any previous engagement which would preclude Her Majesty from exercising her legal powers of prohibiting such exportation by Order in Council, if any special circumstances should arise which might appear to render it proper or necessary for the interests of this country to do so.

We have further to observe, that in the event of war breaking out, any act prohibited by the Foreign Enlistment Act (59 Geo. III, cap. 69) would be

illegal, and would be punishable by the law of this country, even though it might be done in fulfilment of some contract entered into before the breaking out of war; and that it might probably be the duty of Her Majesty's Government, either of its own accord or on the requisition of either belligerent, to exercise the powers given to them by that statute, in order to prevent and to punish any such act. And we must add, that we think it hardly probable that a contract with a foreign Government for building in this country an armour-plated ship could be completed, after the breaking out of war between that Government and another foreign State, without some acts amounting to an "equipping, furnishing, fitting-out, or arming," within the meaning of the 7th section of the Foreign Enlistment Act, and therefore punishable by the laws of this country.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.

No. 178.

The Attorney and Solicitor-General to Earl Russell.—(Received August 12.)

UNITED STATES.

Seizure of the "Oreto" at the Bahamas on suspicion of having on board stores for Confederate States.

My Lord, *Temple, August* 12, 1862.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 2nd instant, stating that he was directed by your Lordship to transmit to us the accompanying letter dated the 31st July ultimo, and its inclosures, from the Colonial Office, respecting the seizure of the vessel "Oreto" at the Bahamas, on the suspicion of having on board stores intended for the use of the Confederate States.

Mr. Layard was also pleased to state that he inclosed a letter addressed to the Colonial Office, from which we should see that this vessel is to be detained until further instructions are sent to the Governor of the Bahamas, and that he was directed by your Lordship to request that we would take these papers into our consideration and furnish your Lordship with our opinion as to the form of prosecution to be adopted in this case;—whether proceedings should be instituted under the provisions of the Foreign Enlistment Act, or for a violation of the law of nations, and with any other observations which we might have to offer on the matter.

Mr. Layard was further pleased to state that he also inclosed for our information a previous correspondence respecting this vessel when she was being fitted out at Liverpool.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That it appears to us to be proper, in the first instance, to correct a misapprehension which is to be found in Mr. Layard's letter, and also in that of Sir F. Rogers of the 31st July. The seizure is therein described as "the seizure of the vessel 'Oreto' at the Bahamas, on the suspicion of having on board stores intended for the use of the Confederate States," whereas the seizure in reality took place, and can only be justified, on the ground of a violation of the Foreign Enlistment Act, by those in charge of the "Oreto," by reason of her having been "equipped, furnished, fitted out, or armed" for the purpose of being employed in the conduct of hostilities against the Government of the United States. A merchant-vessel, under the British flag, lying at the Bahamas, and having for her cargo "stores intended for the use of the Confederate States," even though such stores were military or naval stores, would not be guilty of a breach of the Foreign Enlistment Act, or of any other provision in the municipal law of this country, though by the laws of war she would be liable to capture on the high seas by cruizers of the United States, as carrying contraband, or sailing with an express intent to violate an existing effective blockade.

As regards the manner in which this vessel ought now to be dealt with, we concur in the views expressed by Governor Bayley, that the question of condemnation ought to be submitted to the local Court of Vice-Admiralty. The Act (section 7) directs that the prosecution of the vessel to condemnation is to be "in such Courts" in which "ships or vessels may be prosecuted and condemned for any breach of the laws made for the protection of the revenues of customs and excise,

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or of the laws of trade and navigation." We think that the facts warranted the seizure; but we must add that it is very important that, on the trial, evidence should be adduced of what occurred at Liverpool as regards the building and fitting out, and the alleged ownership and destination of the "Oreto;" and also that, if possible, the circumstances under which she took on board the shot, shells, and ammunition which she is said to have discharged into some other vessel when off Nassau, should be ascertained and proved. This, coupled with the subsequent career of the vessel, strengthens the conclusion that she was destined and "equipped," in her structure and otherwise, for taking part in the war against the United States.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.

No. 179.

The Queen's Advocate to Earl Russell.—(Received August 13.)

CHINA.

As to licenses being issued to Mr. Lay and Captain Osborn to enlist 600 British subjects for military and naval service in China.

My Lord, *Doctors' Commons, August* 12, 1862.

I AM honoured by your Lordship's commands signified in a letter from Mr. Layard of the 11th of August instant, in which Mr. Layard stated that he was directed by your Lordship to transmit to me, together with a copy of the printed papers relative to the proposed employment of Mr. Lay, Captain Osborn, and others, in the service of the Chinese Government, a letter from Mr. Lay, requesting that a provision may be inserted in the licenses issued to him and Captain Osborn, authorizing them to enlist 600 British subjects for military and naval service in China.

Mr. Layard added that Her Majesty's Government were anxious that this authority should be given to Mr. Lay, and that I should take the matter into my consideration, and that I should favour your Lordship with my opinion as to how this could be done without an Order in Council.

Mr. Layard further stated that your Lordship feared it might be necessary to issue a license to every individual enlisted by Mr. Lay, and that this, though cumbrous, might be practicable.

In obedience to your Lordship's command I have taken these papers into my consideration, and I have the honour to report—

That having regard to the language of the Foreign Enlistment Act (59 Geo. III, cap. 69) I cannot safely advise your Lordship that in the absence of an Order in Council or Proclamation, a general provision contained in a license issued under the Roysl Sign-Manual to Mr. Lay and Captain Osborn to enlist British subjects to serve in military operations under the Emperor of China would necessarily exempt the persons so enlisted from the penalties of the aforesaid Statute; it follows, therefore, that, in my opinion, your Lordship's apprehension is well founded, and that it will be requisite to issue a separate license to each individual British subject enlisted by Mr. Lay and Captain Osborn.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 180.

The Attorney and Solicitor-General to Earl Russell.—(Received August 19.)

JAPAN.

Claim of Mr. Moss against Her Majesty's Government for damages and false imprisonment in Japan.

My Lord, *Temple, August* 18, 1862.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 23rd July ultimo, stating that in our Report of the 20th March last* upon the case of Mr. Moss, we expressed an opinion that so long as any further legal proceedings were pending, and in the absence of any application from Mr. Moss, made since the verdict, Her Majesty's Government were neither called upon nor were in a position to interfere; and he was directed by your Lordship to transmit to us, together with the previous papers,† an application

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* Page 66.

† Colonial Office, February 26 and March 22.

from Mr. Moss, dated the 31st of March last,* stating the grounds on which he claims to be compensated by Her Majesty's Government, and two despatches and their inclosures from Mr. Alcock,† from which, among other things, it appeared that the Court at Hong Kong had decided not to grant the appeal which had been applied for by the Attorney-General on behalf of Mr. Alcock, and that the legal proceedings were consequently at an end; and to request that we would take these papers into our consideration, and favour your Lordship with our opinion specifically upon Mr. Moss's claim, and generally as to whether it is necessary that Her Majesty's Government should take any further steps in this matter.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we cannot advise Her Majesty's Government to entertain Mr. Moss's claim for compensation to any extent, or to take any further steps in this matter.

If the analogy of the English law is to be regarded, it is not the practice (and it would be a practice attended with very inconvenient consequences) for the Government to indemnify persons who may have suffered from unfounded accusations, or from erroneous proceedings or sentences, in the ordinary course of the administration of the criminal law: and even against Justices of the Peace, who may have miscarried (not acting maliciously) by exceeding their jurisdiction, the legal remedies are in this country circumscribed by statute, and placed under many safeguards. If in some cases the extent of injury inflicted by an illegal sentence in remote parts of the world may be greater than it generally is at home, so, on the other hand, the inconvenience and mischief of placing the regularity of all the proceedings of Consular Officers under a public guarantee would be proportionably greater; and we cannot advise Her Majesty's Government to create, in the present case, any precedent in favour of such a course.

The case of Mr. Moss is not, in our judgment, one calling for any departure at all from the general rule, whatever that rule ought to be. His own conduct (amounting, upon the most lenient view which can be formed of it, to very culpable indiscretion, in circumstances which imperatively required an opposite behaviour) was the original cause of all that he has suffered. That conduct was judged by Her Majesty's Consular Judges on the spot, who heard all the evidence, and were acquainted with the local circumstances (and who certainly acted *bonâ fide*, and were free from the bias to which their assessors might be subject), to be not merely indiscreet, but criminal, and to deserve a degree of punishment which, if confined within the limits of their legal authority, would have involved consequences not less prejudicial to his pecuniary interests than those which he has actually sustained. If the proceedings against him have failed, and if the sentence has fallen to the ground, this has not been owing to any original want of jurisdiction in the Court which tried him, nor to any reversal of the judgment of that Court upon the merits of the case; but solely because the addition of fine to imprisonment vitiated the sentence. He has availed himself of his legal remedy against Sir Rutherford Alcock, in the ordinary course of law at Hong Kong, and has recovered such damages as the Court there had jurisdiction to give. It is true these damages were limited to the cause of action, which arose in Hong Kong; but, if he has still any further cause of action, not covered by that judgment, the Courts of this country are open to him. Into the question whether his allegations of damage are, or are not, exaggerated, we do not think it necessary now to enter: but the difficulty, if not impossibility, of arriving at any satisfactory estimate of the amount of such damage (for the opinion expressed by the Hong Kong jury on that point ought not, as it seems to us, to have been asked, and is entitled to little or no weight), is an additional reason why the case should be left to the ordinary course of law.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.

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* Mr. Moss, March 31.

† Mr. Alcock, No. 6, February 4; and Separate, April 14.

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No. 181.

The Attorney and Solicitor-General to Earl Russell.—(Received August 19.)

UNITED STATES.

Seizure by General Butler of sugar belonging to British, French, and Greek subjects.

Temple, August 18, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 19th July ultimo, stating that he was directed by your Lordship to transmit to us a despatch, and its inclosures, which your Lordship had received from Her Majesty's Chargé d'Affaires at Washington (No. 28, June 27, 1862), containing a correspondence between General Butler and the Consuls of Great Britain, France, and Greece, relative to the seizure of a large quantity of sugar belonging to subjects of those nations; and to request that we would take the same into our consideration, and furnish your Lordship with our opinion as to the character of the transaction referred to in that correspondence.

Mr. Layard was also pleased to add by way of postscript, that he inclosed further despatches which had just been received from Mr. Stuart on this subject (Nos. 37 and 41, of July 1 and 3).

In obedience to your Lordship's commands we have taken these papers into consideration and have the honour to report—

That it is stated, in Mr. Stuart's despatches to your Lordship of the 1st July, that Mr. Seward had addressed an instruction to Mr. Johnson at New Orleans, to investigate and cause full justice to be done in the case of the sugar belonging to British, French, and Greek subjects at that port, being the sugar referred to in Mr. Layard's letter, and which had formed the subject of the correspondence therein also mentioned. Until the result of Mr. Johnson's interference shall be known, it will, of course, be impossible to advise Her Majesty's Government as to the course of conduct which it may be necessary for them to adopt on the occasion.

We collect from the papers before us, that, on the capture of New Orleans by General Butler, that officer issued a Proclamation dated the 1st of May last, to the effect that the property of foreigners, generally, would be respected. The seizure, therefore, of these sugars is not attempted to be justified on the ground of any arbitrary power of a conquering army to make prize or booty of all property found in the conquered city, nor even on the ground that all foreigners residing and carrying on business at New Orleans, while that city was held by the party in insurrection against the Government of the United States, were liable, by the Municipal laws of the United States, to be treated as adherents of rebellion, and to have their property confiscated for that reason, whenever the authority of the United States' Government might be re-established in the place We are relieved from the necessity of considering the questions which would have arisen if the acts of General Butler had been defended on these grounds.

The ground taken up by General Butler appears to be, that this property, as distinguished from the property of foreigners in New Orleans, generally, is liable to seizure, because it was (as he alleges) bought and paid for with notes issued from the Confederate Treasury at New Orleans; and which notes were (as he also alleges) bought by Mr. Covas (the purchaser of the sugar) with what he designates as "sterling exchange," by which term we understand him to mean good foreign bills of exchange, payable in England or elsewhere, in sterling money. It would seem, from Mr. Coppell's letter to Lord Lyons of the 20th June last, that in a personal interview between Mr. Covas and General Butler, the same charge was made in a somewhat different form; viz., that Mr. Covas had been "engaged in importing gold, and selling it at 100 per cent. premium, with which proceeds he had purchased these sugars;" and that Mr. Covas denied that allegation, and on another occasion exhibited his books, which showed that the sugars had been purchased in the ordinary course and manner of business. Having regard, however, to the fact that the dealings of Mr. Covas (whatever they were) clearly took place while New Orleans was in the sole and exclusive possession of the Confederate authorities, and *de facto* under their Government, and long before the conquest of that city by General Butler, we are unable to perceive the importance, in principle, of the distinction suggested between "the ordinary course of business" and the course of business alleged by General Butler to have been followed. To purchase the paper-money issued by the *de facto* Government of a belligerent Power within whose territory (*i. e.*, the territory within which that Power exercises, exclusively of all others, the functions of a *de facto* Government) foreign merchants happen to be residing, is (as it appears to us) an ordinary commercial transaction; at all events when the paper so purchased is used for ordinary commercial purposes,—and it is not pretended that any other use was made of it in this case. General Butler (so far as it is possible to extract argument from his declamatory letter of the 12th June, 1862), appears to imagine that because the port of New Orleans was blockaded at the time, the sale of foreign bills of exchange in that city was a constructive breach of blockade. To expose such extravagance by reference to any known principles of the law of nations (of which General Butler appears to be absolutely ignorant) would be a waste of words. His only other argument (if it is not the same in a different form) is equally extraordinary, viz., that the purchase of Confederate Treasury notes at New Orleans (being the ordinary paper-currency of the country at that time) by foreign merchants residing there was a "breach of neutrality," exposing the goods purchased with such notes to seizure and confiscation upon the subsequent conquest of the city by the United States' troops; because the foreign bills of exchange given by the foreign merchants in exchange for these notes might be sent by the Confederate authorities to Europe, and might there be employed by them or their Agents for the purpose of buying arms and munitions of war. It is evident that upon such reasoning as this, all commercial dealings whatever by foreigners at New Orleans, during the continuance of the civil war and the blockade, and prior to the capture of that city by the United States' troops, might have been equally liable to be treated as criminal and contraband.

We are of opinion that the seizure and detention of these sugars was wholly unjustifiable; and that it was an act of mere arbitrary confiscation rendered more unjust, instead of being palliated, by the pretence of respecting the property of foreigners generally, and by the principles on which it has been attempted to distinguish these sugars from the general mass of such foreign property.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.

No. 182.

The Attorney and Solicitor-General to Earl Russell.—(Received August 19.)

UNITED STATES.

Restrictions by United States' authorities on trade between United States' ports and ports in British West Indies.

Temple, August 18, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 2nd August instant, stating that he was directed by your Lordship to transmit to us the accompanying further papers* respecting the restrictions imposed by the United States' authorities on trade between United States' ports and ports in the British West Indies, and to request that we would take these further papers into our consideration, together with those on the same subject which were inclosed in his letter of the 19th ultimo, and report to your Lordship our opinion thereupon.

We are also honoured with your Lordship's commands signified in Mr. Layard's letter of the 9th August instant, stating that he was directed by your Lordship to transmit, for our consideration, a further despatch (No. 76 of July 30) and its inclosures respecting the restrictions imposed by the United States' Government on trade between United States' ports and ports in the British West Indies.

In obedience to your Lordship's commands we have the honour to report—

That we have taken these further papers into our consideration; and we are confirmed by them in the views already expressed by us in our former Reports on the same subject, to which we beg leave to refer.

The conduct of the Custom-house authorities at New York amounts to nothing less than an arbitrary stoppage, without even the excuse of previous notice, of the whole ordinary trade, which it has been hitherto usual to carry on between this country and the Bahamas by that route. Whatever irritation may exist on the part of the United States in consequence of the trade carried on

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* Messrs. Chalmers & Co., July 30; Messrs. Shorter & Co., July 30; Messrs. Harris & Co. (received August 2); Colonial Office, July 31.

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between the Bahamas and the Confederate States, it must not be forgotten that this (so far as it is carried on elsewhere than in blockaded ports, and in articles not contraband of war) is, by the rules of international law, as perfectly lawful and legitimate as any ordinary trade between England and the United States; and it is impossible to look upon the proceedings of the New York Custom-house, if they should continue to receive the deliberate sanction of the United States' Government, as having any other character than that of hostility towards a Colony of Great Britain, and therefore towards Great Britain herself.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.

No. 183.

The Attorney and Solicitor-General to Earl Russell.—(*Received August* 21.)

EQUATOR.

As to interference of British Government to prevent ships being built and a loan contracted in Great Britain for the Government of Peru, with a view of making war on Equator.

My Lord, *Temple, August* 20, 1862.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 6th instant, stating that he was directed by your Lordship to transmit to us a translation of a letter from the Equatorian Minister at this Court, representing that the Government of Peru are causing ships to be built and a loan to be contracted in this country with a view of making war on the Republic of Ecuador, and requesting that Her Majesty's Government would interfere to put a stop to such measures as being hostile to the interests of Ecuador; and to request that we would furnish your Lordship with our opinion whether this case is one in which Her Majesty's Government would be justified in interfering, and if so in what manner.

Mr. Layard was also pleased to state that he was directed by your Lordship to add that the Peruvian Government have recently declined the proffered mediation of Her Majesty's Government, which was accepted by the Republic of Ecuador.

In obedience to your Lordship's commands we have taken this matter into our consideration and have the honour to report—

That in our opinion Her Majesty's Government would not be justified in interfering in any manner in this case. The international obligation to which the Minister of Ecuador refers in his despatch, and which he appears to think ought to regulate the conduct of England at the present moment in its relations with the States of Peru and Ecuador, is that of neutrality; but neutrality, both according to the law of nations and the municipal law of this country, means the neutrality of one State, as between two or more other States who are at war between themselves; and has no bearing upon a state of peace, however probable a future war may be, or however much, or however reasonably, war may be apprehended. As regards the building of ships in England for the Government of Peru, the Foreign Enlistment Act is the only portion of the English law that could be appealed to even in argument; and its provisions throughout contemplate, and are only adapted to, an existing state of war. Loans to foreign States with which Her Majesty is at peace are not only nowhere expressly prohibited in our law, but the Courts have not even refused to enforce contracts connected with foreign loans raised in England, except when such loans have been to persons waging war with States friendly to Great Britain.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.

No. 184.

The Attorney and Solicitor-General to Earl Russell.—(*Received August* 23.)

UNITED STATES.

Condemnation of the "Empress" for intention to break the blockade of New Orleans.

My Lord, *Temple, August* 22, 1862.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 11th August instant, stating that he was directed by your Lordship to transmit to us the accompanying papers* respecting the case of the British barque "Empress," which had been condemned by the United States' District Court at New York for an alleged intention to break the blockade of New Orleans; and to request that we would take these papers into our consideration, and favour your Lordship with any observations we might have to offer thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That there does not appear to have been any such miscarriage of justice in this case as to make it advisable or proper for Her Majesty's Government to interfere on behalf of the owners of the "Empress," notwithstanding the decision of the Prize Court. On the contrary, we are disposed to think that the decision of Judge Betts proceeded upon a correct view of the principles of public law applicable to the case, and that the facts, as proved before the Court, warranted the conclusion. If, however, any error in judgment has been committed, it will be open to the owners to have this error rectified in the Superior Court, to which (as we understand) they propose to carry the case by way of appeal.

We observe that the principal question appears to have turned upon the terms of the President's Proclamation, by which the intention of blockading the Southern ports was originally notified. It was insisted on the part of the owners that the Proclamation amounted to an express license to all vessels to approach and enter any of the ports after the commencement of the blockade without peril of confiscation, until they should have been warned off, upon the spot, by the commander of one of the blockading vessels. We cannot agree with this view of the meaning and effect of the Proclamation; we think, with Judge Betts, that the intimation that such warning would be given was intended to operate only as a notice of the manner in which the existence of the blockade would be communicated upon its first establishment to vessels on the spot which might otherwise have been ignorant, or entitled to plead ignorance thereof, so as to affect them with notice; and that it was not intended, and did not operate, as a license or invitation to neutral vessels sailing for blockaded ports after the establishment of a blockade, pursuant to the Proclamation, had become generally known, to approach the mouths of such ports for the purpose of inquiring of the blockading squadron whether the blockade of which they had previous notice was still maintained, so as to give them the alternative of slipping in if they could avoid the blockading squadron, or of escaping capture by pleading their right to be once warned off if they could not do so.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.

No. 185.

The Attorney and Solicitor-General to Earl Russell.—(*Received August* 23.)

UNITED STATES.

United States' steamer "Saginaw" required to quit harbour of Hong Kong in compliance with Proclamation of 31st January, 1862.

My Lord, *Temple, August* 22, 1862.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 9th August instant, stating that he was directed by your Lordship to transmit to us the accompanying correspondence which had passed between your Lordship and the United States' Minister at this Court,† relative to the circumstances under which the United States' steamer "Saginaw" had been required to quit the harbour of Hong Kong in compliance with the terms of Her Majesty's Proclamation of the 31st of January last, of which a copy was likewise inclosed; and to request that we would take the same into our conside- and favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That the Rules issued on the 31st January, 1862, did not come into operation at Hong Kong till after the expiration of six days from the date of the notification and publication thereof by the Governor of that Colony; and if the

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* Lord Lyons, No. 136, February 24, 1862; to Lord Lyons, No. 110, March 13, 1862; to Mr. Stuart, No. 80, July 20, 1862.

† Mr. Adams, July 14, 1862; to Mr. Adams, July 25, 1862; Mr. Adams, July 28, 1862.

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fact be, as stated in Mr. Adams' letter of the 28th July, that the "Saginaw" had arrived at Hong Kong more than a fortnight before the issue of the Governor's Proclamation, an error was committed in applying to that vessel the third Rule, which is only applicable to the case of a ship entering a port, roadstead, or waters belonging to Her Majesty, after the issue of the Notification in the particular country, colony, or dependency to which such port, roadstead, or waters, may appertain.

Whether it will be expedient or proper for Her Majesty's Government to recall or modify the Rules of the 31st January so far as relates to the China Seas, is a question of policy on which we do not understand that we are called upon to express any opinion.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.

No. 186.

The Attorney and Solicitor-General to Earl Russell.—(Received August 23.)

SPAIN.

Claim of Mr. John Carter on account of the manner of his dismissal as engineer in the Spanish service.

Temple, August 22, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 28th July ultimo, stating that he was directed by your Lordship to transmit to us the accompanying papers* relative to a claim preferred against the Spanish Government by an Englishman named John Cater, on account of the manner in which he was dismissed from his employment as engineer in the Spanish service, to which Her Majesty's Government have hitherto given their unofficial support.

Mr. Layard was also pleased to state that we should learn from Sir J. Crampton's despatch No. 271 of the 27th June last the grounds on which the Spanish Government have refused to entertain Cater's claim; and that he was directed by your Lordship to request that we would take these papers into our consideration, and furnish your Lordship with our opinion whether or not Her Majesty's Government would be justified in affording any further support to this claim.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That Mr. John Cater, by his contract with the Spanish Government, bound himself to serve the Queen of Spain as second engineer, "either afloat or on shore, in Spain or her Colonies, as his services might be required;" and "to submit," whilst in the service, "to its established rules and regulations." In a subsequent part of the contract notice is taken of "the Spanish articles of war;" and an engineer serving on board a ship of war of any nation must have been aware that he would necessarily be subject to the rules of naval discipline established by the maritime law of that nation. The contract also (though the engagement is as second engineer) contemplates the possibility of Cater himself filling the situation of first engineer, at least temporarily; and it also contemplates the contingency of the presence on board of another engineer of the same class; in which case the precedence of the two, *inter se*, is to be regulated by the officer in command.

In November 1856 Mr. Cater was tried by a court-martial in the Philippines for alleged acts of insubordination in refusing to light the fires of the ship on board which he was serving when ordered by the commanding officer to do so, and otherwise disobeying orders, the effect of which was to require him to act, for the time being, as first engineer; and being found guilty, he was sentenced to imprisonment, dismissed the service, and forbidden to reside in the Philippines.

We observe that Cater protested against the competency of the Tribunal, because he was an engineer belonging to a special and civil branch of the service, and engaged on conditions embodied in a special contract. But we apprehend it to be clear that the contract did not exempt him from being amenable to discipline in the ordinary way; on the contrary, we think it gave him sufficient notice that he would be held amenable thereto, and, if he was in fact guilty of insubordination and disobedience, we think it was perfectly competent for a Spanish naval court-martial to try him and sentence him to punishment for those offences, proceeding always according to the rules of the Spanish law. The jurisdiction, therefore, of the Court being clear, we do not see how Her Majesty's Government could consistently with international law require the Spanish Government to refuse to it that credit for a right decision upon the matter under inquiry which is usually accorded to all Courts acting within their jurisdiction. At the same time the case does seem to us to be one of considerable hardship: for Cater, who seems to have been ignorant of, or very imperfectly acquainted with, the Spanish language, denies the charge of intentional disobedience to orders, and states circumstances from which it appears really probable that there may have been misunderstanding, rather than insubordination, especially as he would have been justified by his contract in insisting that he had not been engaged to discharge (unless under circumstances of temporary necessity) the duties of first engineer. On the other hand, we do not think that this would be any justification for leaving fires unlighted, when ordered to light them, under the pretext that it was the business of the first engineer to do so, or in replying to such an order that he would communicate it to the first engineer when he came on board (there being, in point of fact, no person then on board or known to be coming on board in sufficient time to execute the order in the character of first engineer). We cannot, therefore, say that Her Majesty's Government can successfully press upon the Spanish Government any claim for compensation to Mr. Cater on the ground of his dismissal from their service, or of the punishment inflicted upon him by the sentence of the court-martial. But this does not seem to us to dispose of the whole case. It remains to be considered whether he has received the full amount of payment to which he was entitled under the express terms of his contract with the Spanish Government. We think that he has not, and that Her Majesty's Government may properly continue to urge, in his behalf, the more punctual fulfilment of that article of the contract which stipulates that "if he should fail to comply with the conditions of his offer (one of which was the performance of the duties as engineer, and another obedience to the established regulations of the service), or by intemperance nullify any agreement entered into, then Her Catholic Majesty's Government should have the power of immediately discharging him, without any notice whatever, on payment of an amount sufficient to defray the expenses of his travelling home," (*i.e.* to England,) "and his wages to that day." We are of opinion that Her Catholic Majesty's Government, when they accepted the tender of service made in those terms, contracted an obligation to pay Cater his wages down to the time of his dismissal, and his travelling expenses to England in the event (which happened) of his being discharged at a distance from his home for any fault or non-performance of duty on his own part. The court-martial, though fully competent to administer naval discipline, was not competent to alter the terms of the contract between an individual and the Government by whom he was employed, nor to absolve the Spanish Government, wholly or in part, from the pecuniary obligations which they had undertaken by that contract. So far, therefore, as the sentence of the court-martial purported to restrict Mr. Cater's claim on the Spanish Government to the payment only of his expenses to the first English Colony, it seems to us to have been *ultra vires*; and we think it ought not to stand in the way of his claim, which appears to us a just one, to be paid at least the full amount of his wages down to the date of his discharge, and his reasonable travelling expenses from Hong Kong to England.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.

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* Mr. Cater, October 20, 1860; to Mr. Cater, November 6, 1860; to Sir A. Buchanan, No. 143, 1860; Sir A. Buchanan, November 10, 1861; to Mr. Cater, January 26, 1861; to Sir J. Crampton, No. 114, 1862; Sir J. Crampton, No. 271, 1862; to Sir J. Crampton, July 18, 1862; Sir J. Crampton, No. 306, 1862.

No. 187.

The Attorney and Solicitor-General to Earl Russell.—(*Received August* 23.)

VENEZUELA.

Claim for detention of the "Alfred" at Puerto Cabello in consequence of informality in ship's manifest.

My Lord, *Temple, August* 22, 1862.

WE are honoured with your Lordship's commands signified in Mr. Murray's letter of the 9th August instant, stating that he was directed by your Lordship to transmit to us a correspondence respecting a claim which had arisen out of the detention of the British vessel "Alfred" by the authorities at Puerto Cabello,* in consequence of some informality in her ship's manifest, and to request that we would take these papers into our consideration, and favour your Lordship with our advice upon the point submitted by Mr. Orme, and with our opinion whether this was a case in which Her Majesty's Government could interfere.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That the detention of the "Alfred" at Puerto Cabello appears to have arisen from the refusal of the master to pay a fine of 500 dollars, exacted from him by the Custom-house authorities there, in conformity with their interpretation of the 2nd and 3rd Articles of the Rules for Importations, contained in a Law of the Republic of Venezuela, passed on the 12th of July, 1860. The master disputed his legal liability to this fine before the Venezuelan tribunals, but the result of that litigation has been that his liability has been established by the Court of Valencia, upon appeal; and no further appeal having been taken by the master from that decision, it has now become final.

It must be assumed, therefore, that the Custom-house authorities were justified in what they did by the local law; and it is much to be regretted that by taking his stand upon a point of law, on which he has failed, the master should have brought upon his owners a detention of the ship and cargo, which would not have taken place if he had promptly paid the fine and complied with the other requirements of the local law, but which was the consequence, in the ordinary course of that law, of his refusal to do so.

It is still more to be regretted that, owing to the refusal of the consignees of the cargo destined for Maracaibo to waive any further claim against the Venezuelan Government, the offer of 5,000 dollars compensation which was (in the first instance) made by that Government conditionally upon its being accepted in full of all claims upon them, should have been declined. We are not without apprehension that, after the litigation which has taken place, it may be difficult now to obtain an equally favourable offer from that Government.

We are, nevertheless, of opinion that the present case is one justifying, and indeed calling for, representation and remonstrance. It is admitted, on the part of the Venezuelan Custom-house authorities that the conduct of the master of the "Alfred" was perfectly *bonâ fide*, and that the breach of regulation for which the fine was exacted was merely formal. The case in substance is this:—A British ship arriving in a port of Venezuela in April 1861 has been fined 500 dollars for coming into Venezuelan waters without having had her manifest made out at Liverpool in a form prescribed by a law of Venezuela, passed only eight months before, and the existence of which does not appear to have been known at Liverpool when she left that port; the manifests which she actually produced being regularly certified (as that law required) by the Venezuelan Consul at Liverpool, to whom the owners and shippers would naturally and reasonably look for information and guidance with respect to matters of form required by the laws of the Republic, which (while they might excusably be ignorant of them) he must be presumed to know. Without laying down any general doctrine as to the responsibility of Governments for the acts and representations of their Consuls in foreign ports, we think that the exaction of a penalty from a foreign vessel for such a cause, and under such circumstances, is inconsistent with the principles on which commercial intercourse between civilized and friendly nations ordinarily is, and always ought to be, carried on; and we infer, from the offer of compensation to which we have already adverted, that this must have been the view of the case which was taken at the time by the Venezuelan Government themselves.

As it does not appear that the terms of the Law of the 12th July, 1860, were known to the owners or master of the "Alfred" when the manifests were made out, it is, perhaps, unnecessary to make much remark upon them. In the translation of that law, with which we are furnished, the word "manifest" is used in the singular number; but it is not expressly stated that every such manifest must be contained in a single document. We should have thought (applying ordinary principles of judicial interpretation to this law), that the requirements of the second Article would have been substantially complied with by the production at Puerto Cabello of the two manifests, which were, in fact, certified by the Venezuelan Consul at Liverpool; provided the particulars contained in those two documents were such as, if contained in a single document, would have been sufficient. It does not very clearly appear whether this was or was not the case; but it seems that the manifest of the goods shipped for Maracaibo was not, in fact, originally produced with the other manifest, at the time when the Custom-house officers at Puerto Cabello made the ordinary demand for documents; although the master has been exonerated by these officers from all imputation of *mala fides* or intentional concealment.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.

No. 188.

The Queen's Advocate to Earl Russell.—(*Received August* 27.)

CHINA.

Draft of Order in Council suspending, as regards Mr. Lay and Captain Osborn and all officers and men engaged by them for service in China, the operations of the Foreign Enlistment Act, 59 Geo. III, cap. 69.

Doctors' Commons, August 26, 1862.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 25th August instant, stating that with reference to my Report of the 12th August instant,* he was directed to state to me that, with the view of giving more complete effect to the wishes of Mr. Lay and Captain Osborn, Her Majesty's Government have it in contemplation to issue an Order in Council, suspending, as regards Mr. Lay and Captain Osborn, and all officers and men engaged by them for service in China, the operation of the Act 59 Geo. III, cap. 69, commonly known as the Foreign Enlistment Act; and to request that I would prepare and transmit to your Lordship, at my earliest convenience, the draft of such an Order, and also to suggest to me the expediency of the Order being so worded that Mr. Lay and Captain Osborn may be at full liberty—

First. To accept for themselves naval and military service under the Chinese Government.

Secondly. To fit out and equip vessels for warlike purposes in China; and,

Thirdly. To enlist British subjects to serve in naval and military operations there.

Mr. Layard was also pleased to inclose copies of the Orders in Council passed in 1835 and 1837, suspending the Foreign Enlistment Act in favour of officers and men of the late British Auxiliary Legion. The confidential printed papers respecting Mr. Lay and Captain Osborn were also annexed.

I have the honour to report—

That I have prepared, in obedience to your Lordship's directions, the Order in Council above referred to, and that the same is hereunto annexed.

This Order in Council has been drawn, to a certain extent, upon the precedent of the Order June 9, 1835; but it has occurred to me that there are three points to which, in the consideration of the present Order in Council, your Lordship's attention should be especially directed, viz.:—

1. In the former communication to me from the Foreign Office, it appeared that Mr. Lay and Captain Osborn asked for license to enlist only 600 British subjects; but as no such limitation is suggested in Mr. Layard's letter of the 25th instant, I have not confined the license to be granted by the Order in Council to any specific number of persons.

2. I have concluded from the statements contained in both communications from the Foreign Office that it was not the intention of Her Majesty's Government to grant, as in 1835, an unqualified license to all British subjects to enlist themselves in the service of a foreign State, but to grant a qualified license to

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* Mr. Sully, January 4, 1862; to Mr. Orme, Nos. 1, 19, and 24; Mr. Orme, Nos. 14 and 36.

* Page 200.

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enlist themselves in such service only under the command of Mr. Lay and Captain Osborn.

It seemed to me that such a qualification, however little needed in the case of the Queen of Spain, might for obvious reasons be very necessary in the case of the Emperor of China; but if I have mistaken in this particular the intention of Her Majesty's Government, I would beg that the Order in Council might be sent back to me for alteration in this respect.

3. Nothing being said as to any limitation of time with respect to the operation of the Order in Council, I have added the limitation of two years (renewable by a subsequent Order) from the precedent of 1835.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 189.

The Attorney and Solicitor-General to Earl Russell.—(Received August 29.)

UNITED STATES.

Claim of owners of American ship "Daring" for detention of a shipment of saltpetre at Calcutta.

My Lord, *Temple, August* 29, 1862.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 8th instant, stating that he was directed by your Lordship to transmit to us the accompanying letter and its inclosure, from Mr. Adams, containing further particulars respecting the detention of the United States' ship "Daring" at Calcutta, and to request that we would take the same into our consideration, and furnish your Lordship with our opinion whether there is anything in these papers to cause us to alter or modify the opinion on this subject expressed in our Report of the 1st instant.*

Mr. Layard was also pleased to state that the previous papers were also annexed for reference if required.

In obedience to your Lordship's commands we have taken these further papers into our consideration, and have the honour to report—

That the letter of Mr. Adams of the 4th of August and its inclosure do not in any way alter the narrative of material facts on which we advised in our Report of the 1st instant, and we see no cause to alter or modify that opinion.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.

No. 190.

Mr. Helps to Mr. Hammond.—(Received August 29.)

CHINA.

Regulations and restrictions in conditions of service, after enlistment, of British subjects into military and naval service of China.

Sir, *Privy Council Office, Whitehall, August* 29, 1862.

I AM directed by the Lord President to transmit to you, for the information of Earl Russell, the inclosed letter which I have just received from the Attorney-General and the Queen's Advocate, in which those Law Officers suggest the expediency of some regulations and restrictions being laid down by the Government in reference to the conditions of service, after enlistment, of British subjects who should enter the military and naval service of the Emperor of China under the sanction of the Order which is to be submitted to Her Majesty's approval at the Council to be held to-morrow.

I am, &c.
(Signed) ARTHUR HELPS.

Inclosure in No. 190.

The Attorney-General and Queen's Advocate to Mr. Helps.

Sir, *Doctors' Commons, August* 29, 1862.

WE are honoured with your letter of the 28th August instant, stating that you were directed by the Lord President of the Council to transmit to us for our

perusal and correction the accompanying Draft of an Order in Council under the Foreign Enlistment Act, granting permission to Mr. H. N. Lay and Captain Osborn to enter the naval and military service of, and to fit out and equip vessels and engage officers and men for, the Emperor of China, and also authorizing British subjects, under certain conditions, to enter the military and naval service of the Emperor.

In obedience to the directions of the Lord President we have perused and considered this Draft Order in Council, and have the honour to report—

That we have settled the Draft Order in Council, and have appended our initials thereto. It did not seem to us practicable to include in the Order any provisions regulating or restricting the conditions of service after enlistment. At the same time, regard being had to the very peculiar nature of the service, we would venture to suggest that it might be expedient that some regulations and restrictions should form the subject of communications or of an understanding in this respect between the Government and Mr. Lay and Captain Osborn. As an illustration of our meaning, we would point out the expediency of care being taken to guard against such of Her Majesty's subjects as may enlist being placed under the immediate command of Chinese officers, or being mixed up with the general forces of the Emperor.

The necessity for this suggestion appears to us to arise from a consideration of the barbarous manner in which hostilities have been, and in all probability will be, carried on to a greater or less extent by the forces of the Emperor of China.

We have, &c.
(Signed) WM. ATHERTON.
R. PHILLIMORE.

No. 191.

The Queen's Advocate to Earl Russell.—(Received September 3.)

UNITED STATES.

Not necessary to send a Custom-house officer from Liverpool to Nassau to give evidence in the case of the "Oreto."

Doctors' Commons, September 3, 1862.

THE Queen's Advocate presents his compliments to Mr. Layard, and with reference to his note of this morning begs to state that the Queen's Advocate has conferred with the Attorney-General, and they have together perused the inclosures marked 1, 2, 3, 4, and 5, contained in the letter from the Treasury of the 26th August last, and are of opinion that it will not be necessary to send a Custom-house officer from Liverpool to Nassau to give evidence in the case of the "Oreto."

At the same time they are desirous of pointing out to the attention of Mr. Layard that the evidence of the Custom-house officer negatives only the arming of the "Oreto," and the putting warlike stores on board of her, and is silent as to any other circumstances of suspicion, such as any peculiarities in the equipment of the vessel, her being pierced for guns, or the like, and as to any statement of the Captain or others as to her real destination.

I have, &c.
(Signed) ROBERT PHILLIMOER.

No. 192.

The Attorney and Solicitor-General to Earl Russell.—(Received September 4.)

UNITED STATES.

Request of Mr. Haigh to obtain a stay of the proceedings before the Prize Court in the case of the "Bermuda."

My Lord, *Temple, September* 3, 1862.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 11th August ultimo, stating that with reference to our Report of the 4th July last, and to our previous Reports upon the case of the "Bermuda,"* he was directed by your Lordship to transmit to us, together with the former papers, a letter from Mr. Haigh, dated the 5th August ultimo, inclosing certified copies of affidavits relative to the capture of that vessel; and to request that we would take Mr. Haigh's letter and the affidavits which he inclosed into our

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* Page 192.

* Pages 126, 129, and 177.

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consideration, and report to your Lordship whether the statements therein made would induce us to alter or modify the view which we have hitherto taken of this case.

In obedience to your Lordship's commands we have taken these further papers into our consideration, and have the honour to report—

That we find nothing in Mr. Haigh's letter of the 5th August, and in the certified copies of affidavits inclosed therein, relative to the capture of the "Bermuda," to induce us to alter or modify the view we have hitherto taken of this case. Two matters only appear to us to call for special remark in Mr. Haigh's letter, with reference to each of which he is in error. He seems to suppose that the extent of territorial waters from the shore has been extended beyond three miles owing to the increased range of cannon in recent times; but we think that, whatever the theory may have been on which the three-miles distance was adopted, and whatever change in this respect it may be thought expedient to introduce by express Convention between Maritime States, the old rule is still in force. Again, he misrepresents the law as regards the capture of a neutral vessel by one of two belligerents in territorial waters, and not on the high seas. A capture so made is illegal; and the illegality, if established before the Prize Court, is an admissible and just ground for resisting a sentence of condemnation on the part of the persons claiming the ship, and independent of the Government whose territory has been violated. The confusion is between such a case as that now suggested and the case of the capture of *an enemy's* ship by a cruizer of the other belligerent. In that case, the act of the violation of neutral territory is the only matter that can be complained of; and this complaint comes, from obvious reasons, from the State whose territorial and supreme rights have been outraged by such violation. Moreover, we find nothing to lead to the inference that the point of capture within territorial waters was not raised and entertained on behalf of the owners before the Prize Court. We still think this a case in which no ground of interference on the part of Her Majesty's Government has been established.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.

No. 193.

The Attorney and Solicitor-General to Earl Russell.—(*Received September 4.*)

FRANCE.

Extradition from St. Lucia of persons accused of crimes coming under the Extradition Treaty of 13th February, 1843.

Case of the fraudulent bankrupt Léandre Sauvignon.

Temple, September 3, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 13th August ultimo, stating that he was directed by your Lordship to transmit to us correspondence, as marked in the margin,* which had taken place between your Lordship's Department, the Colonial Office, and the French Ambassador at this Court, on the subject of the extradition demanded by the Governor of Martinique from the Administrator of St. Lucia, of certain persons accused of crimes coming under the Extradition Treaty of the 13th February, 1843, between this country and France.

Mr. Layard was also pleased to state that we should perceive that in one of the three cases in question, that of Léandre Sauvignon, charged with fraudulent bankruptcy, the accused was actually arrested under a warrant issued by the British Colonial authorities, but that the question having arisen whether such arrest was authorized by any local law of St. Lucia, the Attorney-General expressed his doubts that any such authority existed, and the prisoner was accordingly liberated. And that he was directed by your Lordship to request that we would take these papers into our consideration, and furnish your Lordship with our opinion as to the law laid down by the Attorney-General of St. Lucia in this matter.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That assuming, as we must do, on the authority of the Attorney-General of St. Lucia, that fraudulent bankruptcy is not an offence by the *lex loci*, we are of opinion that the Governor of the Colony had no legal power, and was not called upon under the Treaty of Extradition between Great Britain and France, of the 13th February, 1843, to deliver up the person against whom the charge alleged was that of fraudulent bankruptcy. By the terms of the Treaty, and of the Act giving it force (6 & 7 Vict., c. 75), the offence is to be "so established as that the laws of the country where the fugitive or person so accused should be found would justify his apprehension and commitment for trial if the crime had been there committed." This clause undoubtedly provides for the nature and amount of the evidence to be adduced; but in our opinion it goes farther, and in effect requires that the offence for which extradition may be demanded shall be an offence under the laws of each of the two countries.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.

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* Colonial Office, July 11; to Colonial Office, July 24; Colonial Office, July 24; Count Flahault, August 5, 1862.

No. 194.

The Attorney and Solicitor-General to Earl Russell.—(*Received September 6.*)

MEXICO.

Convention of Claims and Additional Article of 28th April, 1862. Consistency of above Convention with Tripartite Convention of 31st October, 1861, between France, Great Britain, and Spain.

Temple, September 5, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 7th of June ultimo, addressed to Sir John Harding, then Her Majesty's Advocate-General, stating that he was directed by your Lordship to transmit to him a printed copy of a Convention concluded by Sir Charles Wyke with the Mexican Government on the 28th of April last, for the settlement of British claims upon the Republic of Mexico.

Mr. Hammond was also pleased to state that the Queen's Advocate would find at page 26 of the accompanying confidential papers Sir Charles Wyke's report of the circumstances attending the signature of the Convention, and the objects sought to be attained by it. He would also find at pages 56, 116, 126, Part I, and pages 11, 39, 47, Part II, of the papers presented to Parliament respecting Mexico, copies of which were also inclosed, what had passed at Washington respecting Mr. Corwin's negotiations with the Mexican Government. He would also find in the accompanying volumes at the passages marked, the Decrees referred to in the Xth Article of Sir Charles Wyke's Convention.

Mr. Hammond was further pleased to state that he was directed by your Lordship to request that the Queen's Advocate would take these several documents into his consideration, and report to your Lordship whether the terms of the Convention of the 28th of April last are inconsistent with those of the Tripartite Convention of the 31st of October last, of which a copy was also inclosed; and if so, whether to the extent of rendering it inexpedient that Her Majesty should ratify it, or whether there is any other reason why, in his opinion, it should not be so ratified.

Mr. Hammond was also pleased to add that two memoranda relating to the subject were likewise inclosed for his information.

We are also honoured with your Lordship's commands signified in Mr. Hammond's letter of the 14th June ultimo, stating that with reference to his letter of the 7th June, he was directed by your Lordship to transmit to us a copy of a despatch from Sir Charles Wyke (No. 67, May 11), inclosing a copy of an Additional Article to the Treaty of the 28th of April last which he had concluded with the Mexican Government, and to request that we would take this Additional Article into our consideration, together with the Convention itself then before us, and furnish your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we do not see how the conclusion of a separate Convention between this country and Mexico, upon terms of special advantage to this country, can be reconciled with the terms of the Tripartite Convention of the 31st October, 1861, if the latter is to be regarded as still continuing in force, notwithstanding the disagreement of the Commissioners, and the discontinuance of joint operations in Mexico on the 9th of April last. We do not think that "any acquisition of

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territory," within the meaning of the IInd Article of the Tripartite Convention' is involved in the terms of the Convention of the 28th of April last; but the security contracted to be given for the payment of British claims by the IVth Article of the latter Convention does seem to us to be a "special advantage," which it was not competent for either of the Contracting Parties, during the subsistence of the engagements contained in the Tripartite Convention, to seek to obtain by any separate negotiation with Mexico.

The question, then, arises whether the conduct pursued in Mexico by the French Commissioners can safely be regarded as having so far released Great Britain from the engagements of the Tripartite Convention as to make it competent for Her Majesty's Representatives in Mexico, after the discontinuance of the joint operations, to adopt a "completely separate and independent line of action," and to stipulate for a separate settlement of the claims of this country on Mexico, involving special advantages to this country, without any notification to the French Government that the Tripartite Convention was considered to be at end? This view was taken and acted upon at the time, both by the English and by the Spanish Commissioners, and it does not seem to have been met by any objection or remonstrance on the part of the French Commissioners (see their joint letter, dated Cordova, 15th April, 1862, to Sir G. Wyke and Commodore Dunlop, at page 6 of the confidential papers). Nevertheless, we think that it was erroneous, and it certainly appears (from the Foreign Office despatches Nos. 109 and 117 of Part II of the Correspondence laid before Parliament) to have been at variance with the views and intentions then entertained by Her Majesty's Government.

For these reasons we are not without serious apprehension that the ratification of this Convention by Her Majesty might lead to misunderstanding between this country and France,—unless it should result from communications between Her Majesty's Government and the Government of the Emperor that the events which have occurred in Mexico are regarded by France as having virtually dissolved the engagements contracted by the Tripartite Convention, and, consequently, that the ratification of the Convention of the 28th April would not now be regarded by that country as involving any breach of those engagements.

With respect to the Additional Article inclosed in Sir Charles Wyke's despatch No. 67 of the 11th May last, we have to observe that it makes the material guarantee which it professes to concede to the British Government dependent upon the existence of a state of civil war in those ports and places in which it may be put in force, so that the means which it authorizes the British Government to adopt for the purpose of securing the fulfilment of the international obligations of Mexico towards this country in those ports and places would involve practically a forcible intervention by Great Britain in favour of the *de facto* Government for the time being in Mexico, for the purpose of putting down the resistance to that Government of the local authorities of seaports taking part with their political adversaries, and whose resistance that Government might not be able by its own strength to overcome. Without saying that such an arrangement would be open to insuperable objections under all possible circumstances, we cannot disguise from ourselves that it is open to very serious objections, under the actual circumstances of Mexico, more especially when due regard is had to the origin and nature of those differences between France and Great Britain and Spain which led to the suspension of joint operations under the Tripartite Convention.

Subject to these considerations, which we humbly submit to your Lordships' judgment, and to the fact that the pecuniary assistance from the United States to Mexico, in expectation of which the Convention of the 28th April was concluded will, not be forthcoming, we are not aware of any further reason why this Convention should not be ratified.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.

No. 195.

The Law Officers of the Crown to Earl Russell.—(Received September 6.)

UNITED STATES.

Draft of note to be presented to United States' Government relative to restrictions on trade between New York and the Bahamas.

My Lord, *Doctors' Commons, September 5, 1862.*

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 16th ultimo, stating that, with reference to our Report of the 2nd August last,[*] and to his letters of reference of the 2nd and 9th ultimo, he was directed to transmit to us the draft of a note which it is proposed to instruct Her Majesty's Chargé d'Affaires at Washington to present to the United States' Government, respecting the restrictions imposed by that Government on trade between New York and the Bahamas, and to request that we would take this draft into our consideration, and furnish your Lordship with our opinion whether it is right and proper.

We are also honoured with Mr. Layard's letter dated the 16th ultimo, transmitting further papers having reference to the said draft note for presentation to the United States' Government.

We are also honoured with Mr. Layard's letter dated the 20th ultimo, transmitting to us a despatch from Her Majesty's Chargé d'Affaires at Washington, inclosing a copy of a note which he had addressed to Mr. Seward, in compliance with instructions conveyed to him, founded on our Report of the 7th ultimo[†] (July), respecting the restrictions imposed on British trade to the Bahamas, and requesting that we would take the same into our consideration, with the other papers on the subject.

We are also honoured with Mr. Layard's letter dated the 3rd instant, transmitting to us a letter from Mr. Adams, containing further particulars respecting the said restrictions imposed on British trade from New York to the Bahamas.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we have taken into our consideration the despatch of Her Majesty's Chargé d'Affaires at Washington to Mr. Seward, and the other papers submitted to us in the letters of Mr. Layard of the 2nd, 9th, 16th, and 20th ultimo, and that we do not find it necessary to make any addition to or alteration in the opinions which we have had already the honour of submitting to your Lordship on this subject.

We have also taken into consideration the draft note submitted to us with Mr. Layard's letter of the 16th August, and we are of opinion that it will be right and proper that a note in the terms of that draft should be presented by Her Majesty's Chargé d'Affaires at Washington to the United States' Government.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 196.

The Law Officers of the Crown to Earl Russell.—(Received September 6.)

UNITED STATES.

British vessel "Herald" chased and fired upon by United States' ship "Andirondack" off Nassau.

Temple, September 6, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 20th ultimo, stating that he was directed by your Lordship to transmit to us a letter from the Colonial Office, inclosing a copy of a despatch from the Governor of the Bahamas, dated the 18th August ultimo, stating the circumstances under which the British vessel "Herald" was chased and fired upon by the United States' ship "Andirondack," off Nassau.

Mr. Layard was also pleased to state that he inclosed a despatch from Her Majesty's Chargé d'Affaires at Washington on the subject (No. 127), and that he was directed by your Lordship to request that we would take these papers into our consideration, and furnish your Lordship with our opinion thereupon.

We are also honoured with your Lordship's commands signified in Mr. Layard's

[*] Page 193.

[†] Page 177.

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letter of the 28th ultimo, stating that, with reference to his letter of the 20th of August, he was directed by your Lordship to transmit to us a further despatch from Her Majesty's Chargé d'Affaires at Washington (No. 142), respecting the case of the "Herald."

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That the letter of Mr. Seward to the Secretary of the Navy appears to us quite satisfactory upon this subject. That it is not clear that any intentional violation of international law has been committed by the Captain of the "Andirondack;" that if the alleged violation had been committed, the despatch of Mr. Seward contains all the apology that can reasonably be required.

We have, &c.
(Signed) WM. ATHERTON.
ROBERT PHILLIMORE.
ROUNDELL PALMER.

No. 197.

The Law Officers of the Crown to Earl Russell.—(Received September 6.)

Doctors' Commons, September 6, 1862.

UNITED STATES.

Claim of Messrs. Dorrington and Forwood for restoration of the "Adela," and for damages for detention of their vessel.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 15th August ultimo, stating that he was directed to transmit to us a Memorial from Messrs. Dorrington and Forwood, requesting that a demand may be made upon the United States' Government for the restoration to them of the British steamer "Adela," lately captured by the United States' cruizer "Quaker City" while on a voyage from Liverpool to Nassau; and that Messrs. Dorrington and Forwood also apply for damages on account of the detention of their vessel; and to request that we would take this case into consideration, and furnish your Lordship with our opinion thereupon.

We are also honoured with Mr. Layard's letter of the 19th August ultimo, transmitting the accompanying letter containing further particulars respecting the case of the "Adela."

We are also honoured with Mr. Layard's letter of the 20th August ultimo, transmitting further papers containing further information respecting the "Adela," and stating that it appears to your Lordship that the alleged capture of this vessel in British waters is a matter for evidence. That the United States' Government do not pretend to any jurisdiction in British waters, and, if satisfied on this point, will of course give up the vessel. But supposing the "Adela" to have been beyond a marine league from the land, a question arises as to the right of seizing the vessel without search.

That your Lordship considers it probable that a list of vessels supposed to be engaged in conveying contraband of war to the so-styled Confederate States may have been furnished from London or Liverpool to the United States' Government; and such a list, your Lordship concludes, would furnish good ground for search, but not for capture without search: for a vessel may have been erroneously inserted in such list, or her destination may have been altered, and she may have been at the time of her capture employed in legitimate trade between one British port and another. That there is also another point on which your Lordship would be glad of our opinion, namely, the instructions to be given to Vice-Admiral Sir Alexander Milne and Her Majesty's Chargé d'Affaires at Washington. That it seems to your Lordship that British cruizers ought not, if they can prevent it, to allow any British merchant-vessel to be captured in British waters, but that if captured beyond British waters the question of her carrying contraband of war to the Confederates ought to be left, in the first instance, to the Prize Courts of the United States. That if condemned in the District Court, appeal ought to be made by the owners of the vessel to the higher Court, and so on to the highest.

We are also honoured with Mr. Layard's further letters of the 21st and 27th August ultimo, transmitting further papers respecting this case.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That, assuming the accuracy of the statement of the master of the steamship "Adela," there can be no doubt that she was illegally captured upon two grounds, viz., first, by reason of her being at the time of capture within British territorial waters; secondly, by reason of her being seized while in the prosecution of a lawful trade. But the "Adela" being now before the Prize Court, both these questions must be dealt with as questions of evidence by that tribunal.

We must presume that on the statements of the master being proved, the "Adela" will be dismissed with full costs against the captor; on the other hand, if the weight of evidence on the spot should be such as reasonably to satisfy the Court that the alleged destination of the ship was not the real destination, and that the real destination was a blockaded port, an opposite result may be anticipated.

With respect to the orders said to have been given to the United States' naval officers by their Government, we understand from Mr. Seward's note to the Secretary of the Navy that at all events they are no longer to be in force. As regards the orders themselves, we are of opinion that if sanctioned and continued they would have called for prompt and firm remonstrance on the part of the British Government; and even as matters now stand, we think it may be proper that the view taken of these orders by Her Majesty's Government should be distinctly expressed.

Seizure of vessels without preliminary search upon the high seas.

To order the systematic seizure of all vessels, though apparently and *primâ facie* carrying on a lawful trade, without any preliminary search upon the high seas, and without the discovery, during this search, of some strong evidence of suspicion against the vessel, is to subject the mercantile marine of neutral vessels to a system of oppression and annoyance which no neutral Government can be expected to tolerate. It is a state of things but little removed from treating neutrals as belligerents; practically, indeed, fixing upon them the penalties of the latter, without the incidental advantages of the former condition. The unjust seizure, under urgent circumstances, of a neutral vessel may be considered as one of the inevitable burdens which a state of war imposes upon a neutral, and may be partially compensated by the condemnation of the captor in costs, or costs and damages; but the indiscriminate and general seizure of vessels without previous search is to convert a necessary and tolerable exception into an unnecessary and intolerable rule. With respect to the course which Her Majesty's navy should pursue in these very anxious and trying circumstances in which they are placed, it would seem to us that while Her Majesty remains a neutral in the present war, the case must be of a highly exceptionable character which would justify their interference with the capture of British vessels upon the high seas, by cruizers lawfully commissioned by the United States' Government: but within British waters the case is very different, and it is clearly the duty of Her Majesty's ships to prevent by force the commission of any act of violence by a foreign vessel within the territorial waters or dominion of Her Majesty. As regards the distance from the shore to which the jurisdiction of the adjacent territory extends, we are of opinion that whatever the theory may have been on which the distance of a marine league was adopted, and notwithstanding the greatly-increased range of artillery at the present day, the old rule is still in force, and must be adhered to.

We venture, however, to suggest that it is well worthy the consideration of Her Majesty's Government whether some agreement, more or less formal, might not be entered into as soon as possible between the Maritime States, especially Great Britain, France, and the United States, to the effect that the territorial waters of each State should extend to the distance at which newly-invented ordnance can throw shot, whatever that distance may be determined to be. It seems to us that it would be expedient to establish, during the continuance of the present war, a Consul or Vice-Consul at Key West for the protection of British shipping.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 198.

The Queen's Advocate to Earl Russell.—(Received September 9.)

CHILE.

Administration of property of a British subject named Clark or Clarkson, supposed to have been a convict.

Doctors' Commons, September 8, 1862.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 1st September instant, stating that he was directed to transmit to me a despatch from Her Majesty's Chargé d'Affaires in Chile, reporting the steps taken by him as regards the administration of the property of a British subject named Clark or Clarkson, supposed to have been a convict; and to request that I would report to your Lordship my opinion as to the instructions which should be addressed to Mr. Thomson in this matter.

In obedience to your Lordship's directions I have taken this case into consideration, and have the honour to report—

That Mr. Thomson appears to have acted very properly in the steps which he has already taken.

If the said William Clarkson was in reality identical with Juan Clark, the unreprieved convict, he was clearly under an incapacity to dispose of property by testament or will.

Mr. Thomson should apply to the Tribunal at Santiago, which has cognizance of the case, for leave to intervene on behalf of Her Majesty, as the sole person entitled to the effects of the deceased; and I presume that time to establish the interest of the Crown would be granted to him as a matter of course. This interest must be established by evidence which identifies the convict Clarkson with the deceased Clark. Mr. Thomson must take care that the identifying evidence is such as in substance and in form is admissible according to the *lex fori* or the law at Santiago.

It does not appear upon what kind of evidence Mr. Thomson has clearly founded his opinion of this identity. It is very probable, however, that there may be sufficient evidence procurable at Santiago or in the vicinity to make out a *primâ facie* case at least on behalf of the Crown. I would further suggest that if the deceased person was a convict he was incapable of acquiring a foreign domicil, and that the question as to the succession to his personal effects ought, according to the usages of comity, to be remitted to the *forum originis*, that is, to England, in which case the Queen's Proctor would take charge of the interests of the Crown, and advice, upon the usual principles as to the disposition of the property, would be tendered to Her Majesty.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 199.

The Law Officers of the Crown to Earl Russell.—(Received September 9.)

UNITED STATES.

Refusal of United States' Consul at Liverpool to legalize certain documents required by Messrs. Dorrington and Forwood in the defence of their vessel the "Adela."

Temple, September 9, 1862.

My Lord,

WE are honoured with your Lordship's commands signified to us in Mr. Layard's letter of the 16th ultimo, stating that with reference to his letter of the previous day's date, inclosing a memorial from Messrs. Dorrington and Forwood respecting the seizure of their vessel, the "Adela," he was directed by your Lordship to transmit to us a letter from Messrs. Leech, Harrison, and Forwood, dated the 15th August ultimo, inclosing copies of their correspondence with the United States' Consul at Liverpool, relative to the refusal of the latter to legalize certain documents required by them in the defence of their vessel, and to request that we would take this matter into our consideration, and furnish your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken the matter and the papers submitted to us into our consideration, and have the honour to report—

That it appears to us, from the papers submitted to us, that a British steamer, the "Adela," has been captured by a ship of the United States' navy, and brought into the Prize Court for adjudication.

It is clear, and will not be disputed, that a neutral vessel is entitled in this Court of the Law of Nations to every legitimate means of defence.

It is upon the presumption that all such means are conceded to the owners of the captured vessel, that other States are bound to respect the decisions of this Tribunal.

To appoint an agent for the purpose of conducting the defence, and prove by proper evidence the ownership of the captured vessel, are the primary steps which it is incumbent upon the owners to take.

Any municipal regulation which obstructed or prevented the taking of these steps would be in violation of international law.

It appears that in the Prize Court, as in the Municipal Courts of the United States, this appointment of an agent, and this proof of ownership, are required, when the owner is resident in a foreign State, to be attested by a Notary Public resident in that State, and that the fact of the person who so attests, being a Notary Public, must be authenticated by the certificate of the Consul of the United States resident in the same country.

It is clear that the duty of the Consul in this matter is confined to ascertaining and certifying the fact that the attesting person is what he pretends to be, a Notary Public.

In the case of the "Adela," the Consul of the United States at Liverpool refuses to authenticate in the usual way the fact, which he does not gainsay, that Mr. Bateson is a Notary Public. He founds his refusal on the ground of his private knowledge (or rather information) of the guilt of the owners, which (so far as relates to this ship) is the fact at issue, and awaiting judicial determination in the cause: and he makes two suggestions, one, that the owner should cross the Atlantic, and appear personally in the Prize Court; another, that he (the Consul) should attest the papers requisite for the defence, and send them, not to the agent for the accused, but direct to the accusing party, namely, the Government of Washington.

We are of opinion that this conduct of the American Consul is not warranted by international usage or law; that its manifest tendency is to cripple and impede the right of defence to which the owners of the captured vessel are entitled, and gravely to discredit what should be above all suspicion, the administration of justice in the Prize Court.

We would humbly advise your Lordship to represent to the Minister from Washington the unusual and unfair proceeding upon the part of the United States' Consul, and to endeavour to obtain from the Minister directions to the Consul to follow the usual and ordinary course.

We reserve our further opinion until we know the result of this application.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 200.

The Queen's Advocate to Earl Russell.—(Received September 11.)

SIAM.

Proceeds of sale of a British vessel at Bangkok taken charge of by the British Consul.

Doctors' Commons, September 9, 1862.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 4th September instant, stating that he was directed to transmit to me the accompanying letter from the Board of Trade dated the 21st August ultimo, inclosing a despatch from Her Majesty's Consul at Bangkok, stating the circumstances under which he had taken charge of the proceeds arising from the sale of a British vessel at that port; and to request that I would take these papers into consideration and furnish your Lordship with my opinion thereupon.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That the Consul has acted in this matter no doubt with the best intentions, and possibly for the benefit of all persons interested in the proceeds of the sale of the ship, but not in the execution of any duty imposed upon him by law.

That it does not appear to me that your Lordship, any more than my Lords of the Privy Council for Trade, ought to take upon yourself the responsibility of advising the Consul as to the best method of relieving himself from

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liabilities voluntarily incurred. But that, nevertheless, it might be suggested that if any mortgagee of the ship would institute a suit in the High Court of Admiralty here against the proceeds of the ship in the hands of the Consul, the Consul would then be directed to pay them over into the custody of the registry of that Court, and the several claimants would then be legally paid according to the priority of their claims. Such a proceeding need not be attended with any great expense, and, at all events, is the one which would most effectually relieve the Consul from liabilities.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 201.

The Law Officers of the Crown to Earl Russell.—(Received September 13.)

UNITED STATES.

Restrictions on trade between New York and the Bahamas.

My Lord, *Temple, September* 12, 1862.

WE are honoured with your Lordship's commands signified to us in Mr. Layard's letter of the 4th September instant, stating that he was directed by your Lordship to transmit to us a further despatch and its inclosures from Her Majesty's Chargé d'Affaires at Washington (No. 172, August 20, 1862), respecting the restrictions imposed by the United States' Government on trade between New York and the Bahamas, and to request that we would take these papers into our consideration, and furnish your Lordship with our opinion thereupon, with reference to the draft note to be presented to the United States' Government which was sent to us for our opinion on the 16th ultimo.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That the gravity of the circumstances which were the subject of our former Reports is, in our opinion, rather increased than diminished by the grounds on which the proceedings of the New York Custom-house are explained and sought to be justified in Mr. Collector Barney's letter to Mr. Chase, and (as it appears) approved and sanctioned by the Government of the United States.

It is admitted in this letter that the prohibitions and restrictions in question are directed exclusively against the commerce of one particular British possession, namely, Nassau. It is therefore clear that unless they can be justified by the Law of Nations, they violate the terms of the subsisting Commercial Treaties between the United States and this country, and furnish ground for international complaint, and (if thought necessary) for reprisals by Her Majesty's Government.

The position assumed by the United States' Government is this,—that it is entitled to prohibit (or to place under restrictions equivalent to prohibition) the exportations from New York, and from Great Britain viâ New York, to Nassau, of articles which are neither in their own nature contraband of war, nor made contraband for the purpose of the present hostilities by any general and public declaration of that Government, with a view thereby to prevent British subjects resident at Nassau, or making that Colony a depôt for purposes of commerce, from trading in those articles with the Confederate States. The inference that the articles, though having really and *bonâ fide* a British destination, are likely to be afterwards used for the purposes of the trade between Nassau and the Confederate States, is drawn (as explained by Collector Barney) from the magnitude of the consignments; from a comparison between the amount of the trade in similar articles carried on between New York and Nassau in former times and the amount during the present war; from the notorious existence of an extensive trade, during the war, between the Confederates and Nassau; and from the known or reputed connection of certain merchants or mercantile houses in England and at Nassau with that trade. The possibility or probability being thus arrived at that such a use may be made of some of these articles after their arrival at Nassau, it is concluded that the United States' Government are entitled to stop them at New York.

From this conclusion we dissent.

The trade between Nassau and the Confederate States is (subject to those limitations which the Law of Nations has established) as legitimate as the trade between Great Britain and any other part of the world. Even if the Government of the United States were in a condition to ask other nations to assume (which is very far indeed from being the case) that every part of the coasts of the Confederate States is effectively blockaded, British subjects at Nassau would still have a perfect right to sell goods to all such shippers, whether of the Confederate States or others, as might be able to resort to Nassau for the purpose of buying them there; and the dealers at Nassau, or their principals in Europe, in making such sales, are not chargeable with any, the slightest, violation of neutrality. If contraband articles are shipped for any part of the Confederate States they are liable to seizure according to the Law of Nations; if articles not contraband are shipped for any blockaded place, they also may be seized upon the high seas, according to the Law of Nations. But the liability of the trade between Nassau and the Confederate States, or any part of it, to be intercepted upon the high seas, by a maritime capture according to the rules of international law, does not render the dealing in the articles which supply that trade, by British subjects within British jurisdiction, less lawful and innocent than if there were no such liability; much less does it justify a belligerent Government in superadding to the known belligerent rights of blockade and of maritime capture an embargo within its own ports upon any part of the trade of a neutral nation with one of its colonial possessions, merely because this may possibly tend to cripple or embarrass another lawful trade between that neutral Colony and the country of the other belligerent.

It will be for Her Majesty's Government to determine how far (if at all) the importance of maintaining friendly relations, under present circumstances, with the United States may preponderate over the risk of disturbing these relations, by assuming a decided attitude in opposition to the violation of Treaty, and departure from the principles of international law thus attempted.

The question is, no doubt, rendered one of some practical difficulty by the extent to which the trade between the Bahamas and the Confederate States is of a really contraband character; but the doctrine of the United States on this subject has always been the same as our own, viz., that neutral Governments are under no obligation to stop a contraband trade between their subjects and a belligerent Power; and that the only penalty of such a trade is the liability of contraband shipments to capture on the high seas by the other belligerent.

The false assumptions which seem to pervade the views of the United States' Government with respect to Nassau are, that it is a violation of neutrality for a British Colony to carry on any active trade with the Confederate States during the existence of the blockade; and that in aid of the inefficiency of the blockading force an embargo may lawfully be placed on a particular trade of British commerce at New York.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 202.

The Queen's Advocate to Earl Russell.—(Received September 15.)

UNITED STATES.

Claim of owners of the "Will o' the Wisp," captured at Matamoros, and released by sentence of Prize Court.

My Lord, *Doctors' Commons, September* 15, 1862.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 9th September instant, stating that he was directed to transmit to me the accompanying letter, dated September 8, from the Colonial Office, inclosing a Memorial addressed to the Queen by certain British subjects resident in Nova Scotia, claiming compensation from the United States' Government for the seizure of the British vessel "Will o' the Wisp" at Matamoros, by the United States' ship "Montgomery." He was also pleased to inclose other papers bearing upon the subject which have been received at the Foreign Office, and to request that I would take the case into consideration, and furnish your Lordship with my opinion thereupon.

I am also honoured with Mr. Hammond's letter of the 11th instant, transmitting a further despatch from Her Majesty's Chargé d'Affaires at Washington (No. 170) respecting this case.

In obedience to your Lordship's directions I have the honour to report—

That I have taken this case and the various papers which accompany it

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into consideration, and am of opinion that the sentence of the Prize Court releasing the "Will o' the Wisp" ought to have been accompanied by a condemnation of the captor in the costs of the suit. The justice of the case would seem to me also to have required an award of damages against the captor, though upon this point I admit there may be room for doubt. I understand that the facts elicited by the investigation before and at the trial to have been these:—That the vessel was seized just outside the neutral waters of Matamoros; that she was at the time engaged in transhipping on board lighters (among other cargo), gunpowder and ammunition for Matamoros, a neutral port; that these articles had been purchased by a special order for the neutral Government at the time of the capture; on the hand it appears from Mr. Consul Blacker's despatch (June 9, 1862), that the captain had originally made to the captor false and contradictory statements respecting the destination of the gunpowder and ammunition; that these had originally been put clandestinely on board; were not declared in the ship's manifest, nor mentioned by the captain of the vessel to Captain Hunter, the captor, when he first boarded the vessel.

These were circumstances of suspicion, but they were quite rebutted by the fact that the articles in question were actually in course of transmission to the neutral purchasers when Captain Hunter boarded for the second time the "Will o' the Wisp." It is clear too from the despatch of Consul Blacker that the vessel was seized by the captor upon a most erroneous notion of the international law applicable to the case, viz., that he had a right to look beyond the actual and immediate destination of the articles to a neutral port, and to consider what would probably become of them after they had reached this lawful destination in some further and future transaction. This notion is, indeed, distinctly and satisfactorily refuted by the Judge of the Prize Court, and it seems to me that his sound premises ought to have led him to the equally sound conclusion that the captor must pay the cost and damages incident to his unlawful act. That learned person acted upon a true principle, indeed, in maintaining as a general proposition of Prize Law, that where the circumstances of a case disclose probable cause of capture, the Court might in the exercise of its discretion refuse to condemn the captor in costs and damages. In the case before him the Judge found this probable cause in the circumstances of secrecy and suspicion with respect to the gunpowder and ammunition to which I have referred; but he does not seem to have adverted to the fact that the captor was aware at the time he made the seizure that these articles were purchased by and actually being sent to a neutral purchaser in a neutral port, and that the captor seized the vessel believing her nevertheless to be lawful prize. It is quite certain that this ignorance of the law on the part of the captor furnishes no legal excuse for the capture.

I am of opinion, therefore, that it would be proper that Her Majesty's Government should remonstrate on these grounds upon the inadequacy of the sentence of the Prize Court. This remonstrance should state that in their opinion the justice of the case required condemnation in damages, but that there can be no reasonable doubt that the omission to condemn the captor in the costs of this unjust seizure was a miscarriage on the part of the Judge, and a failure in justice which founded a claim for redress to the United States' Government.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 203.

The Queen's Advocate to Earl Russell.—(Received September 15.)

ARGENTINE CONFEDERATION.

Case of Mr. Haycroft, condemned to refund price of lands purchased, and subsequently resold by him.

Doctors' Commons, September 15, 1862.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 9th September instant, stating that he was directed to transmit to me a despatch from Her Majesty's Chargé d'Affaires to the Argentine Republic (No. 5, July 24, 1862), calling attention to a case in which Mr. Haycroft, a British subject, who purchased and subsequently resold some lands, has been condemned by a Court of Law to refund the price received by him for that land, on the plea that the title was defective; and also to transmit a Report on this subject from Mr. Thornton, Her Majesty's Minister to the Argentine

Republic, dated the 5th September instant, now on leave of absence in this country, as also five volumes of correspondence in which I should find marked the previous papers bearing on the case; and to request that I would report to your Lordship my opinion on the case, and that I would state whether I consider that Her Majesty's Government are called upon to take any or what steps in the matter.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That there can be no doubt that according to unquestionable principles of public and international law, the obligations which a State, under one form of Government or under one Administration, contracts towards foreigners are binding upon it when that form of Government or that Administration has been changed. Nor can there be any doubt that a retrospective law, confiscating the property of an innocent owner, is, whatever name may be given to it, a wrongful act; and that in the case of a foreigner becoming the victim of such an act, the State to which he belongs is warranted by international law in demanding compensation from the State which has been the wrong doer. I assume that by the operation of such a law, Mr. Haycroft has been deprived of certain portions of land which he purchased in the State of Buenos Ayres. Nevertheless, it does not appear to me that this is a case in which, having regard to all the circumstances of it, Her Majesty's Government are called upon officially to interfere. It is important, I would humbly suggest, in these cases to bear in mind the distinction which in the nature of things, as well as in the laws and usages of States, subsists between real and personal property.

An English subject who chooses to purchase landed property and thereby contract the relations in some sort of a territorial subject in a South American Republic, which he knows to be in a condition of chronic revolution, perpetually changing both its Government and its laws, and especially those which relate to landed property, cannot, it seems to me, reasonably expect that his own Government shall interfere on his behalf whenever the laws of such a State, with which he has chosen so to incorporate himself, shall become oppressive and unjust towards all its territorial subjects, among which number he has chosen to enrol himself.

The possible abuse of such an interference on the part of Great Britain is, in the abstract, obvious; and the letter of Mr. Thornton is most significant as to the practical danger of that interference being invoked to confirm suspicious or fraudulent titles to land in these unsettled and ill-governed States. It is clear that the original titles to this class of property, if it did not deserve the appellation of "boletos de sangre" (tickets of blood),* were of a very questionable and odious character. It is clear that in 1856, when Mr. Haycroft purchased the land, he was aware of the peculiar character, if not of the vice, of the original title (for he bought it of near relatives of General Rosas), and of the great probability that the then Government of Buenos Ayres would rescind (as they did two years afterwards) the grant of General Rosas which constituted the title; and these are circumstances which render the suspicion of Mr. Thornton that Mr. Haycroft took the land in question, well knowing the jeopardy of the title, as payment for a bad debt, far from improbable. But even if there were no weight in these observations, it is manifest that Mr. Haycroft has a legal remedy for his wrong. The same tribunal which compelled him to restore the purchase-money to his vendee (Senhor Ochoa) must compel his vendor (Senhor Escurra) to restore the money to him. If that vendor be, as is suggested but not proved, a bankrupt, that is a misfortune to which Mr. Haycroft, like other purchasers, is liable. I entirely agree with Mr. Thornton that this fact, if it be one, is an unhappy accident, which founds no claim on the part of Mr. Haycroft for the interference of Her Majesty's Government, or any duty on their part to interfere.

This case, in my opinion, differs materially from that of Messrs. Gibson and Fair, upon which Earl Malmesbury wrote his despatch of March 16, 1859. That was a case of emphyteutical property, the holders of which were disturbed after an interval of twenty years' possession, having, moreover, themselves been sufferers by the conduct of General Rosas, and being free from all suspicion of knowingly purchasing under a bad title.

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* See despatch of Mr. Consul Parish from Buenos Ayres, December 29, 1858.

It may, perhaps, be expedient that Her Majesty's Government should direct Her Majesty's Representative at Buenos Ayres to express the concern with which they learn that the good faith and credit of Buenos Ayres has been tarnished and shaken by retrospective legislation, confiscating property acquired by British subjects under the sanction of that Government, and the obvious tendency of such conduct to impair, unless compensation be awarded, the relations of amity between that country and Great Britain. But it would not seem to me necessary or expedient to take any further step in the present case.

I humbly tender this advice to your Lordship, and have, &c.

(Signed) ROBERT PHILLIMORE.

No. 204.

The Queen's Advocate to Earl Russell.—(Received September 16.)

SPAIN.

Seizure of British barque "A and A" at Ponce (Porto Rico), and detention of captain.

My Lord, *Doctors' Commons, September* 15, 1862.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 9th September instant, stating that he was directed to transmit to me therewith two despatches from Her Majesty's Consul at Porto Rico (Nos. 18 and 19, of the 7th and 10th August), detailing the circumstances under which the British barque "A and A" was seized by the Spanish authorities at Ponce, and her captain forcibly detained; and inclosing a correspondence which has passed on the subject between Her Majesty's Consul, the Captain-General, and the British Vice-Consul at Ponce; and to request that I would take these papers into consideration and furnish your Lordship with my opinion whether any and what steps should be taken by Her Majesty's Government in this matter.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I agree with Mr. Cowper, Her Majesty's Consul-General at Porto Rico, that the Royal Order of 1751, inasmuch as it affects foreigners, was not virtually or at all abrogated by the Spanish Commercial Code. The effect of the Ordinance of Matriculos published in 1802, and referred to as binding by the Royal Order of 2nd July, 1847, is a more difficult question. On the one hand I think it impossible to deny that it is fully within the abstract competence of Spain to make such orders as she has done with respect to foreign vessels within the waters of her Colonies. Indeed, it is no more than Great Britain herself has done in some, though a much less, degree by the creation of Receivers of Wreck, &c., in England. On the other hand, privileges once accorded by one foreign State to another, such as those contained in the Royal Order of 1751, cannot be rightfully taken away without due and formal communication from the one State to the other, offering opportunities for remonstrance and for statement of reasons which may avail to prevent the withdrawal of the privilege. Nor can a bare statement in an Order of Proclamation that the "privileges of foreigners are extinguished in the Colonies" be accepted by foreign Governments as a solution of disputed point whether privileges granted with respect to the mother country do, or do not, in the absence of negative words, extend to her Colonies.

It appears to me that the intemperate language of Mr. Vice-Consul Basanta has probably prevented an amicable adjustment of this matter; as I gather, though the evidence be slight, from what is stated by Mr. Consul Cowper, that the usage has been *de facto* at least in favour of allowing the British Consul and captains the charge of British wrecks. I would humbly advise that the opportunity be taken to put the matter *for the future* upon a certain and sound footing, and that Mr. Consul Cowper be instructed not to seek to open the case of the "A and A," which seems to be practically closed by his judicious conduct, but to state that Her Majesty's Government trust that in future British Consuls and captains may be permitted to act unmolested in all cases relating to the custody, sale, and disposal of British vessels or wrecks where British interests alone are concerned; inasmuch as such permission is in accordance with the usages of all commercial and maritime States, and is supported in the case of Great Britain by the Royal Order of 1751.

If this representation should prove unavailing, it would be desirable that a question which is certainly important should be made the subject of more direct and formal negotiation with the Spanish Government.

I have, &c.

(Signed) ROBERT PHILLIMORE.

No. 205.

The Law Officers of the Crown to Earl Russell.—(Received September 18.)

UNITED STATES.

Claim for damages by owners and charterers of the "Labuan," released by sentence of American Prize Court.

My Lord, *Temple, September* 17, 1862.

WE are honoured with your Lordship's commands signified to us in Mr. Layard's letter of the 22nd of August last, stating that with reference to the Reports of Her Majesty's late Advocate-General of the 22nd and 27th of March, and to our Reports of the 3rd and 11th of April,* respecting the case of the British steamer "Labuan," he was directed by your Lordship to transmit to us, together with the previous papers, and with certain additional correspondence which has since passed respecting that vessel, including a despatch from Her Majesty's Minister at Washington (No. 341) notifying her release, and also a despatch from the Acting Consul at New York (No. 73) transmitting copies of the legal evidence and pleadings, a letter from Messrs. Lefevre and Co. dated the 16th August ultimo, inclosing letters from Messrs. Bailey and Leatham, the owners, and Messrs. De Jersey and Co., the charterers of the "Labuan," stating their claims for damages, and requesting that they may be supported by Her Majesty's Minister at Washington, and to request that we would take these claims into our consideration, and furnish your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have the honour to report—

That we have taken into our consideration all the papers submitted to us in this case.

The original injustice of the seizure of the "Labuan," which has been the subject of so much remonstrance and reclamation on the part of Her Majesty's Government, is now judicially established by the sentence of the American Prize Court.

It is manifest, however, that a sentence merely restoring the vessel to its owners, without the costs of the litigation and the damages incident to the detention, would fall very far short of that justice, of that "due reparation" (to use the language of Mr. Seward) to which the sufferers by this act of wrongful and unjustifiable violence are entitled.

Upon principle they are entitled to whatever damages have been occasioned by the act of the wrong-doer; and it is satisfactory to find that the precedents of the Prize Courts of the United States and of Great Britain have fully recognized and embodied this principle in their decisions.

We can scarcely suppose that the United States' Prize Court will fail to apply this principle to the particular case of the "Labuan," and to condemn the captor in damages as well as in costs.

We are clearly of opinion that the failure of the Prize Court to do justice in this respect would, in the particular case of the "Labuan," warrant the strongest remonstrance on the part of Her Majesty's Government to that of the United States.

Assuming, however, that justice will be done in this respect, we must admit that it would be in accordance with the usage of these tribunals to refer the assessment of the damages to Commissioners appointed by the Court, whose duty it is to make a regular report of the several items and the amount of the damages.

But it seems to us that the peculiar circumstances of this case would warrant Her Majesty's Government in requiring immediate compensation both to the charterers and the owners directly from the Government of the United States.

The "Labuan" was seized at anchor in the waters of a neutral State while her captain was actually on shore.

The "Labuan" was British built, British registered, British owned; manned by a British crew, with a British flag and proper papers all perfectly regular; with no contraband on board; destined to a neutral port; making no attempt at concealment or resistance.

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* Pages 70, 73, 83, and 92.

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There never was the slightest *primâ facie* justification for her seizure, which violated in the most flagrant manner the plainest and most unquestionable principles of international law.

The United States' Government, moreover, in whose name the seizure was made, was clearly apprised of all the circumstances connected with the ship,—her origin, her ownership, her papers, her cargo, her crew, her destination; and so apparent was the absence of any justifiable cause of seizure that the United States' Government never maintained in their correspondence, official or unofficial, or in any way or at any time, that they were prepared to allege or maintain the existence of any such cause.

Lord Lyons pointed out emphatically and carefully to Mr. Seward that to send the "Labuan" for adjudication to the Prize Court was a certain mode of largely increasing the expenses already incurred, and of adding to the amount of the hardships and inconveniences already suffered by this innocent ship.

Nevertheless the case was sent to the Prize Court, and with exactly the result which had been anticipated, namely, the flagrant injustice of the seizure judicially established, the expenses greatly and most unnecessarily aggravated.

The claims of the owners (Messrs. Bailey and Leatham) and charterers (Messrs. De Jersey and Co.) of the ship must, perhaps, if Her Majesty's Government require it, be submitted to the arbitration of some person professionally competent to decide upon them. Large as they are, they may be—we are far from saying they are not—just and due, but we desire to express our opinion that whatever authority, whether emanating from the Prize Court, or directly from the United States' Government, decides upon the admissibility of the various items in the demands, the damages ought to be assessed upon the principle that the seizure and the detention were throughout without a pretext of legal justification.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 206.

The Law Officers of the Crown to Earl Russell.—(Received September 23.)

FRANCE.

Search of the "Marie Louise" at Paimbœuf on suspicion of French deserters being on board.

My Lord, *Temple, September* 22, 1862.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 4th September instant, stating that with reference to the Report of the Law Officers of the 16th of April last* respecting the case of the arrest by the gendarmerie of Paimbœuf of a part of the crew of the British barque "Marie Louise," of Quebec, on the charge of their being French deserters, he was directed by your Lordship to transmit to us a draft of a despatch which, in accordance with the suggestions of the Law Officers, was addressed to Her Majesty's Ambassador at Paris (No. 454), instructing his Excellency to take steps to obtain an explanation as to the grounds for the treatment of three of the crew of the "Marie Louise."

Mr. Layard was also pleased to inclose a despatch from Mr. Gray, Her Majesty's Chargé d'Affaires at Paris (No. 77), inclosing M. Thouvenel's reply (dated the 26th August ultimo) to Lord Cowley's representation, together with the observations of the master of the "Marie Louise" thereupon, which your Lordship considered it advisable to call for; and to request that we would take these further papers into consideration and furnish your Lordship with our opinion whether it is desirable to take any, and if so what, further steps in regard to this case.

The Report of the 16th of April was also annexed for convenience of reference.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That it is not stated in the papers now submitted to us whether the three sailors mentioned in the despatch of M. Thouvenel of the 25th July, 1862, as Marjolli, Arene, and a third unnamed, are or are not the persons referred to in the Law Officers' Report of the 16th April last as Francis Roberts, Walter Aylward, and Sanchez, whose cases the Law Officers then recommended should be followed up, and distinct explanations required, in writing, as to the grounds of the treatment which each of them had received. If these men are not the same, then we are no nearer to the means of forming a satisfactory conclusion than we were in April, and we can only refer your Lordship to the recommendation which we then submitted. But if, as we should infer is the case, the men, however named, are identical, two at least of the three having entered themselves by false and English names on the ship's articles of the "Marie Louise," then we think that as regards the arrests on the ground of desertion from the French navy, satisfactory explanation has been given, and there are no reasonable grounds for Her Majesty's Government further interfering in the matter.

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* Page 94.

The case of the French Government is that two of the three were actually French deserters, and admitted themselves to be so, having, as well as the third, sought for concealment under false names. As regards two of the three, the account given by the captain of the "Marie Louise" at Gloucester, on the 22nd August, is fully in accordance with that which is put forward by the French Minister on the information furnished to him. The captain, speaking of two of the men who were seized out of his ship by the gendarmes at Paimbœuf, says distinctly that "the men confessed themselves deserters from the [French] Marine, being entered in my articles under false names." The third of the arrested men M. Thouvenel describes also as a Frenchman who had once belonged to the Marine, who was also suspected (and we cannot infer without reason) of desertion, and who having been apprehended on that suspicion was liberated as soon as his innocence was established by proof of his having received a regular discharge. To this part of the statement of M. Thouvenel, which has been submitted to the captain, no contradiction is offered, and we therefore assume it to be correct.

There remains the case of the carpenter, Joseph Chartier, who the captain still alleges was stopped by a gendarme on his way to the office of M. Vandersluys for a letter for his captain, and sent back to his ship. Referring to the letter of M. Vandersluys himself to the "Administrateur de l'Inscription Maritime" at Paimbœuf of the 16th March, copy of which is furnished by M. Thouvenel, we cannot regard the statement of the captain in this respect as sufficiently to be relied on to warrant a demand for redress or even of further explanation.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 207.

The Law Officers of the Crown to Earl Russell.—(Received September 24.)

PERU.

Claim of Captain Carvell to administer to property of late Mr. Winder.

My Lord, *Temple, September* 23, 1862.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 20th August, 1862, stating that with reference to the Law Officers' Report of the 24th May last,* he was directed by your Lordship to transmit to us a despatch from Mr. Barton (No. 54, July 10, 1862), on the points to which the Law Officers alluded in connection with the proceedings in Peru against Captain Carvell.

Mr. Layard was also pleased to inclose a letter from Messrs. Dawes, and the previous correspondence therewith, and to request that we would take these papers into consideration, and furnish your Lordship with our opinion as to the course which should be now pursued in this matter.

We are also honoured with Mr. Layard's letter of the 28th August last, inclosing a letter from the O'Gorman Mahon with reference to the case of Captain Carvell, and requesting we would take the same into consideration, together with the papers previously referred to us.

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We are also honoured with Mr. Hammond's letter of the 13th instant.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That the additional papers forwarded to us in this case do not, in our opinion, warrant us in advising Her Majesty's Government that a case is made out for direct official interference.

It is impossible to demand redress for an unjust decision on the ground that certain advocates, too timid to appear openly in Court, express on paper a different opinion upon the law from that which has been judicially delivered by a Judge.

It does not appear that a final judgment has yet been pronounced on the matter which is of most consequence to Captain Carvell, namely, the validity or invalidity of the will of which he has obtained an English probate.

Captain Carvell has now admitted (what he never ought to have contested) the jurisdiction of the Peruvian tribunals; but he cannot say, as he does in effect, I meant to admit it if it decided in my favour, and protest against it if it decided in favour of my adversary.

Her Majesty's Representative at Lima might, we think, be instructed to complain, if the fact be so, that Captain Carvell was ordered to bring in the property of the deceased, received from the British Legation, while his adversary, the widow Winder, was allowed to retain the remainder of the property.

We can express no opinion as to the individual who ought to have been appointed the *juez testamentario;* if the order of the Supreme Court has not been obeyed, that Court must be appealed to.

We think that, generally, Her Majesty's Representative at Lima might be instructed to complain of the want of comity shown by the Peruvian authorities in not recognizing the *forum domicilii* (admitted to be in England) as the *forum competens* to try the question of the validity of the will, at least so far as the personal property is concerned, and to press for a decision upon this point by the Peruvian tribunals, as they have thought proper, contrary to general usage, to try the question themselves.

But in the present state of facts we cannot recommend a more formal interference on the part of Her Majesty's Government.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 208.

The Law Officers of the Crown to Earl Russell.—(Received September 27.)

VENEZUELA.

Interference in favour of Colonial Bank of London for the recovery of a debt.

My Lord, *Temple, September* 24, 1862.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 1st September instant, stating that he was directed by your Lordship to transmit to us the correspondence noted in the margin,* regarding a case in which the Colonial Bank of London had requested your Lordship's interference with the Government of Venezuela in a matter connected with legal proceedings in that country; and to request that we would take these papers into consideration, and report to your Lordship our opinion whether Her Majesty's Government would be justified in interfering in this case, and if so to what extent.

In obedience to your Lordship's commands we have the honour to report—

That we have taken into our consideration all the papers submitted to us.

That the opinion (contained in Inclosure No. 13) of Dr. Nunez de Caceres appears to us well founded upon every recognized principle of public and private law applicable to such a case. That the Venezuelan Government must be considered as also agreeing with it, and as having fully recognized that the law of spoliation, which has been justly designated scandalous, entitled the British creditor to be indemnified by the State.

Looking to all the circumstances, and among them the difficulties which beset this Government and its apparent desire to redeem the good faith and honour of the State, we think that your Lordship might with propriety so far strengthen the hands of Mr. Doveton Orme as to authorize him to demand immediate payment of the capital of the debt, and to require that the question of interest, if not made the subject of private arrangement within a reasonable time, say one month from the date of the payment of the capital, should be submitted to two experts, one chosen by each party interested; and that in the event of their disagreement, Mr. Orme and the Venezuelan Government should, in a manner to be settled by themselves on the spot, choose an umpire expert, and that the whole question of interest should be settled within two months from the date of the payment of the capital.

We have, &c.
(Signed) WM ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

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* Colonial Bank, May 28; to Mr. Orme, No. 23; Mr. Orme, No. 40.

No. 209.

The Attorney-General and Queen's Advocate to Earl Russell.—Received September 26.)

UNITED STATES.

As to seizure of "Oreto" fitted out at Liverpool for service of Confederate States, should she put into Nassau, Bahamus.

My Lord, *Temple, September* 25, 1862.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 16th September instant, stating that he was directed to transmit to us, together with the former papers, a letter from the Colonial Office dated the 16th September instant, inclosing a copy of the Judgment delivered by the Court at the Bahamas in the case of the "Oreto," and requesting to be informed whether it will be necessary to modify the instructions sent to the Governor of the Bahamas, founded upon our Report of the 29th July last,* for the detention of the vessel said to have been fitted out at Liverpool for the service of the so-styled Confederate States, should that vessel put into Nassau; and to request that we would take these papers into consideration, and furnish your Lordship with our opinion thereupon.

Mr. Hammond was also pleased to state that the instructions for the Governor of the Bahamas should be forwarded by the mail of the 27th instant.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we are of opinion that if the vessel "290" should put into Nassau, she ought to be there seized and proceeded against, provided that there be nothing in the condition of the vessel when at Nassau tending to rebut the inference which the Law Officers drew from the facts laid before them with respect to the vessel when she lay at Birkenhead.

We have, &c.
(Signed) WM. ATHERTON.
ROBERT PHILLIMORE.

No. 210.

The Law Officers of the Crown to Earl Russell.—(Received September 27.)

UNITED STATES.

Claim of Messrs. Dorrington and Forwood for restoration of the "Adela," and for damages for detention of their vessel.

My Lord, *Temple, September* 26, 1862.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 6th September instant, stating that with reference to Mr. Layard's letters respecting the "Adela," he was directed to transmit to us some further papers which have since been received on the same subject, and to request that we would inform your Lordship whether there is anything in these papers to induce us to alter the opinion on the case of this vessel contained in our Report of the 6th September instant,† which, for convenience of reference, was inclosed with the papers on which it was founded.

We are also honoured with Mr. Hammond's further letters of the 6th and 18th instant, transmitting further papers relating to this case.

In obedience to your Lordship's commands we have the honour to report—

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* Page 190.

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That we have considered the further papers in the case of the "Adela;" that they do not appear to us to call for any alteration in the opinion which we have already had the honour to forward to your Lordship. Admiral Milne is quite correct in the view which he has taken of the rights of neutrals to trade freely with either belligerent, so long as the cargo is not contraband, and the destination is not to a blockaded port (see his despatch of 25th August, 1862); and we think that his remarks on that point are proper and well calculated to obviate the possibility of any misconception. But we do not understand Mr. Seward's instructions to mean that neutral vessels, under such circumstances, are to be carried in for adjudication; but only that the class of vessels he describes are not to be detained after a search verifying the conditions described.

The question as to the seizure of the Royal mail appears to be a new and very important element in the matter, deserving very grave consideration, and raising a point of some delicacy and difficulty. We are rather inclined to infer, from certain circumstances mentioned in the papers before us, that the United States' Government would concede that all mail-bags, clearly certified to be such, shall for the future be exempt from seizure or visitations, and that some arrangement shall be made for immediately forwarding them to their destination in the event of the ship which carries them being detained. Should this inference prove to be correct, the necessity for discussing the claim to exempt, as a matter of strict right, from visitation and detention Her Majesty's mails on board a private vessel might be avoided.

If it be desired that we should give our opinion upon the abstract point of law, we should, of course, be prepared to do so; but we would venture to suggest that it might be expedient to ascertain from the United States' Minister here whether his Government claim the right of searching and detaining the mail-bags of Her Majesty in such cases.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 211.

The Queen's Advocate to Earl Russell.—(Received September 27.)

PERSIA.

Claim on Persian Government of Meer Ali Naki Khan, a Persian under British protection.

Doctors' Commons, September 26, 1862.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 8th September instant, stating that he was directed to transmit to me the accompanying despatch, with its inclosures, from Her Majesty's Minister at Tehran (No. 54), requesting instructions as to the course he should pursue in consequence of the refusal of the Persian Government to investigate the case of Meer Ali Naki Khan, the particulars of which are fully detailed in the Report drawn up by Mr. Eastwick, forming Inclosure No. 1.

He was also pleased to state, that by the XIth Article of the Treaty between Great Britain and Persia of March 1857, Commissioners were to be appointed to examine into and decide upon the claims on the Persian Government of all Persian subjects, or the subjects of other Powers, who, up to the period of the departure of the British Mission from Tehran, were under British protection: that Meer Ali Naki Khan was at that time under British protection, and his case was brought before the Commission by Mr. Abbott, the British Commissioner, but owing to the opposition of the Persian Commissioner the case was not gone into.

He was also pleased to transmit the former papers relating to this case; and to request that I would report to your Lordship my opinion as to the instructions which it would be right and proper to give to Mr. Alison.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That it seems to me important to state that the papers submitted to me establish as facts which must form the basis of my opinion:—

1. That Meer Ali Naki Khan has been recognized as being entitled to British protection.

2. That his claims were a proper subject for investigation under the Treaty, and ought to have been investigated.

3. That the British Government has not recognized the decision of M. de Gobineau, rejecting these claims, and has distinctly apprized, through Mr. Alison, the Persian Government of this determination.

4. That since the closing of the Commission, the British Government has continued to urge on the Persian Government the obligation of investigating these claims, which still remain uninvestigated.

Assuming these facts, it seems difficult to find in reason any principle why Her Majesty's Government ought now to desist from demanding justice on behalf of the person so admitted by it to be entitled to its protection. Certainly the claim is of an extraordinary character, and it does, as Mr. Alison observes, "involve the Government of the Shah in an accusation of housebreaking and robbery."

It might, nevertheless, be observed that the evidence (tthough of an imperfect character), and the opinions expressed by competent judges on the spot (contained in these documents), do tend strongly to support a charge which sounds so incredible to European ears, but which was not incredible to Mr. Eastwick, the writer of this clear and able Report. Be this, however, as it may, this consequence of criminal imputations upon the Government of the Shah has always existed, and has not been hitherto considered as a bar to urging the investigation of the claim.

I am compelled, therefore, to say that it seems to me right and proper that Mr. Alison should be instructed to continue to press the necessity of an investigation, by way of arbitration or otherwise, upon the Government of the Shah, as a matter in which the honour of the British Government is concerned.

It is highly probable that Meer Ali Naki Khan has greatly overstated the amount of the loss which he has sustained. Possibly from this or other local circumstances Mr. Alison might be enabled to effect some compromise, which, while it would save the dignity of the Government of the Shah, might, on the whole, do justice to Meer Ali Naki Khan. This would be a happy extrication from a considerable embarrassment.

In conclusion, I am bound to say that, in my opinion, the honour of the British Government is pledged to use every effort to obtain from the Persian Government a hearing of this case, unless in some way it can satisfy Meer Ali Naki Khan that he ought to consent to the abandonment of his claims.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 212.

The Law Officers of the Crown to Earl Russell.—(Received September 27.)

NEW GRANADA.

Decree of the Government of New Granada regarding the status of foreigners resident in the Republic.

Temple, September , 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 1st September instant, stating that he was directed to transmit to us a despatch from Her Majesty's Chargé d'Affaires in New Granada (No. 46), callling attention to a Decree of the Government of that country regarding the status of foreigners resident in the the territories of the Republic. Mr. Layard was also pleased to inclose Mr. Griffith's previous despatch (No. 38) to which he makes reference; and to request that we would report to your Lordship our opinion as to the instructions which should be addressed to Mr. Griffith on the points to which it relates.

In obedience to your Lordship's commands we have the honour to report—

That we have taken into our consideration the inclosures from Mr. Griffith and the Decree in the "Registro Official." The subject is certainly one of considerable importance, and we are not aware that such a law respecting foreigners is to be found in the Code or Statute Book of any other State. Nevertheless, it appears to us to be competent to a State to make and enforce such a law, and that the making and enforcing of it furnishes no cause of complaint to foreign States. The distinction between commorant and resident foreigners (though there may in some cases be great difficulty in establishing it) seems to us, on the whole, reasonable and just. The foreigner who, by the

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relations of property, marriage, profession, or business and length of residence, has incorporated himself into a State, certainly owes a qualified allegiance to her, and she would be entitled to extend her protection to him with reference to all other States but that of his origin or birth.

Such foreigners are truly and practically citizens of the State which they have adopted; and cannot complain that they are liable to the obligations of native citizens, with whom they are placed on an equality in every other respect. But it might be desirable that Her Majesty's Representative at Bogotá should draw the attention of the Columbian Government to the fact that the rule as to the military service could not extend in the case of British subjects to authorize or compel them to serve against Great Britain or her allies in any war which might unhappily break out between these these countries and the United States of Columbia; and having placed officially on record this declaration, Mr. Griffith should, we think, be instructed to offer no opposition to the enforcement of the Decree, unless in any point it should be sought to be enforced in such a manner as to violate any express stipulation of the Treaty between this country and Columbia.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 213.

The Law Officers of the Crown to Earl Russell.—(Received September 30.)

JAPAN.

Approval of amended Regulations issued by Her Majesty's Chargé d'Affaires in Japan for the peace, order, and good government of British subjects, of the Regulation prohibiting the resort of British subjects to Yeddo, and the circulars issued to Her Majesty's Consuls in the dominions of the Tycoon of Japan.

My Lord, *Temple, September* 27, 1862.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 30th ultimo, stating that, with reference to our Report of the 26th of February last,* suggesting certain alterations in the Rules and Regulations for the peace, order, and good government of Her Majesty's subjects in Japan, issued by Sir Rutherford Alcock, under the Order in Council of the 23rd of January, 1860, he was directed by your Lordship to transmit to us two despatches from Mr. Winchester, late Her Majesty's Chargé d'Affaires in Japan (No. 20, April 29, and No. 25, May 17); Mr. Layard being pleased to state that the first of these contained copies of those Regulations as amended and classified by Mr. Winchester, under instructions received from Sir Rutherford Alcock before his departure from Japan, and that the second contained copies of the Regulations as further amended by Mr. Winchester, in pursuance of the directions which were addressed to Sir Rutherford Alcock on the 26th of February last (No. 24), founded upon our Report of that date. And that he was directed by your Lordship to request that we would take these last-amended Regulations into our consideration, and report to your Lordship whether we were of opinion that they might receive the approval of Her Majesty's Government.

We are also honoured with your Lordship's commands signified in Mr. Layard's letter of the 1st instant, stating that, with reference to our Report of the 26th of February last, he was directed by your Lordship to transmit to us, together with the draft of an instruction which was addressed to Sir Rutherford Alcock founded thereupon (No. 23, February 26), a despatch from Her Majesty's Chargé d'Affaires in Japan (No. 24), inclosing copies of the Regulation which had been issued prohibiting the resort of British subjects to Yeddo, and to request that we would take this Regulation into our consideration, and furnish your Lordship with our opinion whether it is right and proper.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we have taken into our consideration the amended Regulations, the Regulation prohibiting the resort of British subjects to Yeddo, and the circulars issued to Her Majesty's Consuls in the dominions of the Tycoon of Japan, and that they seem to us properly framed, and fit to be approved of by Her Majesty's Government.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

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* Page 48.

No. 214.

The Law Officers of the Crown to Earl Russell.—(Received September 28.)

UNITED STATES.

Refusal of United States' Consul at Liverpool to legalize documents required by Mr. Haigh in defence of his vessel the "Bermuda."

My Lord, *Temple, September* 28, 1862.

WE were honoured with your Lordship's commands signified in Mr. Layard's letter of the 31st of August ultimo, in which he stated that with reference to his letter of the 16th of August, inclosing a letter from Messrs. Leech, Harrison, and Forwood, relative to the refusal of the United States' Consul at Liverpool to legalize certain documents required by them in defence of their vessel the "Adela," he was directed by your Lordship to transmit to us a letter and its inclosure from Mr. Haigh, complaining of a similar refusal on the part of the United States' Consul in the case of his vessel the "Bermuda;" and Mr. Layard was pleased to request that we would take the matter into our consideration, and report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands we have taken the matter into our consideration, and have the honour to report—

That we have little to add to the advice that we have already had the honour of tendering to your Lordship upon a similar point in the case of the "Adela."

But we would add that the refusal of the Consul of the United States at Liverpool to certify a fact which he knows and does not deny to be true, viz., that a particular person is a Notary Public, is as much without the warrant of reason as precedent. Such an attempt was never made before the present war in America.

It seems to us deserving of very strong comment. A Prize Court, which is a Court of international law, has no right to require evidence the attainment of which it allows its own officers to render impossible.

For let the possible, and indeed not improbable, consequences be observed: First, the Prize Court requires the fact that A. B. is a Notary Public (a person whose authority is well known to all public law) to be certified as a fact by its own Consul; secondly, it allows its own Consul to refuse to certify what he admits to be the fact; lastly, it proceeds to condemn the vessel for the want of the proper evidence, the procurement of which it has thus rendered impossible.

We, of course, treat as nugatory the offer of the Consul to send the affidavit of the accused party to the accuser. The very suggestion evinces how entirely the Consul has mistaken his functions in this matter, and has substituted the feeling of a party in the pending suit for the duty of quasi-judicial office, which, in fact, he had to discharge.

We can at present only report our conviction that the Minister for the United States accredited to Her Majesty will afford, upon application being made to him, the proper redress in this matter; and we beg leave to reserve our further opinion until we have been apprized of the failure (which we cannot anticipate) of such an application.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 215.

The Law Officers of the Crown to Earl Russell.—(Received September 30.)

UNITED STATES.

Liability of a foreigner to military service by reason of length of domicil. Liability to the performance of Civil duties.

My Lord, *Temple, September* 29, 1862.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 8th September instant, stating that he was directed to transmit to us the accompanying despatch from Her Majesty's Chargé d'Affaires at Washington (No. 171, September 20, 1862), inclosing a copy of a despatch addressed to him by the Acting British Consul at New Orleans, in which he asks for instructions on certain points of international law; and to request that we would take these papers into consideration, and furnish your Lordship with our opinion thereupon.

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In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we are of opinion that a domicil established by length of residence only, without naturalization or any other formal act whereby the domiciled person has, so to speak, incorporated himself into the State in which he resides, does not "for the time convert him into a subject of the domicil in all respect save the allegiance he owes his native Sovereign." This proposition is, we think, far too broad. Such a domiciled person is not a citizen (*civis*), but a temporary subject (*subditus temporarius*) of the State in which he is resident. He cannot lawfully be compelled to serve in the military forces of that State against any other State, or be compelled to enrol himself in the militia of the State; though it would be his duty to co-operate with native citizens, when called upon to do so by the proper authorities, in keeping the peace and preserving good order in the particular place in which he resides, as, for instance, against thieves or pirates.

With respect to the performance of civil duties, we are of opinion that he is liable to the performance of such as by the law of the State were obligatory on resident foreigners at the time when he took up his abode therein; upon the principle that he is bound to apprise himself of such existing liabilities before, by his voluntary act, he enters a foreign State in which they already by law exist.

With regard to other civil duties imposed after his domicil has been established, he is entitled to the option of being permitted to leave the State, or to remain and consent to the imposition of the new burden. He is, in every other respect, apart from the exceptions provided by Treaties, or established by custom, subject, like the native citizen, to the general law, civil and criminal, of the State in which he chooses to reside. We must not be understood as expressing any opinion respecting the status of foreigners who have become purchasers of territory in a State.

We may add that in case of illegal acts (acts contrary to the *lex loci*), or of acts at variance with the common principles of justice being committed by or with the sanction of foreign Governments, to the prejudice of resident foreigners, who have not sought a new citizenship in the particular State, the interference on their behalf, of the Representative of their own State, with a view either to prevention or redress, is permitted, and its propriety is recognized by Diplomatic usage. It is otherwise where the individual has by his own choice, and by naturalization or otherwise, become a subject of the foreign State.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 216.

The Queen's Advocate to Earl Russell.—(Received September 30.)

UNITED STATES.

Claim of owners of "Will o' the Wisp," captured at Matamoros, and released by sentence of Prize Court.

My Lord, *Doctors' Commons, September* 29, 1862.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 25th September instant, stating that since the receipt of my Report of the 15th September instant* on the case of the "Will o' the Wisp," your Lordship has received from the Colonial Office the further documents which he was pleased to inclose respecting the case of that vessel, and that your Lordship thinks it better that I should see these papers before your Lordship sends instructions to Her Majesty's Chargé d'Affaires, in case I should see grounds in them for in any way varying the tenour of my Report. He was also pleased to return my Report for convenience of reference, together with the papers already before me on the case.

In obedience to your Lordship's commands I have taken this case again into consideration, and have the honour to report—

That the further statement does not induce me to alter my opinion. It must be remembered that the matter has undergone a judicial examination before the proper Tribunal, the Prize Court, and that the justice or injustice of

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* Page 221.

its decision must be considered with reference only to the evidence that came before it. It is clear, moreover, from Vice-Consul Jones' despatch (June 9, inclosed in Mr. Jonson's No. 25 of June 20), that the gunpowder was not mentioned in the clearance, or to Captain Hunter when he first boarded the vessel, and that it was put in bags bearing another designation. It matters not whether the "Will o' the Wisp" was lying, as Vice-Consul Jones thought, without, or, as it is said in these papers, within, the neutral waters. The neutral State, the only competent Power, makes no reclamation on the subject. I retain my opinion that the non-condemnation in costs was, upon the Judge's own statement, a clear failure of justice, and I have little doubt that damages ought also to have been awarded if the discretion of the Court had been properly exercised; but this latter point is, for the reason which I have already stated, less certain than the former. I have the honour humbly to repeat the advice which I tendered in my Report of the 15th of this instant month.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 217.

The Queen's Advocate to Earl Russell.—(Received September 30.)

NEW GRANADA.

Request of Major Mansell for protection of British Government to the property, in New Granada, of his father-in-law, a New Granadian, some years a resident in England.

My Lord, *Doctors' Commons, September* 29, 1862.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 26th September instant, stating that he was directed to transmit to me a letter from Major Mansell, of the Royal Bengal Engineers, stating the circumstances under which he asks that the protection of Her Majesty's Government may be extended to the property in New Granada of his father-in-law, a New Granadian, who has been for some time a resident in this country; and to request that I would take these papers into consideration, and furnish your Lordship with my opinion whether or not this is a case in which Her Majesty's Government can properly interfere.

In obedience to your Lordship's commands I have taken these papers into consideration and have the honour to report—

That I am of opinion that Her Majesty's Government cannot properly interfere in this matter. Don Manuel Valez is not only a native of New Granada, but has passed a great part of his life in that State, and been a Senator of its Congress. Six years' residence in England, with whatever intention, cannot entitle him to ask, or Her Majesty's Government to grant, a request that they would consider the fines and taxes imposed, justly or unjustly, upon his landed property in New Granada, by the existing Government there, as a subject for official interference and complaint. Nor does the fact that his daughter, who is destined to be a joint heir of his property, has married an English officer, however distinguished, affect, in the absence of any specific Treaty on the point, the application of the usual principles of international law to this case.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 218.

The Law Officers of the Crown to Earl Russell.—(Received October 1.)

TURKEY.

Proposed circular to Consuls in Levant relative to liability of British Government to make good defalcations of Consular Officers who may have appropriated to their own use sums deposited in British Consulates in the Levant.

My Lord, *Temple, September* 30, 1862.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 19th instant, stating that with reference to the letter of the Law Officers of the Crown of the 23rd of June last,* relative to the liability of Her Majesty's Government to make good the defalcations of Consular officers who may have appropriated to their own use sums deposited in British Consulates in the Levant, he was directed by your Lordship to transmit to us therewith a Memorandum dated the 2nd September instant, which had been drawn up by the Judge of the Supreme Consular Court at Constantinople on the above subject, together with the draft of a circular instruction,† which he suggests

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* Page 162.

† In Sir E. Hornby's Memorandum of September 2, 1862.

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should be issued to Her Majesty's Consuls in the Levant, and to request that we would take these papers into our consideration and furnish your Lordship with our opinion thereon.

Mr. Hammond was also pleased to state that the whole of the former correspondence on the subject was annexed therewith for reference.

In obedience to your Lordship's commands we have taken these papers into our consideration and have the honour to report—

That we are of opinion that the proposed circular is proper to be issued, and that the suggestion of the Judge of the Supreme Consular Court respecting the probation of persons appointed to the office of Vice-Consul appears to us wise and expedient.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 219.

The Law Officers of the Crown to Earl Ruzsell.—(Received October 2.)

UNITED STATES.

As to alleged harsh treatment to which British vessels captured for breach of blockade are subjected.

Temple, September 30, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 12th September instant, stating that, with reference to the Law Officers' Report of the 3rd of July,* he was directed to transmit to us, together with the former papers, a despatch and its inclosures from Her Majesty's Chargé d'Affaires at Washington (No. 184), containing explanations respecting the alleged ill-treatment of the crews of captured British vessels.

Mr. Hammond was also pleased to state that it appears to your Lordship that the complaints are unfounded, and the various charges refuted, but that your Lordship would be glad to be furnished with our opinion on the matter.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That we have the honour to agree with your Lordship in your opinion that the complaints in the case of the "Mersey" are unfounded, and the various charges refuted by the affidavits and statements in the papers now submitted to us.

We would suggest that Mr. Consul Edwards ought to be informed that his letter (submitted to us on the former occasion) of June 5, 1862, in which he speaks of "a system of robbery" pursued with respect to prize cases, and of which system the treatment of the crew of the "Mersey" was an example, was intemperate, and certainly in the particular instance not founded on an accurate knowledge of the facts.

We also think that the attention of Mr. Edwards should be called to the statements on this subject contained in the letter of Mr. Upton to Marshal Murray of the 15th August last, and that Mr. Edwards should be asked for any explanation which he may have to offer with reference to these statements.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

* Page 170

No. 220.

The Law Officers of the Crown to Earl Russell.—(Received October 2.)

UNITED STATES.

Forcible enlistment of British subjects in the army of the so-styled Confederate States.

Temple, October 1, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 20th September ultimo, stating that he was directed by your Lordship to transmit to us a despatch from Her Majesty's Chargé d'Affaires at Washington (No. 192, September 1, 1862), inclosing copies of a correspondence with the Acting British Consul at Richmond, respecting the forcible enlistment of British subjects in the army of the so-styled Confederate States, and to request that we would take these papers into our consideration, and furnish your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we are of opinion that British subjects domiciled only by residence in the Confederate States are not liable to be forcibly enlisted in the military service of those States against the Federal States, in the civil war now raging in America.

We are of opinion that subjects of a foreign State, domiciled by residence in another State, in which at the time of the establishment of this domicil no municipal law existed which enacted that domiciled foreigners would be liable to serve in the army of the State, cannot be made liable to such service by an *ex post facto* law.

It may be competent to the State to pass such a law if, at the same time, an option is offered to foreigners affected by it, to leave after a reasonable period the territory if they object to serve; but without this option, such a law would violate the principles of strict international law; and even with such an option, the rules of comity hitherto observed between independent States would not be very scrupulously observed.

If this position be true generally with respect to all active service against enemies of the State, it applies with the greatest force to the case of a civil war, and especially to such a civil war as now rends asunder the United States of America.

The plainest notions of reason and justice forbid that a foreigner admitted to reside for pacific and commercial purposes in a State forming a part of a Federal Union should be suddenly, and without warning, compelled by the State to take an active part in hostilities against other States which, when he became domiciled, were members of one and the same Confederacy with that in which he is domiciled; which States, moreover, have threatened to treat as rebels, and not as prisoners of war, all who may fall into their power.

In the particular instance another strong argument arises against the lawfulness of this forced enlistment. The persons who are the victims of it are also subjects of a kingdom whose Sovereign has forbidden them, under severe penalties, to take any part in this very war; and thus they are made not only to enter a military service contrary to their own wishes, and in violation of the tacit compact under which they took up their original domicil, but also to disobey the order of their legitimate Sovereign.

For these, among other reasons, we are of opinion that Her Majesty's Government ought to address a strong remonstrance to the *de facto* authorities at Richmond against this violation of international law.

It will be remembered that we are not now offering, as we have offered in the Reports of July 31, 1860, March 18, 1861, and September 30, 1861, advice upon the question of liability of British subjects to serve in the domestic police force of the State in which they were domiciled.

We are, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 221.

The Law Officers of the Crown to Earl Russell.—(Received October 3.)

UNITED STATES.

Capture of the "Albert" for alleged intention to break the blockade of the Southern Coast.

Temple, October 2, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 20th September ultimo, stating that, with reference to the Report of the Law Officers of the 30th June,* he was directed by your Lordship to transmit to us, together with the previous papers, a despatch from Her Majesty's Chargé d'Affaires at Washington (No. 19, September 1, 1862), containing further particulars respecting the capture of the British vessel "Albert" by one of the

* Page 169.

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cruizers of the United States; and to request that we would again take this case into our consideration, and furnish your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken this case into our consideration, and have the honour to report—

That (unless the facts of this case should appear, upon inquiry before the Prize Court, to be different from those which are now represented to Her Majesty's Government) we are of opinion that the "Albert" ought to be released with costs; whether she would be also entitled to damages must, in some degree, depend upon the opinion of competent nautical experts as to whether the reason alleged in the protest for her nearness to the shore at the time of the second seizure is or is not satisfactory.

But the *bonâ fide* destination of the cargo (as evidenced by its actual consignment to a house at New York), the passport of the Spanish passenger, and the protest, combine to make out a strong case of innocence.

We do not know whether proceedings in the Prize Court have or have not been begun against the "Albert;" but, judging from the materials now before us, we should confidently anticipate that they will terminate in the release of the vessel.

If, contrary to our expectation, an adverse judgment should be pronounced, it would be necessary for us to be informed of the terms of such judgment, and of the evidence on which the Court proceeded, before expressing any opinion with regard to it. If, on the other hand, the "Albert" should have been released without any judicial inquiry, we should feel no difficulty in advising Her Majesty's Government that as, upon the statements contained in the master's protest and the other papers before us, the capture was altogether unwarranted, it would be proper to make an application to the United States' Government for full compensation and redress.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 222.

The Attorney and Solicitor-General to Earl Russell.—(Received October 4.)

PERU.

Claim of Colonel Mugaburn against trustees of British cemetery at Bella Vista.

Temple, October 3, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 28th of June last, stating that he was directed by your Lordship to transmit to us therewith a despatch from Her Majesty's Consul-General at Lima (No. 14) inclosing copies of a correspondence which had passed between himself and the Peruvian Government, on the subject of a claim brought forward by Colonel Mugaburn, in connection with the British cemetery at Bella Vista.

Mr. Hammond was also pleased to state that we should perceive that the support now given to Colonel Mugaburn's claim by the Peruvian Minister for Foreign Affairs is at variance with the decision contained in a Decree, inclosed therewith, of the Council of Ministers, dated August 20, 1857, and accordingly that he was directed by your Lordship to request that we would furnish your Lordship with our opinion as to the instructions which it would be right and proper to send to Mr. Barton.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That the support now given to Colonel Mugaburn's claim against the Trustees of the Bella Vista Cemetery by the Peruvian Minister for Foreign Affairs is manifestly at variance with the Decree of the Council of Ministers, dated August 20, 1857; but we are not at present sufficiently informed as to the nature or legal validity and effect of that Decree, or of the subsequent "Resolution" by which it is said to have been revoked, to be able to advise Her Majesty's Government as to the course which it may be proper for them to take. Further information on these points is clearly necessary. It does not, in the first place, distinctly appear whether the Council of Ministers, in making

the Decree of the 20th May, 1857, were exercising a judicial, or only an executive authority; nor in either case does it appear whether their legal authority was, or was not, exceeded by that Decree; nor on what grounds or by what authority it was afterwards "annulled." If the Decree itself was not warranted by the law of Peru, or if it was afterwards annulled by any authority competent (according to that law) to annul it, we do not see how it can now be insisted upon as conclusive of anything by Her Majesty's Government. Indeed, so far as the title of Colonel Mugaburn to compensation from somebody is concerned, that Decree, upon the face of it, decided nothing finally; it only declared that the claimant had down to that time failed to show any valid title, and that the title then appeared to be in the Government of Peru, which had gratuitously appropriated the land, subject to any outstanding claims, to the purposes of the cemetery; and that certain *ex parte* proceedings, which Colonel Mugaburn had then taken without citing either the Trustees or the Government, ought to be disregarded and set aside. So far, it seems to have left it open to Colonel Mugaburn to renew his claim at any future time, in any more regular form of proceeding, which he appears now to have done. Its importance consisted chiefly in this, that it declared the intention of the Peruvian Government to have been to take upon itself the satisfaction of any outstanding claims, if they should be substantiated, so as completely to exonerate the Trustees therefrom; thus making the question one between Colonel Mugaburn and his own Government, and not between him and the Trustees. Whether this was an act of executive or of judicial power, its effect, according to the local law, ought to be explained. What seems to be suggested by the letter of the Peruvian Minister for Foreign Affairs of the 1st May, 1862, addressed to Mr. Barton is, that the ground had in fact been appropriated by the Peruvian Government to the purposes of the cemetery, under a reservation of all outstanding claims of third persons for compensation, not upon the footing of any engagement or design whatever of that Government to make itself answerable for any such claims, but upon an express undertaking by the Trustees "to pay the value of the ground at any time that a claim should be made upon the subject." If so, the Decree of the 20th August, 1857, may possibly have proceeded (in this respect) upon a mistake of fact; but whether it was liable, for that or any other reason, to be annulled, or whether it has actually been annulled by competent authority, does not as yet sufficiently appear. Without inquiry into the facts, it is impossible to assume that the statement of the Peruvian Foreign Minister is unfounded; and if it be well founded, as far as at present appears, the Trustees may have no other ground of complaint than that of an adverse decision by a competent tribunal of a foreign country, in which the property with reference to which the complaint is made is situate. Should the result of a full inquiry be to show, either that the Decree of the 20th August, 1857, was originally valid and remains unreversed, or that any reversal which may have taken place has been brought about contrary to the established and prevailing law of Peru, or in a manner at variance with the common principles of justice, then we think that a case may be established, calling upon Her Majesty's Government to interpose its good offices for the protection and indemnity of those British subjects who happen to be concerned as Trustees of the cemetery at Bella Vista. We would, therefore, respectfully recommend to your Lordship that Mr. Barton should be instructed to make a full report to your Lordship upon the several points above adverted to.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.

No. 223.

The Queen's Advocate to Earl Russell.—(Received October 6.)

BRAZIL.

Outrage on three officers of Her Majesty's ship "Forte," and plundering of British ship "Prince of Wales." Question of reprisals.

Doctors' Commons, October 6, 1862.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of this day's date, stating that he was directed to transmit to me the accompanying correspondence respecting a serious outrage committed by a Brazilian police-guard upon three officers of Her Majesty's ship "Forte," together with

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a draft of the instructions which it is proposed to address to Her Majesty's Minister at Rio de Janeiro thereupon. He was also pleased to transmit the papers relating to the plundering of the wreck of the British ship "Prince of Wales," together with drafts of the instructions that have been framed thereupon; and to request that I would take these two cases into consideration, and furnish your Lordship with any observations thereupon, and with my opinion whether the demands made by Her Majesty's Government are just and fair, and such as the merits of the cases demand.

In obedience to your Lordship's commands I have taken these cases into consideration and have the honour to report—

1. With respect to the outrage committed on British officers of Her Majesty's ship "Forte," that it appears to me the circumstances of this very serious case warrant the demands of Her Majesty's Government: and that the draft instructions which it is proposed to address to Her Majesty's Minister at Rio de Janeiro are fit and proper to be sent. I have ventured to suggest in the margin a slight addition.

2. With respect to the second case, the plundering of the British ship the "Prince of Wales," I am also of opinion that the demands of Her Majesty's Government are well founded in justice and reason. I have also ventured in this case to suggest in the margin of the draft instructions proposed to be sent to Her Majesty's Minister at Rio de Janeiro, certain additions and alterations.

It remains to notice the very grave question of reprisals. In my opinion a continued refusal on the part of the Brazilian Government to satisfy the fair demands of Her Majesty's Government would (the nature of the cases and the lapse of time duly considered) warrant, according to the principles of international law, a recourse to this extreme remedy. I would humbly add that it seems to me very desirable to give directions to the proper authorities that these reprisals, if unhappily found necessary, should be exercised (as appears to be the opinion of Lord Palmerston) by the seizure of some ship, or of some portion of public property, belonging to the Brazilian Empire, and that if possible the seizure of private property should be avoided. The public property so seized would of course be holden only as a security until the Brazilian Government did justice, and then restored to them uninjured.

I have, &c.

(Signed) ROBERT PHILLIMORE.

No. 224.

The Attorney and Solicitor-General to Earl Russell.—(Received October 8.)

TURKEY.

Claim of Mrs. Shee on the estate of Anesti Kovako for jewels entrusted to him before his death.

Temple, October 6, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 8th of July last, stating that with reference to the Queen's Advocate's Reports of the 8th of December, 1858, 3rd January, 1st April, and 26th May, 1859 (inclosed herewith), he was directed by your Lordship to transmit to us a despatch from Her Majesty's Agent and Consul-General at Alexandria (No. 73) relative to the claim of Mrs. Shee on the estate of Anesti Kovako, an Ottoman subject, in the matter of some jewels which she entrusted to him, but of which after his death Kovako's brother and heir refused to give any account before the Egyptian Court.

Mr. Layard was also pleased to state that the former correspondence respecting this case was inclosed therewith, together with a volume containing a complete and full statement of the case in all its bearings. And that he was directed by your Lordship to request that we would take the papers inclosed into our consideration and furnish your Lordship with our opinion as to the course which Mr. Colquhoun proposes to take with a view to settle Mrs. Shee's long-pending claim, or what other steps might properly be taken for that object.

Mr. Layard was also pleased to state that he was directed by your Lordship to suggest that it might be of use if Mr. Ayrton, the gentleman mentioned by Mr. Colquhoun as Mrs. Shee's representative, were to confer with us on this case.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That in the very full and circumstantial statement contained in the volume which has been drawn up by Mr. Frederick Ayrton, and which accompanies the papers submitted to us, two distinct claims upon the estate of the late Anesti Kovako are described, viz., the claim of Mrs. Colonel Shee and a claim to a considerable amount by Mr. Ayrton himself. It is with reference to the former claim only that any part of the correspondence has taken place, and to that claim only the attention of the Queen's Advocate was called when he made his Reports. Neither does it appear that Apostoli Kovako, brother and representative of the deceased, has refused to acknowledge the justice of Mr. Ayrton's demand, or has even been applied to on the subject. Regarding these facts, as well as the terms of Mr. Layard's letter to us, which confine our attention to the claim of Mrs. Shee, we propose to apply our remarks to that claim only.

As regards Mrs. Shee's claim it appears to us that the justice of such claim is made so far apparent by legal and credible testimony, collected by Mr. Ayrton, as to render it only a matter of common justice that the claim itself should be submitted without delay to some formal and competent judicial investigation. We also think that the late Anesti Kovako, having been an Ottoman subject, the administration of his estate pertained of right to the Turkish tribunals and not to the Greek Consulate, by reason of the surviving brother Apostoli Kovako, having, after the decease of Anesti Kovako, obtained what is called Hellenic protection. Such is stated by Mr. Consul Green to be the known and settled practice in Egypt, and we agree with the late Queen's Advocate in thinking that such practice is agreeable to the recognized principles of European jurisprudence. It appears, however, that the Egyptian Ministers having been appealed to, positively refused to interfere in Mrs. Shee's behalf, and, as far as in them lay, handed over all jurisdiction to the Greek Consulate; and, as we collect, the estate of the deceased, with the exception of the funds originally retained by Mr. Ayrton out of the Jeddah indemnity, and since by him deposited in the Consulate at Cairo, has already passed away into the possession of his brother Apostoli Kovako. Under these circumstances we think that a fair ground of complaint arises on the part of Her Majesty's Government against the Government of the Viceroy. It is, however, to be regretted, in a diplomatic point of view, that the matter has been allowed to slumber from 1858 or 1859 until the present year.

A very important question remains for consideration, namely, whether resort can be had in any way to the funds paid by Mr. Ayrton into the Consulate for the purpose of satisfying the claims of Mrs. Shee on the estate of the late Anesti Kovako; and we are sorry to be compelled to answer this question in the negative. The destination of the fund in question is in no way altered or affected by the fact of its transference from the hands of Mr. Ayrton to the coffers of the Consulate; and for the purposes of the argument the money may therefore be regarded as if Mr. Ayrton had never parted with it. How then would the case stand? Mrs. Shee, a British subject, had, as we will assume, a just claim against Apostoli Kovako as the personal representative of his deceased brother—the liquidation of which claim, however, was withheld and refused. Mr. Ayrton, also a British subject, had received as the agent of the same Apostoli Kovako (and others), and, so far as he was concerned, in his right as his brother's administrator, a sum of money equal in amount to Mrs. Shee's claim. *Primâ facie*, Apostoli Kovako and the surviving partner of the original firm were entitled to receive from Mr. Ayrton the full sum which that gentleman had received on their account voluntarily, and on the undoubted understanding that it should be accounted for and paid over to the principals. It may be, as suggested, that if Mr. Ayrton shall ultimately think fit to refuse payment of the Jeddah compensation except on compulsion, recourse must be had by Apostoli Kovako and the others, or by him alone, to British jurisdiction, as against Mr. Ayrton, a British subject, under the particular circumstances of the case; although upon this point we are not called upon nor do we wish to express an opinion. Supposing, however, such to be the case, we do not see how, according to any principle of law or justice, Mr. Ayrton could set up, by way of answer, the debt due to Mrs. Shee. The two matters of Mrs. Shee's claim on the intestate's estate and of Mr. Ayrton's liability to the same estate are entirely distinct, and each of them, it appears to us, must be treated separately and apart, and upon its own particular merits.

Mr. Colquhoun's suggestion that the Egyptian Government should be

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called upon to show cause why "these funds should not be applied to the satisfaction of the petitioner's just demands," is, in our opinion, wholly inadmissible; the present question with reference to those funds arising between Apostoli Kovako and his partners and Mr. Ayrton, and in no wise concerning the Egyptian Government.

It appears to us, on the whole, that in all probability the course of justice has been interfered with and obstructed, if not by the acts at least by the connivance of the Egyptian Government, as regards the claim of Mrs. Shee, but that the form of remedy proposed would be only another injustice coming from another quarter. It does not very clearly appear whether there is or is not any regular course of legal procedure which Mrs. Shee could have pursued, or could now pursue, before a competent forum, without the active assistance of the Executive Government in Egypt. If any such course of procedure was open to her, it should have been pursued; if not, the assistance which the British Consul requested, to prevent her claims being defeated by the unfounded pretensions of the Greek Consulate to jurisdiction, ought to have been afforded. And as it seems clear that the persons administering the functions of the Greek Patriarchate in Egypt after Anesti's death ought not to have handed over the estate to Apostoli Kovako, without previously inquiring into Mrs. Shee's claim, and satisfying it if well founded, we should have thought that the Egyptian Government, acting in the interests of justice, might have brought (and might even now bring) to bear on Apostoli Kovako such an amount of pressure as, aided by the representations of the British Consul and Mr. Ayrton, might probably lead to a reasonable adjustment of the matter. This is obviously most desirable; for it must not be forgotten after all that, before payment of Mrs. Shee's claim could be reasonably expected, strict legal proof of its existence might (as it no doubt would) be fairly exacted. The gravamen of her case is that she has been required to submit it for trial to an incompetent tribunal, who would not be governed in their decision either by the *lex loci contractus*, or by the law of the domicil or forum of the deceased, and whose jurisdiction she had a right to decline, and has declined.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.

No. 225.

The Law Officers of the Crown to Earl Russell.—(*Received October* 9.)

CHINA.

Arms and ammunition supplied by foreigners to insurgents in China. As to prohibition by Order in Council to export arms and ammunition from any British port or settlement to any place within dominions of Emperor of China.

Temple, October 8, 1862.

My Lord,

WE are honoured with your Lordship's commands signified to us in Mr. Hammond's letter of the 24th September, saying that he was directed by your Lordship to state that the insurgents in China are largely supplied by foreigners with arms and ammunition, and are thus enabled, not only to maintain the hostilities in which they are engaged with the Imperial authorities, but also to assail the ports to which British subjects are by Treaty entitled to have access, and so to place in jeopardy the valuable trade there carried on;

And that Her Majesty's Government have reason to believe that these supplies are mainly exported from Singapore or Hong Kong; and that your Lordship would be glad to have our opinion whether it might not be possible, by Order in Council or otherwise, to prohibit the export of arms and ammunition from any British port or settlement to any place within the dominions of the Emperor of China, without a license from Her Majesty or Her Majesty's authorities in India or any other British possessions;

And that if we should see no objection to such a course your Lordship would be glad if we would prepare the draft of the proper instrument for giving effect to this prohibition.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That we are not aware whether there are or are not any precedents at the Council Office for a prohibitory proclamation of this kind issued from any of Her Majesty's Colonies, except when Great Britain has been either actually at war or taking precautions for her own defence under the immediate apprehension

of war in some probable contingency; and in the absence of any such precedent we think that the question of the lawfulness of any such proclamation is so doubtful that we cannot safely advise Her Majesty's Government to adopt the course proposed, or to deal with this subject otherwise than in the way of legislation by the proper Imperial or Colonial authority. The result of Lord Hale's examination into the question of the lawfulness of such proclamations, in his Treatise "De Portibus Maris" (Hargrave's Law Tracts, pp. 95 and 96), appears to be that they can only be justified "in the time of hostility or public danger," and then only on the ground of urgent public necessity. It is necessary, therefore, to avoid any extension of the practice beyond those cases as to which it has received the sanction of constitutional usage.

We would suggest that an inquiry should be made whether there may not be some local law or regulation in force whereby the object of the proposed proclamation might be safely attained; and if not, whether local legislation upon the subject may not be expedient.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 226

The Queen's Advocate to Earl Russell.—(*Received October* 9.)

UNITED STATES.

Invoices of British vessels sailing from Belize for American ports required to be authenticated in Belize by Mr. Raymond, whose recognition as American Consular Agent has been refused by British Government.

Doctors' Commons, October 8, 1862.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 4th October instant, stating that he was directed to transmit to me a letter from the Colonial Office dated the 27th September ultimo, inclosing copies of despatches from the Governor of Jamaica and the Lieutenant-Governor of Honduras, together with a letter from the United States' Secretary of State to the agent of Mr. Jex, of Belize, from which it appears that the Government of the United States consider that shippers of merchandize in a British vessel from that port should have their invoices authenticated by Mr. Raymond, a gentleman whose recognition as Consular Agent for the United States has been refused by Her Majesty's Government; and to request that I would take these papers into consideration, and furnish your Lordship with my opinion as to the reasonableness of the United States' Government in urging that parties should obtain certificates from a person whom Her Majesty's Government has refused to recognize as an Agent of the United States.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I am not aware of the grounds of the refusal of Her Majesty's Government to recognize Mr. Raymond as the Consular Agent for the United States; but that, assuming the propriety of those grounds, I am of opinion that the act of the United States' Government in requiring the invoices of British vessels sailing from Belize for American ports to be authenticated in Belize by Mr. Raymond, whom Her Majesty's Government have refused to recognize as the Agent of the United States, is an act of gross discourtesy towards Great Britain, and ought to be the subject of grave and prompt remonstrance on the part of Her Majesty's Government.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 227.

The Queen's Advocate to Earl Russell.—(*Received October* 10.)

SPAIN.

Claim of Mr. Clarke for 846*l.* 3*s.* 7*d.* for coals shipped by him to Manilla. Question of currency in which the amount is to be paid.

Doctors' Commons, October 9, 1862.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 8th October instant, stating that he was directed to transmit to me a letter (dated the 7th October instant) and its inclosures from Mr. Clarke, stating the circumstances under which he claims from the Spanish Government the sum of 846*l.* 3*s.* 7*d.*, on account of the manner in which they have paid for some coals shipped by him to Manilla, under a contract concluded with the Spanish Government in May 1860; and to request that I would take these papers into consideration, and furnish your Lordship with my opinion whether this is a case which calls for any interference on the part of Her Majesty's Government.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I am of opinion that this is not a case in which Her Majesty's Government is called upon to interfere. The construction of the contract between Mr. Clarke and the Spanish Government upon the question of the particular currency in which the coals were to be paid for, may involve discussion of a nice point of contract law. It is quite proper that such a point should be discussed in a court of law, and it appears that both the Spanish Government and Mr. Clarke are willing to submit to the decision of the Court of Manilla. That is in my opinion the proper course to be pursued.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 228.

The Queen's Advocate to Earl Russell.—(Received October 10.)

CHILE.

Complaint of Rev. M. McCartan, a Roman Catholic priest, of treatment by an Ecclesiastical Court in Chile.

Doctors' Commons, October 10, 1862.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letters of the 5th October instant, stating that he was directed to transmit to me a letter dated the 2nd April ultimo, from the Rev. Michael Mc Cartan, a Roman Catholic clergyman, complaining of his treatment by an Ecclesiastical Court in Chile, together with a report upon the case from Her Majesty's Chargé d'Affaires at Santiago (No. 47); and to request that I would take these papers into consideration, and furnish your Lordship with my opinion whether this is a case which calls for any interference on the part of Her Majesty's Government.

In obedience to your Lordship's commands I have taken these papers into consideration and have the honour to report—

That I am of opinion that this case does not demand the interference of Her Majesty's Government. If Mr. Mc Cartan is dissatisfied with the general discipline of the Church to which he belongs, or with the exercise of it in this particular instance, the remedy is in his own hands. He may either appeal from the sentence of which he complains to a higher tribunal, or he may detach himself from the Church which he thinks treats him unjustly. It cannot be reasonably expected that because Mr. Mc Cartan is a British subject, Her Majesty's Government should undertake the reformation of the Roman Catholic Ecclesiastical Courts in Chile.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 229.

The Queen's Advocate to Earl Russell.—(Received October 11.)

MEXICO.

Insufficiency of French blockade of Tampico.

Doctors' Commons, October 10, 1862.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 4th October instant, stating that he was directed to transmit to me a despatch from Her Majesty's Consul at Tampico (No. 31, of the 19th August), inclosing a legalized copy of a protest made before him by the leading merchants of that city with reference to the insufficiency of the blockade of the port by the French naval forces; and to request that I would take the same into consideration, and furnish your Lordship with my opinion as to the course which Her Majesty's Government should adopt with regard to it.

In obedience to your Lordship's commands I have taken this case into consideration and have the honour to report—

That assuming the accuracy of the facts stated in the protest, there is no legal blockade of Tampico. If Great Britain were so blockading Tampico, the English Prize Court would, upon such evidence, unquestionably refuse to condemn a French ship which might happen to be taken entering the port. The true law is clearly laid down by Lord Stowell (the "Rolla," 6 Rob. 372). "It is then said that there are other circumstances that will defeat the operation of the penalty, namely, that the blockade was irregularly maintained by the blockading force, in suffering some ships to go in and others to come out, which would tend to deceive other persons, and would therefore vitiate the the effect of the notification. And I confess, if I was satisfied of the fact that such instances did occur, I should be disposed to admit the conclusion that such a mode of keeping up, or rather of relaxing, the blockade, would altogether destroy the effect of it. For what is a blockade but the uniform universal exclusion of all vessels not privileged by law? If some are permitted to pass, others will have a right to infer that the blockade is raised. It was shown, therefore, that ships not privileged by law have been allowed to enter or come out, from motives of civility or other considerations, I should be disposed to admit that other parties would be justified in presuming that the blockade had been taken off."

Such a blockade as the protest described at Tampico is, in effect, regard being had to what is said as to French vessels, a very objectionable kind of paper blockade. Such a blockade is contrary to the Declaration of Paris, 1856, in which France as well as England announced "qu'elle empêcherait les neutres de violer tout blocus effectif qui serait mis, à l'aide d'une *force suffisante*, devant les ports, les rades, ou les côtes de l'ennemi." In the treatise of De Pistoye and Duverdy, published for the information of the French Prize Courts during the last war with Russia, and a work of considerable authority, the law is correctly stated: "Lorsqu'il ne se trouve plus devant les lieux qui ont été bloqués de forces suffisantes et suffisamment proches pour qu'il y ait danger à y entrer, on peut dire que le blocus n'existe plus, et que les neutres peuvent aller et venir comme avant le blocus. Souvent la nation qui avait établi le blocus notifie la cessation; elle doit même le faire pour apprendre aux neutres qu'ils peuvent faire des expéditions pour les lieux qui ne sont plus bloqués. Mais cette notification n'est pas nécessaire pour que le blocus prenne fin, car c'est le fait *matériel de la présence ou de l'absence des forces bloquantes* qui détermine si le blocus existe ou s'il a cessé d'exister" (vol. i, 378). I must presume that a French Prize Court would act upon the recognized principles of international law upon this subject, which so vitally affects the interests of neutral States, and would (as the English and American Prize Courts would) *admit evidence to show* that there was no *de facto* blockade. But I am rather afraid that this point, upon which any case would turn, might be evaded by the practice or rules of evidence of a French Prize Court, which I fear is sometimes open to a political influence from which ours are happily free.

I think it would be expedient to send a copy of the said protest to the French Government, and to express a confident expectation that no British vessel, *rebus sic stantibus*, would be condemned for entering the port of Tampico. Probably the law would not be denied by the French Government whatever they might say as to the fact. And perhaps it might be ascertained whether a French Prize Court would admit evidence to show that in spite of the notification there was no *de facto* blockade.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 230.

The Law Officers of the Crown to Earl Russell.—(Received October 11.)

TURKEY AND RUSSIA.

Differential duties levied in Russia and Turkey on goods imported by sea in excess of the duties levied on goods imported across the land frontier.

Temple, October 10, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 15th August instant, stating that your Lordship has had under your most serious consideration our Reports of the 23rd of June* and 3rd of July last, on the subject of the differential duties levied in Russia and Turkey on goods imported by sea in excess of the duties levied on goods imported across the land frontier. That the general purport of our Reports is, that notwithstanding

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* Page 161 and

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Great Britain has with each of those two countries a Treaty stipulation that no other or higher duties shall be imposed on the importation into their territories of any article of British produce or manufacture, from whatever place arriving, than are or may be payable on the like article the produce or manufacture of any other foreign country, yet that there is no ground for contending that the imposition of higher duties on goods imported by sea than on goods imported by land is contrary either to the letter or the spirit of such Treaty stipulation. That it is true that in the Treaty with Turkey the words "whether by sea or by land" are added in that clause of Article V which relates to importation from the Sultan's dominions into the dominions of Her Majesty, and that those words do not occur in the corresponding clause of the Article which relates to importation from the British dominions into the dominions of the Sultan. That your Lordship cannot find in the correspondence connected with the negotiation of the Treaty any allusion to this discrepancy, and that it appears to be a pure oversight, as the condition of reciprocity was throughout insisted upon by Her Majesty's Government. The particular expression "by sea or by land" is, moreover, not customary in the corresponding Article of other Treaties, and is in fact exceptional in that with Turkey.

That the construction which we have placed upon the stipulation in question is of such grave importance to the commercial interests of this country, and is so directly opposed to the principle which has hitherto been adopted by this country in the negotiation of Treaties of Commerce, that your Lordship is compelled again to submit the matter to our consideration. That the effect of our opinion would be to place the produce of Great Britain uniformly at a disadvantage in every market in the world to which a third country might have access by a land frontier. Belgium might thus encourage the manufactures of France to our prejudice; France those of Germany; and so on throughout every nation in Europe to which the produce of any other countries may be admitted by land; while British produce can, of course, be imported directly by sea alone.

Mr. Layard was also pleased to state that, disastrous as such a doctrine, if established, would be to British interests, your Lordship is well aware that the mere circumstance of the injury it would inflict is, of itself, no sufficient argument against it. But that your Lordship has no reason to believe that the construction which we have placed upon the stipulation for equality of import duties, is that which is entertained by foreign Powers generally. That in all negotiations with France and Belgium, and with the Zollverein, no pretension to favour goods imported across a land frontier, to the prejudice of goods imported by sea, has, as far as your Lordship is aware, ever been advanced: and in the instances in which such a preference has lately been sought to be justified, it seems rather with a view to political objects, as in the case of Turkey; or to uphold, as in the case of Russia, a system of long existence which, until the recent improvement of inland communication by means of railways, which enables that mode of transit to compete with transit by sea, inflicted no practical injury on the trade which could be carried on by sea alone. And that it seems to your Lordship that the terms of the stipulations in the Treaties are absolute in favour of equality of duties on importation. That there is no condition for equality of circumstances, or conditions of importation; and although no differential duty might be levied on British produce imported by land, in excess of the duty levied on the produce of another country imported by land, yet as the Treaty makes no reference to the mode of importation, but simply declares that any article of British produce shall be admitted at a rate of duty no higher than a similar article the produce of any third country, the plain object of the Treaties would be altogether evaded if, by a strict legal construction of terms, altogether opposed to the spirit of the Treaties themselves, the produce of third Powers were admitted at a less rate of duty on account of the route by which it may be imported.

Mr. Layard was also pleased to state that your Lordship feels it would be hazardous even to attempt to remove the difficulty which we have raised in regard to this question. If, for instance, your Lordship succeeded by negotiation with Russia in obtaining such an amendment of the Treaty as would, beyond all dispute, equalize the duty on importations whether by land or by sea, the effect would be to throw doubt on the stipulation for equality of duty in all our other Treaties of Commerce, and to hold out temptations to foreign countries to establish, to our prejudice, the same distinction which is now contended for by Russia and Turkey, or even other distinctions which ingenuity would be at no loss to draw, if once the plain literal construction of the Treaties be abandoned.

He was also pleased to inclose for our perusal two letters which have been received from the Board of Trade on this subject, and to request that we would again take the subject into our serious consideration, and express your Lordship's earnest hope that we may find reasons to justify Her Majesty's Government in continuing to maintain the sense in which they have hitherto understood the stipulation for equality of import duties, and in which they believe it to be generally understood by foreign Powers; and that the consequences of an opposite construction cannot be viewed without the gravest apprehensions.

In obedience to your Lordship's commands we have again taken this case into consideration, and have the honour to report—

That, on a careful consideration of these papers, we have seen reason to depart from the opinion formerly expressed by the Attorney and Solicitor-General, and to conclude that Her Majesty's Government will be justified in insisting upon that construction of the Treaties between this country and Russia and Turkey which it is manifestly for the interest of British commerce to maintain. We all agree that, in the construction of any doubtful terms in international engagements, reference may be made to the real intention and understanding of the Contracting Parties, if that can be made out from the antecedent communications between them; and that if before the Treaties were made the formula common to them and other similar Treaties had been understood and acted upon generally in a certain sense, the Contracting Parties may properly be assumed to have also understood and used it in the same sense. The statements in Mr. Layard's and Sir Emerson Tennent's letters, to the effect that the sense which Her Majesty's Government now contend for is that which the Contracting Parties can be shown to have had in view at the time, and is in accordance with the practical interpretation hitherto uniformly placed upon the "most favoured nation" clause in Europe (we presume, also, in America), appear to us to be very important, and to go far (if admitted or substantiated) to decide the present question. We understand, for instance, that no lighter transit duties have ever been in force under Treaties of this kind, as between Switzerland and any of the conterminous countries, which have such Treaties with maritime Powers, or between the United States and any part of British North America, than the Customs duties imposed on the same description of goods imported into the same territory in the ships of any maritime nation entitled to the benefit of the most-favoured nation clause. If so, we have no difficulty in advising Her Majesty's Government to insist upon this view of the meaning and effect of the Treaties in their future communications with Russia and Turkey. And, even upon the terms of the Treaties taken by themselves, the Queen's Advocate would probably have arrived at the same conclusion.

We have, &c.

(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

The Attorney and Solicitor-General desire to observe that the grounds of their former opinions, which were given upon the terms of the Treaty only, without any information either as to the existence of any general usage or understanding in other countries applicable to the point in question, or as to the existence of any other evidence of the intention of the Contracting Parties, appear to have been misappropriated. The question under the Turkish Treaty did not seem to them to arise upon the interpretation of the Vth, but upon that of the Ist Article. They never doubted that the Vth Article must be construed exactly in the same way as if the words "whether by sea or land" had been twice repeated in it. That Article, however, corresponding with the IInd Article of the Russian Treaty, in which the phrase is only "from whatever place arriving," relates not to duties upon importations generally, but solely to duties imposed upon imported goods *in respect of the country of their origin*, to duties on goods "*the produce or* *manufacture* of Her Britannic Majesty's dominions or possessions," and on goods "*the produce or manufacture* of any other foreign country." The stipulations which raised the question in the recent Treaty between Austria and Turkey were not for the admission of any articles, as *the produce or manufacture of Austria or of any Austrian possession*, at favourable rates of duty. They were equally and indifferently applicable to the produce and manufacture of all countries, British as much as Austrian, if brought into Turkey (as British or any produce might be) by land over the Austrian frontier. No inquiry was to be made for the purpose of the duty into the origin of the goods. In one sense such a stipulation might be practically favourable to Austrian produce and manufactures, because in such an overland trade they would have a natural advantage. But the question was, whether this Article struck at anything more than differential duties, imposed on the carrier or importer on account of the origin of the goods? If it did not (which was the view taken by the Attorney and Solicitor-General) it became necessary to rely upon the general engagements contained in the IInd Article, and for that purpose to prove the identity, as subjects of taxation, of imports (without reference to origin) by sea and imports (without reference to origin) by land; for under the IInd Article Great Britain seemed to be entitled only to claim the *same* "privileges," which might be conceded by Turkey to any country and not *equivalents*, in a different form, for any such privileges, valuable to other countries, which might be practically inapplicable to her own circumstances or trade It is unnecessary, however, now to dwell upon these points, as the additional facts now stated have enabled us to agree in our practical conclusion.

(Signed) WM. ATHERTON.
ROUNDELL PALMER.

No. 231.

The Queen's Advocate to Earl Russell.—(Received October 11.)

UNITED STATES.

Arrest and imprisonment of Mr. F. Carrol.

Doctors' Commons, October 10, 1862.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 7th October instant, stating that he was directed to transmit to me, therewith, a despatch from Her Majesty's Chargé d'Affaires at Washington (No. 230), inclosing copies of correspondence respecting the arrest and imprisonment by the United States' authorities of Mr. Francis Carrol, a British subject; and to request that I would take the same into consideration, and furnish your Lordship with my opinion thereupon.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That it appears not to be denied that Mr. Carroll is a British subject. That he is a person indulging habitually in the most offensive license of vituperative speech is an irresistible inference from his own letters. But it does not appear to me that any definite charge of treason against the United States' Government has been, or can be, preferred against him. On the other hand, if during a period of civil convulsion he is subjected to the same military law as American native subjects, it is in consequence of his voluntary residence and domicil in the United States. I am of opinion that the suggestion contained in the despatch of Mr. Turner (the Judge-Advocate to Mr. Seward) of the 17th of September, 1862, contains an equitable and fair suggestion, viz., that if Mr. Carroll will undertake either to leave the United States, or to obtain a fit guarantee for his good conduct, he should be set at liberty. At all events I think that the full measure of obligation due from Her Majesty's Government towards Mr. Carroll, as a British subject, would be discharged by obtaining on his behalf either of these conditions from the United States' Government; and I therefore advise that Mr. Stuart be instructed to endeavour to obtain the release of Mr. Carroll upon whichever of these conditions the United States' Government will grant, and Mr. Carroll agree to.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 232.

The Law Officers of the Crown to Earl Russell.—(Received October 13.)

BORNEO.

Application to Sir J. Brooke, as Sovereign of Sarawak, relative to the appointment of a British Consul at Sarawak.

Temple, October 11, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 11th September ultimo, stating that he was directed by your Lordship to transmit to us a letter from Mr. John Abel Smith, dated the 4th September ultimo, containing a statement prepared for the purpose of being submitted to Counsel on behalf of Sir James Brooke, with a view to ascertain whether there exists any legal or constitutional objection to the appointment of a British Consul at Sarawak.

Mr. Hammond added that the various questions which have arisen in connection with Sir James Brooke's position at Sarawak have formed the subject of the correspondence and confidential Memoranda contained in the volumes therewith inclosed for our information; and he also inclosed a Memorandum as to the bearing of Treaty stipulations on the matter, and requested that we would take these papers into our consideration, and that we would report to your Lordship our opinion on the following points:—

1. Supposing Her Majesty's Government to be willing or desirous to send a Consul to Sarawak, does there exist any legal or constitutional ground against applying to Sir James Brooke, as Sovereign of Sarawak, for an exequatur?

2. Do there exist any Treaty stipulations between this country and the Netherlands, or any other foreign government, which precludes such recognition of Sir James Brooke as Rajah of Sarawak?

We are also honoured with your Lordship's commands signified in Mr. Hammond's letter of the 29th September ultimo, stating that he was directed by your Lordship to transmit to us a despatch and its inclosures from the Earl of Elgin respecting Sarawak, dated the 16th August ultimo, in order that they might be taken into consideration, together with the papers which were referred to us in his letter of the 11th September on this subject.

In obedience to your Lordship's commands we have taken these questions into consideration, and have the honour to report—

That (1) we agree with the opinion expressed by the Law Officers of 15th February, 1856, in which they say, "As a question of constitutional law, we are of opinion that it is legally competent to Her Majesty to permit one of her subjects to assume the sovereignty of a foreign State, and to recognize him as such;" and we think that there does not exist any legal or constitutional ground against applying to Sir James Brooke, as Sovereign of Sarawak, for an exequatur to a Consul sent by Her Majesty to Sarawak.

2. We do not find in the Treaty stipulations between Great Britain and the Netherlands, or any other foreign State, any obstacle to the recognition of Sir James Brooke as Rajah of Sarawak.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 233.

The Law Officers of the Crown to Earl Russell.—(Received October 17.)

FRANCE.

Complaint of Dr. Berrington of reflection upon his character by Her Majesty's Ambassador to the French authorities.

Temple, October 16, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the   October instant, stating that he was directed by your Lordship to transmit to us the accompanying papers, as marked in the margin,* upon the subject of a complaint made by Dr. Berrington of a communication addressed by Her Majesty's Ambassador at Paris to the French authorities with

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* Dr. Berrington, March 17, 1862; to Consul Hotham, March 24, 1862; Consul Hotham, No. 15, March 28, 1862; to Bishop of London, April 9, 1862; Bishop of London, April 10, 1862; to Home Office, April 15, 1862; Home Office, April 22, 1862; to Earl Cowley, No. 453, April 26, 1862; Dr. Berrington, July 22 and September 6, 1862; to Dr. Berrington, September 18, 1862; Dr. Berrington, September 19, 1862.

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regard to that person's character, and to request that we would take these papers into our consideration; and that with reference to the statement in the Home Office letter of the ultimo, that this person was at one time a convict in Pentonville prison, we would furnish your Lordship with our opinion as to the answer which should be returned to his last letter of the 19th ultimo.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That as the original complaint of Dr. Berrington against the Consul and Consular Chaplain has been entertained, and an inquiry prosecuted in consequence, and as the receipt of Dr. Berrington's letter of September 6th has been acknowledged, we advise that a letter be written to Dr. Berrington, to the effect that his letter of September 6th does not contain any denial of his having been confined in Pentonville prison for swindling, and therefore does not call for any further notice from Her Majesty's Government.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 234.

The Law Officers of the Crown to Earl Russell.—(*Received October* 18.)

Temple, October 16, 1862.

TURKEY.

Arrest at Cairo of Debono and Amabile, British subjects, on a charge of slave-trading.

My Lord,

WE are honoured with your Lordship's commands signified to us in Mr. Hammond's letter of the 29th September ultimo, stating that he was directed by your Lordship to transmit to us a correspondence, as marked in the margin,* from Her Majesty's Consular Representatives at Alexandria, and from Mr. Petherick, British Vice-Consul at Khartoum, relative to the proceedings of two British traders, Debono and Amabile, who are now under arrest at Cairo on a charge of being engaged in the Slave Trade in the White Nile.

Mr. Hammond was pleased likewise to inclose two Reports which have been drawn up by Sir E. Hornby upon this subject, dated the 8th August and 12th September, ultimo, and to request that we would take these papers into our consideration, and furnish your Lordship with our opinion as to the course it would be expedient that Her Majesty's Government should take in this case.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report,—

That we are of opinion that it would not be expedient upon the present evidence to institute criminal proceedings against either Debono or Amabile, for being engaged in the Slave Trade.

We agree with the observations of Sir E. Hornby upon this point, and we think the prosecution would fail for want of proper evidence. There is, however, little moral doubt that Amabile has been extensively engaged in the Slave Trade: and if the statements of Mr. Consul Petherick are not wholly incorrect, it must have been, and may still be, possible to obtain proper and legal evidence of his guilt.

It is also most probable that his uncle Debono connived at and co-operated with his conduct in this respect.

We think, therefore, that it would be right to apprise the proper authorities at Alexandria that Her Majesty's Government do not intend (owing to the imperfect state of the evidence) to prosecute Debono and Amabile, without some other and further proof of their guilt; but that it is their firm resolution to proceed criminally wherever evidence can be obtained against all British subjects engaged in this detestable traffic.

We think, moreover, that Mr. Consul Petherick ought to be admonished for neglecting to obtain the proper evidence when Amabile's boats were alongside Mr. Petherick's for many hours, and that his conduct in this respect appears to be unaccountable and very reprehensible.

We also agree with Sir E. Hornby in lamenting that Mr. Petherick should

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* Mr. Petherick, No. 1, November 25, 1861; Mr. Colquhoun, No. 3, June 3, 1862; Mr. Cohen, No. 2, April 16, 1862; Mr. Saunders, Nos. 4, 5, 6, and 7.

be engaged in trade, though we are not prepared to say that the fact has induced Mr. Petherick to bring false charges either against Debono or Amabile.

Nothing can more palpably show the inconvenience of such a combination of the functions of Consul with the character of trader than the fact that slaves were brought down the White Nile in Mr. Petherick's own boats, by his own agents; so that if he had not discovered them, and taken such steps as to clear himself, he must himself have been exposed to the suspicion of being concerned in that traffic.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No 235.

The Law Officers of the Crown to Earl Russell.—(*Received October* 18.)

Temple, October 16, 1862.

UNITED STATES.

Claim of Mr. Shaver to compensation for imprisonment and consequent loss of business.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 30th September ultimo, stating that he was directed by your Lordship to transmit to us a letter from the Colonial Office dated the 23rd September ultimo, inclosing a copy of a Report which the Governor-General of Canada has been instructed to furnish, with regard to the refusal of the Government of the United States to grant compensation to Mr. Shaver for his imprisonment, and for his losses consequent thereupon.

Mr. Hammond was also pleased to inclose a letter addressed by Mr. Shaver to your Lordship on the same subject, and stated that with reference to the Report of the Law Officers of the 22nd March last* on this case, which, with the previous correspondence, he also inclosed, he was to request that we would take these papers into our consideration, and favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we are clearly of opinion that Mr. Shaver has established, by good proof, that he is a born subject of Her Majesty, and what is of less importance, that he has retained his British domicil.

Mr. Seward's remark upon this latter point is very superficial; and the rebuke, therefore, which he founds upon his remark to Her Majesty's Government is really foolish as well as flippant.

The domicil of the wife was not stated to be the domicil of the husband.

But the fact of the residence of the wife and family at a particular place was, in the case of a travelling agent, alleged as part of the evidence that his home or domicil was at that place.

This position is in accordance with the best authorities, English and American, upon the particular point of domicil.

We are clearly of opinion that in spite of travelling agencies, limited to three or four months' absence, Mr. Shaver was domiciled at Belleville.

But, in truth, it was a question of natural allegiance and not of domicil; and when Mr. Seward forbore to press the oath of American allegiance, which he had at first tendered to Mr. Shaver, it was, we cannot doubt, because he was satisfied of the British origin and allegiance of Mr. Shaver.

The grave fact as to Mr. Shaver's detention, ill-usage, and incarceration upon charges which the American Government did not venture to bring to a trial, remain, in our opinion, wholly without excuse or modification from the weak and vehement statement of Mr. Seward.

Even if Mr. Seward's reliance in the statements of the United States' officials as to the treatment of Mr. Shaver after his arrest were justified, this would merely tend to show some degree of possible exaggeration (not unnatural or inexcusable in the circumstances) on Mr. Shaver's part as to some points of detail, not really of much importance to the substance of the case, as to which the feelings and observation of prisoners are apt to be more acute than those of gaolers. But when Mr. Seward asserts that, in the correspondence previous to Mr. Shaver's letter to your Lordship, there is "no allusion to a trial," we

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cannot but observe that the letter of Mr. Shaver to Lord Lyons (2nd December, 1861), the answer of Lord Lyons to Mr. Shaver (5th December, 1861), are evidence, not to be gainsaid, that Mr. Shaver did demand either a trial or immediate release.

His demand for a trial could, of course, only be in the alternative, and the Government of the United States preferred the other alternative, namely, that of release without trial.

Mr. Seward's statement is said to be supported, on one point, by the testimony of a single person named, viz., Thompson; but the character of that person, and his particular relations to Mr. Shaver, deprive his evidence, such as it is, of all value in this matter.

It will be observed that even if this man's evidence were not discredited, the offence of Mr. Shaver would be one unknown as such to any but the most absolute and rigid of despotisms. It would be only by such a Government that a free comment upon passing events to a friend could be considered as a crime justifying imprisonment.

As we agree in substance with the able and temperate summary of the case contained in the despatch of his Excellency the Governor-General of Canada, it is not necessary to dwell upon any further details. But we humbly express our opinion, in accordance with that which we have previously given, that the claim of Mr. Shaver for redress and compensation—as to the measure of which we say nothing—is well established in the documents submitted to us.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 236.

The Queen's Advocate to Earl Russell.—(*Received October* 18.)

UNITED STATES.

Claim of Messrs. Cotterill and Sons to restoration of cargo of the "Empress," condemned in District Court at New York.

My Lord, *Doctors' Commons, October* 17, 1862.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 13th October instant, stating that, with reference to my predecessor's Report of the 8th April last,* relative to the case of the "Empress," he was directed by your Lordship to transmit to me therewith, together with the former papers,† a letter from Messrs. Cotterill and Sons, dated the 8th October instant, reporting the condemnation of that vessel by the United States' District Court at New York, and requesting the interference of Her Majesty's Government to procure the restoration of the cargo, and compensation for what they allege to have been an illegal capture; and to request that I would take these papers into consideration, and report to your Lordship my opinion thereupon.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I am clearly of opinion that there is no case made out at present for the interference of Her Majesty's Government in this matter.

Messrs. Cotterill state that, from the decision of which they complain, "an appeal is now pending in the Circuit Court."

The Circuit Court is actually exercising its legitimate jurisdiction over a subject matter properly brought before it.

It is an unquestionable proposition of international law that, in such a case, the foreign Government cannot interfere upon the presumption that justice will not be done.

It is only when justice has been denied in *re minime dubiâ*, in the ultimate Court of Appeal, that the foundation for such interference is laid as a matter of strict right. More especially is this maxim applicable to cases in the Prize Court, and still more in the American Prize Court, which professes to act, and has generally acted, upon all material points of prize law, in harmony with our own.

Her Majesty's Government has never, I believe, except as a matter of political favour, ever entertained the demand of a foreign Government to have the sentence of an English Prize Court reversed before the remedy of an appeal had been exhausted.

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* Page 87.

† Board of Trade, January 22; Queen's Advocate, January 30; to Lord Lyons, No. 72; Lord Lyons, No. 187; Queen's Advocate, April 8; to Board of Trade, April 16.

During the last Russian war several sentences of the Prize Court were reversed on appeal by the Judicial Committee of the Privy Council.

As I feel certain that the proposition of Messrs. Cotterill ought not now, for the reasons which I have given, to be entertained, I have not thought it expedient to express my opinion of the grounds upon which the sentence of Judge Betts in the Inferior Court was founded.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 237.

The Queen's Advocate to Earl Russell.—(*Received October* 20.)

TURKEY.

Claim of Messrs. Ede and Co. to larger interest to be paid by the Porte in settlement of their claim.

My Lord, *Doctors' Commons, October* 17, 1862.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 13th October instant, stating that he was directed by your Lordship to state to me that, among the claims of British subjects which have been recently settled by the Porte, was one of Messrs. Ede and Co., the particulars of which, and the steps taken by Her Majesty's Government in regard to it, I should learn from the correspondence therewith inclosed.* That it appears, however, from the accompanying despatch from Sir Henry Bulwer, and the inclosed letter from Messrs. Ede, that they now make a further claim on the Turkish Government for interest at the rate of 18 per cent. instead of 6 per cent., the sum allowed by the Porte; and he was to request that I would take these papers into consideration, and furnish your Lordship with my opinion as to the course which it would be proper for your Lordship to take in this matter.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That it appears to me, upon a consideration of all the circumstances of the case, that Messrs. Ede have a claim to be supported in a demand for further interest from the Turkish Government, but certainly not at the extravagant rate of 18 per cent., instead of 6 per cent., which they have been pleased to fix.

I would humbly advise Her Majesty's Government to confirm the proposition in the despatch of Sir Henry Bulwer (September 17, 1862), and to sanction the application by his Excellency to the Porte for the further claim of interest at the rate of 9 per cent.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 238.

The Queen's Advocate to Earl Russell.—(*Received October* 20.)

SOCIETY ISLANDS.

Claim of Mr. Blackett to hold certain land in the Island of Borabora.

Doctors' Commons, October 17, 1862.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 10th October instant, stating that he was directed to transmit to me a despatch from Her Majesty's Consul at Raiatea (No. 14), together with its inclosures, relative to the claim of Mr. Blackett, a British subject, to hold certain land in the Island of Borabora, which claim is opposed by the Queen and Chiefs of that Island; and to request that I would take Consul Wodehouse's despatch and its inclosures into consideration, and report to your Lordship my opinion as to the validity of Mr. Blackett's claim.

In obedience to your Lordship's commands I have taken this despatch and its inclosures into consideration, and have the honour to report—

That I agree with the opinion expressed by Mr. Consul Wodehouse; that I think it was competent to the Queen and her Council in Borabora to make

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* Sir H. Bulwer, No. 619; Messrs. Ede & Co., September 25.

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and to enforce the rules or laws prohibiting the sale and lease of lands to foreigners; that I am therefore of opinion that the person called Afriti, Raiti, or Mairui, had no power to lease the land in question to Mr. Blackett, and that his title to such land is therefore void.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 239.

The Queen's Advocate to Earl Russell.—(Received October 20.)

TURKEY.

Claim of Messrs. Barker on Viceroy of Egypt for non-fulfilment of verbal promise for the formation of a Steam Towing Company on the Nile.

Doctors' Commons, October 17, 1862.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 14th October instant, stating that he was directed to transmit to me therewith a Memorandum dated the 16th August ultimo, drawn up by the Judge of the Supreme Consular Court at Constantinople, with reference to the claim of Messrs. Barker, of Alexandria, on the Government of the Viceroy of Egypt for an indemnity on account of losses alleged to have been incurred by them in consequence of the refusal of the Viceroy to ratify a promise made verbally by His Highness to sanction the formation of a Steam Towing Company on the Nile, which promise His Highness afterwards retracted on discovering that he was pledged to another Company; and to request that I would take this paper into consideration, and furnish your Lordship with my opinion thereupon.

The previous correspondence which has passed on this subject was annexed for convenience of reference.*

In obedience to your Lordship's commands I have taken this paper into consideration, and have the honour to report—

That I agree with the opinion of the Supreme Consular Court at Constantinople, and that I humbly advise that the facts now before me do not justify Her Majesty's Government in pressing the claim of Messrs. Barker upon the Egyptian Government.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 240.

The Queen's Advocate to Earl Russell.—(Received October 18.)

UNITED STATES.

Request of Mr. Sellers as to whether he can claim British protection, having declared his intention to become a citizen of the United States, but not having as yet taken the oath of allegiance.

Doctors' Commons, October 18, 1862.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 13th October instant, stating that he was directed to transmit to me a letter dated the 7th October instant, and its inclosures, from Mr. Alfred Sellers, in which that gentleman requests to be informed whether, having declared his intention to become a citizen of the United States at some future time, but not having as yet taken the oath of allegiance, he can claim as a right the protection of Her Majesty's Government; and to request that I would take this letter into consideration, and furnish your Lordship with my opinion as to the answer which should be returned to Mr. Sellers.

In obedience to your Lordship's commands I have taken this letter into consideration, and have the honour to report—

That I humbly advise that an answer be sent to Mr. Seller to the following effect:—That it is to be regretted that he has voluntarily, without legal advice, and without any previous application to Her Majesty's Government, taken an anomalous, uncertain, and hazardous position, so far as his rights as a British subject and his claims upon the active interference on his behalf of the British Government are concerned. That Her Majesty's Government are not disposed to give categorical answers to questions of this kind, which relate to a possible future contingency. While Her Majesty's Government feel it to be their duty to protect to the utmost of their power all loyal subjects of Her Majesty who

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* Mr. Hedlam, November 19, 1861; Mr. Colquhoun. No. 78, January 9, 1862.

happen to be sojourning in a foreign State, they are not prepared to declare, until the occasion actually arises, whether, or to what extent, they may be of opinion that this duty has been modified in the case of a British subject who has formally, and without any previous notification or application to his own Government, announced to the Government of a foreign State his intention to become a citizen of it, and, therefore, as far as lies in his power, to divest himself, hereafter, perhaps in a very short period, of his natural allegiance to his Sovereign.

It is not to be expected that Her Majesty's Government can, directly or indirectly, countenance the doctrine that a subject may play fast and loose with his allegiance, or that he may obtain, at one and the same time, the protection of two Governments. That in these observations it has been assumed that Mr. Sellers really intends, according to his averment, to be a citizen of the United States; but if it should be Mr. Sellers' intention merely to obtain some temporary advantage from the United States' Government by making a *quasi* engagement to it which he does not hereafter *bonâ fide* mean to fulfil, of course Her Majesty's Government cannot be in any way accessory to what is in fact a fraud upon the Government of a foreign State.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 241.

The Law Officers of the Crown to Earl Russell.—(Received October 20.)

URUGUAY.

Assistance of Consul-General at Monte Video to Mr. Gower, to recover amount due to him from estate of late Mr. Lizaur.

Temple, October 18, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 11th September, 1862, stating that, with reference to the Report of the Law Officers of the 2nd of May last,* which was communicated to the Foreign Office by the Queen's Proctor, as to the course which should be pursued by Her Majesty's Chargé d'Affaires and Consul-General at Monte Video in the matter of the property left intestate by Mr. Lizaur, he was directed by your Lordship to transmit to us a despatch from Mr. Lettsom,† containing information which he was requested to furnish upon this matter; and to request that we would take the same into our consideration, and furnish your Lordship with our opinion thereon.

Mr. Hammond was also pleased to annex the despatch from the Foreign Office to Mr. Lettsom‡ to which the paper above alluded to is the reply; and also the former correspondence on the subject.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That it now appears that Mr. Consul Lettsom has not transgressed the bounds of his duty, and has acted only in aid of the heirs of the deceased Mr. Lizaur, and indeed at the earnest desire of the representative of one of the heirs.

We see no reason why the Consul should not aid Mr. Gower and his attornies, Messrs. De Lisle, in recovering the amount due to him from the estate of the deceased; and we think that, if, according to the course of the local law, in the circumstances of this case, he should receive that amount, or any sum for the heirs of the deceased, he may safely transmit the same to England.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

We are also honoured with Mr. Hammond's letters of the 4th and 6th instant, inclosing to us further papers relating to this case, and we have to report—

That we have taken these additional papers into consideration, and that they tend to confirm our opinion, as expressed above previous to their perusal.

(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

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* Page 103.

† Mr. Lettsom, No. 22, July 29, 1862.

‡ To Mr. Lettsom, No. 25, August 29, 1862.

No. 242.

The Queen's Advocate to Earl Russell.—(Received October 20.)

CHILE.

Claim of Irish Church Missions Society to a bequest under the will of the late Mr. T. E. Brown.

My Lord, *Doctors' Commons, October* 18, 1862.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 15th October instant, stating that he was directed to transmit to me the accompanying papers* relative to a claim preferred by the Committee of the Society for Irish Church Missions, to a bequest under the will of the late Mr. Thomas Edward Brown, who died in Chile in 1855.

He was also pleased to state that the circumstances of the dispute as to Mr. Brown's will and the legal proceedings that have been taken in consequence are stated in the Memorandum inclosed in the annexed despatch from Her Majesty's Chargé d'Affaires in Chile; and to request that I would take the case into consideration, and furnish your Lordship with my opinion whether the Society in question has, as yet, any just claim under the will, and, if so, whether it is proper that Her Majesty's Government should interfere in the matter, and to what extent.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I am of opinion that the contingency, namely, the refusal of the Valparaiso Municipality to accept the condition of Mr. Brown's bequest, has not yet happened, and that consequently the claim of the Irish Church Mission Society has not yet accrued. But I am also bound to say that, if it had so accrued, there is no reason why Her Majesty's Government should interfere on their behalf any more than on behalf of Mrs. Solby (who appears to have been very ill-used) or any other suitor. I am clearly of opinion that this Society must take its own steps at its own expense to defend its own rights if it be advised that, as yet, it has any in this suit.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 243.

The Law Officers of the Crown to Earl Russell.—(Received October 20.)

TURKEY.

Right of Turkish Government to expel from Turkey subjects of foreign Powers whose residence might be considered injurious to the public peace.

My Lord, *Temple, October* 18, 1862.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 18th September last, stating that he was directed by your Lordship to transmit to us the papers and reports of the Law Officers on a question raised by the Porte in the year 1859 as to the right of the Turkish Government to expel from Turkey subjects of foreign Powers whose continued residence in the Turkish dominions might be considered a source of danger to the public peace.

That we should find in your Lordship's despatch to Sir Henry Bulwer No. 433 of August 23, 1860, the instructions finally given to Her Majesty's Ambassador on the subject, and that with reference to this correspondence he was to transmit to us the inclosed despatches which have been received from Sir Edmund Hornby, the Judge of the Consular Court at Constantinople (No. 49), Mr. Francis, the Legal Vice-Consul there (No. 58), and Sir Henry Bulwer (No. 388), respecting a question which has arisen at Smyrna out of a claim on the part of the Governor of that city to have deported certain British subjects whose continued presence there he considered injurious to the public peace.

That the views severally taken by Sir Henry Bulwer and Mr. Logie of the question raised in these papers is sufficiently explained in the correspondence; and the points on which your Lordship would wish to receive our opinion are, whether Sir Henry Bulwer in his letters to Mr. Francis and Mr. Blunt has correctly interpreted and applied to the case under discussion the intention of Her Majesty's Government, founded on the recommendations of the Law Officers of the Crown, on which the instruction of August 23, 1860, was addressed to him; and if so, whether in addition to informing Sir Henry Bulwer and the British legal authorities in the Levant that his Excellency's interpretation is approved, any special observations are required on the opinions expressed by Mr. Legal Vice-Consul Logie on being made acquainted with Sir Henry Bulwer's instructions to Mr. Consul Blunt.

In obedience to your Lordship's commands we have taken these papers and questions into consideration, and have the honour to report—

That we agree generally with Sir Henry Bulwer in the distinction which he draws between cases which belong to the category of legal and judicial inquiry, and those which belong to the category of international relations and public policy.

It may be and no doubt will be often difficult in practice to draw the line of demarcation between the two categories. But this difficulty must be overcome by the wisdom and care of Her Majesty's Ambassador upon the spot.

It appears to us that to most of the evils pointed out by Mr. Francis and Mr. Logie as incident to Sir H. Bulwer's position, the answer is that the Porte has *not* an arbitrary power of deportation or expulsion, for that this power can in no case be exercised without the assent of Her Majesty's Ambassador, who is in the first place bound, as Sir H. Bulwer states, to require evidence to be furnished to him, both by the Turkish and English authorities under the Capitulations, upon which his assent is to be given or withholden; and who is in the second place bound to refuse his assent if the only or principal ground alleged be one which ought to be investigated judicially as an ordinary criminal offence under the Capitulations.

With respect to the particular cases, if Sir Henry Bulwer acted upon the grounds of suspicion that the persons were guilty of crime cognizable under the Capitulations, but of which there was no legal proof, we think he did not act in accordance with your Lordship's instructions; but if he acted upon the ground that these were persons of a loose, vagabond, and unsettled life, and of general bad reputation, we think he did not contravene those instructions. For although it was stated in those instructions, and in the Law Officers' Report on which they were founded, that cases of vagabondage might "properly be dealt with as coming within criminal jurisdiction," we understand this rather as a suggestion that it might be desirable to have such cases defined by the Turkish law, and made subjects of criminal jurisdiction (as they are in England), than as meaning that in the absence of any such law in Turkey they might not sometimes be properly dealt with as cases of danger to the community on political grounds. It is needless to add that it could not have been meant that they ought to be treated as coming within criminal jurisdiction unless they were actually made criminal by the Turkish law, which we assume them not to be at the present time. There is undoubtedly a serious risk both that the officers of such a Government as that of Turkey may attempt frequently to abuse a power of expulsion, resting upon vague and indefinite allegations, and exercised without anything like a formal investigation or proof of facts, and also that the Ambassador residing at Constantinople may be often without sufficient means of knowledge to enable him adequately to check such an abuse. For these reasons we agree in the suggestion of the former Report that it might be well if such cases could be placed by competent authority within the reach of the criminal jurisdiction, so as to insure their due and regular investigation under the safeguards of the law, and in the meantime we think that they will require the exercise of very great caution on the part of the Ambassador.

But, on the other hand, the public evils which might arise from the uncontrolled resort of vagabonds under foreign protection to a country like Turkey are great and undeniable; and it cannot be disputed that (in the absence of any adequate legal remedy) the expulsion of such persons may sometimes be justified upon political grounds.

The Porte (Mr. Logie admits) must have the power to refuse to receive the foreigner; and it is upon the same principle that it must have the power, except so far as that prerogative may have been impaired or lessened by positive Treaty or Capitulation, to refuse to retain him. This power, incident to every independent Sovereign, was not taken away by the Capitulations. But it does not follow that it is therefore competent to the Porte, or consistent with the spirit of the Capitulations, to arrest and imprison for any considerable period British subjects, previous to expelling them.

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* Irish Missionary Society, June 30; Mr. Thomson, No. 50, 1862.

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The argument for allowing the power of expulsion is, that the objects of it are not criminals, but considered on political grounds dangerous to the State.

Any imprisonment *at all*, if by that is meant confinement in a common Turkish gaol, is in itself a criminal punishment; and if as appears to have been the case in one instance, it be accompanied by putting the suspected person in irons, it is a severe criminal punishment.

But detention in a place other than a gaol, or the putting a person as it is called in France "au secret" for any considerable period, is also a punishment. In both cases a punishment on suspicion, not proof, and if no crime, cognizable by any tribunal, be alleged, then for no legal offence, even imputed.

It appears to me, therefore, that it would be consistent both with what is due to the Turkish Government and to the rights of Her Majesty's subjects, if the person whom it was intented to expel were allowed to be placed under the special superintendence of the police, either at his own home or elsewhere, not in gaol, until the assent or dissent of Her Majesty's Ambassador could be obtained.

We think, too, that the Porte cannot be allowed to deport any of Her Majesty's subjects to other places in the Turkish dominions, unless such persons have had previously the option given to them of quitting the Turkish dominions altogether within a reasonable time; and even in cases where this option has been declined, we think that due notice of the place to which it is intended to deport them should be given to the Ambassador, who would be able to exercise his veto if, for any local or other reason, he should think it expedient to do so.

We think that, subject to the foregoing modifications, Her Majesty's Government might inform Sir Henry Bulwer that they approve of the principles of his interpretation of the instructions of August 23, 1860, and that a copy of the despatch to him, if your Lordship should adopt our opinion in it, might be forwarded to Mr. Legal Vice-Consul Logie, Mr. Consul Blunt, and Sir E. Hornby.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 244.

The Queen's Advocate to Earl Russell.—(*Received October* 23.)

PERU.

Compensation for imprisonment of T. O'Connor on a charge of being concerned in crimping seamen.

My Lord,
Doctors' Commons, October 22, 1862.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 16th October instant, stating that he was directed to transmit to me the accompanying papers* respecting the case of Thomas O'Connor, a British subject, who was imprisoned by the Peruvian authorities on a charge of being concerned in crimping seamen, no criminating evidence having been produced against him. That I should perceive that the Peruvian Government have refused to accede to the demand for a small indemnity for this person which has been made to them by Mr. Barton in the name of Her Majesty's Government, and to request that I would take the papers into consideration, and furnish your Lordship with my opinion whether the merits of the case are such as would justify Her Majesty's Government in insisting on this compensation.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I am clearly of opinion that the merits of the case are such as to justify Her Majesty's Government in demanding a proper compensation in this case, which is certainly one of great and unwarrantable ill-treatment of a British subject.

I have, &c.
(Signed) ROBERT PHILLIMORE.

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* Mr. Barton, No. 15, 1861; Nos. 16 and 67, 1862; to Mr. Barton, No. 8, 1861, No. 14, 1862

No. 245.

The Queen's Advocate to Earl Russell.—(*Received October* 25.)

UNITED STATES.

Complaint of Mr. J. W. Musson respecting course pursued by Government of Bermuda with regard to American vessel "Wheatland."

My Lord,
Doctors' Commons, October 23, 1862.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 16th October instant, stating that he was directed to transmit to me a letter from the Colonial Office, dated the 15th October instant, inclosing a copy of a letter from Mr. James W. Musson, complaining of the course pursued by the Governor of Bermuda with regard to an American vessel named the "Wheatland," in which he was interested; and to request that I would take these papers into consideration and furnish your Lordship with my opinion thereupon.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That it appears to me that Mr. J. W. Musson has no legitimate ground of complaint against the Governor of Bermuda. The "Wheatland" was an American ship, with American owners and an American master; she was properly, therefore, while in a foreign port, under the care and authority of the American Consul. Whether the owners had or had not power to dismiss the master and substitute another in his place, was a question exclusively of American law, to be considered in Bermuda by the American Consul. The American Consul had no doubt about the matter, and directed the substituted master to be placed in authority. I must observe that Mr. J. W. Musson could have no right to interfere in the matter. If the American owner or Consul erred, the discarded master, Captain Peacock, had his remedy by an appeal to the American Admiralty Court against the former, or the American Executive against the latter. But it was clearly the duty of the Governor of Bermuda both to prevent any breach of the peace on board a vessel in port, and to support the legitimate authority of the foreign Consul over the vessels of his country.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 246.

The Queen's Advocate to Earl Russell.—(*Received October* 25.)

PORTUGAL.

Request of Mr. Lindsay for interference of British Government with Portuguese Government in a legal suit in Portugal.

My Lord,
Doctors' Commons, October 24, 1862.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 22nd October instant, stating that he was directed to transmit to me the correspondence, of which a list is inclosed, respecting a case in which Mr. Lindsay has requested the interference of Her Majesty's Government with the Government of Portugal in the matter of a legal suit in Portugal; and to request that I would take these papers into consideration, and report to your Lordship my opinion on the case, and as to how far Mr. Lindsay is entitled to the support of Her Majesty's Government in prosecuting his claim.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I am of opinion that Mr. Lindsay is not entitled to require the formal intervention of Her Majesty's Government in the legal prosecution of his private claim against the Portuguese Company called the "União Mercantil."

Mr. Lindsay entered into a large and complicated mercantile negotiation with that Company, the Chairman and two Directors of which were British merchants resident at Lisbon. Disputes arise as to the fulfilment of their mutual contract. Mr. Lindsay has recourse to the proper *forum*, the Portuguese Court, to enforce his contract. The Court decides against him, and he appeals, and then, *pendente lite*, asks for the intervention of Her Majesty's Government.

There is no evidence of any corrupt judicial proceeding. The Judge may have been wrong in his law, the jury inconsistent in their finding of facts—I should rather incline to the opinion, as at present advised, that such was the case; but such untoward incidents in the administration of justice are not

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confined to the Courts of Portugal, or even unknown to those of this country. It is to be hoped that these miscarriages as to law and facts, if such they be, will be corrected by the Court of Appeal to which Mr. Lindsay has resorted.

I humbly advise your Lordship that there is at present no adequate ground for any interference, strictly speaking, on the part of Her Majesty's Government; though perhaps your Lordship might think it proper to direct Her Majesty's Representative at Lisbon to watch the further legal proceedings in this case, and, if necessary, again report to your Lordship. I see no foundation for the position or suggestion that the Government of Portugal is responsible for the due execution of the contract.

I have, &c.
(Signed) ROBERT PHILLMORE.

No. 247.

The Queen's Advocate to Earl Russell.—(Received October 25.)

Doctors' Commons, October 24, 1862.

PORTUGAL.

Not necessary to have an interview with Mr. Lindsay.

THE Queen's Advocate presents his compliments to Mr. Hammond, and begs to state that, having written his Report on Mr. Lindsay's claim in accordance with the instructions sent to him in Mr. Hammond's letter of the 22nd instant, thought it best to send that Report to the Foreign Office.

Mr. Hammond's letter of yesterday, which arrived after the Report was written, is directed to the Law Officers, inquiring if they would desire to see Mr. Lindsay. The Queen's Advocate thinks it would not be expedient to see him. If the joint opinion of the Law Officers on this point is desired, perhaps Mr. Hammond will have the goodness to say so.

No. 248.

The Queen's Advocate to Earl Russell.—(Received October 25.)

Doctors' Commons, October 25, 1862.

CHILE.

Mr. Whitehead's claim for injuries inflicted by Chilian troops.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 15th October instant, stating that with reference to Sir John Harding's Report of the 15th of January, 1861,* respecting Mr. Whitehead's case, therewith returned to me, he was directed to transmit to me the explanation (dated the 25th April ultimo) offered by the Chilian Minister in London of the outrage on Mr. Whitehead, for which redress had been demanded in accordance with the advice of my predecessor.

He was also pleased to transmit a despatch from Her Majesty's Chargé d'Affaires in Chile (No. 49), containing his own and Mr. Whitehead's observations on that explanation; and to request that I would take this case into consideration, and furnish your Lordship with my opinion thereupon, and as to the course which Her Majesty's Government should now pursue in the matter.

The previous papers and a Memorandum on the case were annexed for my more complete information.

I am also honoured with Mr. Hammond's letter of the 21st October instant, inclosing some papers relative to Mr. Whitehead's claim, which were accidentally omitted to be sent in the letter from the Foreign Office of the 15th instant.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I entirely agree with the view of this case uniformly taken by my predecessor in office in his various Reports upon the papers from time to time submitted to him.

In the additional papers now submitted to me, I find no reason to alter or modify the view which has been so taken. In the long and elaborate statement of his Excellency M. Carvallo, dated April 25, 1862 (the contents of which, I may add, as it was accompanied by no translation, I was especially careful to master), there are certain general positions which Her Majesty's Government would of course consider indisputable, viz., that a British subject at Valparaiso is amenable to the law of that place; that the Chilian Government are entitled to treat an Englishman at Valparaiso as the British Government would treat a Chilian at London; that sentries must obey military law, and not allow themselves to be forcibly prevented from doing their duty by strangers. These and the like general propositions are unquestionable, but they fall far short of the proposition that either at London or Valparaiso a sentry may run an unarmed man through the body, call together other soldiers, beat him half dead with the butt ends of muskets, shoot off his left arm, follow him into an hotel, load him with execrations, and actually rob him of his watch. This is what the Chilian soldiers did to a poor weak unarmed man, and it is the conduct of savage and cowardly brigands, not of disciplined soldiers.

There are two facts—not *now* (it is important to observe) disputed by the Chilian Government—quite sufficient to dispose of the wretched attempts to give an innocent, indeed a meritorious, colour to this disgraceful atrocity:—

First. The soldiers were compelled by an officer to restore the plundered watch.

Secondly. These ruffians have never yet been cashiered or punished for the crime.

As to what is called the positive evidence on behalf of the soldiers, the value of it may be estimated from the fact which Mr. Walton states, namely, that what the Chilian Government has published as his evidence is entirely opposed to that which he really gave. The truth is, the story concocted since the atrocity was committed is destitute of all reasonable probability, and entirely inconsistent with the admitted robbery.

I humbly advise your Lordship that Her Majesty's Government ought to demand a proper indemnity (and the amount must be measured by the terrible injury inflicted on this innocent man) without delay; and if satisfaction be not speedily given, to resort to the remedy of immediate reprisals.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 249.

The Queen's Advocate to Earl Russell.—(Received October 29.)

Doctors' Commons, October 28, 1862.

UNITED STATES.

Seizure of the "Orion" on a voyage from Jamaica to Matamoros.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 24th October instant, stating that he was directed to transmit to me a despatch and its inclosures from Her Majesty's Chargé d'Affaires at Washington (No. 262), relative to the capture of the British schooner "Orion" by the United States' cruizer "Quaker City," whilst on a voyage from Jamaica to Matamoros; and to request that I would take the same into consideration, and furnish your Lordship with my opinion thereupon.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That it is clear that the "Orion" was in the first instance seized without any colour of justification. From the seizor's statement it appears that her cargo was innocent, her destination neutral, her ownership British. The seizor says that the "Orion" had on board "an assorted cargo, doubtless intended for rebel uses." Upon this plea every vessel that swims the ocean and does not belong to the North American States may be captured. The seizor does not seem to have been aware or to have been subsequently apprized by the authorities of his country that a suspicion in the mind of the captor, unsupported by any evidence on board the ship, does not, according to international law, justify seizure. To seize without some *primâ facie* evidence of this kind is the act of a pirate, not of a belligerent. It is said that after the seizure the master of the "Orion," when on board the captor's ship, has made confessions as to a previous voyage of this vessel affecting her character. But I find nothing which would take off the illegality of her capture even if the alleged confessions made in such

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* See Reports for 1861, page 6.

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circumstances were worthy of credit. I think this is a case for strong remonstrance.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 250.

The Queen's Advocate to Earl Russell.—*(Received October* 29.)

TURKEY.

Complaint of Messrs. Taylor and Co. of duties levied in Egypt on gunny bags and iron wire imported for packing cotton for exportation.

My Lord, *Doctors' Commons, October* 29, 1862.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 18th October instant, stating that he was directed to transmit to me a letter from the Board of Trade, respecting a complaint made by Messrs. Taylor and Co., of Liverpool, on the subject of the duties levied at the Egyptian Custom-houses on gunny bags and iron wire imported in Egypt to be used in packing cotton for exportation. He was also pleased to inclose a despatch from the Acting British Consul-General at Alexandria,* reporting the steps which he took to carry out your Lordship's instruction to endeavour to induce the Egyptian Government to abolish the duty in question, and inclosing a note from the Egyptian Minister for Foreign Affairs, defending the course adopted by that Government; and to request that I would take these papers, together with the accompanying copy of the Treaty of Commerce recently concluded between this country and Turkey, into consideration, and furnish your Lordship with my opinion as to the steps which Her Majesty's Government should take in this matter.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That it appears to me contrary to the spirit of the Treaty that these gunny bags and iron wire should pay double duty of 8 per cent. on import and export. This last duty it seems is indirectly imposed by adding the weight of the package to the weight of the cotton.

The defence is, first, that the cloth and wire undergo alterations after their import, and therefore assume a new character in their transit through Egypt. This seems to me an untenable position. They are imported for the purpose of packing up cotton, and they are merely in the one case shortened, in the other cut up, to suit the cotton. There is no change in the quality of the article, no addition by manufacture, or any alteration of the material.

2ndly. It is said that it is the old practice of the Custom-house to compute duty on the gross weight of cotton, though not of grain. This is a wholly different ground from the former, and not consistent with it. The truth is, the wire and cloth do practically pay a double duty, one on import and one on export, and this appears to me not in harmony with the spirit or meaning of the Treaty.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 251.

The Queen's Advocate to Earl Russell.—*(Received October* 31.)

UNITED STATES.

Capture of the "Ann Sophia" for alleged intention of running blockade of Wilmington.

My Lord, *Doctors' Commons, October* 30, 1862.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 27th October instant, stating that he was directed to transmit to me therewith a despatch and its inclosures from Her Majesty's Chargé d'Affaires at Washington (No. 279), reporting the capture by the United States' cruizer "R. R. Cuyler" of the British schooner "Ann Sophia" for an alleged intention of running the blockade of Wilmington; and to request that I would take the same into consideration, and furnish your Lordship with my opinion thereupon.

In obedience to your Lordship's commands I have taken this case into consideration and have the honour to report—

That I perceive it to be stated in the despatch of Acting-Master Freeman, to Mr. Gideon Welles, that the "Ann Sophia," was captured, "the character of her papers and cargo leading strongly to the suggestion of its being her purpose to violate the blockade." If this be so, the vessel according to the general principles of international law applicable to blockade, was rightly captured. But I am at a loss to understand how a Court of American Prize Law can reconcile the lawfulness of her seizure with the following passage in the Proclamation of the President of the United States: "I, Abraham Lincoln, &c., &c., have further deemed it advisable to set on foot a blockade of the ports within the States aforesaid, in pursuance of the laws of the United States and of the law of nations in such case provided. For this purpose a competent force will be posted so as to prevent entrance and exit of vessels from the ports aforesaid. If, *therefore, with a view to violate such blockade, a vessel shall approach*, or shall attempt to leave either of the said ports, she will be duly warned by the Commander of one of the blockading vessels, who will endorse on her register the fact and date of such warning, *and if the same vessel shall again attempt* to enter or leave the blockaded port, she will be captured and sent to the nearest convenient port for such proceedings against her and her cargo as prize as may be deemed advisable." The "Ann Sophia" appears to have had no warning, and to have been seized when out of sight of land. I presume this point will be properly argued before the Prize Court.

There is a practice which the case of this vessel exemplifies, and which appears to be gaining ground among the irregularities of the North American cruizers; the practice of taking out all, or nearly all the crew of the captured vessel, placing them on board the ship of the captor, and then reporting that they have made such and such declarations adverse to their owners. There may be cases which render it necessary to remove all the crew, but they must be very rare. The excuse set up in this case that "they were all *more or less* intoxicated," is very unsatisfactory. It is manifest how much such acts as these tend to throw discredit upon the adjudication of the Prize Court, which should be above all suspicion.

By the universal and long-established usage of nations the oral evidence in these cases must come from the captured ship's crew only. The greatest care should, therefore, be taken that their first examination after capture should be before the examiner of the Prize Court, and not extracted from or suggested to them on board the ship of the captor. Many an indefensible seizure may thus be prevented from being attended by the proper consequences, viz., condemnation in costs and damages. I humbly suggest that this practice should be strongly remonstrated against.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 252.

The Law Officers of the Crown to Earl Russell.—*(Received November* 1.)

UNITED STATES.

Proceedings of Admiral Wilkes and United States ships of war at Bermuda, and disobedience to orders of Governor of Bermuda.

My Lord, *Temple, October* 31, 1862.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 29th October instant, stating that he was directed by your Lordship to transmit to us for our immediate consideration, the accompanying letters from the Colonial Department and the Admiralty* respecting the proceedings of Admiral Wilkes and the United States' ships of war at Bermuda; and to request that we would favour your Lordship at our earliest convenience with our opinion as to the course which should be pursued by Her Majesty's Government in the matter, and also in regard to the specific questions put by the Admiralty.

Mr. Hammond was further pleased, in a note of the same date, to say that he was directed by your Lordship to transmit to us a letter from the War Office,† containing further information respecting the proceedings of Admiral Wilkes at Bermuda.

In obedience to your Lordship's commands we have taken this matter into consideration and beg to report—

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* Mr. Saunders, No. 89, September 23, 1862.

* Colonial Office, October 28, 1862; Admiralty, October 28, 1862.
† War Office, October 29, 1862.

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That we have the honour to answer the specific questions put by my Lords of the Admiralty as follows:—

Liability of a British ship which has broken a blockade to capture on her homeward voyage.

1. That an English vessel which has broken the blockade by egress from a blockaded port does not become released from liability to capture by an United States' ship of war because on her voyage to England she has reached a British Colonial port.

2. That a vessel which has so broken the blockade, and has transhipped her cargo into another vessel in a Colonial port, does not become thereby necessarily released from the liability to capture; she remains under that liability until she has completed the voyage of her *bonâ fide* destination: for instance, if she meant to run to England from the blockaded port, and there are proofs that such was and continues to be her destination, she will be in jeopardy of seizure until that voyage has been performed, and she has started *de novo* on another voyage from the port of her destination after her breach of the blockade. "Where a ship," Lord Stowell says, "has contracted the guilt, by sailing with an intention of entering a blockaded port or by sailing out, the offence is not purged away till the end of the voyage; till that period is completed, it is competent to any cruizer to seize and proceed against her for that offence." ("Juffrow Maria Schroeder," 3 Rob. 153, 154.)

3. That with respect to cargo tainted by a breach of blockade, which has not reached its destination, but merely undergone transhipment, without any other breach in the continuity of its voyage, in a colonial port, we are of opinion that it would be liable to seizure and condemnation until it had reached the port of its destination.

4. We think also that the ship which knowingly took on board such cargo would be liable to seizure and condemnation.

5. We are of opinion that the authority (the *dominium eminens*) of Her Majesty does extend to three marine miles from the northern reefs. We think that these reefs must be considered as belonging to the territorial jurisdiction incident to the possession of Bermuda; so far, at least, as that between them and the island, Her Majesty has a right to prevent the exercise of hostilities; and that if we are right in considering them as part of Bermuda, it would follow that Her Majesty's jurisdiction must extend for three marine miles from that point.

As we are desired, generally, to express our opinion as to the course which should be pursued by Her Majesty's Government in this matter, we think it right to express our opinion that the conduct of Admiral Wilkes, both past and present, calls for very strong remonstrances on the part of Her Majesty's Government to that of the United States.

It is manifest that he was guilty of a gross insult to Her Majesty's Representative at Bermuda, by disobeying, in the most open and contemptuous manner, the legitimate orders of his Excellency, with respect to anchoring in the fairway, as well as by the greater affront of placing sentinels on Her Majesty's territory. It is equally plain that he made deliberately false statements with respect to the necessities of his ships, for the purpose of setting at naught Her Majesty's instructions.

With respect to the case generally we are of opinion that the true doctrine with respect to the rights of belligerents, in circumstances like those of the present case, is properly explained by Lord Stowell, in the case of "The Anna," 5 Rob., 385:—

"Captors must understand that they are not to station themselves in the mouth of a neutral river, for the purpose of exercising the rights of war from that river; much less in the very river itself." . . . . . "The captors appear, by their own description, to have been standing off and on, obtaining information at the Belize, overhauling vessels in their course down the river, and making the river as much subservient to the purposes of war as if it had been a river of their own country. This is an inconvenience which the States of America are called upon to resist, and which this Court is bound, on every principle, to discourage and correct."

A belligerent has the right, so long as he keeps *bonâ fide* and altogether beyond the limits of neutral waters, to watch for ships guilty of breaches of neutrality, anywhere upon the open seas, however near this exercise of right may be to any neutral territory. This cannot, with any propriety, be called a "blockade" of the neutral territory: inasmuch as it has none of the legal effects of blockade. Neutrals cannot complain of any degree of obstruction whatever, which thus may be offered to ships of their subjects, engaged in breaches of neutrality.

If this right of the belligerent be abused by the capture of ships innocently employed, redress will always be open, and ought to be required, according to the circumstances of each case, and if this should be systematically or recklessly done, or if, when done, due provision should not be made, by the sentence of the Prize Court, for the complete indemnity of the parties injured, a case will arise for peremptory remonstrance, and for further measures if such remonstrance should fail.

But the belligerent right, thus admitted to exist, does not in any degree justify the use of neutral waters for purposes subsidiary to warlike operations.

We cannot but express our opinion that it appears, from the papers before us, that by the late proceedings of Rear-Admiral Wilkes in Bermuda, not only the rules laid down in Her Majesty's orders have been disregarded, but the hospitality extended by the authorities of the island to the ships under that officer's command, upon the pretext alleged by him of want of necessary repairs and supplies, has been seriously abused, for the purpose of furthering belligerent operations which he was engaged in carrying out.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 253.

The Queen's Advocate to Earl Russell.—(Received November 1.)

BRAZIL.

Outrage on three officers of Her Majesty's ship "Forte," and plundering of British ship "Prince of Wales." Question of reprisals.

My Lord, *Doctors' Commons, November* 1, 1862.

I AM honoured with your Lordship's commands signified to me in Mr. Hammond's letter of the 27th ultimo, stating that with reference to my Report of the 6th ultimo,* he was directed by your Lordship to transmit to me two further despatches and their inclosures from Her Majesty's Minister in Brazil (Nos. 84 and 87), respecting the proceedings of the Brazilian Government and their authorities in the matter of the wreck of the "Prince of Wales." And that he was also to transmit to me the instructions that have been sent to Mr. Christie in this case; and to request that I would take the correspondence into consideration and furnish your Lordship with any observations that may occur to me thereupon, and with my opinion whether any further instructions to Mr. Christie are necessary in this case.

The previous papers were annexed for convenience of reference if required.

In obedience to your Lordship's commands I have taken this correspondence and the papers into consideration, and have the honour to report—

That the propositions which the Brazilian Government appears to allege by way of excuse, namely, that it is not to be considered responsible for probable murder and for certain robbery committed by its subjects upon helpless foreigners, because the coast, the scene of these misdeeds, is desert and inhospitable, or because after long delays it has failed in discovering the culprits, are propositions wholly inadmissible by the Government of the injured subjects.

The remarks of Admiral Warren are extremely pertinent.

It is clear that both the wreck and the unfortunate crew have been plundered; the presumptive evidence is strong that the missing bodies said to have been buried, but whose graves nobody can show, were murdered.

It is impossible that the Justice of the Peace on the spot (Bento Venancio Soares) should not have been cognizant of what took place; the presumption from the evidence is strong that he participated in the robbery.

A great parade is made of the sufficiency of the Brazilian Government to discharge its own functions of causing justice to be administered, and of its legitimate jealousy of the interference of the English naval officers; but the result is that the murderers and robbers are undetected, and the supine, if not guilty, Justice of the Peace on the spot remains unpunished.

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* Page 239.

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It appears to me that there is a clear case for moderate indemnity.

I have perused the instructions sent to Mr. Christie, and it does not occur to me that it is requisite to send any further instructions to Her Majesty's Representative at the Brazilian Court.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 254.

The Queen's Advocate to Earl Russell.—(Received November 1.)

Venezuela.

Draft notification of Venezuelan blockade of ports and coasts of Maracaibo.

Doctors' Commons, November 1, 1862.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of 30th October, stating that he was directed to transmit to me the accompanying despatch from Her Majesty's Chargé d'Affaires at Caracas (No. 50), inclosing a copy of a Decree which has been issued by the Venezuelan Government, declaring the ports and coasts of Maracaibo in that Republic in a state of blockade; and to request that if this notice is sufficient, I would prepare, at my earliest convenience, the proper notification to be inserted in the "London Gazette."

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That as the notice appears to be sufficient I have prepared the notification for the "London Gazette" which is appended hereto.

I presume that the Ordenanza de Corso (translated "Order of Privateering") of the 30th March, 1822, according to which vessels breaking the blockade are to be proceeded against, has reference to a regularly constituted Prize Court conducted according to the recognized principles of international law; but it would be desirable to ascertain from Her Majesty's Chargé d'Affaires that such is the case.

I have, &c.
(Signed) ROBERT PHILLIMORE.

Inclosure in No. 254.

Draft Notification.

IT is hereby notified that, on the 30th October, Earl Russell, Her Majesty's Principal Secretary of State for Foreign Affairs, received from Her Britannic Majesty's Chargé d'Affaires at Caracas a despatch, inclosing the copy of a Decree issued by the Venezuelan Government declaring the ports and coasts of Maracaibo in that Republic to be in a state of blockade.

The Decree, in so far as it relates to the blockade is as follows:—

(Here insert *verbatim* the Decree, beginning Article 1 to Article 6, inclusive, and append translation of the same.)

No. 255.

The Queen's Advocate to Earl Russell.—(Received November 1.)

Peru.

Claim of Captain White for imprisonment at Lima.

Doctors' Commons, November 1, 1862.

My Lord,

I AM honoured with your Lordship's commands signified to me in Mr. Hammond's letter of the 30th ultimo, stating that, with reference to the Reports of Her Majesty's Law Officers of the 25th June and 12th of November, 1861,[*] therewith annexed, and to the previous correspondence, of which a list was inclosed, he was directed by your Lordship to transmit to me a letter from Captain White, dated the 25th October ultimo, setting forth the circumstances under which he has advanced a claim against the Peruvian Government on account of his imprisonment in Peru;

And that he was to request that I would take this correspondence into consideration, and report to your Lordship my opinion as to the amount of compensation which Her Majesty's Government would be justified in demanding from Peru in this case.

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[*] See Reports for 1861, pages 133 and 279.

To assist me in arriving at a conclusion on this point, Mr. Hammond was pleased to inclose a Memorandum setting forth the circumstances under which Her Majesty's Government obtained from the Peruvian Government compensation in the case of Mr. Hugh Wilson.

In obedience to your Lordship's commands I have taken this correspondence and papers into consideration, and have the honour to report—

That it is of course difficult to make anything more than a rough approval to the amount of compensation which the mixed considerations of justice and policy require in these cases.

The injury to the individual, the honour of the State of which he is a subject, and the prevention of future wrong to its subjects, are, I humbly think, all, though in different proportions, elements of consideration; and with respect to all these elements, certainly a more aggravated case than that of Captain White cannot easily be conceived.

A British subject, a man apparently of probity, intelligence, education, good conduct, and fair position in society, is suddenly and brutally seized by the throat as he lands (bound on a peaceful errand) from the deck of a steamer, on the quay of a friendly State, goaded with bayonets, refused all explanation of his offence, imprisoned with every circumstance of ignominy in a filthy gaol of common malefactors, by order of the Government, in which he is kept nearly ten months, subjected during that period to continued and barbarous indignities, often attended with great personal suffering, upon a charge of assassination,—which charge three Criminal Courts successively pronounce to be, and always to have been, wholly destitute of foundation; and it is clearly shown that the original mover and principal actor in these wicked proceedings is a Judge, not for the first time known as a bitter enemy of Her Majesty's subjects, and who remains even, as it appears, unadmonished in the discharge of judicial functions.

I have considered the case of Mr. Wilson, and with some reference to the award in that case, and discarding the very exaggerated claim put forward by Captain White, and weighing the peculiar circumstances, I am of opinion that Her Majesty's Government would be justified in demanding from the Peruvian Government, as the amount of compensation due to Captain White, 4,000*l.* or 4,500*l.* I should incline to the latter sum.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 256.

The Queen's Advocate to Earl Russell.—(Received November 1.)

Mexico.

Claim of Mr. Kay for the detention of his vessel the "Beautiful Star" at Vera Cruz.

Doctors' Commons, November 1, 1862.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 30th October, stating that he was directed by your Lordship to transmit to me a correspondence which has passed between Mr. Thomas Kay, Her Majesty's Consul at Vera Cruz, and the Foreign Office,[*] relative to a claim for compensation brought forward by Mr. Kay against the authorities of that port for losses sustained by the detention of his schooner "Beautiful Star," and the seizure of her cargo of gunpowder, and to request that I would take these papers into consideration, and furnish your Lordship with my opinion thereon.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I am of opinion that the despatch of Her Majesty's Consul at Vera Cruz must be considered as proving that Mr. Kay has no claim for compensation on account of the detention of his vessel, which appears to have been occasioned by an accident, which the authorities at Vera Cruz were unable to prevent, and not to have been connected with the seizure of the gunpowder.

I have, &c.
(Signed) ROBERT PHILLIMORE.

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[*] Mr. Kay, July 17, 1862; to Consul Giffard, No. 1, July 26, and No. 19, September 10, 1862.

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No. 257.

The Queen's Advocate to Earl Russell.—(Received November 4.)

PERU.

Claim of Mr. W. Jordan on behalf of the Lima Gas Company for breach of contract.

My Lord, *Doctors' Commons, November* 4, 1862.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 29th October last, stating that he was directed by your Lordship to refer to me a despatch and its inclosures from the Acting British Chárgé d'Affaires in Peru (No. 55), containing a statement of the circumstances under which a claim against the Peruvian Government is made by Mr. W. Jordan, on behalf of the Lima Gas Company, and to request that I would take these papers into consideration, and furnish your Lordship with my opinion whether Her Majesty's Government should support this claim, and if so to what extent.

Mr. Hammond was also pleased to inclose a letter dated the 8th September, ultimo, which your Lordship received from Messrs. Bates, Stokes, and Co., on this subject.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That it appears clear that the Peruvian Government has broken a plain contract with the shareholders of the Lima Gas Company.

The decision of the Supreme Court is not founded upon the plain unambiguous terms of the written contract itself, but upon theoretical arguments which have no reference to the language of the instrument itself.

It is difficult to conceive how any tribunal uninfluenced by political or other motives, could possibly have pronounced that these words—"an exclusive privilege ('privilegio exclusivo') is granted to the Company for making gas in the capital and Callao ('en esta capital y el Callao') for fifteen years, the term to commence from the date in which the apparatus and mains are in working order," did not convey an exclusive privilege to light Callao as well as Lima with gas, but only liberty to *make proposals* for lighting Callao.

The reasons alleged for the forfeiture of the contract are contrary to plain facts.

I think Her Majesty's Government would be justified in instructing Mr. Barton to press strongly upon the Peruvian Government the palpable injustice inflicted by this sentence of the Court on British subjects who have advanced large capital on an undertaking eminently useful to the Peruvian State, and who have been defrauded of privileges plainly guaranteed to them by the contract of its Government.

Mr. Barton might also, if his opinion coincides with Mr. Jordan's on the point, urge the illegal constitution of the Supreme Court which gave the last adverse decision. I do not, however, advise Her Majesty's Government to go further, as at present advised, than thus to instruct Mr. Barton.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 258.

The Law Officers of the Crown to Earl Russell.—(Received November 5.)

PERU.

As to service of notices upon Peruvians in England, in connection with legal proceedings in Peru.

My Lord, *Temple, November* 4, 1862.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 28th October ultimo, stating that he was directed by your Lordship to transmit to us a note from the Peruvian Minister in this country, dated the 14th October ultimo, inclosing two documents addressed "to one of the Judges of the city of London," requesting that notices might be served on certain parties supposed to be resident in this country, in connection with some legal proceedings in Peru. And he was to request that we would take these papers into our consideration, and that we would report to your Lordship our opinion as to whether any or what steps could be taken to give effect to M. Sanz's wishes in this matter.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That the power of Her Majesty's Judges with regard to cases pending in foreign Courts is regulated by the 19th and 20th of Victoria, cap. 113

That by the provisions of that Statute it would be competent to one of Her Majesty's Judges to order the examination of a witness in aid of the matter pending in the Civil Court at Lima, but that no provision is made in it empowering any of Her Majesty's Judges to cause a notice or citation to be served upon a Plaintiff or Defendant in a foreign Court.

That it would seem to us that his Excellency the Peruvian Minister might cause the notice to be served on the person in London, and might certify to the proper authorities at Lima that he had done so, as the tribunals here had no power to aid him in this matter.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 259.

The Queen's Advocate to Earl Russell.—(Received November 5.)

BRAZIL.

Refusal of Brazilian Government to submit Mr. Lang's claim to arbitration.

My Lord, *Doctors' Commons, November* 5, 1862.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 29th October last, stating that "he was directed by your Lordship to transmit to me a despatch from Her Majesty's Minister at Rio (No. 85), inclosing a statement of the grounds on which the Brazilian Government decline to submit to arbitration the claim which has been preferred against them by Mr. Lang; that the case has already been under the consideration of my predecessor, whose Report of the 3rd May, 1858, I should find marked in the accompanying volumes, in which I should also find marked the whole correspondence connected with the case. And that he was to request that I would take the subject into consideration, and report to your Lordship my opinion whether Her Majesty's Government will be justified in taking any or what further steps in the matter."

In obedience to your Lordship's commands I have taken this subject into consideration, and have the honour to report—

That I am of opinion that the refusal of the Brazilian Government (contained in the letter of M. de Sinimbú to the Marquis Abrantes) to consent to an arbitration in this case is not founded upon satisfactory reasons. But, nevertheless, looking to the nature and character of the contract, which is in fact a Brazilian contract, to be interpreted and executed in Brazil; and considering that the Mixed Commission has been broken up, and having regard to the steps which Her Majesty's Government have already taken on Mr. Lang's behalf, I do not think that they can properly go further, and insist upon the appointment of an Arbitrator; though if a new Commission were to be appointed, Mr. Christie might properly be instructed to assist Mr. Lang in bringing his claim before it.

I have, &c
(Signed) ROBERT PHILLIMORE.

No. 260.

The Law Officers of the Crown to Earl Russell.—(Received November 5.)

UNITED STATES.

Complaint of Messrs. David Taylor and Sons of additional duty of 10 per cent. *ad valorem* levied in United States on all goods the produce of countries to the east of the Cape of Good Hope, if imported from Europe.

My Lord, *Temple, November* 5, 1862.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 3rd October ultimo, stating that he was directed by your Lordship to transmit to us a letter from Messrs. David Taylor and Sons, dated the 24th September ultimo, relative to an additional duty of 10 per cent. *ad valorem*, which is imposed by the 14th section of the Tariff at present in force in the United States of America upon all goods the produce of countries to the east of the Cape of Good Hope if imported from Europe; and calling in question the right of the United States' Government, under the existing

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Treaties with this country, to levy the duty in question; and he was to request that we would take the same into our consideration, and favour your Lordship with our opinion as to the bearing of the Treaties in this case.

A copy of the Tariff in question was inclosed for our information.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we have considered the subsisting Treaties between Great Britain and the United States, viz., those of the 3rd July, 1815; 20th October, 1818; 6th August, 1827; 5th June, 1854; and that we do not find in them any stipulations which conflict with the 14th section of the New Tariff by which the United States impose upon the produce of countries eastward of the Cape of Good Hope, if imported from Europe, an additional duty of 10 per cent.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 261.

The Law Officers of the Crown to Earl Russell.—*(Received November 5.)*

UNITED STATES.

Instructions to be sent to Washington relative to conduct of Admiral Wilkes at Bermuda.

Temple, November , 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 4th instant, stating that he was directed by your Lordship to transmit to us therewith, with reference to our Report of the 31st ultimo,* the draft of a despatch which your Lordship proposes to address to Lord Lyons on the subject of the late proceedings of Admiral Wilkes, of the United States' Navy, at Bermuda; and to request that we would take this into our immediate consideration, and at our earliest convenience report to your Lordship whether it may properly be sent to Washington.

Mr. Hammond was also pleased to state that he inclosed the papers on the subject which we had already had before us.†

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we are of opinion that the despatch which your Lordship proposes to send to Lord Lyons may properly be sent.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 262.

The Law Officers of the Crown to Earl Russell.—*(Received November 6.)*

TURKEY.

Claim of Mrs. Shee on the estate of Anesti Kovako for jewels entrusted to him before his death.

Temple, November 5, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 16th October last, stating that he was directed by your Lordship to acquaint us that Mr. Ayrton, having been apprized of the view taken by us in our Report of the 6th October last,‡ of his proposal to appropriate to the payment of Mrs. Shee's claim a sum of money held by him on account of the party against whom that claim is made, requested to add some further observations in support of his view.

That in those observations (which Mr. Hammond was pleased to inclose), Mr. Ayrton alluded to the ancient practice of attachment in the Levant having been set aside by the new Rules of the Consular Court; and your Lordship therefore thought it best, in the first instance, to ascertain from Sir Edmund Hornby how the case stood in that respect.

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* Page 263.

† Colonial Office, October 28; Admiralty, October 28; War Office, October 28; Law Officers, October 31.

‡ Page 240.

Mr. Hammond was also pleased to inclose Sir Edmund Hornby's observations, and to request that we would acquaint your Lordship whether there is anything in Mr. Ayrton's or Sir E. Hornby's observations to induce us in any respect to modify our former opinion, which for convenience of reference he also inclosed, together with the papers in the case, for reference if required.

In obedience to your Lordship's commands we have taken these papers into consideration, and beg to report—

That in our Report of the 7th October we observed, "It does not very clearly appear whether there is or not any regular course of legal procedure which Mrs. Shee could have pursued, or could now pursue, before a competent forum without the active assistance of the Executive Government in Egypt;" and it is now, for the first time, brought to our notice (by Mr. Ayrton's letter to Mr. Hammond of the 13th October), that a system (or practice) of law similar to that which is known in England as foreign attachment prevails in the Consular Courts generally in Egypt and the Levant.

In his general statement Mr. Ayrton seems to be fully borne out by Sir Edmund Hornby in his Minute on the subject. By this Minute it also appears that the practice of attachment (or sequester), whatever it may have been, remains unaffected "either by the Order in Council of August 1860, or by the Rules framed under the provisions of that Order," and that according to such practice, if, in respect of the funds which were in Mr. Ayrton's hands on account of Apostoli Kovako, as his late brother's representative, Mrs. Shee is disposed to seek a remedy by sequester, she (or her agent) should make formal application to the Consular Court at Alexandria for the purpose, such application being supported by affidavits showing all the facts of the case; and an opportunity being afforded to "the party to be affected by it (the sequester) to show cause why it should not be granted." This "party" would not (as we pointed out in our former Report, in opposition to what appeared to be the view of Mr. Consul Colquhoun) be the Egyptian Government, but the person or persons whose private interests would be at stake, namely, Apostoli Kovako alone, or (it may be) Apostoli Kovako and the other individuals who, together with him, were interested in the entire corpus of the Jeddah compensation, originally received on account of the house by Mr. Ayrton.

If Mr. Ayrton is correct when he states, with reference to the practice of sequester as it obtains in Egypt, as follows, "Had I been a French subject in Egypt, she would have been entitled to arrest the funds in my hands, through the French Consul-General," it would appear to be but a reasonable inference that, Mr. Ayrton being a British subject, on his return to Egypt Mrs. Shee will have open to her the remedy of arresting the funds in his hands through the British Consul-General.

We presume the fact that Apostoli Kovako is not a British has not been overlooked by Mr. Ayrton.

Under these circumstances we are of opinion that although, as we stated in our former Report, grounds for diplomatic complaint may already exist, and this later remedy is, owing to a mere accident, unconnected with the original relations of Mrs. Shee and her debtor, yet it would be prudent to refrain from any further representations to the Egyptian Government, until an application to the Consular Court for sequester shall have been properly made, and the result of that application shall be known.

In the view of the case now presented, the matter appears to be one of a private nature, in which justice may be done (so far as this fund is concerned) by ordinary processes of law; and in which, therefore, no interference, on the part of Her Majesty's Government, is (so far) required.

Our former view that this fund could not be reached by other means (which was based on the assumption, apparently involved in the very fact of the case being submitted to us, that the object could be accomplished only by some extraordinary measure, for which the authority of Her Majesty's Government would be required) remains, as we need hardly observe, entirely unaffected.

We observe that Mr. Ayrton conceives the fund, though in the actual charge of the Consul to be, as regards his own claim, liable to the same extent "as if it had continued in my (his) own hands." And we have already intimated our view that the change in the custody of the money could not improve the position of Mrs. Shee with reference to it. On principle, we equally think that such change in custody ought not to operate to Mrs. Shee's prejudice.

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Whether, however—as a matter of precaution, and previous to any application to the Consular Court—the fund should be restored by the Consul to the keeping of Mr. Ayrton, is a matter for the consideration of Mrs. Shee's legal advisers on the spot.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 263.

The Law Officers of the Crown to Earl Russell.—(Received November 6.)

PRUSSIA.

Liability of sons of British Consul at Cologne, Mr. Crossthwaite, to serve in Prussian army, he being a naturalized Prussian subject.

My Lord, *Temple, November 5*, 1862.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 25th October ultimo, stating that he was directed by your Lordship to transmit to us a despatch from Her Majesty's Consul at Cologne (No. 29), inclosing a legal opinion respecting the liability of his sons to military service in the Prussian army, in consequence of his having become a naturalized Prussian subject; and he was to request that we would report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we do not understand what the obligation was by which Mr. Crossthwaite was compelled (as he states in his letter No. 29) to become naturalized as a Prussian subject, nor does it appear what the ages are of the sons of Mr. Crossthwaite—whether they are or are not between the ages of 17 and 25.

It is not clear that any obstacle prevents persons between these ages leaving the country of Prussia. It may, however, be the case that passports are refused to all sons of naturalized subjects between these ages.

Upon the general question we incline to the opinion that the sons of a naturalized Prussian subject (owing allegiance to Her Majesty) who are between the ages of 17 and 25, and are resident in Prussia, would be compellable to serve in the Prussian army.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 264.

The Queen's Advocate to Earl Russell.—(Received November 6.)

FRANCE.

Assistance of British Consul at Bordeaux in tracing an insurance fraud on the vessel "Lord Royston" required by Oriental General Marine Company.

My Lord, *Doctors' Commons, November 6*, 1862.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 5th November instant, stating that he was directed to transmit to me the accompanying letters from the Secretary to the Oriental General Marine Insurance Company,* requesting that Her Majesty's Consul at Bordeaux may be instructed to assist the Company in tracing a fraud which is supposed to have been committed on the Company in the matter of an insurance effected on the British vessel "Lord Royston," and to request that I would at my earliest convenience report to your Lordship my opinion as to whether the application of the Company's Secretary may properly be complied with.

In obedience to your Lordship's commands I have taken this application into consideration, and have the honour to report—

That I see no reason why Her Majesty's Government should interfere in this matter. The Oriental Company, like a private individual, must procure for itself the evidence requisite for carrying on its suit against the person whom it supposes to have defrauded it.

I have, &c.
(Signed) ROBERT PHILLIMORE.

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* Insurance Company, October 23 and October 27, 1862; to Insurance Company, November 4, 1862.

No. 265.

The Queen's Advocate to Earl Russell.—(Received November 10.)

HONDURAS.

Guarantee of Mr. Haslewood's scheme for a tramway across Honduras.

My Lord, *Doctors' Commons, November 10*, 1862.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 7th November instant, stating that he was directed by your Lordship to transmit to me the accompanying letter and its inclosures from Mr. Haslewood, dated the 20th October ultimo, containing an account of a scheme for the formation of a tramway across Honduras, and desiring to be informed whether such a tramway would be entitled to a guarantee of protection under the Clayton-Bulwer Treaty; and to request that I would take this matter into consideration, and furnish your Lordship with my opinion on the question raised by Mr. Haslewood.

Mr. Hammond also added that your Lordship has promised to use the influence of Her Majesty's Government for the protection of any railroad formed by this route.

The Clayton-Bulwer Treaty and the Treaty with Honduras of August 1856 were inclosed for reference.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I am of opinion that the tramway of Mr. Haslewood would be entitled to a guarantee of protection under the Clayton-Bulwer Treaty (Article VIII), and under the Treaty with Honduras, August 1856.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 266.

The Queen's Advocate to Earl Russell.—(Received November 12.)

UNITED STATES.

Complaints of British subjects of forced military service in Western States of North America.

My Lord, *Doctors' Commons, November 10*, 1862.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 7th November instant, stating that he was directed by your Lordship to transmit to me the accompanying despatch from Her Majesty's Chargé d'Affaires at Washington (No. 291), having reference to certain complaints which have been made to your Lordship by British subjects residing in the Western States of North America respecting forced military service, and giving the substance of the answer which your Lordship had returned to them with regard to the duties which he considers British subjects may properly be called upon by the United States' authorities to perform; and to request that I would take the same into my consideration, and favour your Lordship with my opinion as to the correctness of Mr. Stuart's views.

In obedience to your Lordship's commands I have taken these papers into my consideration, and have the honour to report—

That in the particular circumstances Mr. Stuart seems to have acted with prudence and good sense, but that he should be instructed that, as a general proposition of international law, neutral subjects ought not to be compelled to perform any military service; and working in the trenches is a service of that character, and might be considered by the enemy of the United States as impressing upon persons so employed a belligerent character. It does not, however, appear that Mr. Seward does really claim the abstract right of forcing Her Majesty's subjects to perform this service; and of course much allowance upon this point must be made for the conduct of authorities, military and civil, in a city under martial law, and in daily peril of an attack from the enemy.

I have, &c.
(Signed) ROBERT PHILLIMORE.

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No. 267.

The Law Officers of the Crown to Earl Russell.—(*Received November* 12.)

CHINA.

Instructions to Mr. Bruce and Regulations relative to the export from Singapore and Hong Kong of arms and military stores for Chinese insurgents.

Temple, November 11, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 23rd October last, stating that he was directed by your Lordship to acquaint us that since the receipt of our Report of the 8th October,* which for convenience he therewith returned to us, your Lordship received the inclosed despatch from Mr. Bruce (No. 94), setting forth the inconvenience arising from the facility with which the Chinese insurgents obtain arms and military stores.

Mr. Hammond was also to state to us that although, for the reasons stated in our Report, it may not be possible in this country to impose a check upon this proceeding, the local Legislatures of Singapore and of Hong Kong, which are stated to be the principal ports from which those arms and military stores are shipped, might, perhaps, prohibit their exportation to China; and also that in virtue of the powers vested in him by Order in Council, Her Majesty's Envoy might, perhaps, as far as the ports of China are concerned, prevent British subjects from engaging in any such traffic with the insurgents.

Mr. Hammond was accordingly to transmit for our consideration two drafts of letters to the Colonial Office and to Mr. Bruce, in conformity with that view of the matter; and if we should be prepared to concur in the course indicated in those letters, he was further to request that we would frame, for transmission to Mr. Bruce, a draft of the rule or regulation which he may properly issue on the subject.

In obedience to your Lordship's commands, we have taken the proposed letters and matters submitted to us into consideration, and beg to report,—

That we are of opinion that the two letters,—one to the Colonial Office, and one to Mr. Bruce, the drafts of which were inclosed for our perusal,—are fit and proper to send; and that in accordance with the request contained in the letter of Mr. Hammond, we have framed for transmission to Mr. Bruce the annexed draft of the Order or Regulation† which we think it would be proper for him to issue.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 268.

The Law Officers of the Crown to Earl Russell.—(*Received November* 12.)

UNITED STATES.

Nationality of widows not British subjects by birth, but who have become so by marriage, and widows, British subjects by birth, who were married to American citizens or other foreigners.

Temple, November 11, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 30th October ultimo, stating that he was directed by your Lordship to transmit to us, therewith, two despatches from Her Majesty's Chargé d'Affaires at Washington (Nos. 285 and 286, October 11, 1862), the one inclosing the copy of the opinion of the Legal Adviser of Her Majesty's Legation with regard to the nationality of widows not British subjects by birth, but who have become so by marriage, and widows, British subjects by birth, who were married to citizens of the United States or other foreigners; the other inclosing copy of the instructions founded on this opinion which Mr. Stuart has addressed to the Acting British Consul at New Orleans; and Mr. Hammond was to request that we would take the same into our consideration, and furnish your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report--

That with respect to the first class of widows, namely, *American-born widows* of British subjects, we think that the Consul should be instructed to ascertain whether the law of the United States is such as to be at variance with the English Statute, 7 and 8 Vict., cap. 66, which confers upon the wives of

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* Page 242.

† See opposite (p. 274*).

Inclosure in No. 267.

Draft Rule or Regulation.

WHEREAS, by virtue of several Statutes of the Imperial Parliament of Great Britain, and of an Order of Her Majesty in Council dated June 13, 1853, Her Majesty's Chief Superintendent of British trade in China is authorized and empowered to make and to enforce, by fine or imprisonment, Rules and Regulations for the observance of the stipulations of the Treaties between Her Majesty and the Emperor of China, and for the peace, order, and good government of Her Majesty's subjects being within the dominions of the Emperor of China, or being within any British ship or vessel at a distance of not more than one hundred miles from the coast of China:

Now, I, the Honourable Frederick Bruce, &c., &c., being Her Majesty's Chief Superintendent of British trade in China, do, in pursuance and in execution of the aforesaid authority, hereby make the following Rule, Regulation, and Order, that is to say, that all Her Majesty's subjects being within the dominions of the Emperor of China, or being within any British ship or vessel at a distance of not more than one hundred miles from the coast of China, are strictly prohibited, under the penalties aforesaid, from importing or introducing, or causing to be imported or introduced, into any part of the dominions of the Emperor of China, and from transmitting, or causing to be transmitted, from any part of the said dominions to any part thereof, any arms, ammunition, gunpowder, or naval or military stores, except under special license from one of Her Majesty's Consular officers in China, and under the express condition and guarantee that none of the aforesaid articles are destined for the use of the insurgents in arms against Her Majesty's ally the Emperor of China.

W. A.
R. P.
R. J. P.

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natural-born subjects of Her Majesty the privileges of natural-born English subjects, and whether the United States' authorities object to the claim to register such widows as English subjects.

If the American law be at variance with the English, and if the authorities desire to put the American law in force, we are of opinion that the American law must prevail, and that the American-born widows, being resident in America, will not be entitled to the certificate of being English subjects.

That with respect to the second class, namely, British subjects, the widows of American or foreign husbands, if they elect after the dissolution of their coverture to claim the benefit of their British character, they are at liberty so to do, and must be treated and protected as British subjects.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 269.

The Law Officers of the Crown to Earl Russell.—(Received November 12.)

UNITED STATES.

As to trial at Gibraltar of murderer of the Commander of the Confederate privateer "Sumter."

My Lord, *Temple, November* 12, 1862.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 4th November instant, stating that he was directed by your Lordship to transmit to us a letter from the War Department,* inclosing a copy of a despatch from the Governor of Gibraltar respecting the murder of the Commander of the "Sumter" by the second officer of that vessel, together with the opinion given by the Attorney-General of Gibraltar on the case, and other papers relating to it.

Mr. Hammond was pleased to observe that we should see that the Governor desires to be instructed whether the trial of the prisoner should take place in the same manner as if the murder had been committed on board a merchant-vessel; and he was to request that we would take these papers into consideration, and furnish your Lordship with our opinion, at our earliest convenience, on the point in question, and with any other observations which we may have to offer.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

We are not informed whether the "Sumter" is a privateer sailing under letters of marque without a commission from the Confederate States, or a regularly commissioned ship of war. Assuming her, however, to be a privateer, we are of opinion that the offence of murder on board the "Sumter" in a British port is triable in the same manner, and by the same process, as if it had been committed on board a foreign merchant-vessel.

We are not aware of any generally accredited maxim of public or international law, or of any decision of any British or foreign tribunal, which has placed a privateer upon the same footing as a man-of-war with respect to the exercise of jurisdiction over crimes committed on board the vessel while in a foreign port.

If it should turn out that the "Sumter" is a regularly commissioned man-of-war, we think that, having regard to the very peculiar circumstances of the case, the course most consistent with international law would be, not to treat the offence as the subject of criminal jurisdiction at Gibraltar, but to detain the offender until means can be found of communicating with the Confederate Government, and learning from them in what manner they would wish the case to be dealt with.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

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* War Department, November 3, 1862.

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No. 270.

The Law Officers of the Crown to Earl Russell.—(*Received November* 12.)

UNITED STATES.

As to destruction of neutral property on board vessels captured by Confederate war-steamer "Alabama." Apprehensions of Liverpool, New York, and Philadelphia Company of destruction of their steamers by the "Alabama."

Temple, November 12, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 6th November instant, stating that we should doubtless have observed in the newspapers allusions to the proceedings of the Confederate man-of-war steamer "Alabama," which appears to be cruizing in the course of vessels passing between the United States and this country, and capturing and destroying all vessels which it may fall in with under the flag of the Federal States, without regard to the neutral or hostile character of the property which such vessels may have on board.

Mr. Hammond was also pleased to state that he should presently, under your Lordship's directions, have to lay before us various representations from British mercantile firms in this country whose property has been destroyed in this manner; but in the meanwhile he was to send, for our immediate consideration, a letter which had been that morning received from the Chairman of the Liverpool, New York, and Philadelphia Company, dated the 5th November, expressing their apprehensions lest the steam-vessels employed by them should be interfered with and destroyed by the Confederate steamer, if it should appear on search that a portion of their cargo consisted of arms; and Mr. Hammond was to request that we would acquaint your Lordship what answer should be returned to the Company, and whether it is competent for Her Majesty's Government at present to take any, and if so what, steps in the matter.

In obedience to your Lordship's commands we have taken this letter into consideration, and have the honour to report—

That we conceive our advice to be asked upon three points:—

1. As to the form of letter proper to be addressed to the Steam-Packet Company.

2. As to whether it be legally competent to Captain Semmes to execute his threat of destroying British vessels on the high seas.

3. As to whether Majesty's Government can now interfere, and if so in what manner.

To these three questions we have the honour to return the following answers:—

1. We think the proposed letter should state in effect that the destruction of a British vessel at sea by the "Alabama," although contraband of war should be found on board of her, would be contrary to international law. That Her Majesty's Government, on being apprised of the actual occurrence of any such case, would be prepared to remonstrate with the *de facto* Government of the Confederate States, and to demand proper compensation for the injury inflicted upon the property of British subjects embarked on board British vessels; but if the Company have, as it would appear that they are conscious they have done, allowed its vessels to be the carriers of arms to the Federal States, the excuse that the Company does not know what the packages contain which are put on board is, with respect to the belligerent, wholly nugatory, and that the vessels containing such contraband, and their cargo, would be justly liable to the penalties which international law attaches to the conveyance of such articles.

2. This question is, in our opinion, one of the gravest importance, involving a consideration of the most important principles of international law in their application, during the time of war, to the rights of neutrals and the duties of belligerents.

In order to arrive at the conclusion whether or not Captain Semmes would, by the execution of his threat, be guilty of a serious violation of international law, we think it will be expedient, first, to state what the general principles are on which the right of captors to search, visit, and seize neutral vessels, and the obligation of the latter to submit to such search, visitation, and capture, are founded.

The principles are these:—

The captor seizes on a fair suspicion that the neutral is *pro hac vice* aiding the enemy of the captor, for instance, by carrying contraband.

The Government of the neutral submits to the exercise of this authority, the creature of war, on the faith that the conduct and property of its subject will be submitted to the impartial jurisdiction of a legal tribunal, bound to regulate its procedure and its decisions according to recognized principles, not of municipal, but of international law.

Every belligerent is obliged to have such tribunals so constituted and conducted.

A belligerent which carried on war without them would be rightly considered and treated by States not otherwise concerned in the war as piratical.

It is not the act of the captor, but the decree of the Prize Court, that permanently changes the property of the vessel or goods seized, and gives to a new owner a new judicial title, a title universally respected by all States because it is judicial.

It is this decree which makes the prize *good*, or, as the French say, "la déclaration de *bonne* prise."

It is obvious that to have no Court of Prize and to capture without ever resorting to it are, practically, equal violations of neutral rights and international law.

Various well-established legal consequences flowing from this doctrine illustrate it.

Thus, captors who after capture misconduct themselves towards the captured vessel or crew, or who carry the prize for adjudication, unnecessarily, to an inconvenient port, have been mulcted in demurrage, costs, and damages, according to the exigence of the case.

Still further, the captor has been holden bound to make full restitution to the owners of a captured vessel wantonly and unnecessarily destroyed.

The law as laid down by Lord Stowell is in harmony with these principles. Speaking of *enemy's* property, he says, "If impossible to bring in, their (the captor's) next duty is to destroy enemy's property. Where doubtful whether enemy's property, and impossible to bring in, no such obligation arises, and the safe and proper course is to dismiss. Where it is neutral, the act of destruction cannot be justified to the neutral owner by the gravest importance of such an act to the public service of the captor's own State. To the neutral it can only be justified under any such circumstances by a full restitution in value. These are rules so clear in practice that they require neither reasoning nor precedent to illustrate or support them."

We are of opinion, therefore, that by the execution of his threat, Captain Semmes would have committed a grave offence against international law; and we are of opinion, upon the circumstances stated to us, that the *de facto* Government of the Confederate States would be bound to make ample and complete restitution to the British owner.

3. We do not think that in this stage of the case Her Majesty's Government can at present interfere.

But it may be expedient to state the course which is open to British owners to pursue, if treated according to the alleged menace of Captain Semmes.

The Confederate States must be considered, as far as this question is concerned, as an independent belligerent Government, and they must be taken to possess (as in fact they do possess) proper Courts of Prize; and therefore, according to international law, it would be the right of the British owners to take proceedings, technically called extracting a monition, which the Court would be bound to issue, calling upon the captors to proceed to the legal adjudication of the vessels or cargo which they have seized: and it may be stated, as a general rule, that proof of the neutral character of the ship, and of its wilful destruction, would entitle the owner to a decree of full restitution, with costs and damages.*

Having pointed out the legal remedy which is open to the owners in the cases supposed, we think it right to add that the systematic destruction of neutral vessels or cargoes by a belligerent cruizer, avowedly disregarding the obligation of bringing them in for adjudication, is an international wrong of so grievous a character as to warrant the direct interference of Her Majesty's Government for redress, without waiting for or going through the forms of judicial proceedings.

We have, &c.

(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

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* The "Thomas," 1 Rob., 53; the "Susannah," 6 Rob., 53; the "Huldok," 3 Rob., 236; the "Druid," 5 Rob., 145; the "Actæon," 2 Dodson, 574; the "Felicity," ib., 386; the "Ostsee," 1 Spinks, 574.

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No. 271.

The Law Officers of the Crown to Earl Russell.—(*Received November* 12.)

UNITED STATES.

Destruction of British property on board Federal vessels by Confederate war-steamer "Alabama."

My Lord,

Temple, November 12, 1862.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 7th November instant, stating that with reference to his letter of the previous day's date he was directed by your Lordship to transmit to us therewith the accompanying representations from various mercantile firms* in this country relative to the recent proceedings of the Confederate vessel "Alabama" with regard to British property on board Federal vessels, and to request that we would take the same into our consideration, and favour your Lordship, at our earliest convenience, with our opinion upon the several points raised in these letters.

Mr. Hammond was also pleased, in a note of the 8th November instant, to say that, with reference to his letter of yesterday, he was directed by your Lordship to transmit to us, for our consideration, a further letter† which your Lordship had received respecting the destruction of British-owned property by the "Alabama."

In obedience to your Lordship's commands we have taken these letters into consideration, and have the honour to report—

That if the letter of Captain Julius contains, as it appears to do, an accurate report of the conduct of the "Alabama," and of the principles upon which she avowedly acts with respect to British and neutral property, not contraband, on board Federal vessels, a very clear case is made out for demanding both instant and full reparation from the Confederate Government for the British owners; and also for demanding from that Government an express repudiation of the unlawful (and, indeed, piratical) proceedings of a ship sailing under their flag and commission; and that orders be immediately despatched to Captain Semmes to exercise belligerent rights according to the recognized principles of international law; and we are of opinion that if these proceedings should be defended, which we do not anticipate, or if there be a refusal to send out the proper orders, that then, and in that case, the Confederate Government should be apprized that Her Majesty's Government will give directions to Her Majesty's ships to capture and detain the "Alabama."

With respect to the inquiry made by Mr. Clark in his letter to your Lordship, he should be informed that the matter involved has reference to the municipal law of this country only, and is not one for consideration by Her Majesty's Government.

Responsibility of United States for misdeeds of a Confederate steamer.

With respect to Mr. Denny's request, we are clearly of opinion that the United States' Government cannot be held responsible for the misdeeds of a steamer belonging to the Confederate States.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 272.

The Law Officers of the Crown to Earl Russell.—(*Received November* 13)

UNITED STATES.

Destruction by an American cruizer, in Spanish waters, of the British steamer "Blanche," laden with cotton.

My Lord,

Temple, November 13, 1862.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 6th instant, stating that he was directed by your Lordship to transmit to us a despatch from Her Majesty's Chargé d'Affaires at Washington (No. 304), relative to the destruction by an United States' cruizer, while in Spanish waters, of the British steamer "Blanche," laden with cotton; and he was to request that we would take the same into consideration, and furnish your Lordship with our opinion as to the right of the British owners to compensation.

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* Messrs. Rathbone, November 3; Messrs. Brown, Shipley, and Co., November 4; Messrs. Clark, November 4; Liverpool Chamber of Commerce, November 6, 1862.

† Mr. Denny, November 6, 1862.

In obedience to your Lordship's commands we have taken these papers into consideration, and beg to report—

That we are of opinion that the owners of the "Blanche" are, upon the statements laid before us, entitled to full restitution from the captors or Government of the United States.

The offence of capturing the "Blanche" within Spanish waters is one for which the Spanish Government ought, and it appears will demand redress through the agency of its Ambassador at Washington.

The offence of destroying a neutral vessel instead of bringing her for adjudication into the Prize Court is one for which the neutral owner is entitled to demand redress in the manner pointed out in our opinion in the case of the "Alabama."

On both grounds, as well because the ship was unwarrantably destroyed as because, at the time of her destruction, she was within the territorial waters of a neutral Power friendly to Great Britain, and not consenting to the act, we are of opinion that the case is a proper one for an immediate demand of full restitution by Her Majesty's Government from the Government of Washington.

It is, of course, desirable that the necessary representations should be made by the British Minister, acting in concert with the Spanish Envoy to the United States.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 273.

The Queen's Advocate to Earl Russell.—(*Received November* 14.)

TURKEY.

Legality of marriages of British subjects at Kustendjie by English clergymen.

My Lord,

Doctors' Commons, November 13, 1862.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 7th instant, stating that he was directed by your Lordship to transmit to me a despatch from Her Majesty's Agent and Consul-General at Bucharest (No. 34), inclosing a despatch from the British Vice-Consul at Kustendjie, pointing out the difficulties to which several parties located at that place, who were desirous of being married, have been subjected in getting their marriages performed, and the doubts entertained by them as to the legality of such marriages according to the law of England.

Mr. Hammond was also to state that to prevent the recurrence of the difficulties complained of in this respect, the British Vice-Consul at Kustendjie will be furnished with a warrant under the hand of the Secretary of State, authorizing him to celebrate marriages between British subjects according to the Act of Parliament; but as doubts have been raised as to the legality of the marriages already performed, your Lordship requested that I would furnish your Lordship with my opinion as to whether any communication on the subject should be made to the parties.

In obedience to your Lordship's commands I have taken this matter into consideration, and have the honour to report—

That I think it would be proper to apprize Her Majesty's Consul-General at Bucharest that these marriages, celebrated (as I understand them to have been) by English clergymen in Turkey, would be holden, upon proof that they were so celebrated, valid. But that the contracting parties would do well to bear in mind the difficulty which may hereafter arise of producing the requisite legal proof, should the validity of these marriages ever be impugned in a Court of Justice.

I have, &c.
(Signed) ROBERT PHILLIMORE.

1862

No. 274.

The Queen's Advocate to Earl Russell.—(*Received November* 14.)

NEW GRANADA.

Losses sustained by Messrs. Longton and Longrigg on account of seizure of their property by revolutionary authorities at Rio Hacha.

Doctors' Commons, November 13, 1862.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 12th instant, stating that he was directed by your Lordship to transmit to me a Memorial from Messrs. Longton and Longrigg representing the losses which they have suffered in consequence of the seizure by the Revolutionary authorities at Rio Hacha, in New Granada, of certain property purchased on their account, and to request that I would take this subject into consideration, and report to your Lordship, at my early convenience, my opinion whether Her Majesty's Government are called upon to take any or what steps in this matter.

In obedience to your Lordship's commands I have taken this subject into consideration, and have the honour to report—

That it would be proper to make inquiries of Her Majesty's Consul or Vice-Consul at Rio Hacha as to this matter.

It does not appear that any answer was sent by the Vice-Consul to Mr. Danies' letter of the 2nd June, 1861.

But in the meanwhile I must observe that there is no evidence in these papers that the sum of 1,356*l*. has actually been paid by this firm for the "divi divi," either to Mr. Danies or his agents at Liverpool, though in their Memorial Messrs. Longton and Longrigg claim 5 per cent, from "the 29th of March last," their letter being dated "Liverpool, August 1862."

The "divi divi" was seized in May 1861. The vessel of Messrs. Longton and Longrigg (not being the vessel originally sent) arrived at Rio Hacha shortly after the seizure and confiscation of the "divi divi."

I think that Messrs. Longton and Longrigg should be informed that it does not appear in their Memorial on what day the money was actually paid for the "divi divi," nor whether it was paid after knowledge of the confiscation, nor to whom, nor is any receipt for the same among the papers sent to Her Majesty's Secretary of State for Foreign Affairs.

I think it would be better to reserve my opinion upon the course which Her Majesty's Government ought to pursue in this matter until further information be received upon all these points.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 275.

The Law Officers of the Crown to Earl Russell.—(*Received November* 14.)

UNITED STATES.

Case of the British steamer "Blanche."

Temple, November 14, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 12th November instant, stating that he was directed by your Lordship to transmit to us a further despatch and its inclosure from Her Majesty's Chargé d'Affaires at Washington (No. 312), respecting the case of the British steamer "Blanche," destroyed by a United States' cruizer in Spanish waters; and to request that we would take these papers into our consideration, together with those on the same subject which were inclosed in his letter of reference of the 6th instant.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That it does not occur to us that these papers render necessary any addition to the Report which we have already had the honour to make to Her Majesty's Government.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 276.

The Queen's Advocate to Earl Russell.—(*Received November* 17.)

UNITED STATES.

As to right of United States' Government to appropriate, pending the result of an Appeal, the British steamer "Bermuda," if condemned for breach of blockade.

Doctors' Commons, November 15, 1862.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 13th instant, stating that he was directed by your Lordship to transmit to me therewith various despatches from Her Majesty's Chargé d'Affaires at Washington,* respecting the supposed intention of the Government of the United States to appropriate the British steamer "Bermuda," against which proceedings have been taken in the Admiralty Court for breach of blockade, before those proceedings are brought to a close.

Mr. Hammond was also pleased to state, that I should observe that in the last of these despatches Mr. Seward is reported to assume, on the authority of the supposed statute of this country, that the Government would have a right to appropriate the vessel if condemned in the Admiralty Court, pending the result of an appeal against such condemnation; and to request that I would take this matter into consideration, and that, in addition to any observations I might see occasion to offer on the general facts set forth in the inclosed despatches, I would report to your Lordship, at my earliest convenience, what instructions should be sent to Her Majesty's Minister at Washington on the specific point raised by Mr. Seward.

In obedience to your Lordship's command I have taken this matter into consideration, and have the honour to report—

That it would be proper to give instructions to Her Majesty's Representative at Washington to the following purport and effect:—

That the reference of Mr. Seward to a British statute, authorizing the sale of a ship—before the decision of the Appellate Court—by a Decree of the Admiralty (or First Prize) Court, is well founded.

There are two kinds of sale—

1. *Pendente lite*, during the period when proceedings are being carried on in the Admiralty (or First Prize) Court.

2. *After condemnation* in the Admiralty (or First Prize) Court, and before the decision in the Appellate Court.

The Prize Act, passed the 2nd June, 1854, at the breaking out of the war with Russia (17 Vict., cap. 18, sects. 24, 25, 26), provides for both these kinds of sale.

First, it empowers the Judge of the Court to order a ship to be duly appraised and sold "whenever it appears desirable, either from the nature of the property captured, *the probable length of the proceedings, or any other sufficient cause*," that the ship, goods, &c., should "be sold" (sec. 24.) On the other hand, it also empowered the Judge to direct the ship or goods to be delivered up to the *claimant*, "upon his giving good and sufficient security to pay the captor the appraised value thereof, in case the same should be adjudged lawful prize (sec. 25.)

Secondly, the Statute, apart from these clauses, directly empowered the Admiralty (or First Prize) Court to sell after condemnation (sec. 26).

The power of selling the ship after condemnation in the Admiralty (or First Prize) Court, was very frequently exercised here, at the instance of the captor, both during the last war and during former wars. (See Report of Registrar of Admiralty, to the "Franciska," 10 Moore's Privy Council Reports, p. 75, &c.)

I am not aware whether the United States have passed (probably they have) a similar Prize Act, at the breaking out of the war in which they are now engaged. At all events, the exercise of such an abstract power of sale cannot be denied by Her Majesty's Government to the proper authorities of the United States.

Mr. Stuart should obtain a copy of the American Prize Act or Proclamation, and observe whether it contains clauses similar to those referred to in the British Act, and which Act, for the convenience of Mr. Stuart, should, I think, be forwarded to him.

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* Mr. Stuart, No. 324, October 31; No. 309, October 23; No. 297, October 17, 1862; to Mr. Stuart, No. 180, November 5, 1862.

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To a certain extent Mr. Stuart must be guided by the terms of the American instrument; but he may be properly instructed to press that the claimant ought to be preferred as a purchaser if it be found necessary to sell the ship *pendente lite*, and that the necessity contemplated as justifying the sale *at this stage of the case* is, clearly and unquestionably, not the necessity of the belligerent State to supply her naval marine, but a necessity arising from the condition of the ship itself, namely, that it is becoming lessened in value or worsened in condition by remaining in the custody of the Marshal of the Court.

Upon this principle is founded a well-known practice of Admiralty Courts, both in their civil and prize jurisdiction, to order a sale of "perishable" commodities, a practice referred to as having been abused (though the fact is not clear) in these papers.

But as to the sale after *condemnation* in the Admiralty (or First Prize) Court, Mr. Stuart should be instructed to require that a sale, if then ordered by the Court, should be conducted at a public auction, after due notice and advertisements, at which sale, of course, all persons, including the claimant, would be at liberty to attend, and to bid for and purchase the ship.

This a matter of plain justice to the claimant or owner of the captured vessel, and is in accordance equally, I believe, with the American and British practice during former wars.

It is hardly necessary to state that the proceeds of the sale must be paid into Court, to abide the issue of the decision of the Court of Appeal.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 277.

The Queen's Advocate to Earl Russell.—(*Received November* 18.)

BRAZIL.

Proceedings of Treasury at Bahia against two British commercial firms.

My Lord, *Doctors' Commons, November* 17, 1862.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 14th instant, stating that he was directed by your Lordship to transmit to me therewith a despatch from Her Majesty's Consul at Bahia (No. 17), inclosing a correspondence which has passed between himself, the President of the Province, and Her Majesty's Legation at Rio de Janeiro, on the subject of the proceedings of the authorities of the Treasury at Bahia against two British commercial firms in that city, and to request that I would take these papers into consideration, and furnish your Lordship with my opinion on the merits of the case.

In obedience to your Lordship's commands I have taken these papers into consideration, and beg to report—

That the answer of Mr. Christie, if any was sent, to Her Majesty's Consul at Bahia, does not appear in these papers.

That upon the papers before me, I am humbly of opinion that Her Majesty's Government should instruct Her Majesty's Representative at Rio de Janeiro to support Her Majesty's Consul at Bahia in remonstrating on these proceedings of the Brazilian Government.

The distinction is clear and important between a privilege of priority of payment claimed by the State in fiscal matters, such as imposts and dues, and a priority claimed in ordinary commercial transactions, where the State has gone into the market and acted as a merchant.

This point in the abstract should be strongly pressed upon the Brazilian Government, as well as the severe practical hardship and injustice which certainly appears to have been the consequence of the exercise of this alleged privilege, both to the English firms and to their creditors.

It would appear to be more than doubtful whether the municipal Brazilian law, as it at present stands, warrants any such pretension: if it does not, the injury inflicted has been wholly indefensible; but if it does, the existence of a law not only so unjust in itself but so unjust to foreign merchants, so contrary to general commercial usage, appears to me to furnish matter for well-founded complaint and remonstrance.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 278.

The Queen's Advocate to Earl Russell.—(*Received November* 18.)

UNITED STATES.

Recruiting in England for United States' army.

My Lord, *Doctors' Commons, November* 18, 1862.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 17th November instant, stating that he was directed to transmit the accompanying letter from Mr. Edwards, dated the 17th November instant, stating that recruiting is being carried on in this country for the United States' army, and to request that I would take this letter into consideration, and furnish your Lordship with my opinion thereupon at my earliest convenience.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That there can be no doubt that if any of Her Majesty's subjects enlist in the military service of either of the American belligerents, or if any person procure any of Her Majesty's subjects to enlist in that service, they are guilty of a misdemeanour, and punishable by fine or imprisonment (59 Geo. III, cap. 69, sec. 2), and on evidence being given substantiating the averments contained in the letter of Mr. Edwards, the young man, formerly of the 20th Middlesex Volunteers, and the person who paid him the bounty-money, would be so punishable.

I would, however, humbly submit to your Lordship that the individual instance is *per se* of little moment comparatively with its relative importance as evincing that a practice has begun in this country calculated seriously to increase the difficulties already incident to the observance of neutrality by Her Majesty's Government.

It cannot be reasonably doubted that this enlistment of Her Majesty's subjects has been set on foot with the sanction of the Government of the United States, and it would seem to me proper that an immediate communication upon the subject should be made by Her Majesty's Government to the Representative of the United States in this country.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 279.

The Law Officers of the Crown to Earl Russell.—(*Received November* 21.)

UNITED STATES.

Liability of foreigners to conscription in Confederate States since the passing of the new Conscript Act.

My Lord, *Temple, November* 19, 1862.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 11th instant, stating that he was directed by your Lordship to transmit to us a despatch and its inclosure from Her Majesty's Chargé d'Affaires at Washington (No. 307, October 22, 1862), respecting the treatment to which British subjects have been exposed, in the Confederate States, since the passing of the new Conscript Act, and to request that we would take into our consideration the letter of the Confederate Secretary of War to Mr. Acting Consul Magee of the 16th of August (Inclosure 5), and report to your Lordship our opinion upon the doctrine therein maintained that foreigners domiciled in the Confederate States, but who are not naturalized, are liable to the conscription.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we adhere to our former opinion that foreigners permanently residing, but not naturalized, in a State, are entitled to the option of leaving that State in the event of new laws being passed in it which affect their status and alter the obligations which they contracted at the time when they became domiciled in it.

We think that it is competent to the Government of the Confederate States to include British subjects permanently resident in those States in the conscription, if they refuse the option duly tendered to them of leaving the country within a reasonable time and with reasonable opportunities of compliance, but not otherwise.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

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No. 280.

The Queen's Advocate to Earl Russell.—(Received November 21.)

SPAIN.

Complaint of Messrs. Janvrin, Grassie, and De Lisle of proceedings of authorities at Ponce towards the "Voyager." Case of the "A and A."

Doctors' Commons, November 21, 1862.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 17th instant, stating that with reference to my Report of the 15th September last* relative to the proceedings of the Spanish authorities at Ponce in the case of the wrecked British vessel "A and A," and their subsequent interference with the barque "Voyager," which had been chartered to convey the cargo of the "A and A" to England, he was directed by your Lordship to transmit to me a letter from Messrs. Janvrin, Grassie, and De Lisle, complaining, on behalf of the owners of the "Voyager," of the proceedings of the Spanish authorities at Ponce towards that vessel, and requesting the assistance of Her Majesty's Government towards obtaining compensation for her alleged unjust and arbitrary detention.

Mr. Hammond was to request that I would take the accompanying letter into consideration, together with the despatches from Mr. Consul Cowper on this subject (Nos. 18 and 19), and report to your Lordship my opinion as to whether the case, as stated by Messrs. Janvin and Co., would justify the interference of Her Majesty's Government on behalf of the owners.

In obedience to your Lordship's commands I have taken these papers into consideration, and beg to report—

That it is not clear to me on these papers that the underwriters in the case of the "Voyager" will have to pay 700*l.* penalty, and 4*l.* a-day demurrage.

There appears, apart from the interference of the Spanish authority, to have been a dispute between the master of the "A and A," and the owner of the cargo saved from that vessel; and that the latter did not desire this cargo to be transferred to the "Voyager," and set in motion the authorities at Ponce.

I am of opinion that the question as to whether the master of the "A and A," or the owner of the saved cargo, had a right to make this covenant with the "Voyager," is not a matter which calls for the interference of Her Majesty's Government, but is a question of mixed fact and law to be decided, if necessary, by proper legal authority between the parties.

But referring to my former Report, I venture to repeat my humble advice that this system of judicial interference on the part of the authorities at Ponce with British vessels, should be made, on the grounds mentioned in that Report, the subject of remonstrance with the Spanish Government.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 281.

The Law Officers of the Crown to Earl Russell.—(Received November 24.)

UNITED STATES.

Claim of owners of American ship "Daring," for detention of a shipment of saltpetre at Calcutta.

Temple, November 22, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 23rd October ultimo, stating that with reference to our Reports of the 1st and 29th of August,* he was directed by your Lordship to transmit to us, together with the previous papers, a further letter from Mr. Adams, the United States' Minister at this Court, representing that the refusal of Her Majesty's Government to grant compensation to the owners of the "Daring," on account of the detention of that vessel, when laden with saltpetre at Calcutta, was at variance with the previous practice of the British Government.

Mr. Hammond was also pleased to inclose a letter from Mr. Adams stating that the views expressed by him were approved by the Government of the United States; and to request that we would be good enough again to take this case into our consideration, with reference to the correspondence inclosed therewith, which passed on this subject in 1855 and 1856, and inform your Lordship whether we saw any reason to modify the opinion conveyed in our former Reports.

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* Page 224.

† Pages 192 and 210.

In obedience to your Lordship's commands we have taken these papers into consideration, aud have the honour to report—

That the advice which the Law Officers had the honour to tender to Her Majesty's Government in their Reports of the 1st and 29th August last will not be found, upon examination, to be in conflict with the advice contained in the Reports of their predecessors in office, upon which the note of the Earl of Clarendon to Mr. Dallas of the 15th of May, 1856, was founded. That advice and reports, at the period of the breaking out of the Russian war, related to the prohibition of the export of munitions of war from Great Britain, under the provisions of the Customs Act; that is, Sections 149 and 150 of 16 & 17 Vict., cap. 107, which are as follows:—

Section 149. "The time at which any goods shall be shipped on board any export ship shall be deemed to be the time of exportation of such goods, and the time of the last clearance of any ship shall be deemed to be the time of departure of such ship."

Section 150. "The following goods may, by Proclamation or Order in Council, be prohibited either to be exported or carried coastwise:—Arms, ammunition and gunpowder, military and naval stores, and any articles which Her Majesty shall judge capable of being converted into or made useful in increasing the quantity of military or naval stores, provisions or any sort of victual which may be used as food by man, and if any goods so prohibited shall be exported from the United Kingdom or carried coastwise or by water-borne to be so exported or carried, they shall be forfeited."

The Custom-house authorities thought themselves warranted in applying the prohibition to cases of American vessels, on board which the goods in question had been actually shipped, before the issue of the prohibitory Proclamation. The Law Officers, having regard to the express words of the Statute, enacting that the time of shipment should be deemed to be the time of exportation, were of opinion that the Proclamation could not, with respect to such goods, have a retrospective operation, and that the American owners, being within the protection of the Statute, were therefore entitled to compensation.

In India the prerogative of the Crown is not controlled or restricted as to this matter by the terms of any Statute; and it appears to us that, if that prerogative be *bonâ fide* exercised for the safety of the realm on a particular emergency, by forbidding the export of any particular merchandize, in a manner affecting equally native subjects and foreign merchants, the latter, who share, of necessity, to a certain extent, the fortunes of the State in which their commercial dealings are carried on, have no ground, upon principles of strict international right or justice, to require compensation for such an unavoidable diminution of their commercial profits. It is another and a different question whether a State wishing to act with liberality towards the merchants of a friendly State upon motives of policy or generosity, may think it fit to exempt them from sharing in the temporary disadvantages which the necessities of the State have compelled it to inflict upon merchants who are its own subjects.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 282.

The Law Officers of the Crown to Earl Russell.—(Received November 24.)

UNITED STATES.

Case of the British steamer "Blanche."

Temple, November 23, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 18th instant, stating that with reference to our Reports of the 13th and 14th instant,* respecting the case of the "Blanche," he was directed by your Lordship to transmit to us, together with other papers, three despatches and their inclosures, which have been received from the Acting British Consul-General in Cuba, reporting all the particulars connected with the destruction of

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* Pages 278 and 280.

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that vessel;* and to request that we would take the same into consideration, and furnish your Lordship with our opinion thereupon.

Mr. Layard was also pleased to inclose the previous despatches from Mr. Stuart,† for reference if required.

In obedience to your Lordship's commands we have taken these papers into consideration, and beg to report—

That the act of the United States' Commander Hunter appears to combine almost every circumstance of deliberate outrage upon the liberty and property of Her Majesty's subjects, and of insult to Her Majesty's flag, that can well be imagined.

We are of opinion that the demand of Her Majesty's Government for redress ought in no respect to fall short of that which (by the extract from the despatch of the Spanish Ambassador) appears to have been put forth with much firmness and dignity by the Spanish Government; and in one respect at least, namely, in demanding full and ample reparation on behalf of Mr. Clement, it ought to go beyond it.

The immediate trial of Commander Hunter before a competent tribunal, the fullest pecuniary satisfaction to the captain, crew, and owners of the "Blanche," ample indemnification to Mr. Clement, a fitting apology to Her Majesty, are reparations for this gross, insolent outrage, which justice to Her Majesty's subjects, the observance of the rights of nations, and the dignity of Her Majesty's Crown, appear to us imperatively to demand, and which we think Her Majesty's Representative at Washington should be instructed, in combination with the Spanish Ambassador, to press forward with all practicable speed.

The transaction itself furnishes ample reasons for insisting on this full measure of reparation; and if any further reason were required, we think it would be found in the impression appearing, by Consul Crawford's letters, to prevail in the British and Spanish West Indies, of the existence of a system of wilful and deliberate contempt of the rights of Great Britain and of the restraints of international law, on the part of the Commanders of the United States' cruizers; for which impression it must be confessed only too much cause has been given by circumstances which have occurred.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 283.

The Queen's Advocate to Earl Russell.—(*Received November* 25.)

UNITED STATES.

Forcible occupation by General Butler at New Orleans of a house belonging to Messrs. A. and T. Byrne.

My Lord, *Doctors' Commons, November* 24, 1862.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 20th November instant, stating that he was directed by your Lordship to transmit to me a correspondence with Messrs. Andrew and Thomas Byrne,‡ respecting a house belonging to the latter which has been forcibly occupied by General Butler at New Orleans; and to request that I would take this case into consideration, and report to your Lordship my opinion thereupon.

In obedience to your Lordship's commands I have considered this case, and have the honour to report—

That such a forcible seizure and occupation of the dwelling-house of an unoffending neutral can only be justified by the extreme exigencies of the belligerent, incident to his military position in a recently conquered capital of the enemy.

But that if this necessity exist,—and otherwise the conduct of Major-General Butler would be wholly unwarrantable,—it is the duty of the belligerent

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* Señor Genzales, November 14; Mr. Crawford, Nos. 38, 39, and 40; Mr. Stuart, No. 332, November 4, 1862.

† Mr. Stuart, Nos. 304 and 312.

‡ Mr. A. Byrne, October 30; to Mr. A. Byrne, November 5; Mr. T. Byrne, November 14, 1862.

to make adequate compensation for the loss and injury sustained by the neutral proprietor, and to reinstate him as speedily as possible in his dwelling-house.

I humbly advise that Her Majesty's Representative at Washington should be instructed to claim proper compensation for Mr. Thomas Byrne.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 284.

The Law Officers of the Crown to Earl Russell.—(*Received November* 26.)

UNITED STATES.

Licenses granted exclusively to American merchants to trade with the port of Norfolk, that port being still under blockade as regards foreign vessels.

My Lord, *Temple, November* 25, 1862.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 4th instant, stating that he was directed by your Lordship to transmit to us a despatch from Her Majesty's Chargé d'Affaires at Washington (No. 266), stating the grounds on which he has considered it advisable to defer acting on instructions which were drawn up in conformity with the opinion expressed in our Report of the 11th August last,* with regard to the manner in which trade was being carried on at the port of Norfolk by means of licenses granted to American merchants to their exclusive advantage, and to request that we would take the further information now furnished by Mr. Stuart on this subject into consideration, and furnish your Lordship with our opinion as to any steps which Her Majesty's Government can take in the matter.

Mr. Hammond was also pleased to inclose the previous correspondence,† and the United States' Treasury Regulations respecting internal and coastwise intercourse, alluded to by Mr. Stuart, for our information.

In obedience to your Lordship's commands we have taken these further papers into consideration, and beg to report—

That as Norfolk is no longer a blockaded port, the opinion contained in the Report of the Law Officers (August 11, 1862), is, of course, not applicable to that port in its present condition.

It appears to us that the only step which in the actual state of things Her Majesty's Government can take, is to direct Her Majesty's Representative at Washington to endeavour to obtain, by amicable negotiation with the United States' Government, such a modification of the Regulations now acted upon with respect to the trade with Norfolk, and any other Southern ports in the actual possession of the United States' Government, which may not have been yet declared open to foreign trade, as may extend to neutrals the relief which they might naturally have expected to receive from the raising of the blockade at those places.

As we understand the facts, all foreigners are at present equally excluded from the trade with Norfolk, and with all other places similarly situated.

If so, it is not possible to contend that such a general exclusion from particular ports and places involves any breach of the Treaty obligations of the United States towards Great Britain; and as those ports and places are in the *de facto* possession of the United States' Government, no question of international law arises in this state of circumstances.

Under Article I of the Treaty of the 3rd July, 1815, British subjects are only entitled to frequent for the purposes of trade "all such places, ports, and rivers" in the United States' territories "*to which other foreigners are permitted to come.*"

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

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† Mr. Stuart, No. 48, July 7; Law Officers, August 11; to Mr. Stuart, No. 79, August 19; Mr. Stuart, No. 224, September 14, 1862.

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No. 285.

The Queen's Advocate to Earl Russell.—(Received November 26.)

New Granada.

Losses sustained by Messrs. Longton and Longrigg on account of seizure of their property by revolutionary authorities at Rio Hacha.

My Lord, *Doctors' Commons, November* 25, 1862.

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 22nd instant, stating that with reference to my Report of the 13th instant* he was directed by your Lordship to transmit to me a further letter, dated the 19th November instant, from Messrs. Longton and Longrigg, containing explanations on the points alluded to in my Report; and to state that, before your Lordship calls on Her Majesty's Consul at Carthagena for the Report suggested by me, your Lordship would be glad to learn whether the facts now stated by Messrs. Longton and Longrigg are such as to modify the opinion I have already taken in this matter.

In obedience to your Lordship's commands I have taken this letter into consideration, and have the honour to report—

That it now appears that the price of the "divi divi" was paid by Messrs. Longton and Longrigg after they were aware of its confiscation for the time being at New Granada.

They were advised that the property in this article had become theirs before the confiscation, and that they were obliged to pay for it here, and on this ground they claim the intervention of Her Majesty's Government

I must again remark that no receipt is sent, but I think it may be assumed that the money has been actually paid.

On this state of facts, combined with those which appeared on the former papers, a question of law and of fact, of some nicety, arises, which I humbly advise Her Majesty's Government to deal with as follows:—

To instruct Her Majesty's Consul at Carthagena to inquire whether the 200 tons of "divi divi" purchased by Messrs. Danies for Messrs. Longton and Longrigg were set apart and separate in the warehouse of that gentleman, or whether they were part of an undistinguished and unsevered mass of "divi divi" at the time of confiscation.

In the letter of Mr. Danies, which appears in the original Memorial of Messrs. Longton and Longrigg, this fact is not clear.

The importance of it is great, for if the English law governs, as both parties assume (and as I therefore assume), this contract; if the 200 tons of "divi divi" were not so actually, at the time of the confiscation, set apart and severed, but formed there a portion of the common stock to be severed hereafter,—then the property in them had not passed to Messrs. Longton and Longrigg, but remained in Mr. Danies; and Messrs. Longton and Longrigg have paid foolishly, and in their own wrong, and can have no claim upon the aid of Her Majesty's Government.

If, on the other hand, these 200 tons were, at the time of confiscation, so set apart, then the property of British subjects has been unjustly seized and appropriated by the Government of New Granada; and Her Majesty's Consul might properly be directed to support the claim of Messrs. Longton and Longrigg.

I advise, therefore, Her Majesty's Government to reply to Messrs. Longton and Longrigg that their course is to memorialize the existing Government of New Granada for compensation for the loss which, by its wrongful act, they have sustained; and to apprize them that Her Majesty's Consul will be instructed, if an examination of the case warrants him in so doing, to support the Memorial of these gentlemen.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 286.

The Queen's Advocate to Earl Russell.—(Received November 27.)

Peru.

Projects of law involving diplomatic privileges.

My Lord, *Doctors' Commons, November* 27, 1862.

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 24th instant, stating that he was directed by your Lordship to transmit to me a despatch and its inclosures from Her Majesty's Acting Chargé d'Affaires at Lima (No. 81), relative to two projects of law which have been prepared by the Peruvian Minister for Foreign Affairs, involving questions of diplomatic privilege; and to request I would take these papers into consideration, and report to your Lordship any observations I may have to make thereupon.

Mr. Layard also added that your Lordship would be glad to have my opinion on this matter at my earliest convenience.

In obedience to your Lordship's commands I have taken these papers into consideration, and beg to report—

That it would seem to me expedient that Her Majesty's Government should instruct Her Majesty's Representative at Lima to make a formal communication to the Peruvian Government to the following tenor and effect:—

That the attention of Her Majesty's Government has been called to certain printed and published proposals by the Peruvian Secretary of State for Foreign Affairs, for the passing of laws respecting the subjects of foreign Powers; that Her Majesty's Government, while desiring scrupulously to abstain from any interference whatever with the enactment of any municipal laws which that Government may deem expedient for the well-being of its subjects and the good order of the realm, and while avoiding the expression of any unsolicited opinion upon the proposed creation of tribunals having for their object to assist that Government in doing justice to foreigners who have been injured either by the public acts of the Peruvian Executive or the private acts of individual Peruvian subjects, nevertheless I think it proper to apprize, in the most formal manner, the Peruvian Government that Her Majesty's Government do not consent to, and will not hold themselves bound by, any municipal or civil laws passed in derogation of the rights now incident by the principles of general international law and the recognized usages of civilized States to the subjects of Her Majesty, or to those under her protection, in common with the subjects of other foreign States; and that if it should be found that any of the provisions of the proposed enactments conflict, as it would appear that some of them do, with these rights, that the said enactments cannot be regarded by Her Majesty's Government as in any way fettering the action or affecting the conduct which, in the event of any injury being done to any of Her Majesty's subjects, either by the public authorities or the private citizens of the Peruvian State, Her Majesty's Government may find it necessary hereafter, as heretofore, to adopt towards the Peruvian State.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 287.

The Queen's Advocate to Earl Russell.—(Received November 27.)

United States.

Claim of Mr. Cramer on account of detention of bales of sarsaparilla at New York.

My Lord, *Doctors' Commons, November* 27, 1862.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 20th instant, stating that he was directed by your Lordship to transmit to me therewith a letter, dated the 28th August ultimo, from the Colonial Office, together with its inclosure, on the subject of a claim of indemnity put forward by Mr. Cramer, a merchant of Belize, against the Government of the United States, on account of the detention at New York of certain bales of sarsaparilla shipped for that port.

Mr. Hammond was also pleased to inclose an instruction to Her Majesty's Chargé d'Affaires at Washington (No. 104), directing him to bring this claim before the United States' Government, and a despatch from Mr. Stuart (No. 290), inclosing a copy of note from Mr. Seward, declining to entertain Mr. Cramer's claim, and to request that I would take these papers into consideration, together with the previous correspondence referred to in the Colonial Office letter, and furnish your Lordship with my opinion as to the propriety of making a further representation to the United States' Government on this subject.

In obedience to your Lordship's commands I have taken these papers into consideration, and beg to report—

That I am of opinion that it would be proper that Her Majesty's Government should make a further representation to the United States' Government on this matter.

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It is not denied that Mr. Cramer suffered considerable loss by the unauthorized and illegal act of Mr. Raymond, to which effect was given by the Custom-house of New York.

Mr. Stuart's answer does not touch the obvious and real point of the case. It is not the act of the Custom-house alone which is complained of, but that Mr. Raymond, well knowing at the time that he was not recognized and would not be recognized by Her Majesty, proceeded to give the order to the Custom-house which, according to Mr. Seward's own statement, he knew was unwarrantable, except in a contingency which he was aware would not happen.

I must humbly add that it seems to me not the less proper that Her Majesty's Government should press the claim, *per se* just, of Mr. Cramer, that the injury done to him appears to be part of a general conduct, connected with the mission of Mr. Raymond, disrespectful and affronting to Her Majesty.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 288.

The Law Officers of the Crown to Earl Russell.—(*Received November* 28.)

UNITED STATES.

Restrictions on trade between New York and British West Indies.

Temple, November 27, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter, stating that with reference to our Report of the 5th of September last,* in which we expressed our approval of the note which it was proposed to instruct Her Majesty's Representative at Washington to present to the United States' Government, respecting the restrictions imposed by that Government on trade between New York and the British West Indies, he was directed by your Lordship to transmit to us a despatch from Her Majesty's Chargé d'Affaires at Washington (No. 278, October 8, 1862), inclosing the reply which had been returned by the United States' Government, and to request that we would take the same into our consideration, and furnish your Lordship with our opinion thereupon.

Mr. Hammond was also pleased to state that the previous correspondence on this subject was likewise inclosed for reference, if required.

In obedience to your Lordship's commands, we have taken these papers into consideration, and have the honour to report,—

That Mr. Seward in this letter meets the representations made in Mr. Stuart's note of the 25th September last by observing, first, that the particular principles or maxims of international law, and the particular Treaty obligations, assumed to be infringed by the proceedings complained of, were not pointed out by Mr. Stuart. He then, after referring at length to the terms of the Treaty of the 3rd July, 1815, and of the Act of Congress of the 20th May, 1862, states, that "it is not apparent to him that Mr. Stuart's arguments invalidate this Act of Congress. By the law of nations," he adds, "every State is sovereign over its own citizens and strangers residing within its limits, its own productions and fabrics, and its own ports and waters, and its highways, and, generally, within all its proper territories. It has a right to maintain that sovereignty against sedition and insurrection by civil preventives and penalties, and by armed force, and it has a right to interdict and prohibit within its own borders exportation of its productions and fabrics, and the supplying of traitors in arms against itself with materials and munitions, and any other form of aid and comfort. It has a right within its own jurisdiction to employ all the means necessary to make these prohibitions effective. It does not appear to the Undersigned that the United States have surrendered this right by the Convention between themselves and Great Britain which has been recited." He then observes that under the Ist Article of the Treaty of 1815, the right of British subjects to reside and carry on trade in ports and places of the United States is not absolute, but is limited to those ports, &c., "into which *other foreigners* are permitted to enter, and in which they are permitted to reside and trade;" and that while so residing and trading, they are expressly declared to be *subject to the laws and statutes of the United States;* and, also, that under the IIIrd Article of the same Treaty, the United States do not engage that there shall be no prohibition of exports from the United States in British ships or by British subjects, but only that there shall be no such "prohibition, *which shall not extend equally to all other nations.*" He then proceeds to explain his view of the nature and effect of the Act of Congress, which, he says, "does not confine its prohibitions or its requirements to British vessels trading between New York and the Bahamas, but applies them to all vessels of all nations, including the United States, wherever trading, whether with the Bahamas, or any other part of the world. The prohibitions and requirements are not uncertain as to the authority which prescribes them, or the form of the prescription; but they are declared and promulgated in solemn enactment by the Congress of the United States. The conditions on which the prohibitions and requirements are suspended are not left to caprices, suspicions, or beliefs, but they are dependent on satisfactory evidence of ascertainable facts. They involve no question of neutral rights, because no neutral has or can have a right, more than any citizen of the United States, to do an act within their exclusive jurisdiction which is forbidden by the statutes and laws of the country. The Act has nothing to do with the blockade of the insurrectionary ports; because it confines its prohibitions and requirements to transactions occurring, and to persons residing or being within the ports actually possessed by the United States, and under their unquestioned protection and control."

Mr. Seward thus professes to examine the mode in which the Act of Congress, which he thus vindicates, has been put into execution. He refers to the orders of the Treasury of the United States dated the 14th April and the 18th May, 1862, by which the exportation of certain articles from the United States, within specified geographical limits, was prohibited; and to the general instructions issued to the Collectors of Customs under dates the 22nd and 23rd May, 1862; saying that these orders and instructions appear to him to be within the authority given by the Act of Congress, and to be in themselves unobjectionable, inasmuch as "they do not expressly nor by any implication discriminate against Great Britain, her colonies or dependencies, and in favour of any other nation, or even in favour of the United States. The instructions," he continues, "leave nothing to the caprice of the Collector as a subordinate officer; but they are explicit commercial Regulations, prescribed by the highest authority. The conditions on which prohibitions are to attach are to be ascertained upon satisfactory evidence; and for the Collector's exercise of power in applying them he is responsible to the Head of the Department to which he belongs. The Regulations have no connection whatever with the blockade; but they affect only persons, vessels, merchandize, ports, waters, and highways exclusively within the United States, and within the territories which are within the absolute and unquestioned possession of the United States, and subject, in fact as well as in law, to their authority.

In conclusion, he states, that the President, "desirous to remove all possible grounds for misconstruction," has directed the two prohibitory Orders of the 14th April and the 18th May to be rescinded; "so that the case will stand altogether upon the Act of Congress, and the General Instructions of the Treasury:" and, while expressing his belief that the special proceedings of the Collector of the Customs have been unexceptionable, he describes the information furnished to him on that subject as vague and uncertain, and undertakes that any particular case which may be presented for that purpose shall be examined on its merits.

The general result of Mr. Seward's argument appears to be, that he defends the proceedings against which Her Majesty's Government have felt it their duty to remonstrate, on three grounds:—

1st. That these proceedings were authorized by an Act of Congress, and by Orders of the Executive Government of the United States, taking effect as law within their own territory, and by which, according to the express terms of the Treaty of 1815, the commercial intercourse of Great Britain with the United States was liable to be controlled and regulated.

2nd. That those proceedings and the Act and Orders on which they were founded (although prompted by the exigencies of the present civil war) are wholly unconnected with the blockade, and depend for their justification, not upon the assertion or exercise of any belligerent right, but upon the territorial sovereignty of the United States over persons, places, and things within their own proper jurisdiction.

And, lastly, that the Act and Orders, on which he relies as authorizing

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these proceedings, have not been directed in any special or exceptional manner against Great Britain, or against any of her colonies, but have been made equally and indifferently applicable to the ships and subjects of all other nations.

It seems, therefore, to be admitted that the interruptions, lately opposed to the trade between Great Britain and the Bahamas by the Custom-house authorities at New York cannot be justified consistently with the international engagements of the United States contained in the Ist and IIIrd Articles of the Treaty of 1815, unless they were (1) authorized by "the laws and statutes" of the United States in the sense in which these terms are used in the Ist Article of the Treaty; and (2) imposed as a common liability and burden upon the trade of Great Britain, and of all other foreign nations.

Both these conditions on which the attempted justification depends appear to us to fail, when the question is examined in the light of facts, and when certain false assumptions which seem to be involved in Mr. Seward's letter are corrected. But, first, it is desirable to clear the ground by adverting to some questions of principle.

1. Whether the Act of Congress of the 30th May, 1862, and the Treasury Orders mentioned by Mr. Seward, are or are not sufficient to justify the proceedings of the Custom-house authorities of New York, as between themselves and their own Government, is a question into which we do not conceive it to be at all necessary for Her Majesty's Government to enter. For, if those proceedings have been inconsistent with the engagements of the Treaty between the United States and Great Britain, it is no answer to the British Government to say that they were sanctioned by Congress, or by the Executive Government of the United States.

If, indeed, Mr. Seward ought to be understood as contending that no act whatever done within the territory of the United States, and authorized by Congress, can be inconsistent with the engagements contained in the Treaty, that is a proposition from which we must record our unequivocal dissent. The engagement for liberty of commerce, contained in the first Article of the Treaty, is a positive engagement on the part of the United States; and the words of reservation at the end, "but subject always to the laws and statutes of the two countries respectively," do not mean that the principal engagement itself may be nullified, or may be rendered illusory, either wholly or in part, at the option of either of the Contracting Parties, by domestic legislation directed to that end; but merely, that obedience is to be rendered by foreign traders, while in each country, to all the laws and statutes enacted by either nation for the ordinary and legitimate purposes of internal government and administration; and that each Government reserves to itself the right of making such laws, upon commercial as well as upon other subjects. It is worthy of remark that the words "subject, &c.," are not, in this clause, qualified even to the extent that the incidence of such laws upon the subjects of the Contracting Parties, and upon all other foreigners, must be equal and impartial; and it will hardly, we suppose, be argued, that an Act of Congress, expressly prohibiting or placing under arbitrary restraints, all trade between the United States and Great Britain, or all trade between the United States and any particular British possession, would be consistent with the Treaty. If a reference to maxims of international law is desired, it is a well-known maxim that Treaties are to be interpreted in good faith, and in such a manner that they may have their effect, and not be rendered vain or illusory.

2. This principle being established, we conceive it necessarily to follow that the liberty of commerce granted to Great Britain by the United States under this Treaty cannot, without breach of faith, be subsequently limited by the enactment in Congress of conditions having reference, not to anything to be done within the domestic and territorial jurisdiction of the United States, nor even to anything to be done within the scope of these belligerent rights which are conceded to that Power, while at war, by the law of nations; but to acts which it is supposed may be done by the subjects of an independent State, entitled to the benefit of the Treaty within the territories of their own Sovereign, or in some other part of the world where the legislation of the United States has no force or operation. If, for example, an Act of Congress were passed, prohibiting any trade with the Bahamas unless Her Majesty would engage to prohibit and prevent all trade between the Bahamas and the Confederate States, this would not be a "law or statute" of the United States, to which the commercial rights of Great Britain, under the Treaty, were made subject according to the true construction and meaning by the terms of the Treaty; it would be simply a refusal, on the part of Congress, to perform the engagements of the Treaty, unless Her Majesty would consent to act under the dictation of the United States, concerning matters falling entirely within the scope of her own independent sovereignty, and as to which no obligation of compliance was imposed upon her, either by Treaty or by the Law of Nations. It is superfluous to add, that what cannot be done in good faith, directly, is not more consistent with good faith when it is attempted indirectly. If it would be a violation of the Treaty for Congress to pass such an Act as has been supposed, it is not less so for the Government of the United States to use the machinery of an Act, passed in vague and general terms by Congress, for practically the same purpose; which in truth is the very thing which has been done.

3. This brings us to another material point. By the "laws and statutes" to which the trade under the Treaty is to be subject, definite laws and definite statutes, which foreigners can understand and observe as practical rules for their government while within the United States' territory, must be intended; not laws, so called, which do nothing but authorize subordinate officers of the Government to give or withhold, at their discretion, those rights which the United States have engaged by the Treaty to secure to British subjects. The Orders of the 14th April and the 18th May, which prohibited the export of certain specified articles within certain defined geographical limits (and which it is now proposed to rescind), were such laws as it was within the undoubted competency of the Government of the United States to make, consistently with the Treaty, and they have been freely admitted by Her Majesty's Government to be so, throughout the correspondence on this subject. Again, the Treasury Instructions of the 22nd May, and the first part of those of the 23rd May, prohibiting certain articles, *ancipitis usus*, as contraband during the present war, were laws of the same character, against which no exception has ever been taken by Her Majesty's Government; and the provisions of the Instructions of the 23rd May as to clearances and bonds, so far as they authorized security to be required for the *bonâ fide* delivery of goods exported from the United States at the destination for which they were cleared or permitted, have never been objected to. But to require security to be given by a British shipper at New York (whether trading there merely *in transitu*, as in the case of the Cunard line of steamers or otherwise), extending to any ulterior uses which might be made of goods so exported after delivery at their port of final destination within British territory, and when they might have passed finally and for ever out of the control of the shipper, is to impose an arbitrary and impossible condition, and is, therefore, a prohibition scarcely in disguise. If a general law clogging the trade between Great Britain and the United States with such a condition, would be a breach of the Treaty (and we entertain no doubt that it would), the Treaty is not less broken by the exercise, under whatever authority, of an arbitrary power to clog with such a condition, at the discretion of particular officers, the clearances of particular British subjects, neither convicted, nor indeed accused of the violation, actual or intended, of any law of the United States while within its territory, and subject to its jurisdiction.

4. To Mr. Seward's extraordinary statements that, under the Act of Congress and the Instructions of the 23rd May, "the conditions and requirements on which the prohibitions are suspended, are not left to caprices, suspicions, or beliefs, but are dependent on satisfactory evidence of ascertainable facts;" and, again, that "the Instructions leave nothing to the caprice of the Collector, as a subordinate officer, but are explicit commercial regulations, prescribed by the highest authority;" and that "the conditions on which prohibitions are to attach are to be ascertained upon satisfactory evidence,"—it seems sufficient simply to oppose the very words of the documents themselves. The second section of the Act of Congress gives the power which is said by Mr. Seward to authorize the requisition of such bonds as have been required, to the Collector of Customs, without any rule whatever for its exercise beyond what is expressed in the words, "*if he shall deem it necessary under the circumstances of the case.*" The Instructions are to refuse clearances to all vessels, when "*it is believed by you on satisfactory grounds, that there is imminent danger that the goods will fall into the possession of or under the control of the insurgents;*" and "*in all cases*

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where, in your judgment, there is ground for apprehension that any goods, &c., *will be used in any way for the aid of the insurgents*, you will require substantial security, &c." Comment upon the discrepancy between the words conferring this most absolute and arbitrary discretion, and Mr. Seward's representation of their effect. seems to be superfluous.

5. The arguments, therefore, that the Act of Congress is a law of the United States which makes the acts complained of compatible with the Treaty, and that they are justified because the British commerce affected by them is intercepted, not upon the high seas, but in places within the territorial dominions of the United States (the second of which depends wholly upon the first), fall to the ground. And it must be recollected that this branch of the case is entirely independent of the question whether, in this respect, the trade of other foreign countries has been dealt with in the same way with our own. For the engagements of Article I of the Treaty are positive between Great Britain and the United States, without any reference being made therein to other foreigners, except for the mere purpose of determining to what ports and places British subjects and ships may come. It is only under Article III that a "prohibition" can be justified as against Great Britain, by showing that it "equally extends to all other nations." And we think it clear that the present case is not one of the "*prohibition of any article the growth, produce, or manufacture of the United States, &c.*," within the meaning of the 3rd clause of the Treaty, which plainly refers to general prohibitions of the exportation of specified articles (such, *e. g.*, as the Prohibitory Orders of the 14th April, 18th May, and 22nd May), and not to the prohibition of the exportation of particular articles not generally prohibited, by particular shippers, on particular occasions, unless certain exceptional conditions not required by the law in other cases are complied with.

6. Mr. Seward, however, insists that the Act of Congress "does not confine its prohibitions or its requirements to British vessels trading between New York and the Bahamas, but applies them to all vessels of all nations, including the United States, wherever trading, whether with the Bahamas or any other part of the world:" and that the Treasury Instructions "do not expressly, nor by any implication, discriminate between Great Britain, her Colonies or Dependencies, and in favour of any other nation, or even in favour of the United States." We apprehend that if a law is made containing no prohibition at all in itself, but giving to certain Executive officers an authority to prohibit all or any shipments at their discretion, the question whether any foreign nation is aggrieved by it, or not, must depend, not upon the abstract and *per se* inoperative terms of the power, but upon the practical use which is made of it by the Executive Government. If the action of the Government, upon such a law, is confined to a particular trade of a particular nation, it is just the same thing to that nation as if the law itself had been expressly and exclusively directed against that branch of its trade. With respect, indeed, to the Act of Congress of the 30th May last, it may very well be that it has been used for purposes which were not at all in contemplation when it was passed, for (as we pointed out in our Report of the 2nd August last) it would have been a sound and reasonable construction of the 2nd section of that Act to understand it as merely authorizing the Collector to take security for the delivery of shipments at the destination for which they were cleared, and against any use thereof, *preceding such delivery*, for the purpose of affording aid or comfort to any person or parties in insurrection against the authority of the United States. If so limited, the power would be unobjectionable. The Treasury Instructions, also, of the 23rd May, bear upon the face of them that they were measures arising out of, and connected with, the raising of the blockade of the ports of Beaufort, Port Royal, and New Orleans, and the reopening, under certain regulations, of the trade with those ports. It was impossible to infer from the mere perusal either of the Act of Congress or of the Instructions, that they were intended, or would be made use of, for the purpose of placing under virtual prohibition any part of the export trade (in articles neither contraband nor prohibited by any Law, Order, or Proclamation) from New York, and from England viâ New York, to the Bahamas, or, indeed, any part of the export trade from the Northern States to any foreign country whatever. But when, under colour of these Legislative and Executive Acts, such an interference with British trade has actually taken place, and especially when nothing of the same kind has been done with respect to any part of the trade of any other foreign country, the

violation of Treaty, so far as regards the British Government, is precisely the same as if the General Orders of the United States' Government had been openly and avowedly directed against that particular branch of British trade which has been so interfered with, and that alone.

7. What, then, are the facts as to this part of the case? Here, again, we have nothing to do but to oppose to Mr. Seward's present argument that nothing more is in question than certain "explicit commercial regulations," and that no peculiar or exceptional interference has taken place with the trade between Great Britain and the Bahamas, the very words of his own letter to Mr. Stuart dated the 18th of August last. "*The exclusive order*," he there says, "*is applied to the Island of Nassau only; because there is no complaint of abuse of neutrality laws elsewhere;* and not at all invidiously, or because it is a British possession. The restriction is a measure adopted for the public safety, endangered by insurrection, and *not at all as in any sense a measure of trade;* and I think it justifiable on the same grounds with the inhibition of certain exports referred to by the British Government. *So soon as the abuses which have rendered the order necessary shall have ceased, it will be at once rescinded.* In the letter, also, of Collector Barney, dated the 9th August (a copy of which was inclosed in Mr. Seward's letter of the 18th), that officer, while affecting to have made no discrimination in any case "in favour of American vessels or American citizens, or those of any other nationality," distinctly admits that the trade between New York and Nassau (which alone had been obstructed) was "carried on almost exclusively in British vessels belonging to Nassau." The manner in which and the principles upon which Mr. Collector Barney acted towards that trade, sufficiently appear from other passages of his letters, of which copies have also been communicated to Her Majesty's Government by Mr. Seward or Mr. Adams, and of which the United States' Government have expressed their approval. In his letter of the 12th June, 1862, Mr. Barney declares his prohibitions to have been issued, "in the exercise of the discretion devolved upon him as an officer of the Government of a sovereign people," whenever "he had reason *to suspect* that any goods were *intended by individual enterprise, or the special contracts of British subjects, to directly contribute to the welfare of the enemies of the United States.*" In his letter to Mr. Chase of the 16th July, he says, "The trade carried on between this port and Nassau in articles *to be shipped thence* directly to places and persons in the Confederate States, is of a magnitude only equalled by the barefaced notoriety of the transactions:" and (referring to a letter from the United States' Consul at Nassau, in which the names of certain firms there, said to be engaged in the trade with the Confederate States, were mentioned), he adds, "the evils detailed therein, it would seem, can only be remedied *by the non-intercourse which the exaction of the objectionable bonds will, in most instances, produce.*" In the letter 9th August, already referred to, he says, "Her Majesty's Government labours under a serious misapprehension when stating that the authorities of the New York Custom-house have attempted to interfere with the ordinary and legitimate trade of the Bahamas. It is only in cases of *extraordinary shipments, or when we have had good and sufficient reasons* (*founded on the statements of merchants here engaged in the trade*) for the belief that they were intended *for interdicted ports in the Southern States*, that we have intervened for the protection of the interests of our Government by prohibition," &c.

8. The case, thus originally made by the United States' Government, was, we humbly conceive, conclusively answered, upon the admitted principles of international law, by our previous Reports, particularly that of the 12th September last. How that case is to be reconciled with Mr. Seward's present arguments and statements, it is not for us to explain. He now says that the "Regulations" in question "have no connection whatever with the *blockade*." The existence, however, of the blockade is the only ground on which, in any place or under any circumstances, the Government of the United States could claim a right to complain of the importation of commodities, not contraband of war, *from the Bahamas* into the Confederate States; and it is evident that this was the justification relied upon by Collector Barney for his endeavours to intercept at New York innocent commodities not prohibited by any general law or order of the United States' Government, which (he was led to believe) would, if introduced into the Bahamas, afterwards find their way to "interdicted ports in the

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Southern States." Mr. Seward now appears to admit, that what has been done cannot be justified by any reference to belligerent rights of the United States; yet it is apparent, from his own former declaration, already quoted, that he originally sought to justify the whole course of proceeding, "not in *any sense as a measure of trade*," but as a measure of defence against an alleged "abuse of neutrality laws" by merchants resident in a particular British Colony.

9. Our conclusion upon the whole matter is, that there has been a serious violation of the Ist Article of the Treaty of 1815 (which, it is admitted, is now to be read as extending to the British West Indies), which it has been attempted to disguise under pretence of the right of domestic legislation; that the case is not really one of domestic legislation at all, but is one in which the forms of domestic legislation have been made subservient to an endeavour to control a particular branch of neutral trade, as carried on, not within the territory of the United States, but in the proper territory of the neutral Power; that it is, in fact, as to such British goods as have been stopped *in transitu* from Great Britain to the Bahamas, an embargo, for causes not justified by international law; and, as to innocent and lawful exports from the United States, a denial of the commercial intercourse guaranteed by Treaty, except on terms to which no independent foreign nation could submit, without compromising the rights of neutrality and her own sovereignty within her own dominions.

10. In the concluding paragraph of his letter, Mr. Seward seems to draw a distinction between the actual proceedings of which Her Majesty's Government have complained, and the abstract terms of the Act of Congress, and Orders of the United States' Treasury, with which Her Majesty's Government have no concern, except so far as they may be made the pretext for any violation of the Treaty rights of this country, confining himself to the defence of the latter, and professing to be, as to the former, as yet but imperfectly informed. We do not conceive that any real doubt or obscurity can rest upon the facts, especially after the broad and general avowals contained in Mr. Barney's letters. The distinction, however, now drawn by Mr. Seward may possibly justify the hope that, although the proceedings of the New York Custom-house towards the Bahama trade have not been hitherto disavowed or condemned by the United States' Government, the remonstrances of Her Majesty's Government may, nevertheless, have the practical effect of preventing the continuance or repetition of similar proceedings in any future case in which British trade may be concerned.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 289.

The Law Officers of the Crown to Earl Russell.—(*Received November* 29.)

UNITED STATES.

Case of the British steamer "Blanche."

My Lord, *Temple, November* 28, 1862.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 26th November instant, stating that with reference to our Reports of the 13th and 23rd instant,* respecting the case of the "Blanche," he was directed by your Lordship to transmit to us a despatch from Her Majesty's Chargé d'Affaires at Washington, inclosing an extract from the "New York Herald," purporting to contain an account given by Captain Hunter of his pursuit of that vessel, and of her destruction on the coast of Cuba; and to request that we would take these papers into consideration, and favour your Lordship with any observations which we might have to offer thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That the compulsion exercised on Mr. Clements to make the false deposition in question is not the least discreditable part of this outrage.

It does not occur to us that these further papers render necessary any addition to the Report which we have already had the honour to make in this matter.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

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* Pages 278 and 285.

No. 290.

The Law Officers of the Crown to Earl Russell.—(*Received November* 29.)

UNITED STATES.

Destruction by the "Alabama" of British property on board the American vessels "Lafayette" and "Lauraetta."

My Lord, *Temple, November* 28, 1862.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 21st instant, stating that he was directed by your Lordship to transmit to us two despatches and their inclosures from Her Majesty's Consul at New York,* reporting the destruction by the "Alabama" of the American vessels "Lafayette" and "Lauraetta" with British property on board, and to request that we would take these cases into our consideration and report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration and have the honour to report—

That we think the principles of international law which we had the honour to lay before Her Majesty's Government in our former Report on the "Alabama" govern these cases; and that the British owners whose property has been seized on board the "Lafayette" and "Lauraetta" are entitled to ample restitution, to be obtained, in the circumstances, either by the direct interposition of Her Majesty's Government demanding redress from the Confederate States' Government, or by proceedings in the Prize Court of the Confederate States.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 291.

The Law Officers of the Crown to Earl Russell.—(*Received November* 29.)

UNITED STATES.

Drafts of instructions respecting destruction by the "Alabama" of British property on board Federal merchant-vessels.

My Lord, *Temple, November* 28, 1862.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 21st November instant, stating that he was directed by your Lordship to transmit to us the drafts of the answers which your Lordship proposed to return to the letters from British merchants respecting the destruction by the "Alabama" of British property on board Federal merchant-vessels, which formed the subject of our Report of the 12th instant.†

Mr. Hammond also stated that we would observe that the proposed answers to Messrs. Clark and Mr. Denny were in accordance with the suggestions in our Report, and added that the draft of answer to Messrs. Brown, Shipley and Co., the Liverpool Chamber of Commerce, and others, contained the decision of the Cabinet on this question.

Mr. Hammond was further pleased to state that your Lordship thought it right, however, to submit these drafts for our consideration, and you would be glad to be informed, at our earliest convenience, whether we concur in them.

In obedience to your Lordship's commands we have taken these drafts into our consideration, and have the honour to report—

That we are of opinion that the draft letters proposed to be sent, namely, those to Mr. Denny, Messrs. J. and J. Clark, and Messrs. Brown, Shipley, and Co, and Rathbone and Co., are proper to be sent.

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* No. 125, November 4; No. 128, November 7.

† Page 278.

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But we think that in the last letter, viz., to Messrs. Brown, Shipley, and Co., the words "Prize Court" should be substituted for "Court of Justice."

We have, &c.

(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 292.

The Law Officers of the Crown to Earl Russell.—(Received November 29.)

ITALY.

Marriage by British Consul at Naples of a Protestant lady and a Belgian Roman Catholic.

Temple, November 28, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 21st November instant, stating that he was directed by your Lordship to transmit to us a despatch from Her Majesty's Consul-General at Naples (No. 61, November 15, 1862), requesting instructions as to whether he would be legally borne out in celebrating a marriage between an English Protestant lady and a Belgian subject, who is also a Roman Catholic; and to request that we would take Mr. Bonham's despatch into our consideration and favour your Lordship with our opinion as to the instructions which should be sent to Mr. Bonham on this subject.

In obedience to your Lordship's commands we have taken this despatch into our consideration, and have the honour to report—

That we are of opinion that if the gentleman produces the certificate mentioned in Mr. Consul-General Bonham's despatch to Earl Russell of 15th November, 1862, and the lady be of full age, the Consul ought not to refuse to celebrate the marriage between the parties; but that he has acted properly in warning them of its invalidity according to the *lex loci*.

We have, &c.

(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 293.

The Law Officers of the Crown to Earl Russell.—(Received December 1.)

UNITED STATES.

As to exemption of vessels of Liverpool, New York, and Philadelphia Steam-ship Company from destruction by the "Alabama," they being engaged in conveying mails between Great Britain and United States.

Temple, November 29, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 17th instant, stating that with reference to our Report of the 12th instant,* on the representation of Mr. Inman of Liverpool respecting the apprehension entertained by the Liverpool, New York, and Philadelphia Steam-ship Company of the destruction of their vessels by the Confederate steamer of war "Alabama," he was directed by your Lordship to request that we would inform your Lordship whether the circumstance of the Company being under an engagement with the Government or Postmaster-General of the United States to convey the mails of the United States between this country and America would make any difference in the view which we took of the case in our above-mentioned Report.

Mr. Hammond was pleased also to inclose a copy of the answer which, in consequence of our Report, was returned to Mr. Inman, dated the 13th November instant, and the draft of a despatch which has been addressed to Mr. Stuart (No. 188, November 15, 1862) and to Her Majesty's Acting Consul at Richmond.

In obedience to your Lordship's commands we have taken this matter into our consideration, and beg to report—

That our observations in the above-mentioned Report would apply to the case of a British ship belonging to a British company resident in Great Britain, and conveying, under engagements with the Government of the United States, the ordinary mails from Great Britain to the Federal States.

In addition to the considerations applicable generally to neutral vessels, this peculiar class of vessels is entitled to more than ordinary favour and protection, upon the principles explained in the despatch of your Lordship to Mr. Seward, of January 23, 1862; but, subject to this qualification, this class of vessels cannot be considered to be exempt from the legitimate exercise of belligerent rights.

We have, &c.

(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 294.

The Law Officers of the Crown to Earl Russell.—(Received December 1.)

UNITED STATES.

As to right of Commander of the "Alabama" to remove articles contraband of war from a British steamer, and appropriate them to the use of his own ship, or destroy them, leaving the steamer to pass on.

Temple, November 29, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 17th instant, stating that with reference to our Report of the 12th instant* respecting the threat said to have been made by the Commander of the Confederate steamer "Alabama" that he would destroy any vessel of the Liverpool, New York, and Philadelphia Steam-Packet Company which he might fall in with having on board contraband of war,—he was directed by your Lordship to request that we would report to your Lordship whether, according to international law, the Commander of the Confederate ship of war would be justified in removing the obnoxious articles from a British steamer so found with articles of contraband of war on board, and appropriating such articles to the use of his own ship, or destroying them, leaving the British steamer herself to pass on without further molestation.

In obedience to your Lordship's commands we have taken this matter into consideration, and beg to report—

That we are clearly of opinion that it is the general duty of the belligerent to bring into the Prize Court for adjudication all questions of contraband, and not to take the law into his own hands by forcibly removing articles, alleged to be of this character, from the neutral ship which conveys them; and we think it is the right and the interest of neutral States to object to and resist any systematic deviation from this rule.

If particular cases should arise in which articles unequivocally contraband should be thus forcibly removed, it would always be open to the neutral Government to consider such cases upon their own particular merits, and (if it were thought fit) to leave the owner of the alleged contraband goods to seek his remedy in the Prize Court of the belligerent.

We have, &c.

(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 295.

The Law Officers of the Crown to Earl Russell.—(Received December 3.)

UNITED STATES.

Proceedings of American Admiral Wilkes at Bermuda. Question of British territorial jurisdiction from the mainland.

Temple, December 3, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 15th November, stating that in our Report of the 31st October* on the subject of Admiral Wilkes' proceedings at Bermuda, we state with reference to the question propounded by Vice-Admiral Sir Alexander Milne in the following words:—"To what extent from the mainland of Bermuda does Her Majesty's territorial jurisdiction extend? Is this limit three marine miles from the northern reefs, which in themselves are eight miles and a half from the shore of the island? But were it not for a letter from the Secretary of State for Foreign Affairs, dated the 12th of July, 1849, respecting the Cays of Cuba, I should have no doubt as to the question; I certainly considered these reefs as part of Bermuda;"—"that we were of opinion that the authority (the *dominium eminens*) of Her Majesty does extend to three marine miles from the northern

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* Page 276.

* Page 276.

† Page 263.

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reefs. We think that these reefs must be considered as belonging to the territorial jurisdiction incident to the possession of Bermuda, so far at least as that, between them and the island, Her Majesty has a right to prevent the exercise of hostilities, and that if we are right in considering them as part of Bermuda, it would follow that Her Majesty's jurisdiction must extend for three marine miles from that point."

Mr. Hammond was also pleased to state that the papers relating to the question which arose in regard to the cays of Cuba were not sent to us with his letter of the 29th of October; but the Lords Commissioners of the Admiralty being desirous that our attention should be called to them with reference to the present case, your Lordship directed him to forward to us the accompanying volumes, in which, at the places marked, we should find the correspondence in question, which originated, as we should perceive, in the interference of the Spanish authorities with British fishing vessels.

Mr. Hammond likewise inclosed a list of the papers to which our attention is called, and was to request that we would consider the point raised by Vice-Admiral Milne, and report to your Lordship our opinion thereupon at our early convenience.

We are also honoured with a further letter from Mr. Hammond (of the 17th November) with reference to this matter, transmitting to us, by your Lordship's direction, a letter from the Colonial Office dated the 15th November instant, inclosing a despatch from the Governor of Bermuda, and a report of the Attorney-General of the Colony on the same subject, and requesting that we would take the same into consideration simultaneously with the papers before us.

We are also honoured with Mr. Hammond's letter of the 19th November, transmitting to us by your Lordship's direction a volume containing further papers* relative to the view taken by Her Majesty's Government of the claims of Spain in respect of the cays adjacent to the Island of Cuba.

In obedience to your Lordship's commands we have taken these papers and questions into consideration, and have the honour to report—

That we are still of opinion that the territorial jurisdiction of Bermuda must be estimated at the distance of a marine league from the North Rock, or the outer ledge of the coral reef; or at all events from the rock, and the outer edge of that part of the coral reef, which is not covered by the sea at low water.

It appears that the Islands of Bermuda consist of a collection or group of about 365 ledges of coral formation, emerging above the water.

The whole group lies upon a coral bank, of which the "ledger flats" are a continuation.

The North Rock, which is fourteen feet above water, forms part of these flats, and lies at the mouth of what is marked on the Ordnance map as the Western Channel,—though only upon one occasion, as we are informed by Captain Barnett (who has been employed by Government to survey the island), was it ever passed through by men-of-war.

This rock would admit of a fort being constructed upon it, and it might be necessary in a future war to place one there for the protection of the island.

The "ledger flats" generally, though sometimes covered at high water, are, in fact, as it were, a natural hedge or girdle of defence to the Bermudas, of which they are, as has been said, a continuation.

Great Britain appears to have always attached great importance to the maintenance of a complete jurisdiction over the whole reef, as well as that part of it designated as the Bermudas.

Surveys of the whole group were made in 1793 and 1797.

The original is kept in the Admiralty, and one copy was sent to Bermuda. Both have been always kept secret, and no copies of them allowed to be made.

These Bermuda reefs bear a close analogy, not only to the Bahamas, but, so far as the application of the law affects them, to the Florida reefs, and to the uninhabited islands distant five or six miles from the mouth of the Mississippi.

The former the Americans have, we believe, always claimed as a continuation of the mainland. As to the latter, we have the advantage of an express decision of Lord Stowell, the principles and even the language of which appear very applicable to the case of the North Rock and "ledger flats" of Bermuda:—

"The capture was made," Lord Stowell says, "it seems, at the mouth of the Mississippi, and (as it is contended in the claim) within the boundaries of the

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* Queen's Advocate, November 11, 1859; Memorandum, November 24, 1859.

United States. We all know the rule of law on this subject is, 'terræ dominium finitur ubi finitur armorum vis;' and since the introduction of fire-arms, that distance has usually been recognized to be about three miles from the shore. But it so happens in this case that a question arises as to what is to be deemed the shore, since there are a number of little mud islands, composed of earth and trees, drifted down by the river, which form a kind of portico to the mainland. It is contended that these are not to be considered as any part of the territory of America, that they are a sort of 'no-man's' land, not of consistency enough to support the purposes of life, uninhabited, and resorted to only for shooting and taking bird's nests. It is argued that the line of territory is to be taken only from the Balize, which is a port raised on the mainland by the former Spanish possessors. I am of a different opinion. *I think that the protection of territory is to be reckoned from these islands, and that they are the natural appendages of the coast on which they border, and from which indeed they are formed.* . . . . Consider what the consequence would be if lands of this description were not considered as appendant to the mainland, and as comprised within the bounds of territory. *If they do not belong to the United States of America, any other Power might occupy them:* they might be embanked and fortified. What a thorn would this be in the side of America. It is physically possible at least that they might be so occupied by European nations, and then the command of the river would be no longer in America, but in such settlements. *The possibility of such a consequence is enough to expose the fallacy of any arguments that are addressed to show that these islands are not to be considered as part of the territory of America. Whether they are composed of earth or solid rock will not vary the right of dominion, for the right of dominion does not depend upon the texture of the soil. I am of opinion that the right of territory is to be reckoned from those islands.* That being established, it is not denied that the actual capture took place within the distance of three miles from the islands, and at the very threshold of the river."—('The Anna,' 5 Robinson, 385 b. and c.)

It remains to notice the papers which we have had the honour to receive relative to the conduct of Great Britain upon the analogous case of Cuba and the Bahamas. The question in this matter arose upon a dispute, not as to the exercise of neutral or belligerent rights, but as to the extent of operation to be allowed to a municipal law of Cuba upon the subject of turtle fishing in the waters of Cuba and of the adjacent cays.

Upon reference to the two opinions given by Sir John Dodson, when Queen's Advocate, upon the subject of "the cays" adjoining to Cuba, it does not appear that in either of them he expressed an opinion founded upon the assumption of the fact that these cays, though uninhabited, unquestionably belonged to Spain. The case seems to have been originally presented to him as if these "cays" were a series of uninhabited rocks, scattered over the sea which intervenes between the British and Spanish possessions, in the Bahamas and Cuba respectively; not proved to be in the exclusive possession, *de jure*, of either Power, and being *de facto* frequented by the fishermen of both. Both Sir John Dodson's Reports seem to turn upon the uncertainty attaching to the dominion over these rocks, and do not necessarily touch the question whether, if the sovereignty of Spain over these islands were established, such sovereignty would not have carried with it the maritime rights in controversy.

Though in Lord Palmerston's letter (8th September, 1848) which preceded Sir John Dodson's last Report (30th December, 1848), the opinion of Lord Palmerston certainly propounded the novel principle "that the uninhabited cays of the coast of Cuba cannot be considered invested with territorial jurisdiction beyond low water mark;" and certainly the last Report of Sir John Dodson seems to have been understood by the Foreign Office as sanctioning the opinion so expressed in the letter of Lord Palmerston; and instructions appear to have been issued (24th July, 1849, vol. 760) to Consul Crawford, founded upon the principle advanced in Lord Palmerston's letter to the Colonial Office (20th September, 1849, vol. 763).

But on the 30th of July, 1850 (vol. 771), Lord Eddisbury directed Mr. Kennedy (the Acting Consul-General at Havana) "to state to the Captain-General of Cuba, *that Her Majesty's Government do not dispute the right of sovereignty of the Crown of Spain over the cays in question, but Her Majesty's Government do not admit that the right of sovereignty over barren and uninhabited rocks and islets can carry with it territorial jurisdiction over the surrounding*

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seas." And Mr. Otway was afterwards instructed on the 30th June, 1852, to admit that, "if persons not being Spanish subjects should occupy, under the pretence of fishing, any of the cays or islets, they would be liable to be ejected by the Spanish authorities."

It appears clear, however, that the Report of the late Queen's Advocate, Sir John Harding (11th November, 1859), does not sanction the principle that these cays, if Spanish, did not carry with them the usual territorial jurisdiction over adjacent waters; he rather returns to the original position of Sir John Dodson, as to the uncertainty of the Spanish title to the cays themselves. Indeed, he expressly says, "If the Spanish title should be clearly established in one or more particular cases, *then I consider that the three-mile limit applies to such cases, just as it would to the coast of Cuba.*"

This is the doctrine embodied in our recent and present Report upon the Bermudas, and which we believe to be both sound in principle and supported by the very strong precedent of the "Anna," which we have cited; and which we must remark, in conclusion, does not appear to have been present to the mind of Sir John Dodson when he made his second Report upon the letter of Lord Palmerston of the 8th September, 1848.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 296.

The Law Officers of the Crown to Earl Russell.—(Received December 3.)

TURKEY.

Draft Order in Council repealing Order in Council of August 1860 for the regulation of British Consular jurisdiction in Turkey.
Questions of trial by jury in civil suits, and returned convicts.

Temple, December 3, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 24th November ultimo, stating that with reference to the Report of the Law Officers of the 7th May last,* on the applications made from Constantinople and Smyrna for the establishment of jury trials in regard to civil cases brought before the Consular Courts at those places, he was directed to state to us that, having regard to the Report made by Sir E. Hornby as to the satisfactory working of the jury system when resorted to in criminal cases, and to a further application which has been received from the British residents at Smyrna, your Lordship is prepared to defer to the representations of the parties most immediately interested in the matter, and, with our concurrence, to adopt as far as practicable a system of trial by jury in civil cases brought before the Consular Courts in the Levant. That your Lordship has accordingly authorized Sir E. Hornby, who has lately been in this country on leave of absence, to frame for our consideration such clauses as, if sanctioned by the Queen in Council, might carry out the new system; and Sir E. Hornby having, with your Lordship's permission, placed himself in communication with Mr. F. S. Reilly, who took a leading part in framing the Order in Council of August 1860, and the Rules for giving effect to it, has now submitted to your Lordship the draft of an Order in Council which he was to inclose for our consideration.

That it has been thought advisable, with a view to prevent confusion hereafter, instead of making a separate Order in Council to meet the special object in view, to repeal the Order of 1860 altogether, and to incorporate its provisions in a new Order, together with such other provisions as are required for carrying out the jury system; and that advantage has been taken of the opportunity to make some slight amendments in the working and arrangement of the Order of 1860; and also to provide that returning from deportation without license duly obtained should be treated as a substantive offence, punishable by imprisonment and re-deportation; that the previous practice of refusing British protection to returned convicts being found to work a disproportionate amount of punishment by exposing them to the severities of confinement as castaways in a Turkish prison.

Mr. Hammond was also pleased to state that the passages in the present draft which are new are noted in the margin, for our greater convenience, and that we should find prefixed to the rules which it has been found necessary to annex, a statement of the points in which alterations have been made in those now in force. That it is provided in the draft that the Order should take effect from the 1st of January next. As, however, Her Majesty may not hold a Council so as to admit of the Order being passed and promulgated in Constantinople before that day, it may be necessary to fix a later day—either the 1st of February or the 1st of March—for the Order coming into operation; and in that case, as your Lordship is of opinion that no delay should take place in bringing into operation the jury system, it will be advisable to provide for a corresponding alteration in the application of the provisions, as set forth in section 17, for the formation of the Jury List for the year 1863.

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* Page 114.

He was also pleased to add that Mr. Reilly, of No. 22, Old Square, Lincoln's Inn, is fully conversant with the whole subject, and that he will be ready to attend us if we should desire to have personal communication with him; and that your Lordship would be glad if we would give our early attention to the subject of this reference, so that the draft Order may be ready to be submitted for Her Majesty's sanction at the first Council that may be held, and that in order to facilitate the consideration of it a copy of this letter was sent separately to each of the Law Officers.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we think the entire repeal of the Order in Council of 1860 was expedient, and that we approve of the new provisions and amendments incorporated in the draft Order submitted to us, and of the provision that unduly returning from deportation should be treated as a new and substantive offence, punishable by imprisonment and re-deportation; and that on the whole we approve of the draft Order, and advise Her Majesty's Government to carry it into execution.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 297.

The Law Officers of the Crown to Earl Russell.—(Received December 4.)

TURKEY.

Consular jurisdiction over Ionians in Ottoman dominions.

Temple, December 3, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 4th ultimo, stating that the question respecting the exercise of jurisdiction over Ionian citizens in the Ottoman dominions has been long under the consideration of Her Majesty's Government; and it formed the subject of Reports from the Law Officers, dated October 31, 1860, and February 25, 1861.*

That much correspondence on this subject has passed between the Foreign and Colonial Offices, which has resulted in the letter from the Colonial Office of September, to which he was to call our especial notice, although for our more complete information he inclosed all the papers on the subject.

That your Lordship thought it desirable to obtain the opinion of Sir Edmund Hornby on the matter in the stage to which it is brought by the letter from the Colonial Office of September; and Mr. Hammond inclosed a Memorandum drawn up by him and Mr. Reilly, dated the 3rd November ultimo, on the suggestions contained in it.

Mr. Hammond was to request that we would take this matter into our early consideration, and acquaint your Lordship with our opinion on the course proposed in the Colonial Office letter of September, and in some degree modified by Sir E. Hornby and Mr. Reilly.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That we approve of the draft "Atto di Governo," as modified by the suggestions of Sir E. Hornby and Mr. Reilly, and to which we have affixed our initials.

We think that the better course to pursue, as between the Porte, the

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* For the latter Report, see Reports for 1861, page 33.

British Government, and the Ionian Senate, will be to issue an Order in Council immediately after the passing of the "Atto di Governo;" such Order giving effect, in terms, to the various provisions of the "Atto di Governo," without, however, any express reference to it, as having passed or been enacted. In this way all possible authority will be secured in support of the various arrangements proposed, which we assume will not infringe any exclusive sovereign rights of the Porte which have not been given up by Treaty, &c.

The most important question is to determine the authority in whose hands the pardoning convicted criminals shall be placed. It appears to us that the reasoning of Sir E. Hornby and Mr. Reilly is sound; and that, having regard to the relations of Her Majesty to the Sublime Porte, this power should be ultimately vested in Her Majesty, to be exercised by her Representative the Lord High Commissioner, so as to control the decision of the Senate, both as to the question of an entire free pardon and of the substitution of a sentence of less severity; and that the blank in the proposed "Atto di Governo" should be filled up accordingly.

In the copy of the proposed Act of Government laid before us, there seems to be a defective enumeration (apparently intended to have been complete) of articles. Mr. Reilly's attention, we would suggest, should be called to this.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 298.

The Queen's Advocate to Earl Russell.—(Received December 5.)

MEXICO.

Publication in "Gazette" of Admiral Jurien's letter to Captain Tatham notifying that the port of Tampico would be open to all neutral vessels.

My Lord, *Doctors' Commons, December* 5, 1862.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 1st December instant, stating that with reference to my Report of the 10th October last,* respecting the insufficiency of the blockade of the Mexican port of Tampico by the French naval forces, he was directed to transmit to me a despatch and its inclosures which had been received from Earl Cowley (No. 1,270), in answer to an instruction in which his Excellency was directed to ascertain whether a letter addressed by Vice-Admiral Jurien to Captain Tatham, notifying that the port of Tampico would forthwith be open to all neutral vessels, and of which a copy had been forwarded to the Foreign Office by Her Majesty's Consul at Vera Cruz (No. 16, September 9, 1862), was in conformity with orders from the French Government; and to request that I would take these papers into consideration, and furnish your Lordship with my opinion as to the propriety of publishing Vice-Admiral Jurien's letter in the "Gazette."

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I am of opinion that it would be proper to publish duly the letter of Admiral Jurien in the "Gazette."

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 299.

The Queen's Advocate to Earl Russell.—(Received December 8.)

TURKEY.

Fraud committed by Mr. T. Walsh while conducting the house of business at Aleppo of Messrs. Cababé, naturalized British subjects.

My Lord, *Doctors' Commons, December* 6, 1862.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 4th December instant, stating that he was directed to transmit to me a letter dated the 27th November ultimo from Mr. F. Reed, inclosing a memorial from Messrs. Peter and Paul Cababé, naturalized British subjects, stating the circumstances under which they have been defrauded by their clerk, Mr. Thomas Walsh, while conducting their house of business at Aleppo, and requesting that certain specific instructions may be sent to Her Majesty's Consul at that place in connection with that matter; and to request that I would report to your Lordship what steps it will be right and proper for Her Majesty's Government to take therein.

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* Page 244.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That upon the materials before me I cannot safely advise Her Majesty's Government how to proceed. At present there is nothing but the *ex parte* statement of the Messrs. Cababé to form an opinion upon. It must be remembered that Mr. Walsh is also a British subject, and that it would not be just to take the strong measures against him requested by Messrs. Cababé, without giving him an opportunity of making his own statement. I think Her Majesty's Government should at least require Her Majesty's Consul at Aleppo to make a report upon the whole subject to them before any proceedings are taken in this matter.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 300.

The Queen's Advocate to Earl Russell.—(Received December 9.)

BRAZIL.

Proceedings of Treasury at Bahia against two British commercial firms.

My Lord, *Doctors' Commons, December* 8, 1862.

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 3rd instant, stating that with reference to that part of my Report of the 17th ultimo* on the proceedings of the authorities of Bahia against two British commercial firms in that city, in which I state that Mr. Christie's answer to Mr. Consul Morgan was not included with the papers sent to me, he was directed by your Lordship to transmit a despatch from Her Majesty's Minister at Rio de Janeiro (No. 95, October 21, 1862), and a further despatch from Her Majesty's Consul at Bahia (No. 21, November 10, 1862), containing the answer in question, and a rejoinder from Mr. Morgan; and to request that I would report to your Lordship whether those additional papers induce me to alter or to modify my opinion as already given upon this subject.

Mr. Layard was pleased to inclose, for convenience of reference, Mr. Morgan's former despatch (No. 17, September 29).

In obedience to your Lordship's commands I have taken these further papers into consideration, and have the honour to report—

That it is much to be lamented that the despatches of the Consul at Bahia and those of Her Majesty's Representative at Rio Janeiro upon one and the same subject, should have been sent home separately, and at different periods, as advice must, in such circumstances, necessarily be given upon an imperfect or fragmentary statement of facts.

The complaint of Mr. Christie upon this head appears to me well founded.

In the present instance, however, the subsequent statement of the case by Mr. Christie does not incline me to vary substantially the advice which I had the honour to offer upon the previous report of Mr. Consul Morgan alone.

The true question is, whether the Executive Government of the Brazils, being a party concerned in a purely commercial matter, unconnected with any fiscal considerations, has or has not arbitrarily interfered, upon the plea of privilege, to prevent a British subject from obtaining that justice which the proper tribunals —those which had due cognizance of the cause—had meted out to him.

That the Brazilian Government is not warranted in so doing, even by their municipal law, is a proposition common to the legal adviser of Mr. Christie, and to Mr. Morgan.

But that it has done so at Bahia, in the particular case of these merchants, is a fact established by the last despatch of Mr. Morgan,—an act of oppression the more unjustifiable because, as Mr. Christie shows, the illegality of it had been already formally pronounced by the Superior Tribunal at Pernambuco,—identical, I presume, with what Mr. Consul Morgan calls the High Court of the Relação.

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* Page 282.

1862

It is suggested by Dr. Azendo, the Brazilian legal adviser of Mr. Christie, that these British subjects may appeal to a like Court in the province of Bahia, and that this Court will, perhaps, or probably, deliver a sentence in accordance with the Court at Pernambuco.

But I am of opinion that a foreign merchant ought not to be compelled to suffer the grievous delay and expense of a Brazilian Appeal Court, by reason of an act of the Government already judicially declared to be a variance with the law of the State, and which certainly conflicts with international comity and the received usages of civilized nations.

I think that Her Majesty's Representative may properly be instructed to interfere and protest against such proceedings, and to claim as a matter of plain right and justice that the judgment of the proper Municipal Court (the Court of Commerce) upon the subject be not prevented from taking effect, as it has been in these cases, by the arbitrary prohibition of the Government, whatever technical form or legal dress that prohibition may assume, or through whatever tribunal it may seek to carry it into effect.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 301.

The Law Officers of the Crown to Earl Russell.—(*Received December* 9.)

UNITED STATES.

Demand of Government of United States for redress for national and private injuries sustained by the acts of violence committed by the Confederate steamer "Alabama."

Temple, *December* 8, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 24th November ultimo, stating that he was directed by your Lordship to transmit to us therewith a note which your Lordship had received from the United States' Minister at this Court, dated November 22, 1862, detailing certain acts of violence committed by the Confederate steamer "Alabama," and asking of Her Majesty's Government redress for the national and private injuries thereby sustained by the Government and citizens of the United States, as well as a more effective prevention of any repetition of such lawless and injurious proceedings in Her Majesty's ports hereafter as those complained of.

With this note Mr. Hammond transmitted to us a collection of papers, many of which had already been before us, respecting the "Alabama," while in the course of equipment, and during her stay in British waters; and also a volume containing, at the passages marked, the correspondence which passed between Mr. Hammond, then Her Majesty's Minister in the United States, and the American Government, to which Mr. Adams refers.

Mr. Hammond likewise inclosed a Mememorandum and other papers respecting the equipment in the ports of the United States, during the late war between this country and Russia, of vessels of war for the service of the Russian Government.

And he was to request that we would take these matters into our early consideration, and report to your Lordship our opinion how far the requests of the Government of the United States for redress for past injuries done by the "Alabama," and for a more effective prevention of like injurious proceedings for the future, can be and ought to be complied with.

In case we should be of opinion that the latter request ought to be complied with, your Lordship desired to learn whether a new Act of Parliament would be required to enable Her Majesty's Government to do so, and in what manner such an Act might be framed.

We are also honoured with Mr. Hammond's letter of the 25th November and 3rd instant, inclosing to us further papers relative to this subject, including an extract from the President of the United States' Message to Congress in 1855, respecting the supply of arms to belligerents; and also a "Digest of the Decisions of the Supreme Court of the United States," with passages marked, which bore more or less on the question under consideration.

In obedience to your Lordship's commands we have taken these matters into our consideration, and have the honour to report—

That with respect to the first part of the demands made by the United States' Minister upon Her Majesty's Government, namely, compensation from Great Britain for damages inflicted by the Confederate steamer "Alabama" upon the United States' shipping, we are clearly of opinion that it is wholly unwarranted by the principles or precedents of international law.

If Great Britain had demanded compensation from the United States for the injuries continually inflicted upon the property of British subjects by the same vessel, on the ground that the United States claimed authority and jurisdiction over the Confederate States, who commissioned the steamer, the demand would not have been more unreasonable. Nor if the Confederate States were to demand compensation for the mischief accruing to them from the notoriously large export of arms and munitions of war from this country to New York.

In both cases the answer would be much the same.

To the complaint of the Confederate States Great Britain may reply, that with reference to the export of arms and munitions of war by subjects of Great Britain, from British ports, the ordinary municipal law of this country does not empower Her Majesty's Government to prohibit or interfere with such export; and that the permission of the export is not contrary to the Law of Nations, and affords no just ground of complaint to a belligerent. The authorities for this latter position are numerous and unconflicting; but it may suffice to refer to passages on the subject in the works of two American writers of high and admitted authority. The passages are as follows:—

1. "It is not the practice of nations to undertake to prohibit their own subjects, by previous laws, from trafficking in articles contraband of war. Such trade is carried on at the risk of those engaged in it, under the liabilities and penalties prescribed by the Law of Nations or particular Treaties. ("Wheaton's International Law," 6th edit., 1855, page 571: by Laurence.)

2. "It is a general understanding that the Powers at war may seize and confiscate all contraband goods without any complaint on the part of the neutral merchant, and without any imputation of a breach of neutrality in the neutral Sovereign himself. It was contended on the part of the French nation in 1796, that neutral Governments were bound to restrain their subjects from selling or exporting articles contraband of war to the belligerent Powers. But it was successfully shown, on the part of the United States, that neutrals may lawfully sell, at home, to a belligerent purchaser, or carry themselves to the belligerent Powers contraband articles, subject to the right of seizure *in transitu*. This right has since been explicitly declared by the judicial authorities of this country (United States . The right of the neutral to transport, and of the hostile Power to seize, are conflicting rights, and neither party can charge the other with a criminal act."—(Kent's "Commentaries," vol. i, p. 145. 8th Ed. 1854.)

In accordance with these principles the President's Message of 31st December, 1855, contains the following passage:—"In pursuance of this policy the laws of the United States do not forbid their citizens to sell to either of the belligerent Powers articles contraband of war, or take munitions of war or soldiers on board their private ships for transportation, and although in so doing the individual citizen exposes his property or person to some of the hazards of war, his acts do not involve any breach of national neutrality, nor of themselves implicate the Government."

To the complaint of the United States respecting the sailing of vessels from British ports for the use of the belligerent Confederates, Great Britain may well answer that the "Alabama," as Mr. Adams knows and admits, sailed not only without the direct authority or indirect permission of Her Majesty's Government, but in opposition to the municipal law and in spite of earnest endeavours made to enforce it.

These are circumstances not calculated to excite much surprise in the United States' Government, for two reasons; first, because their principal municipal law (passed almost at the same time as our own, and we believe after a full understanding between the two States) is in fact almost identical with that of Great Britain upon this subject; secondly, because its notorious evasion during the late war between Great Britain and her allies against Russia was the subject of frequent remonstrances on the part of Her Majesty's Representative at Washington to that Government.

Great Britain was then, as on other occasions, assured that every effort which the law would allow had been made to prevent such practices; that the United States' Government could only proceed upon legal evidence (the law as to which is almost, if not entirely, the same as in Great Britain); and upon such evidence no conviction could be procured.

1862

In the case of the "Alabama," it is not denied that strict orders were given for her detention as soon as it appeared to the Legal Advisers of Her Majesty's Government that the evidence might be sufficient to warrant them in advising such a course, and that the "Alabama" contrived to evade the execution of these orders.

With respect to the precedent cited by Mr. Adams from the demands of Great Britain upon the United States, soon after the breaking out of the French Revolutionary war, and the admission of the justice of these demands by the United States' Government, and the formal recognition of them in the VIIth Article of the Treaty of the 19th November, 1794, we have the honour to observe that an examination of the actual occurrences and of the history of that remarkable period presents a state of facts materially different from those relating to the "Alabama," and therefore requiring and having received the application of principles of law which, in that state of facts, sanctioned the demands for compensation made by the British Government.

The Revolutionary Government of France at that time openly avowed its determination to disregard all the principles of international law which had hitherto subsisted between civilized States, and proceeded to put into force its determination, among other ways, by claiming to equip, as a matter of right, and by actually equipping, privateers in the neutral ports of the United States, by sending them forth from those ports to prey upon British commerce, by bringing back prizes into the neutral ports, and then going through some forms, which they called adjudicating upon them.

This was the avowed system upon which belligerent France claimed to act, and by the temporary superiority of her naval force did, for a brief period, act in the neutral ports and waters of the United States, notwithstanding the remonstrances of the United States' Government.

These facts of open and deliberate equipment of privateers by the French, and of the capture by them of British vessels in the waters of the United States, and of their bringing them, when captured, into the ports of the United States, formed collectively the basis of the demands made by the British Plenipotentiaries.

Great Britain did not then complain of an accidental evasion of the municipal law by a particular ship, but of the systematic disregard of international law upon all the most important points of neutral obligation.

This is apparent from the whole correspondence of our Ministry with the Government of the United States at that time; and, indeed, from the replies alone which Mr. Jefferson sent to Mr. Hammond.*

With respect to the second question put to us, namely, whether some improvement may not be made in our existing law, whereby the hands of Her Majesty's Government may be strengthened.

This object, if necessary, could only be effected in one of two ways:—

(1.) By an entirely new statute.

(2.) By an amendment of the present Foreign Enlistment Act.

We are of opinion that it would not be expedient to adopt the former remedy.

But we incline to the opinion that some words might be added to the sections of the present Foreign Enlistment Act, which would have the effect of giving greater power to the Executive to prevent the construction of ships in our ports destined for the use of belligerents.

We think, however, that Her Majesty's Government, if they think fit to propose to Parliament such an alteration, should previously confer with the Government of the United States, and ascertain whether that Government is ready to make similar alterations in its own Foreign Enlistment Act; and that the amendments, like the original statutes, should proceed *pari passu*, as it were, in both countries.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

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* See (X.) Letter from President Jefferson to Mr. Hammond, Philadelphia, August 7, 1793; (D.) From same to same, September 9, 1793; (E.) From Mr. Hammond to the President, Philadelphia, September 12, 1793; (G.) From the President to Mr. Hammond, Philadelphia, September 5, 1793; which speaks of excluding "French privateers" from all "further asylum in our ports."

No. 302.

The Law Officers of the Crown to Earl Russell.—(Received December 11.)

CHINA.

Proposed measures for preventing Chinese insurgents from obtaining arms and military stores from Hong Kong and Singapore.

My Lord, *Temple, December 9, 1862.*

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 6th instant, stating that he was directed by your Lordship to transmit to us, together with the previous papers, a letter from the Colonial Office, inclosing a copy of a letter from Sir Hercules Robinson commenting upon the measures proposed to be taken at Hong Kong for preventing the Chinese insurgents from obtaining arms and military stores from that port; and to request that we would take this letter into consideration, and furnish your Lordship with any observations we have to offer thereupon.

In obedience to your Lordship's commands we have taken this letter into consideration, and beg to report—

That we are, of course, unable to decide whether the opinion of Mr. Bruce or of Sir H. Robinson be well founded as to the supply of arms to the Taepings from Hong Kong.

But assuming the fact to be that arms are so supplied, we think that the Governor of Hong Kong should exert his authority for the suppression of the traffic by the issue of a prohibitory Ordinance, and by endeavouring to enforce it; and we should hope that those endeavours, aided by the Order to be issued by Mr. Bruce, might abate the evil complained of. At all events such a course would evince to the Chinese Government the sincerity of our desire to deter British subjects from affording aid to the rebels.

We see no reason why a similar course should not be adopted at Singapore.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 303.

The Queen's Advocate to Earl Russell.—(Received December 11.)

MEXICO.

Notification of port of Tampico being forthwith open to neutral vessels.

My Lord, *Doctors' Commons, December 10, 1862.*

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 8th December instant, stating that with reference to my Report of the 5th December instant,* in which I was of opinion that it would be proper to publish in the Gazette the letter of Vice-Admiral Jurien to Captain Tatham notifying that the port of Tampico would forthwith be open to all neutral vessels, he was directed to return to me the papers which accompanied Mr. Hammond's letter of the 1st instant,† and to request that I would prepare the requisite notice for the Gazette containing Vice-Admiral Jurien's letter.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I have prepared a draft notification of the relaxation of the blockade at the port of Tampico, which I herewith annex to this Report.

I have, &c.
(Signed) ROBERT PHILLIMORE.

Inclosure in No. 303.

Draft Notification.

Foreign Office, December , 1862.

IT is hereby notified that Earl Russell, K.G., Her Majesty's Principal Secretary of State for Foreign Affairs, has received from Her Majesty's Consul at Vera Cruz information that the Admiral in command of the naval forces of His Majesty the Emperor of the French duly notified on the 8th September last to Captain Tatham, of Her Majesty's ship "Phaeton," that the port of Tampico would forthwith be open to all neutral vessels, provided they had no contraband of war on board, or passengers endeavouring to land for hostile purpose.

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* Page 304.

† Earl Cowley, No. 1,270; Consul Gifford, No. 16.

The aforesaid letter of Admiral Jurien is as follows:—

(Copy in French and English.)

No. 304.

The Queen's Advocate to Earl Russell.—(Received December 12.)

PERU.

Disposal of the property of the late S. W. Ellis.

My Lord, *Doctors' Commons, December 10, 1862.*

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 7th December instant, stating that he was directed to transmit to me a despatch from the Acting British Chargé d'Affaires in Peru (No. 85), calling attention to some questions which have arisen regarding the disposal of the property of the late S. W. Ellis, a British subject; and to request that I would communicate to your Lordship any observations which I may have to make on this subject.

In obedience to your Lordship's commands I have taken this despatch into consideration, and have the honour to report—

That it appears, by the concluding part of Mr. Consul Barton's despatch, that the person appointed by him to examine the deceased's papers has been permitted to do so; and as the Peruvian Minister for Foreign Affairs appears, at the request of Mr. Consul Barton, to have sent proper directions to the Judge, it does not seem to me that there is at present any necessity for the interference of Her Majesty's Government. Mr. Consul Barton appears to have acted very properly in the matter.

I have, &c.

(Signed) ROBERT PHILLIMORE.

No. 305.

The Attorney and Solicitor-General to Earl Russell.—(Received December 13.)

DENMARK.

Draft of Treaty for the marriage of His Royal Highness the Prince of Wales with Her Royal Highness the Princess Alexandra.

My Lord, *Temple, December 12, 1862.*

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of this day's date, stating that he was directed by your Lordship to transmit to us the accompanying draft of a Treaty between Her Majesty and the King of Denmark, for the marriage of His Royal Highness the Prince of Wales with Her Royal Highness the Princess Alexandra, eldest daughter of His Royal Highness the Prince Christian of Denmark, and to request that we would take the same into our immediate consideration, and report to your Lordship, with the least possible delay, whether we saw any objection thereto.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we have taken the said Draft Treaty into our consideration, and are of opinion that it is properly framed, and that there is no objection thereto.

We have, &c.

(Signed) WM. ATHERTON.
ROUNDELL PALMER.

No. 306.

The Queen's Advocate to Earl Russell.—(Received December 15.)

NEW GRANADA.

Right of New Granada to take refugees from on board British mail-steamer "Avon."

My Lord, *Doctors' Commons, December 13, 1862.*

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 6th instant, stating that he was directed by your Lordship to transmit to me a letter which your Lordship received from the Admiralty, inclosing copy of a despatch from the Admiral commanding on the American and West Indian station, relative to the state of affairs in New Granada.

That it appears from one of the inclosures in the Admiral's despatch, that certain political refugees, one of them the ex-President of the Republic of New Granada, embarked at Carthagena on board the British mail-steamer "Avon," as passengers for St. Thomas; that on the arrival of the steamer at Colon, intelligence reached the Governor of Panamá that those persons were on board; that, in consequence, the Governor came across the Isthmus with a party of soldiers in order to take the persons in question out of the mail-steamer, but that his object was defeated by those persons having been previously transferred from the steamer to Her Majesty's ship "Orlando," there to remain until the "Avon" continued her voyage to St. Thomas.

That the captain of Her Majesty's ship "Orlando" expresses an opinion that if the Governor of Panama had gone on board the mail-steamer with an armed force to take out the refugees, it would have been a breach of Article III of the Postal Convention with New Granada of the 24th May, 1847 (Hertslet, vol. viii, page 767), which stipulates that the British mail-steamers "shall be considered and treated as ships of war, and shall be entitled to the same honours and privileges as ships of war."

That upon this subject two questions arise:—

1st. Whether the Convention is or is not in force?

That the Convention was to last five years from the exchange of the ratifications; either party being at liberty to give at the end of the first four years, a year's notice for its termination; if no notice were given, it would continue for a second period of five years, and so on.

That Her Majesty's Government being desirous to obtain the abolition or reduction of the heavy transit rate payable to New Granada under Article XX of the Convention, for mere leave to send the British mails across the Isthmus of Panamá, gave notice in 1856 for the termination of the Convention at the end of the second period of five years, *i. e.*, on the 17th December, 1857.

That finding, however, that the New Granadian Government, were willing to enter into negotiations for a new Convention, Her Majesty's Government consented to continue the Convention of 1847 temporarily, until the new one should be concluded; and that the New Granadian Minister in London was accordingly empowered by his Government to negotiate with the British Post Office, and on the 24th December, 1849, he signed a new Convention with the Postmaster-General.

That the New Granadian Government, however, refused to ratify that Convention, and Her Majesty's Government, after having exhausted every effort to induce them to do so, and believing that they should never obtain a satisfactory arrangement so long as they continued to pay the transit rate, under Article XX of the Convention of 1847, informed the Granadian Government that after the 31st December, 1861, no further payments on that account would be made, unless they ratified the Convention of 1859, or unless payment of the transit rate was enforced upon the mails of the United States, for which the Government of the United States had for many years refused to pay anything beyond the charge made by the Railway Company for their transport. That the temporary continuance of the Convention of 1847 was not, however, in other respects expressly terminated, because the Convention relates to other matters besides the transit rate, which it was not desirable to leave unprotected by a Conventional arrangement.

That in this state the question still remains.

2ndly. That whether, assuming that the Convention remains in force, the stipulation of the IIIrd Article which has been quoted will bear the construction put upon it by the captain of the "Orlando," the whole scope of the Convention being the Post Office service between the British dominions and New Granada?

That your Lordship requested I would take these questions into my consideration, and report to your Lordship my opinion thereupon.

In obedience to your Lordship's commands I have taken these questions into consideration, and have the honour to report—

That I am of opinion that, upon general principles applicable to the construction and obligation of Treaties, this Postal Convention between Great Britain and New Granada cannot be considered as in force since the 31st December, 1861.

1862

The term originally fixed for the duration of the Treaty expired in 1857. It has been since continued by the consent of both parties to it; but Great Britain having given formal notice that after the 31st December, 1861, she would no longer fulfil the engagements contained in a very important Article of the Treaty, and New Granada having given no consent to this material alteration, it would, unless there be other qualifying circumstances, cease, from the above-mentioned date, to be binding upon New Granada.

It may be, however, that New Granada may have done some act or acts, or made some admissions or declarations, whereby she has bound herself still to observe, until some further arrangement take place, the other engagements of the original Treaty, although the XXth Article be abandoned by Great Britain.

It would require a careful consideration of what may have been actually written, said, or done by New Granada since the 31st December, 1861, to pronounce an opinion upon this point. In the papers now before me I have not sufficient evidence that she has consented to keep alive the Treaty and to give up Article XX.

Upon the second point, namely, whether the words in the IIIrd Article, "they shall be considered and treated as ships of war, and shall be entitled to the same honours and *privileges* as ships of war," did or did not confer upon these postal steamers the right of immunity from visit and search in the ports of New Granada enjoyed by Her Majesty's ships of war, I am of opinion that they did confer this privilege, and that the Captain of the "Orlando" has put a right construction on this language.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 307.

The Queen's Advocate to Earl Russell.—(*Received December* 18.)

TURKEY.

Fair draft of new Order in Council for the regulation of British Consular jurisdiction in dominions of Ottoman Porte.

Doctors' Commons, December 17, 1862.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 15th instant, stating that with reference to the Report of the Law Officers, dated the 3rd instant,* respecting the draft of an amended Order in Council on the subject of jurisdiction in the Levant, he was directed by your Lordship to transmit to me therewith a fair copy of that draft,† as approved by the Law Officers, and to call my attention to certain alterations which have since been made in it, and which I should find at pages 2, 3, 6, and 19, Sections 1, 4, 17, and 62.

That the alteration in Section 1 consists in making the date at which the Order shall come into effect the 1st of March instead of the 1st of January, it not being likely that Her Majesty will hold a Council so as to admit of the Order coming into operation on the 1st of January as originally intended.

That the alteration in Section 4 consists in the reproduction in the clauses 2 and 3 of the provisions respecting jurisdiction over Ionians contained in Clause 61 of the Order of August 27, 1860, and in the exemption, in Clause 1, of Ionians from trial by jury in civil cases (except in so far as other foreigners are to be subject to it), and from the obligation to serve on juries in civil cases.

That it is thought necessary to retain these clauses during the settlement of the Atto di Governo which I had lately had before me, and the Report on which has been communicated to the Secretary of State for the Colonial Department.

That the alterations in Sections 17 and 62 are merely adaptations of dates to the altered period at which this Order is to come into effect.

Mr. Hammond was to request that I would take these alterations into consideration, either with or without communication with the Attorney and Solicitor-General, and report to your Lordship my opinion whether there is any objection to their being inserted in the Order.

In obedience to your Lordship's commands I have the honour to report—

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* Page 303.

† For Order in Council of January 9, 1863, as laid before Parliament, see "Order in Council and Correspondence respecting the Administration of Justice in the Ottoman Empire," presented to both Houses, March 16, 1863.

That taking into consideration the reasons alleged for the retention of the clauses in question, I do not think there is any objection to their insertion in the Order in Council.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 308.

The Law Officers of the Crown to Earl Russell.—(*Received December* 19.)

TUNIS.

Convention with Government of Tunis to enable British subjects to hold real property in Tunis.

Temple, December 18, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 8th November ultimo, stating that he was directed by your Lordship to transmit to us the accompanying correspondence which has passed between the Foreign Office and Her Majesty's Agent and Consul-General in Tunis,* respecting an arrangement proposed to be entered into between Her Majesty's Government and the Government of Tunis, for the purpose of enabling British subjects to hold real property in that Regency; and to request that we would take this matter into consideration, and furnish your Lordship with our opinion with regard to the terms of this proposed arrangement.

In obedience to your Lordship's commands we have taken this matter into consideration, and beg to report—

That we are of opinion that, with the alterations proposed by us, and appended to certain articles of the instrument, this Convention is proper to be carried into effect.

We desire, however, to draw especial attention to the effect of one of our suggested alterations, namely, that which relates to the succession to immoveable (or real) property in the case of intestacy. The effect will be to place that succession under the same law and conditions as the succession to moveable (or personal) property. We have inferred from the VIIth and VIIIth Articles that this is in accordance with the intention of those who framed the Convention.

But it is most desirable that it should be ascertained that we have rightly interpreted the wishes, in this particular matter, of the British merchants, or others, who are interested in the execution of this Convention with the Tunisian Government.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 309.

The Law Officers of the Crown to Earl Russell.—(*Received December* 20.)

UNITED STATES.

Proposed Convention of claims between Great Britain and United States.

Temple, December 18, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 24th November ultimo, stating that in the year 1853 a Convention was concluded between Her Majesty and the United States of America, providing for the settlement of all claims of either party upon the other, arising out of any transaction of a date prior to the exchange of the ratifications of the Convention, by means of a Mixed Commission.

That that Convention worked well in practice, and effected a final settlement of a large number of claims, some of which had for many years been the subject of discussion between the British and United States' Governments.

That since the breaking out of the civil war, Her Majesty's Government have found it necessary to prefer claims upon the Government of the United States on account of injuries sustained by British subjects. Some of those claims the American Government have refused to admit, and there appears little or no hope of their ever being settled, unless by a process similar to that adopted in

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* Mr. Wood, Nos. 28 and 33; to Mr. Wood, No. 7.

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1853, for the extinction of the claims then outstanding between the two Governments.

That your Lordship therefore proposed to the Government of the United States to conclude a Convention similar to that of 1853, applicable to all claims arising out of any transaction subsequent to the exchange of the ratifications of the Convention of 1853, and prior to the exchange of the ratifications of the Convention thus proposed. Your Lordship suggested, however, that the Arbitrator should be named by the two Governments, instead of by the Commissioners as in 1853, the latter course having then been found inconvenient.

That the Government of the United States have assented to your Lordship's proposal generally, but have expressed a desire that the Commission should sit at Washington instead of London, and suggest an addition to the IIIrd Article, whereby all claims which may be pending in a Court of Justice of either party, during the time stipulated for the duration of the Commission, should be excepted from the consideration of the Commissioners.

But if this addition be agreed to, it seems to your Lordship that it would, on the other hand, become necessary to add a provision to Article V, in order to prevent claims which would be excepted from the cognizance of the Commission, under the clause proposed to be added by the United States' Government, from being irrevocably barred under the general terms of Article V.

That it seems to your Lordship, also, that it would be prudent to except from the consideration of the Commission any claims arising out of a case such as that of the "Blanche," which was recently destroyed by an American cruizer on the coast of Cuba, in which a third Power complains of violation of territory, and has already made such complaint to the Government of either Contracting Party.

Your Lordship has, moreover, doubts as to the prudence, under present circumstances, of extinguishing absolutely, as was done in 1853, all claims whatever arising out of any transaction prior to the exchange of the ratifications, and is disposed to press for the insertion of words reserving from being finally barred any claims which the two Governments may by common consent think to be proper to be decided by the Commission.

That the inclosed printed copy of the Convention of 1853 contains in black ink the alterations made by your Lordship before proposing it to the United States' Government, in order to adapt it to the present time; and in red ink the alterations desired by that Government. The further alterations which seem to your Lordship to be expedient are contained in the manuscript attached to the printed copy.

That your Lordship directed Mr. Hammond to request that we would take these papers into consideration, and report to your Lordship our opinion upon the whole subject.

In obedience to your Lordship's commands we have taken these papers into consideration, and beg to report—

That we are of opinion that it would be expedient that, at the proper time, Her Majesty's Government should enter into such a Convention as is now submitted to our consideration, with the United States of America. That we presume that Her Majesty's Government are satisfied, upon good grounds, that at the present moment the proposal made by your Lordship to Mr. Adams, and the acceptance, in substance, of that proposal by him, should be carried into effect.

It appears to us that for this object the Convention, with the proposed additions, and with an alteration which we have suggested in the proposed addition to the Vth Article, is well adapted.

It would of course, for obvious reasons, be desirable that the Commission should sit at London, and not at Washington; but we do not think that such a condition should be considered as indispensable, or be allowed to prevent the execution of the Convention.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 310.

The Law Officers of the Crown to Earl Russell.—(Received December 20.)

CHINA.

Draft Order in Council to enable British subjects to enter the military and naval service of China.

My Lord, *Temple, December* 18, 1862.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 4th instant, stating that he was directed by your Lordship to call our attention to Her Majesty's Order in Council of the 30th August, sanctioning the entrance of British subjects into the naval and military service of the Emperor of China; and with reference to that Order he was to state that Her Majesty's Government are of opinion that it is an object of great European interest that the Taepings should be put down, and the Chinese Government be strengthened; but that this result can hardly be obtained by any other means than by drilling, organizing, and rendering efficient a sufficient number of Chinese troops; that it appears to Her Majesty's Government that, with this view it would be desirable to place at the disposal of the Chinese Government a number of British officers, who should have command, according to their respective ranks, over such troops; their pay and all other expenses connected with their employment being exclusively provided for by the Chinese Government.

That the point, therefore, on which your Lordship would desire to have our opinion, and that at our earliest convenience, is, whether the Order in Council to which he (Mr. Hammond) called our attention, is sufficient to admit of British military officers entering into and being employed in the service of the Chinese Government, or whether a further Order of Her Majesty in Council would be required to give effect to the course which in this respect Her Majesty's Government are prepared forthwith to adopt.

If we should be of opinion that a further Order is required, he (Mr. Hammond) was to request that we would cause a draft thereof to be prepared, to be submitted for Her Majesty's sanction at the first Council that may be held by Her Majesty.

In obedience to your Lordship's commands we have taken this matter and the points submitted to us into consideration, and beg to report—

That we have prepared the Draft Order in Council, which is annexed to this Report.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

Inclosure in No. 310.

Draft Order in Council.

AT the Court at Windsor, the 30th day of August, 1862;

Present:

THE QUEEN'S MOST EXCELLENT MAJESTY IN COUNCIL.

WHEREAS by an Act passed in the fifty-ninth year of the reign of His late Majesty King George the Third, intituled "An Act to prevent the Enlisting or Engagement of His Majesty's Subjects to serve in Foreign Service, and the fitting out or equipping in His Majesty's Dominions Vessels for Warlike Purposes, without His Majesty's Licence," it was enacted and declared that if any natural-born subject of His Majesty, His heirs or successors, without the leave or license of His Majesty, His heirs and successors, for that purpose first had and obtained, under the Sign-Manual of His Majesty, His heirs or successors, or signified by Order in Council, or by Proclamation of His Majesty, His heirs or successors, should take or accept, or should agree to take or accept, any Military Commission, or should otherwise enter into the military service as a commissioned or non-commissioned officer, or should enlist or enter himself to enlist, or should agree to enlist or to enter himself to serve as a soldier, or to be employed, or should serve in any warlike or military operation, in the service of or for or

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under or in aid of any foreign Prince, State, Potentate, Colony, Province, or part of any Province or People, or of any person or persons exercising or assuming to exercise the powers of government in or over any foreign Country, Colony, Province, or part of any Province or People, either as an officer or soldier, or in any other military capacity; or if any natural-born subject of His Majesty should, without such leave or license as aforesaid, accept, or agree to take or accept, any Commission, Warrant, or Appointment as an officer, or should enlist or enter himself, or should agree to enlist or enter himself, to serve as a sailor or marine, or to be employed or engaged, or should serve in and on board any ship or vessel of war, or in and on board any ship or vessel used or fitted out, or equipped or intended to be used, for any warlike purpose, in the service of or for or under or in aid of any foreign Power, Prince, State, Potentate, Colony, Province, or part of any Province or People, or of any person or persons exercising or assuming to exercise the powers of government in or over any foreign Country, Colony, Province, or part of any Province or People; or if any natural-born subject of His Majesty should, without such leave and license as aforesaid, engage, contract, or agree to go, or should go to any foreign State, Country, Colony, Province, or part of any Province, or to any place beyond the seas, with an intent or in order to enlist or enter himself to serve, or with intent to serve in any warlike or military operation whatever, whether by land or by sea, in the service of, or for, or under, or in aid of any foreign Prince, State, Potentate, Colony, Province, or part of any Province or People, or in the service of, or for, or under, or in aid of any person or persons exercising or assuming to exercise the powers of government in or over any foreign Country, Colony, Province, or part of any Province or People, either as an officer or a soldier, or in any other military capacity, or as an officer, or sailor, or marine, in any such ship or vessel as aforesaid, although no enlisting money, or pay, or reward, should have been or should be, in any or either of the cases aforesaid, actually paid to or received by him, or by any person to or for his use or benefit; or if any person whatever, within the United Kingdom of Great Britain and Ireland, or in any part of His Majesty's dominions elsewhere, or in any Country, Colony, Settlement, Island, or place belonging to or subject to His Majesty, should hire, retain, engage, or procure, or should attempt or endeavour to hire, retain, engage, or procure, any person or persons whatever to enlist, or to enter or engage to enlist, or to serve or to be employed in any such service or employment as aforesaid, as an officer, soldier, sailor, or marine, either in land or sea service, for or under or in aid of any foreign Prince, State, Potentate, Colony, Province, or part of any Province or People, or for or under or in aid of any person or persons exercising or assuming to exercise any powers of government as aforesaid, or to go, or to agree to go, or embark from any part of His Majesty's dominions, for the purpose, or with intent to be so enlisted, entered, engaged, or employed as aforesaid, whether any enlisting money, pay, or reward should have been, or should be actually given or received, or not;—in any or either of such cases every person so offending shall be deemed guilty of a misdemeanour, and upon being convicted thereof, upon any information or indictment, should be punishable by fine and imprisonment, as in the said Act is mentioned:

And that if any person within any part of the United Kingdom, or in any part of His Majesty's dominions beyond the seas, should, without the leave and license of His Majesty for that purpose first had and obtained as aforesaid, equip, furnish, fit out, or arm, or attempt or endeavour to equip, furnish, fit out, or arm, or procure to be equipped, furnished, fitted out, or armed, or should knowingly aid, assist, or be concerned in the equipping, furnishing, fitting out, or arming of any ship or vessel, with intent or in order that such ship or vessel should be employed in the service of any foreign Prince, State, or Potentate, or of any foreign Colony, Province, or part of any Province or People, or of any person or persons exercising or assuming to exercise any powers of government in or over any foreign State, Colony, Province, or part of any Province or People, as a transport or store-ship, or with intent to cruize or commit hostilities against any Prince, State, or Potentate, or against the subjects or citizens of any Prince, State, or Potentate, or against the persons exercising or assuming to exercise the powers of government in any Colony, Province, or part of any Province or Country, or against the inhabitants of any foreign Colony, Province, or part of any Province or Country, with whom His Majesty should not then be at war; or should, within the United Kingdom, or any of His Majesty's dominions, or in

any Settlement, Colony, Territory, Island, or place belonging or subject to His Majesty, issue or deliver any Commission for any ship or vessel, to the intent that such ship or vessel should be employed as aforesaid, every such person so offending should be deemed guilty of a misdemeanour, and should, upon conviction thereof, upon any information or indictment, be punished by fine and imprisonment, or either of them, at the discretion of the Court in which such offender should be convicted; and every such ship or vessel, with the tackle, apparel, and furniture, together with all the materials, arms, ammunition, and stores which may belong to or be on board of any such ship or vessel, should be forfeited; and it should be lawful for any officer of His Majesty's Customs or Excise, or any officer of His Majesty's navy, who is by law empowered to make seizures for any forfeiture incurred under any of the laws of Customs or Excise, or the laws of trade and navigation, to seize such ships and vessels aforesaid, and in such places and in such manner in which the officers of His Majesty's Customs or Excise and the officers of His Majesty's navy are respectively to make seizures under the laws of Customs or Excise, or under the laws of trade and navigation; and that every such ship and vessel, with the tackle, apparel, and furniture, together with all the materials, arms, ammunition, and stores, which may belong to or be on board of such ship or vessel, may be prosecuted and condemned in the like manner and in such Courts as ships or vessels may be prosecuted and condemned for any breach of the laws made for the protection of the revenues of Customs and Excise, or of the laws of trade and navigation:

Her Majesty, by and with the advice of Her Privy Council, being desirous of enabling Her subjects to engage in and enter the naval and military service of the Emperor of China, is pleased to Order, and it is hereby Ordered, that from and after the first day of September next, it shall be lawful for Horatio Nelson Lay, one of Her Majesty's subjects, and Sherard Osborn, a Captain in Her Majesty's Navy, to enter into the military and naval service of the said Emperor, and to accept any Commission, Warrant, or other appointment under the said Emperor, and to accept any money, pay, or reward for their services, and to fit out, equip, purchase, and acquire ships or vessels of war for the use of the said Emperor, and to engage and enlist British subjects to enter the military and naval service of the said Emperor.

And it is hereby further Ordered, that it shall be lawful for every British subject to enlist and enter himself by engaging and enlisting himself with the said Horatio Nelson Lay and Sherard Osborn, and no other person or persons whatsoever, in the military and naval service of the said Emperor, and to serve the said Emperor in any military, warlike, or other operations, either by land or by sea, and for that purpose to go to any place or places beyond the seas, and to accept any Commission, Warrant, or other appointment from or under the said Emperor, and to accept any money, pay, or reward for his service: Provided always, that the license and permission hereby given shall be in force only for the term of two years from the said first day of September next, unless, by Order in Council made in manner aforesaid, such period should be further extended.

(Signed) ARTHUR HELPS.

No. 311.

The Queen's Advocate to Earl Russell.—(Received December 31.)

UNITED STATES.

Condemnation of the "Lilla," by the Prize Court at Boston. Request of Mr. G. R. Bushby for support of British Government in his appeal to the Supreme Court.

Doctors' Commons, December 20, 1862.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 17th December instant, stating that with reference to the Report of the Law Officers of the Crown of the 2nd of August last,* he was directed by your Lordship to transmit to me therewith, together with the previous papers, a further letter, dated the 11th December instant, from Mr. G. R. Bushby, reporting the condemnation by the Prize Court at Boston of his vessel, the "Lilla," and stating the grounds on which he trusts that Her Majesty's Government will support an appeal to the Supreme Court which

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* Page 195.

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he has caused to be entered against this decision, and will demand the restitution of his ship.

Mr. Hammond was also pleased to send me a despatch from Lord Lyons (No. 455), inclosing a copy of Judge Sprague's decision in the case, and he was to request that I would take Mr. Bushby's application into consideration, and report to your Lordship my opinion thereupon.

In obedience to your Lordship's commands I have taken Mr. Bushby's application into consideration, and have the honour to report—

That I do not advise Her Majesty's Government to interfere in this case upon the ground that the vessel was captured within British waters.

The master in his protest originally placed the capture beyond three miles from the shore off Abaco, and the Prize Court would be warranted in considering this evidence as conclusive upon the point.

It was quite within the legitimate province of the jurisdiction of the Prize Court to inquire into the facts of the *bonâ fide* transfer of the "Lilla" from a belligerent to a neutral during the war.

The absence of proof that Mr. Bushby was an actual purchaser for value, and the fact that the old captain was on board, and exercising a sort of command, occasionally at least, were circumstances calculated to excite just suspicion.

It is proper to state, however, that I see with grave alarm the refusal of the Judge of the Federal Court to recognize the authority of the Confederate Prize Court in its relations to neutral States. The mischief and the injustice of such a course is manifest. Such a decision may go a long way to justify those proceedings of the "Alabama" of which the Federal States have so bitterly complained.

It is very possible that the Court of Appeal will admit the further proofs refused by Judge Sprague, and will reverse the sentence, as it has very recently reversed one elaborate decision of the inferior Court.

If the Court of Appeal should, however, sustain this sentence, it may deserve consideration whether Her Majesty's Government should or should not tender a remonstrance upon the whole case to the United States' Government.

In the meanwhile directions should be given to watch the proceedings in the Appeal Court, and to facilitate in every way, short of direct interference, the prosecution of the appeal.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 312.

The Queen's Advocate to Earl Russell.—(Received December 24.)

TURKEY.

Consular protection claimed by Mr. Sophocles Theologo, a naturalized British subject, for his agent, Mr. Xenophon Theologo, at Galatz.

Doctors' Commons, December 22, 1862.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 18th instant, stating that he was directed by your Lordship to transmit to me a correspondence which has passed between the Foreign Office, Mr. Sophocles Theologo, a naturalized British subject, and Her Majesty's Consul at Galatz,* relative to Consular protection claimed by his agent at Galatz, Mr. Xenophon Theologo, but refused by Mr. Ward.

Mr. Hammond was also pleased to inclose a copy of the Circular Instructions to Her Majesty's Consuls of January 8, 1851, referred to by Mr. Consul Ward as bearing him out in refusing, without further instructions, to afford Consular protection to Mr. Sophocles Theologo's agent, together with drafts of answers which your Lordship proposes to return to Mr. Ward and Mr. Sophocles Theologo upon this subject.

And with reference to the Report of the late Queen's Advocate of the 18th August, 1852, Mr. Hammond was to request that I would, at my earliest convenience, report to your Lordship my opinion as to whether the proposed drafts of answers are right and proper.

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* Mr. Theologo, October 29, 1861; to Mr. Theologo, November 11, 1861; to Consul Ward, No. 7, November 14, 1861; Consul Ward, No. 3, January 14, 1862; Mr. Theologo, July 14 and November 24, 1862.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I am of opinion that the proposed drafts of answers are right and proper.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 313.

The Queen's Advocate to Earl Russell.—(Received December 24.)

RUSSIA.

Request of Mr. L. Galèa of Odessa to know what steps he should take to legitimatize a natural child.

Doctors' Commons, December 23, 1862.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 22nd December instant, stating that he was directed to transmit to me a despatch from Her Majesty's Consul-General at Odessa (No. 39), inclosing a letter from Mr. Laurent Galèa, a British subject, requesting to be informed what steps he can take towards legitimatizing a natural child; and to request that I would report to your Lordship my opinion as to what answer should be returned to Mr. Galèa's application.

In obedience to your Lordship's commands I have taken Mr. Galèa's application into consideration, and have the honour to report—

That I am unable to point out any process through the agency of which the child of Mr. Laurent Galèa can be legitimatized in England. Possibly there may be less difficulty in procuring his legitimatization in Russia, where Mr. Galèa appears to be domiciled. The doctrines of the civil and canon law which are admitted into the laws of some countries, as to adoption and legitimacy, are unknown to the law of England; and indeed I do not know the law of any European country by which the issue of an unmarried woman could be rendered the legitimate child of parents, one of whom was a woman, not the mother of, but married to the father of the child.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 314.

The Queen's Advocate to Earl Russell.—(Received December 24.)

UNITED STATES.

Capture of the "Ann Sophia" for alleged intention of running blockade of Wilmington.

Doctors' Commons, December 23, 1862.

My Lord,

I AM honoured with your Lordship' commands signified in Mr. Hammond's letter of the 17th instant, stating that with reference to my Report of the 30th of October* upon the case of the "Ann Sophia," he was directed by your Lordship to transmit to me, together with the previous papers, a despatch from Her Majesty's Minister at Washington (No. 464, November 28), inclosing a copy of the letter in which Mr. Seward had acknowledged the receipt of the representation addressed to him in this case; and to request that I would take the same into consideration, and furnish your Lordship with my opinion whether Mr. Seward's observations with regard to the acknowledgment made by the captain of the "Ann Sophia" should be accepted as sufficient.

In obedience to your Lordship's commands I have taken Mr. Seward's letter, together with the other papers, into consideration, and have the honour to report—

That the letter of Mr. Seward generally upon this case is satisfactory, and that his observations with regard to the acknowledgment made by the captain of the "Ann Sophia" should be accepted as sufficient.

I have, &c.
(Signed) ROBERT PHILLIMORE.

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No. 315.

The Queen's Advocate to Earl Russell.—(*Received December* 29.)

UNITED STATES.

Act of the Legislature of Virginia regulating the issue of licenses to trade in that State.

My Lord, *Doctors' Commons, December* 26, 1862.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 22nd instant, stating that he was directed by your Lordship to transmit to me, therewith, two despatches from Lord Lyons, Her Majesty's Minister at Washington (Nos. 272 and 470), respecting an Act passed by the Legislature of Virginia regulating the issue of licenses to trade within that State, and he was to request that I would take this matter into consideration, and furnish your Lordship with my opinion thereupon.

In obedience to your Lordship's commands I have taken this matter into consideration, and have the honour to report—

That I am of opinion that it was competent to the Legislature of Virginia to pass the Act in question, though I think it might be open to some expostulation on the part of Her Majesty's Government as to the severity of its effect upon neutral subjects.

It seems, however, to be a measure of supposed self-defence in time of war, and that an interval, however short, is allowed to elapse before it comes into practical effect; I am of opinion, therefore, that it founds no just cause of complaint as a direct violation of international law.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 316.

The Queen's Advocate to Earl Russell.—(*Received December* 29.)

TURKEY.

Claim advanced by the Porte to right of search in the Strait of Prevesa and in the Gulf of Arta, and to confiscate munitions of war found on board foreign vessels.

My Lord, *Doctors' Commons, December* 26, 1862.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 20th December instant, stating that he was directed to transmit to me the accompanying despatches from Her Majesty's Chargé d'Affaires at Constantinople (No. 91 of the 25th November, and No. 105 of the 3rd of December), inclosing copies of his correspondence with Aali Pasha, the Turkish Minister for Foreign Affairs, on the subject of a claim advanced by the Porte to exercise the right of search in the Strait of Prevesa and in the Gulf of Arta, and to confiscate munitions of war found on board vessels in those waters.

That the Treaty between Greece and Turkey of July $\frac{9}{21}$, 1832, which is referred to by Mr. Erskine, will be found in State Papers, vol. xxii, page 934; and to request that I would take these papers into consideration, and report my opinion as to the right of the Porte to exercise such jurisdiction in regard to British vessels.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That having regard to the language of the Treaty, namely,—"Thus the shore of the Gulf of Arta to the north and west of the point where the boundary line meets its waters, will be retained by the Ottoman Empire; and the shore of the gulf to the south and west of the line is assigned to the State of Greece, with the exception of the Fort of Punta," I am clearly of opinion that the first proposition of the Porte to visit all vessels entering the Straits of Prevesa and the Gulf of Arta was illegal. The amended proposition, as it appears in the letter of the Turkish Minister, namely, that this visit will be only exercised upon vessels "*destinés pour les seules côtes* de la Turquie sur le Détroit de Priveza et le Golfe d'Arta," is also not free from grave objection, though Mr. Erskine's rendering of these words—"only to vessels *touching some part of the coast* belonging to Turkey"—would contain a proposition against which no reasonable exception could in the circumstances be taken by Her Majesty's Government. But it should be clearly stated and understood that the Porte does not profess to exercise any jurisdiction of the sort, except as to vessels actually anchoring in, and not merely passing over, Turkish waters.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 317.

The Queen's Advocate to Earl Russell.—(*Received December* 29.)

SPAIN.

Claim of Spanish Consul-General at Odessa to compensation for the destruction, during the Crimean war, of his property near Kertch.

My Lord, *Doctors' Commons, December* 26, 1862.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 14th instant, stating that with reference to the Reports of my predecessor, dated January 24, March 26, October 28, and November 2, 1857, he was directed by your Lordship to transmit to me a note from the Spanish Minister at this Court, dated the 1st December instant, again calling attention to the claim of the Spanish Consul-General at Odessa to be compensated for the destruction, during the Crimean war, of property belonging to him near Kertch; and Mr. Hammond was to request that I would take Señor Gonzales' note into consideration, together with the previous correspondence, as marked in the accompanying volumes, and that I would report to your Lordship my opinion as to the answer which should be returned to Señor Gonzales.

In obedience to your Lordship's commands I have taken Señor Gonzales' note, together with the previous correspondence, into consideration, and have the honour to report—

That I humbly advise that an answer be returned to Señor Gonzales by Her Majesty's Government to the following tenour and effect:—

That the claim of the Spanish Government on behalf of the Spanish owner is put forth as a claim founded upon international right and justice.

That such a claim, whether considered (1) as an abstract question of law, or (2) as clothed with the particular circumstances of the case, appears to Her Majesty's Government equally inadmissible.

1. With respect to the abstract question of law:—

The principle of international jurisprudence which considers the immoveable property of a neutral, situate in the country of the belligerent, as being subject to the same exigencies of war as the immoveable property of the belligerent himself, is a principle well founded upon the practice and usage of States, upon the reason of the thing, and is supported by the opinions of accredited writers.

So far as the abstract question of law is concerned, Her Majesty's Government must now, as hitherto, take their stand upon this principle, and refuse to be driven from it by speculative refinements as to what ought to be, rather than what is, the international law upon the subject.

It is clear that endless difficulties might arise from the contrary doctrine.

The neutral may have mortgaged his property, wholly or in part, to the belligerent, or he may have only that fiduciary relation to it which in the English system of law is represented by a trustee who has the legal or nominal, while the person for whom he is trustee has the equitable or beneficial, title to the property.

It would be imposible that the belligerent should, *flagrante bello*, inquire into the character of the title to the property which is in the territory of the enemy. The neutral by choosing to reside and purchase land in that territory identifies himself with it, and with its fortunes. Moreover, the belligerent can have no security that the property of the neutral, with or without his consent, may not be used by the Ruler of the territory (who has over it what jurists call *dominium eminens*), as it actually was in this very instance, "as a strategic measure" (to borrow the expression of the Russian Commander) against him. And if the British Commander, having reasons to believe that the enemy would use the farm and its provisions for their benefit, and therefore to his detriment, had done what he did not do, namely, ordered its destruction, he would have acted according to the necessary and recognized rules of war, and subjected his Government to no claim for restitution or indemnity.

Upon the same principle, if the Spanish Consul had possessed a mercantile establishment at Sebastopol, and it had been destroyed by the bombardment of British cannon, he would not have been entitled to reparation. Upon the same principle, Her Majesty's Government refused to a British subject, Mr. Platt, compensation for the destruction of his valuable machinery at Kertch, though he had endeavoured to place himself under the protection of Her Majesty's forces.

The analogies of recognized and undisputed Maritime Prize Law support the same doctrine. If the Spanish Consul's merino sheep, and the straw which

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was to feed them, had been taken on board a Russian ship in the Straits of Yenikale, they would unquestionably have been condemned as enemy's property. Why? Because the neutral, although a Consul, had incorporated himself with the trade of the belligerent, and his property was *pro hâc vice* to be treated as that of the belligerent.

But the reason applies with much greater force upon every principle, both of policy and jurisprudence, to landed property of the neutral, which is physically as well as politically inseparable from the country of the belligerent.

2. If Her Majesty's Government consider this case, not in the abstract, but clothed with all its circumstances, they are equally indisposed to accede to the demand of the Spanish Government.

Upon this point it would be almost sufficient to refer to the former despatches of Her Majesty's Government.

It must be repeated that it appears from General Mitchel's report to Her Majesty's Government, that while the farm had been partly destroyed "as a strategic measure" directed by Russia against Great Britain and her allies, and by a conflagration so extensive that it is doubtful whether any considerable farm-building remained upon it, and while it had been also plundered by the Turks, the British Commander, on the other hand, so far from ordering or sanctioning any destruction or rapine, had purchased and paid for the forage on the farm, 642*l.* 7*s.* 1*d.* by a contract of December 10, 1855, and had, as it is admitted, given strict orders to his troops to abstain from injuring the property.

The evidence which Her Majesty's Government have received, both upon the general injury done to the farm, and as to the special injury alleged to have been done to what remained of it after the Declaration of Peace, differs materially from that adduced by Señor Gonzales.

This discrepancy, and the insuperable difficulty of ascertaining the exact truth, and circumstances necessarily incident to such a peculiar claim, serve to illustrate the good sense of the rule of law which refuses to entertain it.

Lastly. The fact that the Government of Turkey has been pleased (perhaps upon grounds of facts not applicable to or admitted by Her Majesty's Government) to send a sum of money to Señor Boquer y Rivas, does not induce Her Majesty's Government to sanction the introduction of a new principle, fraught with grave consequences, into the international relations of States. Still less is Her Majesty's Government induced to do so by the example of Russia in this particular instance.

The conduct of Russia in this matter is, however, by no means unimportant in its legal bearing upon the question. It demonstrates that the question truly stated is one which appertains to the public law of Russia, and not to the law of nations. It may well be that the former law indemnifies those subjects, native or temporary, whose property has on account of the general interests of the State suffered either from the exigencies of the State itself, or at the hands of the enemy; but upon this very account the enemy cannot be called upon to repair the damage on the ground that the property was neutral.

For these, among other reasons, Her Majesty's Government are of opinion that they ought to adhere to the opinion expressed in their former despatches upon this subject, of March 31, 1857, and of November 11 in the same year, and regret that they are unable to accede to the claim preferred on behalf of the Spanish Consul by the Spanish Government.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 318.

The Queen's Advocate to Earl Russell.—(Received December 29.)

SPAIN.

Claim of Collector of Customs at Barcelona to take charge of the sale of the wreck of a British vessel.

My Lord, *Doctors' Commons, December* 27, 1862.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 26th instant, stating that he was directed by your Lordship to transmit to me a despatch from Her Majesty's Minister at Madrid (No. 394), reporting that the Collector of Customs at Barcelona has claimed the right to take charge of the sale of the wreck of a British vessel to the exclusion of Her Majesty's Consul, who has hitherto had the direction of such sales.

That Her Majesty's Government were informed last year, in a despatch which Mr. Hammond also transmitted to me, that it was the intention of the Spanish authority to adopt such a course; but Her Majesty's Chargé d'Affaires having obtained an opinion from the Legal Adviser of his Legation adverse to the pretensions of the Spanish authority, brought the matter to the notice of the Spanish Government, and promised to report the view they took upon it.

That Report has not been received, and the matter has dropped until this occurrence arose.

Mr. Hammond was to request that I would take these papers into consideration and furnish your Lordship with my opinion whether Her Majesty's Government would be justified in insisting on the right of Her Majesty's Consul to take charge of such wrecks.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That it appears to me that the opinion of Señor Diaz y Auguelles is well founded in fact and law; and that Her Majesty's Representative at Madrid should be instructed to urge that both by Treaty and by long prescriptive usage the customary and proper jurisdiction of the British Consul over wrecks of British vessels ought not to be interfered with by the officers of the Spanish Customs.

It may be expedient to discover on what grounds the French Embassy remonstrated against a similar invasion of the privileges of their Consul: but it does not seem to me desirable that any reference to their proceedings should be made by Her Majesty's Representative in his remonstrance to the Court of Madrid.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 319.

The Queen's Advocate to Earl Russell.—(Received December 29.)

PERSIA.

Right of British Consul-General at Bagdad to protect children of Ali Agha, who was born in India, but of Persian descent.

Doctors' Commons, December 27, 1862.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 16th December instant, stating that he was directed to transmit to me the accompanying despatch and its inclosures from Her Majesty's Minister at Tehran (No. 184, October 26), requesting instructions with regard to the right of the British Consul-General at Bagdad to afford protection to the children of a person named Ali Agha, who was born in India, but was of Persian descent, the Persian Government having asserted that the children ought to be placed under the protection of the Persian Consul at Bagdad. He was also pleased to inclose the instructions with respect to the granting of British protection to Persian subjects, and persons of Persian origin, referred to by Mr. Alison (No. 82, September 14, 1850, and No. 64, August 23, 1860); and to request that I would take these papers into consideration, and furnish your Lordship with my opinion as to the decision which Her Majesty's Government should come to in this matter.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I am of opinion that the British Consul-General at Bagdad is authorized upon the principles of law, and warranted by the usage applicable to the subject, to take under his protection the sons of Ali Agha, while they continue resident at Bagdad.

I have, &c.
(Signed) ROBERT PHILLIMORE.

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No. 320.

The Law Officers of the Crown to Earl Russell.—(Received December 29.)

UNITED STATES.

Claim of Messrs. Martin and Son for destruction by United States' cruizers of their vessel the "York," driven ashore on coast of North Carolina.

Temple, December 27, 1862.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 15th instant, stating that with reference to the Report of the Law Officers of the 28th July last,* relative to the destruction by United States' cruizers of the British ship "York," he was directed by your Lordship to transmit to us, together with the previous papers,† a despatch from Her Majesty's Chargé d'Affaires at Washington,‡ inclosing a copy of a note from Mr. Seward stating the grounds upon which the United States' Government justify the proceedings adopted in the case of that vessel; and a letter from Messrs. Martin and Sons,§ the owners of the "York," inclosing documents tending to prove the nature of her cargo, and the reasons for her being stranded in the neighbourhood of a blockaded port.

And Mr. Hammond was to request that we would take these further papers into our consideration, and furnish your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have the honour to report—

That a consideration of the further papers submitted to us in this case leaves no doubt upon our minds that in our former Report we took a correct view of this case.

On the one hand, the statement of the United States' Commander, Prentiss, that the "York" was discharging her cargo (which is not even alleged to have been contraband) under the protection of the Confederate troops, is a conjecture, in itself unsupported by proof, and quite at variance with evidence subsequently produced.

On the other hand, there is not only the very credible and sober testimony of the master and others connected with the "York" in support of the original statement, in itself accordant with every appearance and probability, but there is also the evidence of the "York" having been boarded and visited on two occasions by United States' Captains, the latter occasion happening shortly before the vessel was driven on shore; both of whom satisfied themselves, after investigation, of the perfect lawfulness of her cargo and her destination.

We cannot help entertaining a strong hope that if the later papers now before us are laid before the United States' Government, they will at once recognize the justice of the claim for compensation to the "York."

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 321.

The Queen's Advocate to Earl Russell.—(Received December 29.)

UNITED STATES.

Claim of owners of the "Will o' the Wisp," captured at Matamoros, and released by sentence of Prize Court.

Doctors' Commons, December 27, 1862.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 17th instant, stating that with reference to my Report of the 15th of September‖ upon the case of the "Will o' the Wisp," he was directed by your Lordship to transmit to me, together with the previous papers, a correspondence on the subject which has since passed between the Foreign Office and Her Majesty's Chargé d'Affaires at Washington.¶

Mr. Hammond was also pleased to transmit me further papers respecting the case which have been received from the Colonial Office, and from Mr. Joseph Howe;** and he was to request that I would take the same into consideration, and furnish your Lordship with my opinion thereupon.

In obedience to your Lordship's commands I have taken these further papers into consideration, and have the honour to report—

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* Page 189.

† Messrs. Martin, July 10; Law Officers, July 28; to Mr. Stuart, No. 78; to Messrs. Martin, October 14.

‡ Mr. Stuart, No. 243.

§ Messrs. Martin, October 18, 1862.

‖ Page 221.

¶ To Mr. Stuart, No. 139, October 2; Mr. Stuart, No. 310, October 24, 1862.

** Colonial Office, December 13, 1862; Mr. Howe, December 16, 1862.

That with respect to the alleged place of capture, I have to remark (in addition to my observations on this point in my former Report), that of the two witnesses examined, one swears to the capture having taken place "off the mouth of the Rio Grande River, about two miles from the land on the Mexican side" (page 18); the other swears it took place "at the mouth of the Rio Grande" (page 22). There was no appearance under protest to the jurisdiction, nor does the point appear to have been distinctly or specifically raised by the defensive plea (page 25), nor to have been argued before nor adjudicated upon by the Judge (pages 26, 27). It is incorrectly stated, therefore, in the Memorial, that the "Will o' the Wisp" and cargo "were decreed to be given up as not being liable to seizure in a neutral port" (page 32).

The ground of the Decree—whether or no it ought to have gone upon the ground of the seizure having been made in neutral waters—actually did go upon the lawfulness of a trade in gunpowder between two neutral ports.

It is also stated in the Memorial (page 31)—"that the cause was heard in the absence of the agent of your memorialist, the supercargo of the vessel, who was obliged to remain at Matamoros, he being on shore when the vessel was seized, and by reason of her sudden departure from Matamoros he was unable to proceed in her to Key West, or to forward the papers which would have shown the character of the voyage, with the full particulars of which the master was but imperfectly acquainted; and no opportunity was afforded afterwards to proceed from Matamoros to Key West."

But I do not find any complaint on the part of those who conducted the case, that any application was made to the Court, and refused by it, for a delay in order to produce further proof; and I find that the British Vice-Consul, Mr. Welch, in his despatch of the 28th August to Lord Lyons (Inclosure No. 2 in No. 221), says:—"I am aware that complaints have been made by parties that the Prize cases are hurried through the Court to the detriment of the claimants, but to my certain knowledge the Court has never refused to grant abundant time for communication with absent owners."

I must think, therefore, that the Court is no way responsible for the absence of this proof.

I have the honour to repeat my opinion, that the justice of the case required that both costs and damages should have been awarded to the owners of the "Will o' the Wisp,"—the former certainly, the latter according to all reasonable probability.

But it must be remembered that the British Vice-Consul, Blacker, speaks (June 9, 1862, inclosed in No. 25, Mr. Jonson's despatch) of the equivocating and prevaricating manner in which the Captain gave his evidence, and that the case at first appears to have made an unfavourable impression upon Mr. Stuart.

It does not appear that Mr. Seward has, as yet, made any reply to the demand of Her Majesty's Government. It might be desirable, if there still be an opportunity for so doing, that Her Majesty's Representative at Washington should be instructed to say that evidence, obtained quite lately, tends to show that the capture was made in neutral waters, because the United States' Government may and ought to take this into consideration, though the matter was not, in the particular exigencies of the case, pressed upon the Court.

It is true that the United States' Government may reply that an appeal is open to the owners of the "Will o' the Wisp," but it may be strongly urged that they ought not, all the circumstances considered, to be made to incur further expense.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 322.

The Queen's Advocate to Earl Russell.—(Received December 30.)

TURKEY.

Claim of Ismael Bey, a Circassian, to British protection as a naturalized British subject.

Doctors' Commons, December 30, 1862.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 20th December instant, stating that he was directed to transmit to me two despatches and their inclosures from Her Majesty's Chargé

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d'Affaires at Constantinople (Nos. 89 and 107), stating the circumstances under which a person named Ismael Bey has applied for British protection, and to request that I would take these papers into consideration, and furnish your Lordship with my opinion as to the manner in which this claim should be dealt with by Her Majesty's Government.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I am of opinion that Ismael Bey is entitled upon this evidence, until it is credibly contradicted, to be considered by Her Majesty's Government as a native Circassian; and, if this be so, it is clear that he has a claim to British protection upon the very narrowest construction (the correctness of which I do not mean to affirm) of the Act of Naturalization, for even by that construction he would be entitled to protection so long as the passport was in force, and he was seized by the Turkish authorities before its expiration.

I am of opinion, however, that if Ismael Bey be satisfactorily proved to be a Turkish native subject, Her Majesty's Government ought not to protect him under the Act of Naturalization against his native Sovereign. It is a very different question (one not properly arising in this case) whether he has not a right to be protected against every other foreign authority.

I think that if Her Majesty's Government decide upon affording the protection claimed, it might be expedient, regard being had to all the circumstances of the case, that Ismael Bey should be required to submit (as he appears to be willing to do, see Inclosure No. 7 in despatch No. 89) to an investigation of the charge preferred by the Porte before the Supreme Consular Court, and to abide by the decision of that Court. This is, however, a matter which I think might be left to the discretion of Her Majesty's Representative at Constantinople.

I have, &c.

(Signed) ROBERT PHILLIMORE.

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FROM

THE LAW OFFICERS

OF

THE CROWN.

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CONFIDENTIAL.

Law Officers' Reports: 1863.

No. 1.

The Law Officers of the Crown to Earl Russell.—(Received January 1.)

UNITED STATES.

My Lord, *Temple, January* 1, 1863.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 24th ultimo, stating that he was directed by your Lordship to transmit to us a letter from the Admiralty dated the 24th December, stating that the following telegram in cypher had been received from the Senior Naval Officer at Gibraltar, viz.:—

"Confederate steamer sold to British owners. United States' Minister notifies the sale will not be respected by war vessels, and that 'Sumter' will be taken on the high seas when the vessel sails. Instructions requested."

That the Admiralty, referring to the case of the "Minerva" (6 Robinson's Admiralty Reports, pages 396 and 399), request to be informed whether the Senior Officer should be told in reply that the sale is invalid, and will not be supported by Her Majesty's Government.

Mr. Layard was to request that we would take the case into consideration, and furnish your Lordship at our earliest convenience with our opinion as to the course which Her Majesty's Government ought to pursue in the matter.

We are also honoured with Mr. Layard's second letter dated the 26th ultimo, stating that with reference to his letter of the 24th ultimo, he was directed by your Lordship to transmit to us a copy of the letter from the War Office, transcribing a further telegram received from Gibraltar respecting this case, and to request that we would take the same into our consideration, and report to your Lordship our opinion as to the answer which should be returned thereto.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we are clearly of opinion that the authorities at Gibraltar ought not to have prohibited the sale of the "Sumter" at Gibraltar. The United States' Consul's statement that the "Sumter" had been taken as prize appears to be unwarranted, and one to which no attention is due.

With respect to the probability and lawfulness of the capture of the "Sumter" on the high seas by an United States' cruizer, we have to remark that her seizure for the purposes of investigation and trial in the Federal Prize Court would certainly, in the circumstances, be justifiable and lawful.

We do not think it necessary for us now to express any final opinion upon the question of prize law, whether the purchase of the "Sumter" at Gibraltar by a neutral was or was not lawful.

The present Judge of the Admiralty Court decided (1855) that the sale of a single ship to a neutral by a belligerent during war was lawful, where payment was made of the purchase-money, and the title and interest of the belligerent vendor wholly divested. And he said, "It matters not, generally speaking, where the ship was lying at the period of such a sale, provided she was not *in*

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transitu, nor lying in a blockaded port." (The "Baltica," Spinks' Prize Cases, page 271.)

This, however, is not inconsistent with the doctrine of Lord Stowell (the "Minerva," 6 Robinson's Admiralty Reports, page 401) that the purchase by a neutral from a belligerent of a vessel built (or, indeed, used) for war, but rendered incapable of acting as a ship of war by the arms of the other belligerent, and driven into a neutral port for shelter, is unlawful, as tending to enable the enemy to rescue himself from the disadvantage into which he had fallen.

It is true that the transfer of enemy's *merchant* ships, so driven into port, to neutrals has, after much doubt, been held legal by the English Prize Courts, and that in the particular case decided by Lord Stowell, the transfer was of a *ship of war* from a belligerent to a neutral; but the "Sumter" may properly be considered as being at the time of the sale in the same category, though to be used by the purchaser for commercial purposes only.

And, on the whole, we incline strongly to the opinion that her condemnation in the Federal Prize Court would not warrant any interference on the part of Her Majesty's Government.

As regards the question contained in the last telegram from Sir W. J. Codrington, whether on the demand of the Liverpool merchant who is supposed to have made a *bonâ fide* purchase of the "Sumter," he ought to be registered as a British owner of the ship, we think the answer should be in the affirmative. It will be understood that in advising this answer, we take for granted that the several requirements, with reference to registration, of "The Merchant Shipping Act, 1854," Part II (so far as applicable), will be complied with.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 2.

The Queen's Advocate to Earl Russell.—(Received January 1.)

Doctors' Commons, January 1, 1863.

My Lord,

JAPAN.

I HAVE the honour to state that I have received a letter from Mr. Hammond, dated the 29th December, 1862, in which, among other matters relative to the demands of Her Majesty's Government upon the Government of Japan, he states that he has your Lordship's directions to request me to prepare the usual instruments for the constitution of a Prize Court at Hong Kong, if I should be of opinion that it is proper to constitute the same, and authorizing me to obtain the assistance of the Queen's Proctor for this purpose; and as I am of opinion that it would be expedient to constitute a Prize Court at Hong Kong, I have therefore availed myself of your Lordship's permission to call in the assistance of the Queen's Proctor for the preparation of the necessary documents in which we are now engaged.

The Queen's Proctor has reminded me that, on all former occasions, the Advocate of the Lords Commissioners of the Admiralty was also called in for the same purpose.

I have therefore to beg that your Lordship will be pleased to direct the Queen's Proctor to request the Advocate to the Admiralty to render the assistance usual in these cases.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 3.

The Queen's Advocate to Earl Russell.—(Received January 2.)

Doctors' Commons, January 1, 1863.

My Lord,

UNITED STATES.

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 27th December ultimo, stating that he was directed to transmit to

me the accompanying papers* respecting the arrest of Captain Sherwin, a British subject, in Fort Delaware, Pennsylvania; and to request that I would take this case into consideration, and report to your Lordship my opinion thereupon.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That the abstract right of the United States' Government to try Captain Sherwin for high treason cannot be denied; but that Her Majesty's Representative at Washington should be instructed to express surprise at the gravity and suddenness of the charge, after the negotiations which had taken place with respect to that gentleman; to remark upon the great improbability of its being sustained; to point out the previous respectability of Captain Sherwin's character, and his positive denial of the charge, supported *primâ facie*, at least, most strongly by his refusal to leave his prison without indemnification; and to speak firmly as to the unquestionable right to ample compensation which incarceration and trial upon a false or unsustained charge of this description would give to the party accused.

It does not, however, appear to me clear why Captain Sherwin sent the five men in the schooner to Nassau; this act raises a suspicion that he was aware of their object and character. But I do not at present see any reasonable ground for supposing that he is indictable for high treason against the United States.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 4.

The Queen's Advocate to Earl Russell.—(Received January 2.)

Doctors' Commons, January 1, 1863.

My Lord,

UNITED STATES.

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 27th December ultimo, stating that he was directed by your Lordship to transmit to me the papers noted in the margin,† respecting the destruction of the British schooner "Ellen" by the United States' cruizer "Mercedita."

That I should perceive from Lord Lyons' despatch and its inclosures that he has been informed by Mr. Seward, that under all the circumstances of the case, the United States' Navy Department is willing to allow three-fourths of the amount claimed as compensation, and that Lord Lyons awaits instructions as to accepting the sum.

Mr. Layard was to request that I would take this case into consideration and report to your Lordship my opinion thereupon, and more especially as to whether the compensation offered by the United States' Government ought to be accepted by Her Majesty's Government on behalf of the claimants.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report,—

That I think it is evident that the United States authorities know that the "Mercedita" was alone guilty of this collision, and it is probable that an unbiassed Court of Admiralty would find the "Mercedita" wholly to blame, and would condemn her owners in the full amount of the value of the lost schooner "Ellen," and in the costs of the suit.

Nevertheless, as the issue of such a suit is never at any, and especially in the United States' Courts at the present time, certain; as it is possible that both parties might be found in fault, in which case only half of the damage would be paid by the "Mercedita," and each vessel would be left to pay its own costs; and as even in the event of entirely successful litigation, there would be extra costs not included in what are called the taxed costs, which would fall upon the "Ellen," I advise that the tender of immediate payment of three-fourths be accepted.

I have, &c.
(Signed) ROBERT PHILLIMORE.

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* Messrs. Ismay & Co, November 17; to Mr. Stuart, No. 201; Lord Lyons, No. 490.

† Colonial Office, October 25, 1862; to Colonial Office, October 29, 1862; to Mr. Stuart, No. 175, October 29, 1662; Lord Lyons, No. 481, December 5, 1862.

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No. 5.

The Queen's Advocate to Earl Russell.—(*Received January* 3.)

Doctors' Commons, January 3, 1863.

UNITED STATES.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 30th December ultimo, stating that he was directed to transmit to me the correspondence, as marked in the margin,* between the Foreign Office and Her Majesty's Minister at Washington, relative to the objections entertained by the United States' Secretary for the Navy to furnish American cruizers with the Warrants and Instructions prescribed by the Treaty between the two Governments for the suppression of the Slave Trade, on the ground that the privileges granted by the Treaty are in conflict with the belligerent rights of United States' cruizers.

He was also pleased to transmit the draft of a despatch which your Lordship proposes to address to Her Majesty's Minister at Washington on the subject; and to request that I would take these papers into consideration, and furnish your Lordship with my opinion whether there is any foundation for the opinion entertained by the United States' Secretary for the Navy in this matter, and also whether the proposed draft to Lord Lyons is right and proper.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I am of opinion that the view taken by your Lordship, and expressed in the draft despatch to Her Majesty's Minister at Washington, is perfectly correct.

I do not see any foundation for the apprehension of the United States' Secretary of Navy. It is quite clear that nothing is taken from, but something is added to, the power of the belligerent.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 6.

The Queen's Advocate to Earl Russell.—(*Received January* 3.)

Doctors' Commons, January 3, 1863.

BRAZIL.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 30th December ultimo, stating that he was directed to transmit to me two despatches, from Her Majesty's Minister at Rio and Consul at Pernambuco,† regarding the administration of the property of a deceased British subject named Henry Gibson, who died at the latter place on the 3rd of last month; and to request that I would inform your Lordship what instructions should be given to Mr. Christie on this subject.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That Mr. Christie should be instructed that upon the present statement the legal presumption is, that Henry Gibson, deceased, was domiciled at Pernambuco. There is an unsupported assertion that he was domiciled in England, but all the facts in these papers are against this supposition. That if he died domiciled at Pernambuco, the law of Brazil will govern the question of the validity of his testament, both as to real and personal property (it would govern it as to real property even if he were domiciled in England), and also the question of the guardianship of his minor children. There is no Treaty, I believe, with Brazil which exempts British subjects from the operation of the general rule of private international law.

The Consul may be directed to render such assistance as may be in his power to the executors, but not to dispute, as a matter of right, the jurisdiction of the Brazilian Court over the testament of Mr. Gibson. As far as the personal property in England is concerned, the Court of Probate there will follow the order of the Brazilian Court.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 7.

The Queen's Advocate to Earl Russell.—(*Received January* 6.)

Doctors' Commons, January 3, 1863.

UNITED STATES.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 26th December, stating that he was directed by your Lordship to transmit to me therewith a despatch and its inclosures from Her Majesty's Consul at New York (No. 139, December 4), reporting the circumstances attending the capture of the British steam-vessel "Onachita" by the United States' cruizer "Memphis," for an alleged intention of violating the blockade of the Southern ports of North America; and to request that I would take the same into consideration, and furnish your Lordship with my opinion thereupon.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That the master's protest states the facts of a cargo of contraband arms having been taken on board at Bermuda, and of that cargo having been thrown overboard when the "Onachita" was chased.

The legal inference from these facts, unexplained, is, that the "Onachita" was carrying contraband to the Confederates, and might therefore be captured as lawful prize. But if she was seized 200 miles from the American coast on the ground of her intention to break the blockade, that question is again raised which appears to me of much importance, and not as yet to have met with a satisfactory solution either in the Prize Courts or from the Government of the United States, namely, the effect of the President's Proclamation upon the general law of blockade.

Previously to this Proclamation Great Britain and the United States had always maintained the position that a vessel sailing with intent to break the blockade was liable to capture anywhere on the high seas. France, on the contrary, had maintained that a vessel could not be seized, except after notice by a blockading ship, off the blockaded port.

In 1838 M. Molé put forth this doctrine in these words relatively to the blockade of the Argentine Republic:—

"Les bâtiments de guerre neutres se présentant devant un port bloqué doivent aussi être invités à s'éloigner; s'ils persistent, le Commandant du blocus a le droit de s'opposer à leur entrée par la force; et la responsabilité de tout ce qui peut s'ensuivre pèsera sur les violateurs du blocus."

And upon this text MM. Pistoye and Duverdy, in 1855, write the following comment (it is needless to say that they are mistaken as to the foundation of the English doctrine on the subject):*—

"Autrefois l'Angleterre, toujours par suite de ses idées sur les blocus imaginaires, saisissait tout navire que des croiseurs rencontraient en route pour un port bloqué, lorsqu'il était constant que ce navire avait mis à la voile après que la notification officielle du blocus avait été connue dans le port d'où il était parti. On considérait comme une violation de blocus le fait de se diriger vers des lieux qui étaient bloqués. Aujourd'hui il n'en saurait être de même, car les neutres ne sont obligés de respecter que les blocus effectifs; or, il peut se faire qu'un blocus notifié officiellement ne soit pas effectif, il peut même se faire qu'un blocus qui a été établi avec des forces suffisantes ait cessé d'exister; les neutres sont dans leur droit de se diriger vers un port bloqué, pour voir si le blocus subsiste toujours; ils ne sont coupables que lorsque, le blocus existant, ils cherchent à le violer."

The President's Proclamation would appear to have designedly set aside the old law, and adopted the French law, of blockade.

This was quite competent for the United States' Government to do; but if so, the United States' Prize Court must be bound by the Proclamation until it be formally altered:—

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* To Mr. Stuart, No. 6; Mr. Stuart, Nos. 11 and 12; to Lord Lyons, No. 18; Lord Lyons Nos. 23 and 26.

† Mr. Christie No. 107; Consul Hunt, No. 22.

* De Pistoye and Duverdy, vol. i, page 375.

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"I, Abraham Lincoln, &c., have further deemed it advisable to set on foot a blockade of the ports within the States aforesaid, in pursuance of the laws of the United States, and of the Law of Nations in such case provided. For this purpose a competent force will be posted so as to prevent entrance and exit of vessels from the ports aforesaid. If, *therefore, with a view to violate such blockade*, a vessel shall approach, or shall attempt to leave either of the said ports, she will be duly warned by the Commander of one of the blockading vessels, who will endorse on her register the fact and date of such warning; and if the same vessel shall again attempt to enter or leave the blockaded port, she will be captured and sent to the nearest convenient port for such proceedings against her and her cargo, as prize, as may be deemed advisable."—(Proclamation of President Lincoln, dated April 19, 1861.)

I have drawn attention at some length to this point, because it seems to me expedient that it should be fully pressed upon the Prize Court on behalf of British subjects.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 8.

The Law Officers of the Crown to Earl Russell.—(Received January 6.)

Temple, January 5, 1863.

My Lord,

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Hammond's four several letters dated the 31st ultimo, stating that he was directed by your Lordship to transmit to us a copy of a letter from the United States' Minister at this Court, dated December 30, 1862, calling your Lordship's attention to the sale of the vessel "Sumter" at Gibraltar; and also two letters from the War Department, dated December 31; copies of a letter from the Board of Admiralty, and of its inclosures; and a further letter from the Admiralty, both of the same date, together with its inclosures, all on the same subject; and that he was to request that we would take these further papers, together with those previously transmitted to us, into our consideration, and furnish your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken these further papers into consideration, and have the honour to report—

That they do not appear to us to render necessary any alteration in the Report which we have already had the honour to make in this case. It may, however, be expedient to state explicitly that we are of opinion that the "Sumter" cannot be protected by any of Her Majesty's ships beyond the territorial waters of Gibraltar, that is, beyond the distance of three miles from the shore.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 9.

The Queen's Advocate to Earl Russell.—(Received January 6.)

Doctors' Commons, January 5, 1863.

My Lord,

UNITED STATES.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 1st instant, stating that, with reference to the case of the British steamer "Labuan," which formed the subject of the Law Officers' Reports of the 22nd March, 3rd April, and 17th September of last year,* he was directed by your Lordship to transmit to me a despatch and its inclosures from Her Majesty's Minister at Washington (No. 512, December 16, 1862), respecting the refusal of the authorities at New York to grant a clearance to that vessel on the 5th of November last, on which day she was loaded and ready for sea; That I should observe that the explanation given to Her Majesty's Minister for this refusal was lest, being bound for Matamoros, the "Labuan" should carry intelligence respecting General Banks' expedition, and that the clearance was at last given on the 11th ultimo, five days after General Banks had sailed.

Mr. Hammond was to request that I would take the circumstances of this case into consideration, and report to your Lordship my opinion whether Her Majesty's Government would be borne out in complaining of the detention of the "Labuan."

In obedience to your Lordship's commands I have taken the circumstances of this case into consideration, and have the honour to report—

That, in my opinion, all the circumstances considered, the detention of the "Labuan" does not require any further remonstrance or intervention on the part of Her Majesty's Government.

I have, &c.
(Signed) ROBERT PHILLIMORE.

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* See Reports for 1862, pages 70, 83, and 225.

No. 10.

The Queen's Advocate to Earl Russell.—(Received January 7.)

My Lord, *Doctors' Commons, January* 5, 1863.

NEW GRANADA.

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 1st instant, stating that he was directed by your Lordship to transmit to me a despatch from Her Majesty's Chargé d'Affaires in New Granada (No. 17) respecting a case in which a claim is advanced against the Government of that country, arising out of the seizure of a conductor of silver; and Mr. Layard was to request that I would report to your Lordship my opinion as to the answer which should be returned to Mr. Griffith as to the course to be pursued by him in case the New Granadian Government should pay compensation in notes, stated to be at a discount, but which he admits are a legal tender.

In obedience to your Lordship's commands I have the honour to report—

That Mr. Griffith should be instructed not to support the Company in refusing the notes of the New Granadian Government, which are by the law of that country a legal tender; though the large discount to which they are now fallen may be fairly urged as an element in estimating the amount of indemnification, if it is to be paid in these notes.

I humbly suggest that the good faith of the New Granadian Government in this matter, and the difficulties with which they are pressed, entitle them to a very favourable consideration.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 11.

The Queen's Advocate to Earl Russell.—(Received January 6.)

My Lord, *Doctors' Commons, January* 6, 1863.

UNITED STATES.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 1st instant, stating that he was directed by your Lordship to transmit to me a despatch from Her Majesty's Consul at Madeira (No. 31, December 2, 1862), and a letter and its inclosures from the Admiralty, dated December 13, 1862, relative to the course pursued by the United States' ship "Tuscarora" in searching the British steamer "Thistle," shortly after the latter vessel had left the Island of Madeira:

That I should observe that, in the Consul's despatch, it is stated that the "Tuscarora" brought the "Thistle" to, and sent boats on board, when at a distance of between three and four miles from the shore, and that the Commander of Her Majesty's ship "Leopard," in his report to the Admiralty, states that this occurred at a distance of four miles from land.

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Mr. Hammond was to request that I would take this case into consideration, and report to your Lordship my opinion whether Her Majesty's Government would be borne out in objecting to the search of the "Thistle" under these circumstances.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That it was competent to the United States' ship "Tuscarora" to stop and visit upon the high seas the British vessel the "Thistle."

That the "high seas" must be considered (at present at least) as beginning at the distance of three miles from the shore,—beyond which distance the visit is said to have taken place.

The search for contraband, moreover, was not, according to the letter of the British Consul, at all unreasonable. But it was not competent to the American cruizer to make a belligerent use of the port of a neutral State; and a more unneutral use of the port cannot be well conceived than lying in wait in it for the vessels of another neutral State as they enter and leave this port, and the instant they pass the limits of three miles, boarding and visiting them, and then returning to the port.

This conduct appears to me to call for a remonstrance on the part of Her Majesty's Government, both to the Governments of Portugal and of the United States.

The former ought not to allow such an use of the port of Madeira to the belligerent; to persist in doing so would be a just cause of grave offence to Great Britain.

The latter, in making such a use, violates the principles of international law, both towards Portugal and Great Britain.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 12.

The Queen's Advocate to Earl Russell.—(Received January 7.)

Doctors' Commons, January 6, 1863.

My Lord,

JAPAN.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 29th ultimo, stating that he was directed by your Lordship to transmit to me therewith copies of two despatches addressed to Her Majesty's Chargé d'Affaires in Japan (Nos. 38 and 41), respecting the reparation to be demanded of the Japanese Government, and of one of the principal Daimios, and if necessary to be enforced, for the murder and outrage committed on British subjects on the 14th of last September.

That I should observe that in the event of redress being refused by the Japanese Government, the Admiral commanding Her Majesty's naval forces in the waters of Japan will be instructed, in pursuance of Her Majesty's commands signified in the inclosed letter from your Lordship to the Lords Commissioners of the Admiralty, to enforce the same either by reprisals or by blockade, or by both; and that in the event of reparation being refused by the Daimio, the Admiral will be instructed to use coercion against him by blockading his harbour, by seizing his ships, and if necessary, by attacking him in his residence.

That your Lordship directed Mr. Hammond to request that I would consider these instructions with reference to the steps which it may be necessary to adopt in the event of the indicated measures of coercion against the Government or the Daimio being had recourse to; and specifically with reference to the expediency of forthwith constituting a Prize Court at Hong Kong, before which vessels, either Japanese or neutrals, captured for breach of blockade, if instituted, might be proceeded against. That I would likewise consider the case of Japanese vessels taken as reprisals, and afterwards brought before a Prize Court for condemnation.

That if such a Court is deemed by me necessary, your Lordship apprehends that the authority of Her Majesty in Council will be required to give effect to it; and Mr. Hammond was accordingly to request, that in that case I would prepare without delay, and with the assistance of the Queen's Proctor if I should desire it, the proper drafts of instruments to be submitted for Her Majesty's sanction, so that the same may be ready at the time of the next Council being held, which will be shortly.

Mr. Hammond was also to request that I would furnish your Lordship with any observations which I may think it advisable should be communicated to the Admiral for his guidance in carrying out the instructions referred to in this letter.

I am also honoured with Mr. Hammond's letter of the 1st instant, stating that your Lordship had requested that the Queen's Proctor would, in conjunction with the Admiralty Advocate, render me such assistance as I might require in framing the necessary instruments for the constitution of such Prize Court.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That it appears to me expedient that, in the event of Her Majesty being compelled to declare war against Japan, a Prize Court should be legally constituted at Hong Kong.

The blockade of the Japanese ports would, in all probability, affect the neutral commerce of the United States of America and of France, and might give rise to some delicate and serious questions of international law.

It is, therefore, in my humble judgment, a necessary precaution that the proper international tribunal, a Prize Court, should be in existence to decide upon them.

I have, therefore, with the assistance of the Admiralty Advocate and the Queen's Proctor, prepared the usual and proper instruments, which are as follows:—

1. Order in Council, authorizing the seizure and detention of Japanese vessels, and directing a Commission to be prepared, authorizing the Lords of the Admiralty to require the Admiralty Courts to deal with such vessels and their cargoes.
2. Commission to the Lords of the Admiralty.
3. Warrant to the Judge of the High Court of Admiralty.
4. The like to the Judge of the Vice-Admiralty Court at Hong Kong.
5. Instructions to the Vice-Admiralty Courts.
6. The like to naval officers.
7. Interrogatories to witnesses.

In these papers I have followed your Lordship's instructions in treating the Prince of Satsuma, as well as the Tycoon of Japan, as belligerents.

There is a novelty in this mode of procedure; but there is no reason why the Prince should not be treated as *de facto* independent, which would seem to be the case, though whether he be so *de jure*, or not, must depend upon a more intimate acquaintance with the Constitution of Japan than I possess.

With respect to instructions to be given to the British Admiral commanding at Japan, I would suggest the importance of impressing upon him, that if he find it necessary to declare war and establish a blockade, he should in the first place publish the Notification of the blockade, according to the form which (in order to prevent the mistakes which arose in the last war) I have appended to this Report, and of which it would, I think, be convenient that some printed copies should be sent out from this country, to be ready for immediate use. He should then send copies of the same to the Representatives of foreign States in Japan, and by the earliest means in his power to Shanghae and Hong Kong, and of course to the Government at home, in order that a proper Notification may appear in the "Gazette," and be communicated to foreign Powers.

I think, moreover, that in the particular circumstances of this blockade the Admiral should be instructed not to seize any neutral vessels which have not previously been warned, and whose warning has not been indorsed upon their papers. At all events, at first and for a reasonable period, this course should be purused.

Your Lordship will observe that the Order in Council is drawn (according to precedent) widely, so as to enable Her Majesty's Government to constitute the High Court of Admiralty and any Vice-Admiralty Court a Prize Court; they are, so to speak, Prize Courts *in posse*, but it will be understood that only that Court to which a warrant and instructions are sent will be actually a Prize Court *in esse*.

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I mention this because I understand it to be the intention of Her Majesty's Government to create only one Prize Court, namely, that at Hong Kong.

I have, &c.
(Signed) ROBERT PHILLIMORE.

Inclosure in No. 12.

Form of Notification of Blockade.

(Insert date at the top. Day, month, year, and ship.)

I, , Admiral, commanding the naval forces or Her Majesty Queen Victoria in the waters of Japan, do hereby notify that I have this day, the day of , by command of Her Majesty Queen Victoria, established a blockade of the following ports and harbours in the Islands of Japan, namely,

and that the aforesaid ports and harbours are in a state of strict blockade by a competent force. And it is hereby further notified that all the measures authorized by the law of nations, and the respective Treaties between Her Majesty and the different neutral Powers, will be adopted and executed with respect to all vessels which may attempt to violate the said blockade.

R. P.

No. 13.

The Queen's Advocate to Earl Russell.—(Received January 7.)

Doctors' Commons, January 6, 1863.

My Lord,

AFRICA.

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 29th December last, stating that he was directed by your Lordship to transmit to me the accompanying letter, and its inclosures, from the African Association at Liverpool, calling your Lordship's attention to an Agreement between Pepple, King of the Bonny country, on the West Coast of Africa, on the one part, and Messrs. Foster and Chamerovzow and Viscount de Thury on the other part, by which certain exclusive privileges of trade and navigation are to be granted to the latter in consideration of the sum of 20,000*l.* to be paid by them to the King; and Mr. Layard was to request that I would take these papers into consideration, and furnish your Lordship with my opinion whether the provisions of the Agreement in question are at variance with the Treaty of November 21, 1848, concluded by Her Majesty's Government with the King and Chiefs of Bonny, which Treaty would be found at p. 51, vol. viii, of "Hertslet's Commercial Treaties."

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I am of opinion that the Agreement in question, which restricts for the period of twenty years, to particular persons, the rights of navigating the River Bonny, and of placing exclusive trading establishments thereon, is at variance with the letter and the spirit of the VIth Article of the Treaty of November 21, 1848, which confers upon all Her Majesty's subjects the right of trading freely in all the rivers, places, and ports of the kingdom.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 14.

The Queen's Advocate to Earl Russell.—(Received January 7.)

Doctors' Commons, January 6, 1863.

My Lord,

PERU.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 1st instant, stating that he was directed by your Lordship to transmit to me a despatch from Her Majesty's Acting Consul-General in Peru (No. 91), calling atention to the circumstances under which Mr. J. Smith has suffered loss by the proceedings of Peruvian authorities, and to request that I will take this despatch into consideration, and report to your Lordship whether Her Majesty's Government are called upon to take any or what steps in this matter.

In obedience to your Lordship's commands I have taken this despatch into consideration, and have the honour to report—

That there is some difficulty in understanding why Mrs. Smith applied in her capacity as an United States' subject for permission to open a canteen in San Lorenzo, and is a matter to be inquired into at Lima. I assume, at present, that she was, at the time of her application, the wife of Smith, the complainant, a British subject. He appears to have been treated with great injury and injustice; and I think Her Majesty's Representative at Lima should be instructed to support, in a moderate way and to a moderate degree, his claim for compensation from the Peruvian Government.

Probably about 1,000 or 1,500 dollars, instead of 8,000, should be the limit of the demand.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 15.

The Queen's Advocate to Earl Russell.—(Received January 12.)

Doctors' Commons, January 10, 1863.

My Lord,

TURKEY AND EGYPT.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 5th January instant, stating that he was directed to transmit to me the accompanying letter, dated the 30th December ultimo, from Messrs. Schunck and Co., soliciting your Lordship's support in regard to a claim advanced by a person named Emil Pasha on the Egyptian Government. That I should perceive from the previous papers in this case which were also inclosed the nature of Emil Pasha's claim, and the interest which Messrs. Schunck and Co. have in the matter; and to request that I would report to your Lordship my opinion whether the case is one in which Her Majesty's Government should interfere.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I agree with Her Majesty's Consul at Cairo that this is a case in which Her Majesty's Government ought not to interfere.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 16.

The Queen's Advocate to Earl Russell.—(Received January 12.)

Doctors' Commons, January 10, 1863.

My Lord,

ITALY.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 8th instant, stating that he was directed by your Lordship to transmit to me the accompanying correspondence* respecting the case of Mr. C. Wilkinson, a British subject residing at Leghorn, who was assaulted by an Italian workman in August last, and complains that he has been unable to obtain redress; and Mr. Hammond was to request that I would take these papers into consideration, and report to your Lordship my opinion whether any further steps should be taken by Her Majesty's Government on Mr. Wilkinson's behalf.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

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* Mr. Wilkinson, October 13 and December 17, 1862; to Sir J. Hudson, No. 256; Mr. West, No. 4.

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That I am clearly of opinion that no further steps should be taken in this matter by Her Majesty's Government.

Mr. Wilkinson must seek redress, according to the ordinary forms of law, in the proper tribunal.

He has suffered no denial of justice; on the contrary, the Italian authorities have perhaps gone further than those of this country would have gone, in taking measures for the future protection of Mr. Wilkinson against Borelli, in the absence of any case legally substantiated against that person in a Court of Justice.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 17.

The Queen's Advocate to Earl Russell.—(*Received January* 12.)

Doctors' Commons, January 10, 1863.

ITALY.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 8th January instant, stating that he was directed to transmit to me therewith a despatch from Her Majesty's Chargé d'Affaires at Turin (No. 2), inclosing copies of correspondence relative to a search which was made in the houses of certain British subjects at Girgenti in October last, while Sicily was in a state of siege; he also inclosed a copy of the Decree ordering the establishment of the state of siege in the island; and to request that I would take these papers into consideration, and report to your Lordship my opinion whether the proceedings of the Italian authorities on the occasion alluded to were such as to call for any remonstrance on the part of Her Majesty's Government.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That in my opinion the proceedings of the Italian authorities on the occasion referred to have not been such as to render necessary any remonstrance on the part of Her Majesty's Government.

It is important that I should state that this opinion is not founded on any doubt as to the general obligation of the Treaty of 1845 upon the existing Italian Government. I do not, indeed, understand that any such excuse is set up by that Government. I think that there was no deliberate intention of violating the provisions of that Treaty, but that in a state of siege, which suspends the operation of the ordinary municipal law towards all the inhabitants of the city, the visiting and search of the houses of certain British subjects in the necessary execution of a measure called for by regard for the public security, affords no reasonable ground for complaint to the Government of those subjects; especially when such visiting and search appears to have been unattended by violence or plunder. It would be pedantic and unjust to consider such a forced and temporary suspension, in time of war, of the provisions of a Treaty intended to operate in time of peace as an intentional or unjustifiable breach of its obligations.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 18.

The Queen's Advocate to Earl Russell.—(*Received January* 12.)

Doctors' Commons, January 10, 1863.

ARGENTINE CONFEDERATION.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 6th instant, stating that he was directed by your Lordship to transmit to me a despatch and its inclosures from Her Majesty's Chargé d'Affaires at Buenos Ayres (No. 34, October 31, 1862), respecting the case of Martin Quigley, a British subject, who has been forcibly compelled to serve in an Argentine regiment, under the plea that he had been guilty of some criminal act; and Mr. Layard was to request that I would take this correspondence into consideration, and report to your Lordship my opinion on the legality of this measure, and as to the instructions which should be sent to Mr. Doria.

Mr. Layard was pleased to observe that I should find the Treaty to which Mr. Doria refers in the last paragraph of his despatch, at page 47 of vol. iii of "Hertslet's Treaties."

In obedience to your Lordship's commands I have taken this correspondence into consideration, and have the honour to report—

That, both upon general principles and the specific provisions of the Treaty, it was an unlawful act on the part of the Argentine Republic to compel a British subject to serve as a foreign soldier, though it be defended as a punishment for an alleged, and in this case unproved, criminal offence.

I am of opinion that Mr. Doria should be instructed to state, as the clear and definite instruction of Her Majesty's Government to him, this position of law to the proper authorities of the Argentine Republic.

Mr. Doria, in making this communication, will of course take care not to re-open the individual case of Mr. Quigley; but, on the contrary, to repeat the expression of his satisfaction that it has been so amicably terminated.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 19.

The Law Officers of the Crown to Earl Russell.—(*Received January* 12.)

Temple, January 12, 1863.

RUSSIA.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 16th of December ultimo, stating that he was directed by your Lordship to transmit to us therewith a correspondence[*] which had taken place respecting a claim on the Russian Government which had been put forward by Mr. Bate for payment for an astronomical instrument which he alleged was supplied by his father to the Emperor Alexander of Russia in 1818, and that we would see that the authorities at St. Petersburgh reject Mr. Bate's claim; and to request that we would take the papers into our consideration, and favour your Lordship with our opinion whether Her Majesty's Government could give any further assistance in the matter to Mr. Bate.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we agree with Lord Napier in believing the claim of Mr. Bate to be well-founded, and that the astronomical instrument was ordered on behalf of the Emperor, and sent to the Russian Embassy; and we also agree with his Lordship in thinking that the evidence offered by Mr. Bate (although not sufficient to substantiate any claim in a Court of Law if such claim had been competent) is sufficient to produce a moral conviction that the price of the instrument in question is really due from the Russian Government. At the same time we feel bound to add that the very great lapse of time, and the neglect of the opportunities which might have existed of substantiating the material facts by conclusive evidence, if greater diligence had been used (especially at the time when the instrument itself was discovered in the hotel of the Russian Embassy after Count Lieven's departure from this country), are such as to make its rejection by the Russian Government not necessarily inconsistent with good faith.

Entertaining these views, we think that Lord Napier should be instructed to make a further application, stating that Her Majesty's Government are unable to arrive at the same conclusion as the authorities at St. Petersburgh; and that, believing the claim to be made in good faith, and to be supported by evidence worthy of a more candid examination than that which it has yet received, they hope that the Imperial Government will consent to refer the matter to arbitration, as proposed by Lord Napier. Should this, however, be

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[*] Mr. Bate, July 1; to Mr. Bate, July 17; Mr. Bate, July 19; to Lord Napier, No. 136, 1861. Memorandum, April 25; to Mr. Bate, May 3; Mr. Bate, April 23 and May 8; to Mr. Bate, May 10; to Lord Napier, No. 103; Lord Napier, Nos. 447 and 455, 1862.

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refused, we do not advise Her Majesty's Government to take any further steps in the matter.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 20.

The Law Officers of the Crown to Earl Russell.—(*Received January* 12.)

Temple, January 12, 1863.

My Lord,

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 31st December ultimo, stating that he was directed by your Lordship to transmit to us the papers, as marked in the margin,* by which we would perceive that, with the view to render the Treaty of the 7th of April, 1862, between Her Britannic Majesty and the United States of America for the suppression of the African Slave Trade, still more efficacious for its purpose, it was proposed to extend the reciprocal right of visit and detention of vessels to the coasts of the Island of Madagascar, Puerto Rico, and San Domingo.

Mr. Layard was also pleased to state that, by the Ist Article of the Treaty in question, this right could only be exercised within 200 miles from the coast of Africa to the southward of the thirty-second parallel of north latitude, and within thirty leagues of the Island of Cuba; and it was now proposed to extend it to within thirty leagues of the coasts of the Islands of Madagascar, Puerto Rico, and San Domingo: he was accordingly to transmit to us the draft of an Additional Article to the Treaty of the 7th of April, 1862, for giving effect to this arrangement, which Lord Lyons is to be instructed to propose to the United States' Government; and to request that we would take the same into our consideration, and favour your Lordship, at our early convenience, with our opinion whether it is right and proper.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That the draft of the Additional Article to the Treaty of the 7th of April, 1862, is, in our opinion, properly drawn for the purpose of effecting the contemplated arrangement.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 21.

The Law Officers of the Crown to Earl Russell.—(*Received January* 12.)

Temple, January 12, 1863.

My Lord,

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 20th of December ultimo, stating that he was directed by your Lordship to acquaint us, with reference to the concluding paragraph of our Report of the 8th of December, 1862,† respecting the case of the "Alabama," that your Lordship had expressed to Mr. Adams his readiness to confer with him with the view of endeavouring to ascertain whether any alterations could be made in the Foreign Enlistment Acts of this country and of the United States, whereby the hands of the respective Governments might be strengthened, so as to admit of their dealing more effectually with cases similar to that of the "Alabama."

Mr. Hammond was also pleased to state that in anticipation of Mr. Adams availing himself of this offer, your Lordship would be glad to be furnished by us at our earliest convenience, with any suggestions which we may have to offer, by which this object might be effected so far as British law is concerned, and which your Lordship might place before Mr. Adams as proper to be adopted by the United States in regard to their laws.

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* Lord Lyons, Nos. 24, 25, and 27, Slave Trade; to Lord Lyons, No. 17, Slave Trade; Admiralty, October 31, 1862.

† See Reports for 1862, page 306.

Mr. Hammond was also further pleased to add that on previous occasions Mr. Adams has mentioned generally in conversation with your Lordship, that the provisions of the law of the United States are more stringent than those of the British statute.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That it appears to us that the provisions of the Foreign Enlistment Act might be wisely strengthened, as we have already stated, by arming the Government with an earlier power of interference with respect to ships whose construction might denote that they were intended for belligerent purposes. The principal defects, in this respect, of the present Act are, that the 7th section prohibits only the "*equipping, furnishing, fitting out, or arming*" any ship or vessel, "with intent, or in order that," &c., and that these words might probably be held not to extend to the *building or constructing*, or *altering and adapting* a vessel, with intent or in order that the same might be used as a ship of war in the service of a belligerent Power, if the operation stopped short of what might be technically called *equipment* or *armament;* and also that there is nothing to prohibit the *sale* or delivery, for the like purpose, of a ship constructed (or even equipped and armed) as a ship of war, provided the act of equipment or armament for that purpose is not brought home to the seller. We think that the statute might with propriety be amended, so as to bring the acts of *building*, &c., and of *sale*, within the same category with those of *equipping* and *arming*, when the intent and purpose is the same. Great care would, of course, be necessary in framing such an amending Statute; and it does not occur to us that beyond this, any additional stringency or severity of provision could prudently be attempted.

Referring to the observations of Mr. Adams to your Lordship as to the greater stringency of the American Foreign Enlistment Act, we think it might be expedient if your Lordship would request him to state in what respects he considers it to be more stringent than the British Act of Parliament; and perhaps, when this information is obtained, your Lordship would have the goodness to submit it to us for our consideration.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No 22.

The Law Officers of the Crown to Earl Russell.—(*Received January* 12.)

Temple, January 12, 1863.

My Lord,

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 31st ultimo, stating that with reference to our Reports of the 13th, 14th, 24th, and 28th of November last,* respecting the case of the British steamer "Blanche" destroyed in Spanish waters by the United States' cruizer "Montgomery," he was directed by your Lordship to transmit to us, together with the former papers, the correspondence which has since passed on the subject,† including despatches from Lord Lyons, covering copies of notes which he has exchanged with Mr. Seward, relative to the claims for compensation which Lord Lyons has been instructed to put forward, and an instruction which has since been addressed to his Lordship (No. 326), directing him to ask for an apology in regard to the compulsion exercised on Mr. Clements to induce him to sign a false statement of the circumstances relating to the "Blanche."

Mr. Hammond was to request that we would take these further papers into consideration, and furnish your Lordship with our opinion thereupon.

Mr. Hammond has been pleased also to transmit to us, by your Lordship's

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* See Reports for 1862, pages 278, 280, 285, and 296.

† Lord Lyons, No. 476, December 2, 1862; to Lord Lyons, No. 330, December 26, 1862; Lord Lyons, No. 496, December 8, 1862; Lord Lyons, No. 501, December 12, 1862; Lord Lyons, No. 513, December 16, 1862.

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directions, a further despatch and its inclosures from Lord Lyons respecting this case (No. 531, December 19), and to request that we would take these papers into consideration, together with those previously sent to us.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we do think Her Majesty's Government, after all that has passed, ought to leave the claim for compensation entirely in the hands of the Spanish Government; among other reasons against this course is this, that the demand for the apology on account of the compulsory false statement of Mr. Clements is a matter which could not well be left to that Government, and, indeed, one in which it would probably, and might properly, decline to interfere.

We think Lord Lyons acted properly in allowing the negotiation between Spain and the United States to precede his own demands on the part of Her Majesty's Government, but that he ought now to press these demands in a substantive form upon the United States' Government, both generally as to the unlawful seizure and destruction of the vessel, and particularly as to the grievous wrong done to Mr. Clements.

As to the general demand, however, it seems to us expedient that it should be in harmony as far as possible with that made by the Representative of the Crown of Spain.

It would appear by Mr. Seward's letter of December 17 (which has been sent to us since the former papers), that it is the intention of the United States' Government to dispute altogether the British ownership and character of the "Blanche."

We have at present no means of knowing upon what evidence an assertion apparently so improbable is founded.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 23.

The Law Officers of the Crown to Earl Russell.—(*Received January* 12.)

Temple, January 12, 1863.

UNITED STATES.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 7th instant, stating that, with reference to our Reports of the 1st instant and 5th instant* respecting the case of the "Sumter," he was directed by your Lordship to transmit to us the draft of the answer which your Lordship proposed to return to the note from Mr. Adams on this subject, and to request that we would take this draft into our consideration, and report to your Lordship our opinion whether it is right and proper.

In obedience to your Lordship's command we have taken these papers into our consideration, and have the honour to report—

That we are of opinion that the letter of your Lordship, of which a draft is inclosed, is proper to be sent with the alterations which we have had the honour of making in the margin and at the end thereof.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 24.

The Law Officers of the Crown to Earl Russell.—(*Received January* 12.)

Temple, January 12, 1863.

FRANCE.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 24th December ultimo, stating that he was directed by your Lordship to transmit to us the accompanying letter from the French Chargé d'Affaires at this Court respecting the case of the French vessel "Olivier," which, being bound from Hayti to Liverpool with a cargo of cotton and mahogany, appeared to have been abandoned at the latter port by the owners, in consideration of the heavy expenses already incurred, and which would further be necessary to render that vessel seaworthy.

Mr. Layard was also pleased to state that it appeared that the consignee of the cargo threatened the owners of this vessel with proceedings in the English Courts in consequence of the course pursued by them in this matter, and the expense he has had to incur before the cargo could be released; and that, on the other hand, the proceedings of the owners were stated to be justified by French law, and the French Chargé d'Affaires was desirous of ascertaining whether, in consideration of the serious consequences which would result to French maritime interests in general from an adverse judgment in this case, it would be possible to obtain the good offices of Her Majesty's Government to averts uch an issue; and to request that we would take the Marquis de Cadore's application into our consideration, and that we would favour your Lordship with our opinion as to the course which Her Majesty's Government should take in this matter.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we are clearly of opinion that it is not competent to Her Majesty's Government, by any use of its good offices or otherwise, to prevent any subject of Her Majesty from bringing an action in the proper tribunal against a French subject for damages, whatever may be the cause of action alleged; nor to interfere with the trial and adjudication of any such action, if brought according to the ordinary rules of law.

Any conflict between the commercial laws of France and Great Britain will be duly considered by the Judge of the Court: and the question whether the law which ought to govern the contract be French or English will be determined upon the usual principles of jurisprudence applicable to such cases. If any inconvenient consequences should at any time result from the manner in which any such question may be eventually decided by the English Courts, in any case which may be of general importance to the commercial interests of the subjects of the two countries, the only mode of applying a remedy to such inconvenience will be by new legislation.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 25.

The Law Officers of the Crown to Earl Russell.—(*Received January* 13.)

Temple, January 12, 1863.

UNITED STATES.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 22nd December last, stating that with reference to our Report of the 30th September,* he was directed by your Lordship to transmit to us a despatch from Her Majesty's Minister at Washington (No. 483), inclosing a copy of a despatch from Mr. Vice-Consul Edwards explaining his statements respecting the treatment of the crews of captured vessels, and in particular respecting the treatment of the crew of the "Mersey;" and Mr. Hammond was to request that we would take these papers into consideration, and furnish your Lordship with our opinion thereupon.

The previous papers relating to this subject were also therewith inclosed.†

In obedience to your Lordship's commands we have taken these papers into consideration and have the honour to report—

That we think the explanations offered by Mr. Vice-Consul Edwards, as far as relates to his statements in his letter to Lord Lyons of the 5th of June, 1862, respecting the treatment of the crew of the "Mersey," are by no means satisfactory.

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* Pages 1 and 6.

* See Reports for 1862, page 236.

† Lord Lyons, No. 415; Mr. Stuart, No. 184; Law Officers, September 30; to Mr. Stuart, No. 143.

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We do not think it necessary to remark upon that part of the case, which originally rested upon the allegations of certain coloured seamen, who have at different times given different and inconsistent accounts of the same transactions. But we much regret to observe that on a point of graver and more serious importance, resting on matters within his personal knowledge, Mr. Vice-Consul Edwards has failed to justify his own statements.

It appears, from Mr. Upton's letter of the 15th of August, that on the 30th of May last, at the close of the examination of certain witnesses in the case of the "Mersey," an order of the Prize Court was applied for and obtained by Mr. Edwards' father (a Notary Public, then acting as counsel for the claimants), for the delivering to each of the "Mersey's" crew, who had been detained as witnesses, of his personal effects, according to a particular specification thereof, then made by the parties themselves on affidavit, and that this order was soon afterwards, in due course, carried into effect, and no complaint of its infraction was ever made. Nevertheless, on the 2nd June (three days after the date of this order), Mr. Charles Edwards, the Notary Public, and father of the Vice-Consul, who had himself obtained it, took from each of those witnesses a protest, in which it was represented that they had been "robbed and plundered of their personal effects;" and, on the 5th of June, Mr. Vice-Consul Edwards wrote to Lord Lyons in the following terms: "Although repeated applications have been made to the United States' Marshal by the parties in person, as well as, at my instance, by the counsel to the claimants, they have not up to the present time succeeded in obtaining restitution of the property taken from them. *This system of robbery has characterized all the cases,*" &c., &c. No mention of the order for restitution being made either in the protest or in the Vice-Consul's despatch.

It is difficult, we think, to speak in terms of too strong censure of such a representation, made under such circumstances, by an Acting Consul, to the Minister of his own Government, unless it could be excused on the ground that he was himself misled, or left in ignorance of the material facts.

This, however, is not alleged by the Vice-Consul; nor, indeed, could it be, because it was at his instance, as he states, that his father, Mr. Charles Edwards, made application upon the subject to the United States' Marshal. What he now offers in his justification on this point, is a letter written on the 6th of June by his father to the United States' Marshal, complaining that a delay of five days had then taken place in the execution of the order of the Prize Court, for delivering up of the property in question; together with the reply of the United States' Marshal, bearing the same date, in which that officer says, "My order to deliver this property would have been given to your clients as soon as they were discharged, had they applied to me for it;" and explained, that it would be necessary for the owners to go to Fort Lafayette, where the property was, in order to have it delivered to them; adding in a postscript, "If your clients will go down to Fort Lafayette, and receipt for their effects, I will pay the express fare to New York." These two letters, the Vice-Consul now appeals to, as evidence of the literal truth of his own statement on the 5th June, that the witnesses had not up to that time succeeded "in obtaining restitution of the property taken from them." He appears, however, to forget that the whole importance of that statement consisted in the character ascribed by him to the detention of this property, as part of a "system of robbery," said by him to be practised upon the crews of captured British vessels.

With respect to the other matters now brought forward by the Vice-Consul in confirmation of his general statements, respecting the treatment of the crews of the captured vessels, we do not feel ourselves in a position to express any satisfactory opinion, and we would suggest that it may probably be desirable to learn, what is the view taken of these matters by Lord Lyons and Mr. Stuart.

The disproof which Mr. Edwards' statements have received in the case of the "Mersey" renders it not improbable that a similar investigation might, in other instances, be attended with similar results; and it is not shown to our satisfaction that in the particular instances now mentioned all proper and available means were taken to bring the alleged facts to the notice of the Prize Courts, or other proper authorities of the United States, and to obtain redress from them after due inquiry.

We observe that the United States' Marshal, in his letter of the 18th August last, says that, down to that date, no complaint of ill-treatment or peculation had ever been made to him. The Vice-Consul in his present despatch makes, however, one very remarkable statement, into which, we think, it will at all events be proper to institute further inquiry; namely, that the crews of four British ships, the "Fanny Laurie," the "Wave," the "Maria," and the "A. Middleton," were confined, either in Fort Lafayette, or in the City jails, for periods varying from twenty to thirty-five days, "*most of that time in irons.*" These periods of detention, though long, may possibly be justified; but nothing (unless it were very violent and disorderly conduct on their own part) could justify the confinement *in irons* of British subjects, detained in prize cases as witnesses; in the other papers, however, which accompany this despatch, we find no where, any mention at all of irons, except as to one single coloured seaman, of the "Fanny Laurie," who is stated to have been placed in irons, for some hours, on board the United States' ship "Massachusetts" (on the pretext, as we collect, of some alleged refractory words or conduct), but who is not said to have been afterwards so treated, either in Fort Lafayette or in any other prison. It is remarkable, if this statement as to irons is really well-founded, that no direct complaint on so very grave a subject should have been previously made to Her Majesty's Government; while, on the other hand, if it should prove to be erroneous, or seriously exaggerated, it will furnish additional ground for receiving with much caution any future representations which may proceed from the same quarter.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 26.

The Law Officers of the Crown to Earl Russell.—(Received January 13.)

Temple, January 12, 1863.

My Lord,

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 1st instant, stating that he was directed by your Lordship to transmit to us a despatch and its inclosures from Her Majesty's Minister at Washington (No. 511, December 16, 1862), respecting the cases of the British schooners "Isabel" and "Teresa," which have been captured by United States' cruizers, and taken into Key West for adjudication.

Mr. Hammond was also pleased to state, that, in these cases, a question has arisen as to how far the British Vice-Consul at Key West would be borne out in interfering on behalf of the Captains of the respective vessels—the one being an American citizen, and the other being claimed as such; and that we should observe, that Her Majesty's Minister, while referring this question for the ultimate decision of Her Majesty's Government, had directed Her Majesty's Consul at New York to furnish the British Vice-Consul at Key West with instructions in the sense of a despatch which your Lordship addressed to Her Majesty's Minister on the 7th of March last (No. 102), and which was founded upon a Report from the Law Officers of the 3rd of that month; and to request that we would favour your Lordship with our opinion as to any further instructions which should be given in regard to them.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we are of opinion that Her Majesty's Representative at Washington has taken a correct view of the law applicable to these cases, in his despatch to Mr. Consul Archibald. With respect to the question in the letter of Her Majesty's Representative (December 16, 1862), "whether *bonâ fide* United States' citizens, who have not become enemies of the States by adhering to the so-called Confederate Government, have, if taken on board British vessels, captured by the United States for a breach of blockade, any claim to British protection," we think this question must be answered, generally, in the negative. We observe, however, both with respect to this class of United States' citizens, and to all other persons captured on board British vessels, that questions might arise, not touched in this nor in our former Report, in the event of its proving that any vessel, out of which such persons may have been taken,

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was *unjustifiably* captured. It does not occur to us that further instructions, with respect to the particular cases referred to, need now be sent to Her Majesty's Representative at Washington.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 27.

The Law Officers of the Crown to Earl Russell.—(*Received January* 13.)

Temple, January 12, 1863.

TURKEY.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 23rd December ultimo, stating that your Lordship's attention having been called to an article in the "Daily News," having reference to a proceeding in the Consular Court at Constantinople, you were pleased to direct Sir Edmund Hornby, who was then on his return to that place, to send home a report on the case.

Mr. Hammond was also pleased to state that this Report had been received, and that he was directed by your Lordship to transmit it to us,* together with the report of the proceedings in the Court, extracted from the "Levant Herald," and to request that we would take the same into consideration, and report to your Lordship our opinion as to the regularity of the course taken by the Court.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That the charge on which Mr. Calvert was tried at Constantinople, before Mr. Legal Vice-Consul Francis, is described partially in the Report of Mr. Francis to Sir Edmund Hornby of the 8th December, 1862 (see page 4); and no further account of the form or terms of the charge is to be found in the papers which are before us. It is clear, from this language, as well as from the statements of Sir Edmund Hornby and of Mr. Francis, that the procceding which was adopted against Mr. Calvert had not (indeed could not have) any reference to the 291st Rule of the Consular Court, providing for the punishment of contempts and misbehaviour in the face of the Court, or during its sitting; on the contrary, it went altogether upon the ground of the utterance of the words used by Mr. Calvert in relation to Mr. Consul Fraser on the occasion referred to, amounting to a misdemeanour at common law, and being, therefore, under the Order in Council, a criminal offence if committed in Turkey. If a misdemeanour had thus been committed by Mr. Calvert, and he was properly tried for the offence, fine and imprisonment were a proper punishment; and although we think that, in awarding punishment, the Court would have acted wisely to have been governed by the extent of fine and imprisonment provided by the 291st Rule in the case of contempt of Court, yet we cannot say that it was bound so to act.

As regards the mode of trial, that is, "in a summary way," and without a jury, we think that the legality of the course pursued is established in the two Reports of Sir E. Hornby and Mr. Francis. The offence having been committed at the Dardanelles, the case was not one "within the original jurisdiction of the Supreme Consular Court," so as to be governed by the 37th Regulation of the Order in Council, as regards "trials in a summary way." We are not satisfied, as Sir E. Hornby and Mr. Francis appear to have been, that this case could properly be treated as coming within the provisions of the 18th clause of the Order in Council, which applies to cases, the "pendency" of which is to be reported by the Provincial Consular Court to the Supreme Consular Court; and, here, it does not appear that any criminal proceeding had been instituted, or was pending, against Mr. Calvert in the Provincial Court. But, assuming the case not to fall within the 18th section, we think that it would properly come within the general terms of the concurrent jurisdiction, which is conferred, by the 16th section, on the Supreme Consular Court. It would also seem that the award of "costs" against the accused was warranted, as a part of the sentence, by the 338th Rule of proceeding in cases dealt with summarily.

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* Sir E. Hornby, No. 77, December 10, 1862.

The main question remains—was the use of the language admitted to have been uttered by Mr. Calvert, on the occasion on which it was used, a misdemeanour? It is not often that, in England, *oral* defamation of this kind is made the subject of proceeding, either by indictment or criminal information, especially when the slanderous words do not appear to have been uttered in the presence and hearing of third parties; and there is no trace of such having been the case, here, on the notes of the Judge who tried the case; although Sir E. Hornby distinctly states, in his Report, that the words were spoken "in the presence of" foreigners (he believes) as well as British subjects. On the whole, however, we think that the words, having been spoken of a Judge, and being a serious calumny of him in his judicial office, might properly have formed the subject of an indictment if uttered in England, and were, therefore, criminally punishable in the person of a British subject in Turkey.

We must add, however, that the case is one of considerable nicety, and of a class which it is not desirable, without necessity, to bring before such an exceptional tribunal as the British Consular Court in Turkey. We make this remark the rather because it is to be collected from the Reports of the Chief Judge and the Legal Vice-Consul, that, in the punishment awarded regard was had, not only to the slander particularly complained of, but also to the supposed necessity of upholding the general authority of the Court, and even to the alleged aggravation of Mr. Calvert's offence by the intemperate line of advocacy adopted by his Counsel.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 28.

The Law Officers of the Crown to Earl Russell.—(*Received January* 14.)

Temple, January 13, 1863.

AFRICA.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 23rd December last, stating that he was directed by your Lordship to acquaint us that your Lordship had received from the Archbishop of Canterbury the inclosed Memorials, addressed to the Queen, praying for Her Majesty's licence, under the Act 5 Vict., cap. 6, in order to enable his Grace to consecrate the Rev. W. G. Tozer, as Bishop of the United Church of England and Ireland, to the tribes around Lake Nyassa and the adjoining country; and the Rev. Edward Twells to be Bishop of the United Church of England and Ireland in the Orange River Free State, formerly within the diocese of Cape Town. That the Archbishop, however, does not, in his Memorials, as was done by his predecessors in the case of the Bishop of the Anglican Church at Jerusalem in 1841, and in the case of the Bishop of Honolulu in 1861, make any suggestion as to the limits to be assigned to the respective dioceses; but on the contrary, in the letter from his Secretaries which accompanied the Memorials, states that he is unable to offer any.

Mr. Layard was pleased to transmit to us the papers connected with the cases of Bishop Alexander in 1841, and Bishop Staley in 1861; and with reference to the form of Memorial and Licence used in those cases, and to the provisions of the Act 5 Vict., cap. 6, and especially the 2nd section of that Act, your Lordship requested that we would furnish you with our opinion whether the Queen's licence to consecrate the two Bishops now to be appointed can properly be issued without a more precise definition of the limits within which they are to exercise their spiritual jurisdiction than is contained in the Archbishop's Memorials.

That, as bearing upon this subject, Mr. Layard was to refer us to two Reports addressed by the Law Officers to Her Majesty's Secretary of State for the Colonial Department under date of the 5th of October and 20th of Decem-

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ber, 1858, relative to the consideration of the late Bishop Mackenzie, to whom Mr. Tozer, one of the two Bishops now intended to be consecrated, is to be the successor.

That your Lordship would be glad to receive our reply at our earliest convenience.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That the Act 5 Vict., cap. 6, does not, in our opinion, render necessary any precise definition of the limits within which a Bishop consecrated under that Act shall exercise his spiritual functions in a foreign country, unless it be proposed that Her Majesty, besides authorizing the *consecration* by her Royal licence under the 1st and 3rd sections, should also, under the 2nd section, authorize the exercise by such Bishops of "spiritual jurisdiction over the ministers of British congregations of the United Church of England and Ireland, and over such other Protestant congregations as may be desirous of placing themselves under his authority." If, in the case of Mr. Tozer, it were sought to obtain Her Majesty's authority for the exercise of any such jurisdiction, we are not satisfied that it would not be necessary to assign more precise limits for that purpose than any which can be collected from the description of "the tribes around Lake Nyassa and the adjoining country," contained in the Archbishop's Memorial. Nor would there appear to us to be any serious practical difficulty in doing this (if it were thought desirable) consistently with the general nature and purposes of the Mission; for the whole space, within any given degrees of latitude and longitude, might be assigned (as the whole of Syria, Egypt, Chaldea, and Abyssinia was assigned in the case of Bishop Alexander), "subject to such alterations in respect to the limit of the jurisdiction to be exercised as may hereafter be made by Her Majesty's authority." The limits so assigned would be those only of the legal "jurisdiction" to be exercised over ministers of British congregations and others, voluntarily submitting themselves, in that respect, to British authority; and there would be no impediment to the extension, beyond those limits, of the Bishop's missionary operations.

In the case, however, of Mr. Twells, the description of "the Orange River Free State, formerly within the diocese of Cape Town," appears to us to be a specification of limits as definite as those which were thought sufficient in the cases of Bishop Alexander and Bishop Staley: and which might, therefore, be safely and properly adopted if it were thought expedient to authorize Mr. Twells to exercise jurisdiction over the ministers of British congregations, &c., pursuant to the 2nd section of the Act.

We observe that the Memorial of the Archbishop of Canterbury differs, in each of these cases, from those which were presented to the Crown by his Grace's predecessors before the consecration of Bishop Alexander and Bishop Staley, in this one important respect, viz., that it does *not* solicit Her Majesty to authorize the exercise, by the Bishops now to be consecrated, of any jurisdiction over ministers of British congregations, or others voluntarily submitting themselves to British authority. And if Her Majesty should simply comply with the prayer of these Memorials (as, in our opinion, she lawfully may), without proceeding to authorize the exercise of any such jurisdiction, the effect will be that, while the consecrations may lawfully take place, the Bishops, when consecrated, will not be entitled, by virtue of the Act, to exercise any jurisdiction over any ministers of British congregations, &c.

Her Majesty's Government will of course determine whether there is any reason of public policy which ought to stand in the way of the extension of the missionary operations of the Church of England among the native population of Africa by means of Bishops, without any dioceses fixed under the authority of the Act in the manner desired.

It does not occur to us to suggest any such objection; and being of opinion that Her Majesty's licence for the consecration of a Bishop under the 1st and 3rd sections of the Act may lawfully be granted in a case in which it is not thought expedient also to authorize the exercise of jurisdiction by such Bishop over the ministers of British congregations, &c., within any local limits, under the 2nd section, we answer your Lordship's question by saying, that we think the Queen's licence to *consecrate* the two Bishops now to be appointed may properly be issued, without any more precise definition of the limits within

which they are to exercise episcopal functions than is contained in the Archbishop's Memorials; but that the licence, if so given, ought *not* to proceed (as in former cases) to authorize the exercise by such Bishops of any local jurisdiction.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 29.

The Law Officers of the Crown to Earl Russell.—(Received January 17.)

UNITED STATES.

My Lord,
Temple, January 16, 1863.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 12th of January instant, stating that with reference to his letter of the 2nd instant, respecting the case of the "Alabama," he was directed by your Lordship to transmit to us a despatch from Lord Lyons (No. 544, December 23, 1862), inclosing a copy of a note from Mr. Seward, justifying the proceedings taken in regard to the seamen of the captured vessel "Sunbeam" (case reported on by the Queen's Advocate on the 28th of November last), to induce them to enter the service of the United States' Government; and to request that we would take these circumstances into our consideration, with reference to any bearing they might have upon the case of the "Alabama."

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That the position taken up by Mr. Seward ought not to be left unnoticed.

It is in substance that it is perfectly competent to the Federal Government to induce, so that neither violence nor fraud be used, Her Majesty's subjects to act as belligerents, contrary to the Foreign Enlistment Act, and in direct opposition to the principles of international law contended for by Mr. Adams in the case of the "Alabama."

This is a circumstance not to be forgotten in any future correspondence between Her Majesty's Government and Mr. Adams on the subject of that ship.

It would not be proper, we think, to leave unanswered this letter from Mr. Seward to Lord Lyons. We think that Lord Lyons should be instructed to express the regret which Her Majesty's Government feel at the declaration of Mr. Seward, its inconsistency with the obligations of the belligerent towards the neutral, and the manner in which it must embarrass Her Majesty's Government in their endeavour to observe a strict neutrality between the belligerent Powers.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 30.

The Law Officers of the Crown to Earl Russell.—(Received January 17.)

GENERAL.

My Lord,
Doctors' Commons, January 16, 1863.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 13th January instant, stating that with reference to our Report of the previous day's date, suggesting the amendments which, in our opinion, might be made to the Foreign Enlistment Act, he was directed by your Lordship to state to us that it appeared to your Lordship that it would be advisable, in addition to the alterations suggested by us, to give a power to the Secretary of State for the Home Department to act, as well as the Customs Department, or instead of the Customs Department, in seizing a vessel infringing the provisions of the Act; and to request that we would take into our consideration, and that we would favour your Lordship with our opinion as to the propriety of giving this power to the Secretary of State.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That we are of opinion that it would be proper to give this power to the Home Department, without taking away the existing power possessed by the Customs Department.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 31.

The Law Officers of the Crown to Earl Russell.—(*Received January* 17.)

Temple, January 16, 1863.

UNITED STATES.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 10th instant, stating that with reference to his letter of the 2nd instant he was directed by your Lordship to transmit to us a letter from Mr. Adams, dated the 5th January, inclosing copies of papers respecting the depredations committed by the "No. 290," or "Alabama," which he has been instructed to submit to the consideration of Her Majesty's Government, and to request that we would take these papers into our consideration and favour your Lordship with such observations as we may have to offer thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That these papers containing accounts of the various captures made by the Confederate war-steamer the "Alabama" do not appear to us to affect in any way the principles of international law applicable to the proceedings of that ship which we have had the honour to bring to your Lordship's notice in our former Reports. Some of the memorialists pray that their Government will so order their naval force as to prevent such captures of the "Alabama." That is undoubtedly the remedy for the evil of which they complain, but it is, of course, one with which Her Majesty's Government have no concern. There is also an allegation that the crew of the "Alabama" are partly or mainly composed of British subjects; if this be so, these persons are acting in violation of the Foreign Enlistment Act, but unfortunately in accordance with the principles upon this subject maintained by Mr. Seward in his recent despatch to Lord Lyons.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 32.

The Law Officers of the Crown to Earl Russell.—(*Received January* 17.)

Temple, January 17, 1863.

UNITED STATES.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 2nd instant, stating that he was directed by your Lordship, with reference to our Report of the 8th of December last* respecting the case of the "Alabama," to transmit to us, together with the former papers, the correspondence which has since passed between your Lordship and Mr. Adams on the subject, viz., your Lordship's answer to Mr. Adams of the 19th ultimo, which is founded mainly upon our above-mentioned Report, and the note and inclosures which been received from Mr. Adams in reply.†

Mr. Hammond was pleased also to transmit to us the sketch or outline of a note which your Lordship has drawn up by way of rejoinder to Mr. Adams, and stated that your Lordship requested we would take this proposed note, and

the other papers, into consideration, and return it to your Lordship with such corrections and additions to it as we might consider desirable.

Mr. Hammond also inclosed two memoranda relative to the case of the "America," which bear on the case of the "Alabama."

In obedience to your Lordship's commands we have taken this note and the other papers into consideration, and have the honour to report—

That it appears to us that the outline of the note drawn up by your Lordship contains, with certain slight additions, which we have made in the margin of it, all that it seems to us expedient to say by way of rejoinder to Mr. Adams.

We venture to suggest that the last paragraph, which we have placed within brackets, should be omitted, inasmuch as it does not appear that the United States' Government can properly be held responsible for any disloyal language of the persons referred to, and it seems better not to introduce any matter which may be open to that remark.

We have also suggested the substitution for that paragraph, of another having direct reference to the case of the crew of the "Sunbeam."

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 33.

The Law Officers of the Crown to Earl Russell.—(*Received January* 17.)

Temple, January 17, 1863.

UNITED STATES.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 10th January, 1863, stating that he was directed by your Lordship to transmit to us two further despatches and their inclosures from Lord Lyons (No. 539, December 22, and No. 560, December 26), respecting the case of the steamer "Blanche," destroyed in Spanish waters by the United States' steamer "Montgomery;" and to request that we would take the same into consideration, together with those referred to us in Mr. Hammond's letters of the 31st ultimo and 3rd instant, and furnish your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That it is impossible to read the evidence taken before the Court-martial without being struck by the evident determination of the Federal captain to disregard, in the most flagrant manner, the rights of neutrals, of which he does not pretend that he was ignorant.

Upon this point there cannot be a more aggravated case.

With regard to the origin of the fire which eventually consumed the ship, it is most incredible that any one of the crew of the ship was the author of it.

It is remarkable that "the card" of Mr. Clements was not forwarded with the proceedings of the Court-martial to the Spanish Minister. But we have every reason to believe that this compulsory statement of Mr. Clements forms one of the objectionable features of this great outrage.

It remains, lastly, to notice the declared intention of Mr. Seward to disregard the sentence of the Confederate Prize Court, duly and formally pronounced, on the ground that rebels cannot have a Prize Court.

If this doctrine be, indeed, formally promulgated, it will require the most prompt and decided contradiction on the part of Great Britain and every neutral State. It is as much at variance with the most important principles of international law as it is destructive of the belligerent rights and status, on which the conduct of the United States' Government throughout the war has been founded, and which have hitherto been scrupulously (however much to their injury) respected by the neutral States.

If this question really arise, we shall be prepared, if necessary, to express an opinion more fully with respect to it.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

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* See Reports for 1862, page 306.

† To Mr. Adams, December 19, 1862; Mr. Adams, December 30, 1862.

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No. 34.

The Queen's Advocate to Earl Russell.—(*Received January* 17.)

Doctors' Commons, January 17, 1863.

My Lord,

UNITED STATES.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 9th January instant, stating that he was directed to transmit to me the accompanying despatch from Her Majesty's Minister at Washington (No. 525, December 19), respecting a tax imposed by the United States' Government on captains of vessels retailing goods from the decks of their vessels in United States' ports; that I should perceive from the papers inclosed in this despatch that a question has been raised as to whether this tax is contrary to the Reciprocity Treaty;* and to request that I would take the matter into consideration and furnish your Lordship with my opinion thereupon.

In obedience to your Lordship's commands I have taken this matter into consideration, and have the honour to report—

That I am of opinion that the retail tax in question is not contrary to the Reciprocity Treaty (June 5, 1854) between Great Britain and the United States. The tax is not a Customs duty; and there can be no reason why articles which, in consequence of the Reciprocity Treaty, have been admitted free of duty should not pay the retail tax as well as any other articles. The fact that they are, for the mutual convenience of the seller and buyer, sold on shipboard, instead of on a stall in the market or a shop in the street, cannot exempt them from contributing to the tax, which, in itself, is perfectly lawful.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 35.

The Queen's Advocate to Earl Russell.—(*Received January* 21.)

Doctors' Commons, January 21, 1863.

My Lord,

CHILE.

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 17th instant, stating that with reference to my Report of the 8th of September last,† he was directed by your Lordship to transmit to me therewith a despatch from Her Majesty's Consul at Valparaiso,‡ relative to the administration of the property of a British subject named Clark or Clarkson, supposed to have been a convict; and to request that I would take this despatch, together with the former papers which were therewith inclosed,§ into consideration, and report to your Lordship my opinion on the case.

In obedience to your Lordship's commands I have taken the despatch together with the former papers, into consideration, and have the honour to report—

That I am of opinion that Mr. Consul Rouse should be apprized that Her Majesty's Government see no reason to find fault with what he has done, or to doubt that he has acted with diligence and with no other desire but that of performing his duty.

That Her Majesty's Government cannot form any opinion as to the propriety of the legal steps taken in the Court at Valparaiso; nor, as it appears from Mr. Thomson's letter of November 28, 1862, that the cause, with all its incidents, is now transferred to Santiago, is it necessary that they should enter into the discussion of this subject.

With respect to Mr. Thomson I have nothing to add to the observations upon the law applicable to the case which I had the honour to make in my last Report to your Lordship.

I have, &c.
(Signed) ROBERT PHILLIMORE.

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* Mr. Mason, July 7, 1862; to Mr. Mason, July 10, 1862; Mr. Mason, January , 1863.

† See Reports for 1862, page 218.

‡ Consul Rouse, No. 12, December 1. 1862.

§ Mr. Thomson, No. 42, 1862; to Mr. Thomson, No. 21, September 10, 1862.

No. 36.

The Attorney and Solicitor-General to Earl Russell.—(*Received January* 22.)

My Lord, *Temple, January* 22, 1863.

RUSSIA.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 9th of January instant, stating that he was directed by your Lordship to transmit to us therewith a note, dated the 14th November ultimo, from the Russian Ambassador at this Court, requesting, under the circumstances mentioned therein, the restitution of a sum of money paid as stamp duty on certain bonds of the Russian Loan issued on the 1st of May last.

Mr. Hammond was also pleased to inclose the draft of a letter referring that application to the Treasury, together with the reply, dated the 6th instant, which had been received from that Board: and to request that we would take these papers into our consideration, and report to your Lordship whether we concur in the opinion expressed by the Commissioners of Inland Revenue, and by the Lords of the Treasury, that the bonds in question were liable to stamp duty.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we concur in the opinion expressed by the Commissioners of Inland Revenue, and by the Lords of the Treasury, that the bonds in question are liable to stamp duty: taking the facts to be as stated, that the bonds bear no date, and that they were signed on some day or days subsequent to the 3rd of June, when the Act enforcing the duty came into operation.

The question is one not of law, but of fact. If the statement of the date of signature, contained in Baron Brunnow's letter can be substantiated, there can be no doubt that the duty paid ought to be returned, and if no duty had been paid, we think that under the terms of the Act (having regard to the fact, appearing on the face of the bonds, that the debts thereby secured were inscribed in the Government Book of the Russian Empire on the 1st of May, 1862), there would be no legal presumption that the signature was later than the 3rd of June, and, consequently, that the onus of proving the date of such signature would have been upon the Crown claiming the duty. It is, of course, for Her Majesty's Government to consider how far they ought to give credit to any statement as to the time of the actual signature which may be made to them on a more careful examination into the facts by the Russian Government; but the *onus probandi* seems to us to have been changed, and now to rest upon the Russian Government by reason of the actual payment of the duty under the circumstances detailed in the letter of the Commissioners of Inland Revenue.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.

No. 37.

The Queen's Advocate to Earl Russell.—(*Received January* 24.)

Doctors' Commons, January 23, 1863.

My Lord,

BRAZIL.

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 9th January instant, stating that he was directed to transmit to me the accompanying despatches from Her Majesty's Minister at Rio (Nos. 71 and 113), relative to an embargo which has been laid on the property of Mr. Vereker, Her Majesty's Consul at Rio Grande do Sul, on account of certain moneys received by him in his official capacity from the proceeds of a British vessel, the "Canrobert," which has been sold by order of a Naval Court; and to request that I would take these papers into consideration, and report to your Lordship my opinion upon the case.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That upon the statement made by Mr. Christie as to the facts, and the opinion of Dr. Azevedo as to the law in this case, it appears to me that Mr. Vereker is liable to the persons claiming to be paid out of the proceeds of

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the "Canrobert." The opportunity for settling this affair should certainly not be allowed to escape. If Mr. Vereker be in England it would be expedient to communicate to him this opinion, and to apprize him that your Lordship finds it necessary to send instructions to Mr. Christie to settle this affair at once, which it seems will render it necessary, unless Mr. Vereker takes immediate measures to prevent it, that so much of his property in the Brazils should be sold as would be required to defray the claims in question.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 38.

The Queen's Advocate to Earl Russell.—(*Received January* 24.)

Doctors' Commons, January 23, 1863.

My Lord,

VENEZUELA.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 20th instant, stating that he was directed by your Lordship to transmit to me a despatch (No. 61), and its inclosures, from Her Majesty's Chargé d'Affaires at Caracas, relative to a claim advanced by Mr. Robert Syers against the Government of Venezuela for damages done to his property by Agents of that Government; and Mr. Hammond was to request that I would take these papers into consideration, and report to your Lordship my opinion as to what support, if any, Her Majesty's Government would be justified in giving to Mr. Syers' case.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I am of opinion that Her Majesty's Chargé d'Affaires at Caracas should be instructed to press, using his discretion as to time and mode, the claim of Mr. R. Syers upon the Venezuelan Government, and to effect, if it should be in his power, an amicable arrangement upon the basis of what he may consider a fair and reasonable estimate of the damage which Mr. R. Syers has sustained.

It is clear that the Venezuelan Government are liable to damages so estimated.

Mr. R. Syers should be apprised that his own estimate will not be made the basis of any official demand on the part of Her Majesty's Government; and if he decline to accept compensation, except upon this estimate, Her Majesty's Chargé d'Affaires should be instructed to interfere no further in the matter.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 39.

The Queen's Advocate to Earl Russell.—(*Received January* 24.)

My Lord, *Doctors' Commons, January* 23, 1863.

TURKEY.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 19th instant, stating that he was directed by your Lordship to transmit to me the accompanying despatches from Her Majesty's Chargé d'Affaires at Constantinople,* respecting the claim of an Ionian, named Falanga, against the War Department of the Turkish Government, on account of goods supplied by him for the use of that Department; and Mr. Hammond was to request that I would take these papers into consideration, and report my opinion as to the course which it would be proper for Her Majesty's Government to take in this matter.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I humbly advise Her Majesty's Government to instruct Her Majesty's Representative at Constantinople to press the Turkish Government to consent to the appointment of a proper Commission, with power to try and decide the whole question of M. Falanga's claim, both as to its existence at all and as to the amount to which it extends.

The Commission must be of the usual mixed kind in these cases, and the contingency of the members of it being equally divided in opinion should be provided for, as Mr. Erskine suggests, by the previous appointment of an umpire.

It is manifest, from the letters of Aali Pasha to Sir H. Bulwer, that M. Falanga has a *primâ facie* claim of a very serious character against the Turkish Government; and also that the consent to appoint a Commission to try, but not to adjudicate, is founded on a desire to stave off, by delays, the payment of that claim, the substantial justice of which it was apprehended that the Commission would establish. The claim appears to be made in good faith; to be *primâ facie* not inconsiderable; the person making it is under British protection; it is founded on an alleged breach of contract, ruinous to the claimant, by the Turkish Government.

I humbly advise that it be so far supported by Her Majesty's Government as to cause it to be adjudicated upon by as fair and impartial a tribunal at Constantinople as the nature of the case will admit.

I have, &c.
(Signed) ROBERT PHILLIMORE.

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* Mr. Erskine, No. 66, November 12, 1862; and No. 11, January 2, 1863.

No. 40.

The Law Officers of the Crown to Earl Russell.—(*Received January* 26.)

My Lord, *Temple, January* 23, 1863.

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 13th instant, stating that he was directed by your Lordship to transmit to us two letters from Mr. Mason,* the agent in this country from the so-styled Confederate Government, requesting explanations with reference to the terms employed by your Lordship in a despatch to Lord Lyons of the 15th February last, relative to the blockade of the Southern ports, maintained by the cruizers of the United States' Government.

Mr. Hammond was also pleased to inclose the draft of a letter which your Lordship proposes to address to Mr. Mason in reply; and was to request that we would take the same into our immediate consideration, and furnish your Lordship with any observations or suggestions which we may have to offer thereupon.

Mr. Hammond was also pleased to inclose copies of the Declaration of Paris, and of the Parliamentary papers containing your Lordship's instruction to Lord Lyons, and to state that that instruction was founded upon the opinion of the Law Officers given a short time before.

In obedience to your Lordship's commands we have taken these papers and the draft proposed letter into consideration and have the honour to report—

That we are of opinion that your Lordship's letter to the Confederate Commissioner is proper to be sent, and contains a correct statement as to the law of blockade.

We have ventured to make some additions in confirmation of the view taken by your Lordship, and also pointing out the position of the United States' Government with reference to the Declaration of Paris.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 41.

The Queen's Advocate to Earl Russell.—(*Received January* 26.)

Doctors' Commons, January 24, 1863.

My Lord,

SIAM.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 12th January instant, stating that he was directed to transmit to me

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* Hertslet's Treaties, vol. ix, p. 998.

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a letter, and its inclosures, from the Colonial Office, dated the 27th December, 1862, respecting the estate of the late G. Attard, a native of Malta, who was drowned in Siam in June 1859. That I should observe that it is stated by Mr. Attard's widow, who has petitioned the Governor of Malta on the subject, that the estate of the deceased, who was under American protection, produced after liquidation by the United States' Consul at Bangkok, a sum of about 1,000 dollars, but that after a lapse of three years 83*l.* 11*s.* only has been remitted to Malta in respect of the proceeds; but that the Governor of Malta suggests that the United States' Government should be called upon for explanations, and for indemnification if it should appear that a loss has been sustained by remissness or unjustifiable carelessness on the part of the United States' Consulate. He was also pleased to transmit to me the previous papers, and to request that I would take the case into consideration and furnish your Lordship with my opinion thereupon.

In obedience to your Lordship's commands I have taken this case into consideration and have the honour to report—

That Mr. Attard, the deceased, must be considered as a subject of the United States. It is distinctly stated in the despatch from the Office of Privy Council for Trade, dated 1st November, 1859 (volume Siam, 1859), "that he was not a British subject, and that the British Consul had no jurisdiction to administer to his effects;" consequently the American Consul was the proper authority to deal with the whole question of his estate, and the report of that functionary as to the amount of it ought to be received as satisfactory by British authority, unless it be most clearly inaccurate or untrue. It does not appear to me that the Report of Mr. Chandler, the late United States' Consul, is necessarily open to either of these charges. It is true that he originally stated his belief that the estate would realize 1,000 dollars, and that there was a great delay, owing in some measure to the change of Consuls, and to a dispute about the nationality of the deceased, in the collection of property, and that the assets eventually realized only 366½ dollars, a fact which is thus accounted for in the letter of Mr. Chandler to the Governor of Malta, 28th April, 1862:—

"The estate was sold at auction in March, and the last of the claims were collected in on the 27th of that month. The last of the debts of the estate were also paid on that day. The claims against the estate were far greater than supposed, and after paying them there was left only the sum of 366½ dollars."

I see no reason to doubt the good faith of this transaction, and looking at all the circumstances, I think that the American authorities cannot be made responsible for any depreciation (if, indeed, any has taken place—of which there is no evidence) in the value the assets. I therefore do not advise Her Majesty's Government to require the production of vouchers, or to interfere further in this matter.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 42.

The Law Officers of the Crown to Earl Russell.—(Received January 27.)

Temple, January 26, 1863.

My Lord,

TURKEY AND EGYPT.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 10th December last, stating that with reference to our Reports of the 6th of October and 5th of November last,* respecting the claim of Mrs. Shee on the estate of Anesti Kovako, now pending in Egypt, you were directed by Earl Russell to transmit to us therewith the drafts of two letters which, in consequence of what we stated in the last of those Reports, were addressed severally to Mr. Ayrton, the agent of Mrs. Shee, and Her Majesty's Acting Consul-General in Egypt.†

That Mr. Ayrton, as we should see by the answer which had been received from him,‡ objects to the course which it was stated was open to him for the settlement by legal process of the matter in dispute, and presses for the direct and immediate interference of Her Majesty's Government in the matter.

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* See Reports for 1862, pages 240 and 270.

† To Mr. Ayrton, November 22, 1862; to Mr. Saunders, November 29, 1862.

‡ December 8, 1862.

That while the questions raised by Mr. Ayrton have been under consideration, a complaint has been received, apparently from the legal advisers in this country of the adverse parties in Egypt, remonstrating against the conduct of Mr. Agent and Consul-General Colquhoun in the matter, and your Lordship, as that gentleman's proceedings were directly impugned, thought it right in the first instance, and as he was in this country, to call upon him for an explanation.

That explanation, together with the complaint, Mr. Hammond was pleased to inclose,* and stated that he was to request that we would consider the facts and statements put forward by Mr. Ayrton in his letter of the 8th of December, and by Messrs. Crowder and Co., and by Mr. Consul-General Colquhoun, in their respective letters of the 27th October and 2nd December, and advise your Lordship as to the course which in the present state of the business your Lordship should adopt.

Mr. Hammond was also pleased to inclose, for convenience of reference, the former papers in the case.

In obedience to your Lordship's commands we have the honour to report—

That, with reference to the facts and statements put forward by Mr. F. Ayrton in his letter of the 8th of December, we can but refer your Lordship to our former Reports of the 6th of October and the 5th of November last, respecting the claim of Mrs. Shee on the estate of Anesti Kovako now pending in Egypt. The former of these Reports was written in ignorance of, and consequently without reference to the practice of foreign attachment (or sequester) obtaining in the British Consular Courts in the Levant; and if that practice, though still prevailing (contrary to the view taken by Mr. F. Ayrton in his letter to Mr. Hammond of the 13th of October last), would, if appealed to, *necessarily* fail, as a means of raising Mrs. Shee's demand before the Consular Court, on the merits, the case is the same as if the practice did not exist; and viewing it in that light, we can but repeat, by reference, the observations which we had the honour to submit to your Lordship in our first Report. But if by the statements put forward by Mr. F. Ayrton in his letter of the 8th December, we are to understand (and this appears to us to be their purport) only that difficulties lie in the way of Mrs. Shee's obtaining what she desires—a hearing of her case before a competent Tribunal on the merits, and that the attempt to compass that end in the Consular Court by foreign attachment *might* fail, we still adhere to the opinion expressed in our second Report (5th November last) that the attempt ought to be made, and the result of such attempt known, before any case can fairly be made out for Her Majesty's Government to consider even whether the circumstances call for political or diplomatic interference.

We have to add that we find it difficult entirely to reconcile Mr. F. Ayrton's views as regards the sufficiency of the law of foreign attachment as administered at Alexandria and Constantinople to meet his client's case, expressed in his letter of the 13th October, with those set forth in his more recent letter of the 8th December. In the earlier letter he states, "if any doubt arises upon the right of Mrs. Shee to make the fund in question" (*i.e.* the portion of the Jeddah compensation which, remaining in the hands of Mr. Ayrton, had been handed over by him to the Consul-General at Alexandria) "available, it must result from the late Order in Council not having provided for this mode of procedure." Sir Edmund Hornby having in the meantime pointed out that "the late Order in Council in no way affected the right of Mrs. Shee to make the fund in question available," Mr. Ayrton then, in his second letter, "while deferring on the technical point mooted," proceeds to enumerate a great number of obstacles, insuperable or otherwise, to Mrs. Shee's being able to make the fund "available," notwithstanding that he is now satisfied that the Order in Council does not affect the question. In short, the former letter seems to represent foreign attachment as being all-sufficient, if only it were in force; the latter, admitting foreign attachment to be in force, describes it as so entirely insufficient as to call for the immediate political action of Her Majesty's Government, without even waiting for the event of a trial of the question.

Mr. F. Ayrton, in his second letter, also describes certain possible inconveniences which might occur to himself were the fund now held by the Consul-General to be returned into his keeping ("as mentioned in your despatch"), and

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* October 27, 1862; and Mr. Colquhoun, December 2, 1862.

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intimates that, under the circumstances, he might "hesitate to accept" the fund. Upon this, we have only to observe that the delivery of the fund (now incorrectly described by Mr. Ayrton, as having been "arrested by Her Majesty's Agent and Consul-General") to the Consul-General at Alexandria, was, as we understand, the voluntary act of Mr. Ayrton himself, and that it rests with him entirely, whether he will, or will not, apply for the restoration of the fund to his own keeping.

Mr. Ayrton also speaks of your Lordship's possibly "sanctioning" the "return" of the fund; no intention having been expressed, or being entertained on the part of the Government in any way whatever to interfere with respect to the disposition of such fund.

We also think it proper to repeat what we stated in our first Report, that we do not conceive ourselves called upon to deal with or consider Mr. Ayrton's own claim, but that of his client, Mrs. Shee, only.

As regards the other matter on which your Lordship desires our advice, namely, the facts and statements put forward by Messrs. Crowder and Co., and by Consul-General Colquhoun, in their respective letters of October 27th and December 2nd, we must observe that the letter of Mr. Colquhoun does not appear to us to be quite satisfactory, regarding it, as we must, as intended to be an answer to the previous letter of Messrs. Crowder and Co. of the 27th October.

Messrs. Crowder and Co. state (and they are not contradicted by Mr. Colquhoun) that proceedings were commenced in the Consular Court at Cairo against Mr. F. Ayrton by Messrs. Miralacchi and Co., for recovery from him of the fund in question, and that to such proceedings Mr. Ayrton did not even appear. We have pointed out, in our first opinion, that to any such proceedings (though we are only informed of their having been taken by the letter of Messrs. Crowder and Co.) no answer could possibly be set up by Mr. Ayrton on the ground of Mrs. Shee's claim.

Messrs. Crowder and Co. further allege that, in this state of the case, the fund was transferred to, or placed at the disposal of, Mr. Colquhoun; that gentleman's own statement being that he "directed the bank to hold it to the order of Her Majesty's Agent and Consul-General in Egypt."

It would also seem, according to Messrs. Crowder and Co's uncontradicted statement, that the matter of the suit by Messrs. Miralacchi and Co. against Mr. Ayrton having been brought on before the Judge of the Supreme Consular Court (he happening to be at Cairo, was "adjourned" in consequence of what is called the "sequester imposed by Mr. Colquhoun on the moneys recovered by Mr. Ayrton." It thus appears to be admitted that a delay, at least of proceedings, in the ordinary course by the firm of Miralacchi and Co. against Mr. Ayrton, has been occasioned by the interference of the Consul-General; and what we fail to discover in Mr. Colquhoun's letter of December 2nd, is any legal justification of such interference. It is not alleged that any application for sequester on behalf of Mrs. Shee was made to the Consular Judge; and it is clearly to be inferred that the course, as regards foreign attachment, which Sir E. Hornby describes as proper and necessary, was not pursued.

It appears to us to follow that if the Consul's conduct admits of justification, that justification has yet to be adduced.

Even if a legal sequester had been applied for and obtained, it would be a question, depending on the practice of the Court, how far such sequester could be allowed to interfere with the progress of an action, previously commenced, for recovery of the debt attached by the person to whom it was primarily due.

We do not enter upon any consideration of the statements made by Messrs. Crowder and Co. as to the facts and merits. We assume them to be according to the instructions which those gentlemen have received, but at the same time we agree with Mr. Colquhoun that the Consular Court might, on a full hearing and discussion, satisfactorily dispose of all matters really in controversy. We must add, however, that Messrs. Crowder and Co.'s letter only the more convinces us of the inexpedience of any present interference of Her Majesty's Government as desired by Mr. Ayrton.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 43.

The Attorney and Solicitor-General to Earl Russell.—(*Received January* 27.)

Russia.

My Lord, *Temple, January* 26, 1863.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 24th instant, stating that he was directed by your Lordship to transmit to us therewith a draft of a note to the Russian Ambassador at this Court, containing a question which it is proposed to address to his Excellency with regard to the time of the signature of the Russian bonds, on the question of whose liability to stamp duty we reported on the 22nd instant; and to request that we would take this draft into our consideration, and report to your Lordship our opinion whether the question is rightly and properly put.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we have considered the draft of your Lordship's proposed note to the Russian Ambassador at this Court, and we are of opinion that the question therein contained is one which may be rightly and properly put.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.

No. 44.

The Queen's Advocate to Earl Russell.—(*Received January* 27.)

Russia.

My Lord, *Doctors' Commons, January* 26, 1863.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 19th instant, stating that he was directed by your Lordship to transmit to me the correspondence marked in the margin,* relative to the claim of Mr. Richard Willis, a British subject, for losses alleged to have been sustained by him in regard to some property which he holds near Sebastopol, a portion of which was, after the siege of that place, occupied as a burial-ground by the allied forces; and Mr. Hammond was to request that I would take these papers into consideration, and that I would, with reference to the questions put in Lord Napier's No. 500 of the 23rd ultimo, report to your Lordship my opinion as to the instructions which should be sent to his Excellency in reply.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I am of opinion that Lord Napier might be instructed to use his good offices on behalf of Mr. Willis, who appears to be an innocent sufferer to a considerable extent; but not to place his interference on the ground of international right on the part of Her Majesty's Government, and of correspondent international obligation on the part of the Russian Government.

The affair is, strictly speaking, one appertaining to the public law of Russia exclusively. A foreigner who buys land in a foreign State, and who suffers in common with the native subjects of that State from the operations of war, has a right, generally speaking, to be put upon the same, but not on a better, footing than the native subjects.

It would certainly be equitable, and according to the analogies of all jurisprudence derivable from civilized municipal law, that Mr. Willis should be compensated by the Russian Government for injuries which his property sustained on account of the defensive operations of the Russian army, but the matter cannot be pressed beyond this by Her Majesty's Government.

I have, &c.
(Signed) ROBERT PHILLIMORE.

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* Consul Eldridge, April 4; Consul-General Murray, May 1; to Lord Napier, No. 110; to Office, May 18; from Office, May 28; Lord Napier, No. 251; to Lord Napier, No. 115; Lord Napier, Nos. 384, 402, and 500.

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No. 45.

The Queen's Advocate to Earl Russell.—(*Received January* 27.)

Doctors' Commons, January 26, 1863.

My Lord,

UNITED STATES.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 23rd instant, stating that he was directed by your Lordship to transmit to me the letter from Mr. J. N. Crosse, dated the 14th January instant, inquiring whether Her Majesty's Government will claim compensation for a house and furniture at Fredericksburg, Virginia, the property of British subjects, at present assumed to be destroyed; and to request that I would take Mr. Crosse's letter into consideration and furnish your Lordship with my opinion as to the answer which should be returned to it.

In obedience to your Lordship's commands I have taken Mr. Crosse's letter into consideration, and have the honour to report—

That your Lordship's attention should be drawn to the fact that the statement of Mr. Crosse is of the most bare and jejune description. No circumstances or incidents are mentioned which attended the destruction of the house, nor, indeed, is the fact of destruction itself stated positively, but hypothetically. To such a statement I humbly suggest that the proper answer would be that, in the absence of any knowledge as to the circumstances attending the transaction, it would seem to Her Majesty's Government that the property in question, if destroyed at all, which appears uncertain, has suffered in common with other property in its own neighbourhood, from the inevitable operations of war, and that the case, as now stated, presented no grounds for the official interference of Her Majesty's Government.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 46.

The Law Officers of the Crown to Earl Russell.—(*Received January* 30.)

Temple, January 27, 1863.

My Lord,

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 19th instant, stating that he was directed by your Lordship to transmit to us a despatch and its inclosures from Her Majesty's Minister at Washington (No. 17, January 3, 1863), reporting the circumstances under which he had positively forbidden Mr. Acting Consul Magee to send in one of Her Majesty's ships of war from Mobile to Havana, some specie, which the Bank of that city was anxious to remit to this country in payment of interest, payable in London, upon bonds of the State of Alabama. That Lord Lyons also requests to be instructed whether, if Mobile or other Southern ports should be taken by the United States' forces, money destined for the payment of interest on American securities held in England, or on which the interest is payable in England, is to be regarded as British property, and whether Her Majesty's Consuls are to demand of the United States' authorities that it be respected as belonging to neutrals.

Mr. Hammond was to request that we would take this matter into consideration, and furnish your Lordship, at our earliest convenience, with our opinion as to the instructions which should be addressed to Lord Lyons thereupon.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we are of opinion that Lord Lyons took a correct view of the principles of international law, applicable to the subject of the transmission of money to the English creditor, in one of Her Majesty's ships, from a blockaded port.

We think however that Lord Lyons might be instructed to communicate to the United States' Government the course which, in obedience to the dictates of strict good faith, he has pursued; and that (as it cannot be supposed that the United States' Government would wish to prevent the discharge of a public debt contracted by the State of Alabama, while a *de facto* as well as *de jure* member of the United States, with the subjects of a friendly neutral country) he might reasonably ask permission to be allowed to transmit this money, notwithstanding the existence of the blockade, through the safe channel of one of Her Majesty's ships to England.

With respect to the application of Lord Lyons for advice as to the course which ought to be pursued in the case of money found in a captured Southern port, destined for the payment of interest to British creditors upon State bonds, we have to remark that there can be no doubt that, according to the common law of England, and of some States in the United States, a change of property cannot be effected by mere dedication or destination on the part of the first proprietor, and independent of any act or consent of the intended transferee, or of some agent or representative on his behalf; without such act or consent, all remains, as it is said, *in fieri*, liable to be revoked and undone by the original owner.

Upon this principle, therefore, money *bonâ fide* destined for the payment of interest on American securities held in England, or on which the interest is payable in England, could not, by reason of this destination alone, be properly regarded as British property, and upon this principle Her Majesty's Consul should be instructed not to demand of the United States' authorities that money so circumstanced should be regarded as the property of neutrals.

We are of opinion that this principle ought to be applied to the suggested case, and therefore that the Consul should be so instructed.

We are also of opinion that if the money, instead of being merely dedicated and set apart in the hands (or repositories in the territory) of the debtors, had been *bonâ fide* delivered over, in any such Southern port, to an agent or agents there, duly authorized to receive the same, and to give effectual receipts on behalf of the British creditors, that the money would in such case be the property of the British creditors, and demandable by Her Majesty's Consul as such.

We cannot doubt that the British creditor himself, being in such ports, might lawfully receive payment of his just debt, and that money so paid to him would immediately and for every purpose become British property; and on general principles such a payment to an agent as we have supposed would have the like effect.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 47.

The Law Officers of the Crown to Earl Russell.—(*Received January* 29.)

Temple, January 29, 1863.

My Lord,

AFRICA.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 26th January, 1863, stating that with reference to our Report of the 13th instant,* on the subject of the proposed consecration of the Rev. William George Tozer to be Bishop of the United Church of England and Ireland to the tribes around Lake Nyassa and the adjoining country, and of the Rev. Edward Twells to be Bishop of the United Church of England and Ireland in the Orange River Free State, formerly within the Diocese of Cape Town, he was directed by your Lordship to transmit to us drafts of licences to the effect prayed for in the Memorials of the Archbishop of Canterbury, which had been already submitted to us, and which were again submitted to us therewith; and Mr. Hammond was to request that we would take those drafts into consideration, and report to your Lordship our opinion thereupon at our earliest convenience, as it is desired by the Archbishop that the consecration should take place early next week.

In obedience to your Lordship's commands we have taken these drafts into consideration, and have the honour to report—

That we are of opinion that in the licence to consecrate Mr. Tozer, the words "in Africa" ought, as proposed, to be added.

And with respect to both licences, we think that inasmuch as no jurisdiction is proposed to be conferred under the powers given to Her Majesty by the

* Page 20.

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second section of the Act of Parliament, the recital of that section should be struck out, and we have struck it out accordingly.

In other respects the licences seem to us quite proper.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 48.

The Queen's Advocate to Earl Russell.—(Received January 31.)

Doctors' Commons, January 30, 1863.

My Lord,

FRANCE.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 24th January instant, stating that he was directed by your Lordship to transmit to me the accompanying letter from Sir Alexander Tulloch, inclosing a petition from Mr. Clark of Wilton Park, setting forth the circumstances under which a sum of money has lapsed to the French Crown, but which he imagines there would be no difficulty in recovering, if the rights of the case were brought to the personal knowledge of the Emperor of the French, and with that view he solicits the assistance of Her Majesty's Government.

Mr. Hammond was to request that I would take these papers into consideration, and furnish your Lordship with my opinion as to whether it is a case in which Her Majesty's Government can properly interfere.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I do not advise Her Majesty's Government to interfere officially in this matter.

The money of an intestate bastard has lapsed to the French Crown, as under similar circumstances it would have lapsed to the English Crown. It is true that Her Majesty, as a matter of grace and favour, usually makes a grant to the next of kin, but this course of proceeding cannot properly be pressed upon a foreign Government.

Mr. Clarke should himself present a petition to the Emperor, and perhaps Her Majesty's Ambassador might be able, though not officially, to secure its due presentation to His Majesty.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 49.

The Law Officers of the Crown to Earl Russell.—(Received February 4.)

Temple, January 31, 1863.

My Lord,

SPAIN.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 22nd instant, stating that with reference to the Report of the Law Officers of the 3rd of July last,* regarding the application made by Mr. Mackenzie on behalf of the assignees of Mr. Mould,† he was directed by your Lordship to transmit to us a draft of a letter which your Lordship caused to be addressed to Mr. Mackenzie,‡ calling for the further information suggested by us.

That no reply to this letter was received from Mr. Mackenzie, but an application has been made to your Lordship by Mr. West for the assistance of Her Majesty's Government as against Mr. Mould, in the letter which Mr. Hammond was pleased to inclose (January 10, 1863).

That, in Mr. West's letter, allusion is made to Mr. Mackenzie as having been that gentleman's agent in some of the transactions connected with this case, and your Lordship therefore caused a communication to be made to Mr. West (January 13, 1863), the draft of which, together with Mr. West's answer (January 19, 1863), were also inclosed for your information.

Mr. Hammond was to request that we would take these papers into consideration, and that we would report to your Lordship our opinion as to the course which Her Majesty's Government should pursue in this matter.

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* See Reports for 1862, page 174.

† Mr. Mackenzie, June 17, 1862.

‡ To Mr. Mackenzie, July 12, 1862.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we are of opinion that Her Majesty's Government may properly instruct Her Majesty's Representative at Madrid to bring to the notice of the Spanish Government the claim of Mr. West, and the peculiar grounds upon which it rests, namely, that the formal sanction given by the Spanish Government to the arrangement between Mr. Mould and the Railway Company shuts out Mr. West from the ordinary remedy in a Spanish Court of Law, and that there appears to be good reason to believe that the Spanish Government was deceived by a suppression of the truth when it gave the sanction in question.

In giving this opinion we assume that at the time when Mr. West obtained the security for his debt, Mr. Mould had not been, and indeed is not now, declared bankrupt.

We have, &c.
(Signed) WM ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 50.

The Attorney and Solicitor-General to Earl Russell.—(Received February 5.)

My Lord, *Temple, January* 31, 1863.

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 6th instant, stating that he was directed by your Lordship to transmit to us three despatches and their inclosures from Her Majesty's Minister at Washington (No. 534, December 20, No. 535, December 20, and No. 536, December 22), respecting the liability of British subjects who have exercised the rights of franchise in the United States to be drafted for service in the Militia, and to request that we would take these papers into our consideration, and report to your Lordship thereupon.

Mr. Hammond was also pleased to add that he had likewise transmitted therewith two previous despatches from Mr. Stuart on the same subject (No. 99 and No. 123).

We are also honoured with your Lordship's commands signified in Mr. Hammond's letter of the 26th instant, stating that he was directed by your Lordship to transmit to us the accompanying despatch from Her Majesty's Minister at Washington (No. 11), inclosing a copy of an opinion delivered by the Attorney-General of the United States on the question of citizenship, and to request that we would take the same into our consideration, together with the other papers relating to this subject referred to us in his letter of the 6th instant, and favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we regret that we cannot entirely concur in the view taken by the Queen's Advocate of the proper answer to be given to your Lordship in this case, and which is expressed in his separate Report.

We do not conceive this to be a case involving any question of the ordinary right of aliens, by international law, to be exempted from compulsory militia service in a war carried on by the nation among whom they reside. Agreeing, therefore, with the observations of the Queen's Advocate on that subject (which are in conformity with former Reports, in which we have concurred), we are not satisfied of their relevancy upon the present occasion.

We also agree with the construction placed by the Queen's Advocate (according to the law laid down by the Supreme Court of the United States in the Dred Scott case) upon the Act of Congress of 1792, concerning the Militia; and we think (so far as it may be proper for us to enter into any mere question of American law) that the persons whose status is now in question may properly be assumed not to be legally "citizens of any State," within the true meaning of that Act of Congress.

The Government, however, of the United States appear disposed either to

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construe their own law differently upon this point, or arbitrarily to overrule it (as they have done many other of their own municipal laws during the present contest). And in this state of things two questions appear to us to arise: the first, whether, on general principles of international law, aliens resident in a country where they have been admitted to the exercise of a high political franchise (such as the right of suffrage) on the same footing with citizens, and upon the condition and faith of a declaration that they intend to become citizens, may not justifiably be treated by the Government with which they have so far identified themselves, as liable to the same compulsory military service with citizens; the second, whether, if aliens under such circumstances cannot justly invoke the protection of their own nation against compulsory military service, on general principles of international law, they would be entitled to do so on the ground that, according to the true construction of the municipal law of the country exacting that service, no persons are liable thereto who are not complete "citizens" according to the proper legal definition of that term.

We think that the first of these questions ought to be answered in the affirmative, and the second in the negative.

As to the first, it seems to us difficult to conceive any sound reason, on abstract principles, why persons who have become, in the strictest sense, constituents of the Government and Legislature under which they are living, and partakers of the ultimate sovereign power residing in the Electoral Body, on which the whole political superstructure is built up, should be exempt from military service. The facts stated by Mr. Anderson and Lord Lyons exclude the supposition that they were, in any State, admitted to the exercise of those privileges on the faith that they would continue aliens, and so be exempt from the burdens of citizenship. On the contrary, they were required publicly to declare their intention to become citizens as a condition of their being thus admitted, by anticipation, to some of the highest rights of citizenship; and we cannot but think that the State in which they live is morally entitled to hold them, under such circumstances, bound by that contract (of which the performance is entirely within their own power), and not entitled, by delaying or evading its performance, to escape from the penalties to which they would be subject if it were performed. The case seems to us to be wholly different from that of persons who have merely declared an intention to become naturalized, and have taken preliminary steps for that purpose, but who have not been put into possession in the meantime of any public status or privileges upon the faith of that declaration. Such persons have a *locus pœnitentiæ* till their naturalization is complete, because their status is not in the meantime altered, and their intention to change it continues to be (as it was originally) merely voluntary and gratuitous. But where an alien is put into possession of the highest fruits of citizenship, on the faith of a public declaration that he intends to be naturalized, the situation of both parties (*i.e.*, both the individual and the State) is altered, and he seems to us to have no longer any moral right, as between himself and that State, to recede from that engagement.

2. With respect to the second question, if the right to exemption be one, dependent merely on the construction of an American Statute, and upon the argument (however well-founded) that a person who has contracted to become a citizen is not legally liable to serve in the militia under that Statute until his naturalization is complete, we think that this does not raise a case for the interference of Her Majesty's Government, but that the question ought to be discussed and the exemption established (if at all) in the American Courts of law.

This is the principle on which Her Majesty's Representatives at Washington have already announced Her Majesty's intention to act* (taking, in this respect, a different line from France) with respect to those British subjects who, not being naturalized in the United States, have *de facto* exercised, in some of the States, political franchises to which none but complete citizens are in those States *de jure* entitled. These persons are not legally "citizens of any State" within the true construction of the Militia Act of 1792, and they have none of the rights legally belonging to citizens. Indeed they are (in that respect) still further removed from a true citizenship than those whose status is now under consideration; for it is to be presumed that they will not be suffered to continue in the enjoyment, without a legal title, of political franchises which they are

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* See Mr. Stuart's despatches Nos. 99 and 123, July 25 and August 3, 1862; and Lord Lyons No. 536, December 22, 1862.

proved to have hitherto usurped by wrong. But Her Majesty's Government have expressly renounced the right to interfere in their favour, considering them to be morally estopped from denying their citizenship, for the purpose of evading liabilities to which they would be legally subject if the profession of citizenship, on the faith of which they have enjoyed political franchises, had been true. It appears to us that, on the same principle, we ought to consider the persons now in question also morally estopped from setting up their own want of a complete title to citizenship, for the purpose of evading, through the interference of Her Majesty's Government, liabilities to which they would be legally subject if the promise to become citizens, on the faith of which they have enjoyed political franchises, had been or were now fulfilled. Our conclusion upon the whole matter is, that Her Majesty's Government ought to leave all persons of this class to establish (if they can) the exemption which they claim, in the Courts of the United States, and ought not to interfere in their favour.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.

No. 51.

The Queen's Advocate to Earl Russell.—(Received February 5.)

Doctors' Commons, January 31, 1863.

UNITED STATES.

My Lord,

THE reason for my troubling your Lordship with a separate Report will appear at the conclusion.

This question appears to me to involves the following important considerations, namely:—

1. The liability of British subjects who have exercised the franchise to be enrolled in the United States' Militia, regarded as a question of *international law.*

2. The same question considered as a matter of the *public or Constitutional law of the United States.*

3. Whether, if both international law and the public law of the United States be opposed to this liability, it nevertheless be not undesirable that Her Majesty's Government should interfere on behalf of subjects who have so far incorporated themselves into the constitution of a foreign State.

With respect to the first consideration, I can do little more than repeat the opinion which the Law Officers have already had the honour to offer to your Lordship, upon the general question of British subjects being compelled to enter foreign military service, namely, that British subjects resident in a foreign State may be lawfully called upon to serve in any force having for its object the preservation of domestic peace, *e.g.*, to act as constables or police, or the like.

That they are not liable to compulsory service in the army or navy of a foreign State, unless they had been apprised by the law as existing when they took up their abode in such foreign State, that this consequence would follow from their continued residence in it; or unless they have been given an option (to be reasonably imposed and exercised) of leaving the State, or submitting to such service.

These observations appear to me to apply with great stringency to a case like the present, in which British subjects are called upon to serve (for such I presume to be the consequence of their enrolment in the Militia) against a belligerent with whom Her Majesty is at peace.

With respect to the second consideration, namely, that which relates to the public or Constitutional law of the United States, I have thought it right to express my opinion upon this also.

The opinion of Mr. Carlisle has led to a careful examination of the law upon this point, and I venture to express my entire concurrence with the statement of that gentleman.

The great importance of the case, the possibility that your Lordship may think it fit to instruct Lord Lyons to press this, as well as the other consideration, upon the Government of the United States, and the clearness of my conviction with respect to the mis-statement of the law by Mr. Seward, have induced

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me to state to your Lordship the premises which have led me to the conclusion that the exercise of the franchise does not place the foreign subject in the category of the citizen, who, by the law of the United States, is bound to serve in the Militia.

The law is laid down with so much authority by the Supreme United States' Court in the great case of *Dred Scott* v. *Sandford*, (xix "Howard's Reports," p. 393), and in terms so apposite to the present question, that I cite them at length.

Chief Justice Taney observes (pp. 405, 406) that—

1. "Each State may still confer these (rights of citizenship) on an *alien*, or any one who it thinks proper, or upon any class or condition of persons, yet he would not be a *citizen* in the sense in which that word is used in the constitution of the United States."

2. "No State since the adoption of the Constitution, can, by naturalizing an *alien*, invest him with the rights and privileges secured to a *citizen* of a State under the Federal Government."

3. "It is true every person, and every class and description of persons, who were at the time of the adoption of the Constitution recognized as *citizens* in the several States, became also citizens of *this new political body*, but none other."

4. The same learned Judge (speaking of Article IX, section 5, of the Articles of Confederation, and of the distinction between citizens and free inhabitants), observes:—

"The word *citizen* excluded, and no doubt intended to exclude, foreigners who had not become citizens of some one of the States when the Constitution was adopted; and also every description of persons who were not fully recognized as citizens in the several States." (Page 419.)

6. "Another of the early laws of which we have spoken is the first Militia Law, which was passed in 1792 at the first session of the second Congress. The language of this law is equally plain and significant with the one just mentioned. It directs that every free able-bodied white male citizen shall be enrolled in the militia." (Page 420.)

7. "But it is said that a person may be a citizen and entitled to that character, although he does not possess all the rights which may belong to other citizens; as, for example, *the right to vote*, or to hold particular offices, and that yet, when he goes into another State, he is entitled to be recognized there as a citizen, although the State may measure his rights by the rights which it allows to persons of like character or class resident in the State, and refuse to him the full rights of citizenship. This argument overlooks the language of the provision in the Constitution of which we are speaking." (Pages 421, 422.)

"Undoubtedly a person may be a citizen, that is, a member of the community who form the Sovereignty, although he exercises no share of the political power, and is incapacitated from holding particular offices.

"Women and minors, who form a part of the political family, cannot vote; and when a property qualification is required, to vote or hold a particular office, those who have not the necessary qualification cannot vote or hold the office—yet they are citizens.

"So, too, *a person may be entitled to vote by the law of the State itself*, who is not a citizen even of the State itself. And in some of the States of the Union foreigners, not naturalized, are allowed to vote. And the State may give the right to free negroes and mulattoes, *but that does not make them citizens of the State, and still less of the United States.*"

To this authority might be added the printed opinion of the United States' Attorney-General Bates, sent to us by your Lordship (Washington, 1862, pp. 4, 5).

It appears, therefore, to be demonstrably clear that Mr. Seward is wrong in stating that the exercise of the franchise is the criterion of citizenship in the United States; and that so far as Mr. Seward founds the obligations of these persons to serve in the Militia upon this basis, his position is contrary to the law of the United States.

There remains the *third and last point*, namely, whether it be not undesirable that Her Majesty's Government should interfere on behalf of British subjects who have exercised the political franchise, but have not completed their naturalization as citizens of the United States.

This requires a twofold consideration—

1. Apart from the public United States' law.
2. With reference to that law.

First. Apart from the consideration of the peculiarity of the Constitution of the United States, the consequences flowing from the Federal relations to each State, and the public law as to the conditions of citizenship, it would seem, upon general principles of international law, difficult to conceive any sound reason why persons who have so far incorporated themselves with the public life and constitution of a Republican State like the United States, as to exercise the political franchise, should not be considered as subjects by that Republic.

It is also true that they are, so to speak, inchoate citizens, having obtained the privilege of voting on the faith that they will become naturalized subjects; nevertheless they are not now citizens by the law of the United States.

Secondly. With respect to the second consideration, namely, as to the expediency of interference on the part of Her Majesty's Government on the ground of the public or Statute law of the United States, I am disposed to take rather a more doubtful view than my colleagues of this very grave question.

While, on the one hand, it appears to me in one point of view not unreasonable that Her Majesty's Government should leave these persons, who who have exercised the franchise, to fight their own battle for exemption from service in the Militia in the Courts of the United States, on the other hand, I am pressed by the recollection of the severe doctrine of British law, that allegiance is inalienable; that Her Majesty's Proclamation, declaratory of the public law of Great Britain, forbids British subjects (which these persons still are) to take any part in the present conflict between the United States' Government and the Confederates; and I am not clear that the strict observance of the duties of neutrality towards the Confederate belligerents does not call upon Her Majesty's Government to exert its influence to prevent, or at least to protest against, the enrolment of British subjects in the United States' Militia.

It may not be inconvenient, perhaps soon, or at least hereafter, that Her Majesty's Government to be able to say to the Confederate belligerents that they have acted in this manner.

It is possible that in a civil war, waged with such daily increasing bitterness, questions of an embarrassing kind might arise, relating to British subjects taken prisoners by the Confederate forces.

Upon the whole, I so far differ from my colleagues as to think it desirable that Her Majesty's Government should instruct Lord Lyons to put forward on behalf of these persons the point of law which is open to them, and upon which it seems to me clear that they would put the United States' Government in the wrong, and would also probably avoid future international difficulties.

I have, &c.

(Signed) ROBERT PHILLIMORE.

No. 52.

The Queen's Advocate to Earl Russell.—(Received February 4.)

Doctors' Commons, February 2, 1863.

UNITED STATES.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 26th January ultimo, stating that with reference to the Report of Her Majesty's late Advocate-General of the 19th February, 1862,* upon the case of the British schooner "Telegraph," which was seized and carried into Key West by the United States' cruizer "Wanderer," he was directed by your Lordship to transmit to me, together with the former papers, the further correspondence† which passed on the subject in the summer of last year, and a letter which has now been received from the Colonial Office, inclosing a copy of a despatch from the Governor of the Bahamas, in explanation of the delay which has occurred in following up this case, and forwarding a letter from Mr. Dillet,

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* See Reports for 1862, page 42.

† To Lord Lyons, No. 80; Lord Lyons, No. 311; to Colonial Office, May 30, 1862; Colonial Office, January 21, 1863.

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an attorney at Nassau, again claiming compensation from the United States' Government on behalf of the owner, master, officers, and crew of the "Telegraph."

Mr. Hammond was to request that I would take these papers into consideration, and report to your Lordship my opinion thereupon.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That the seizure and detention of the "Telegraph" appears to have been an unjust and vexatious act, without any reasonable justification.

The "Telegraph" was clearly a neutral ship; she had no contraband on board; there was nothing to found any suspicion of her intending to break any blockade. She had received, as is now admitted, distinct permission from the Collector of Customs at Key West to touch at Vaccus for wood. Her clearance was, according to the same Collector's admission, perfectly proper and regular.

The neutral ship ought not to suffer from any mistake of the belligerent commander; and, moreover, it is clear that an order of the American flag-officer's, dated 19th December, 1861, could not affect or justify the conduct of Commander Spotts in the November preceding.

The seizure was, in these circumstances, in itself an act of violence.

The manner in which the belligerent's right of visit and search was exercised was, both as to the ship and crew, unjustifiable.

As to the ship, because Commander Spotts ought to have conducted his right of search on board the vessel, and had no right, except in a case, which this was not, of necessity, to order the papers to be brought on board his ship.

As to the crew, because the treatment of William Fisher was an unjustifiable act of violence and cruelty.

The excuse is manifestly insufficient, and probably untrue.

The defence of the United States' Commander for forcibly taking a British sailor out of a British ship, and for putting him in irons for three days and three nights, is, that at one time the sailor, under the provocation of a seizure which always was and is now proved to be unjust, swore loudly on board his own ship, and therefore the United States' captain took him out of this ship and put him in irons on board of an American ship for three days and three nights.

Mr. Seward cannot seriously think that this is any valid excuse for treating a neutral subject, taken illegally out of a neutral ship, for this length of time like a felon, or that any neutral State, able to protect itself, can be satisfied with such an excuse.

I am of opinion that Her Majesty's Government ought to demand reasonable compensation on both grounds: first, for the illegal detention of the ship, and it may be observed that a Prize Court ought to have dismissed her with costs and damages against the captor; secondly, for the gross ill-treatment of W. Fisher.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 53.

The Law Officers of the Crown to Earl Russell.—(Received February 5.)

Temple, February 3, 1863.

My Lord,

UNITED STATES. WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 29th January last, stating that he was directed by your Lordship to transmit to us a letter from the Admiralty inclosing copies of a despatch from Sir A. Milne, dated the 28th January ultimo, and of the instructions which he had left with the senior officer of Her Majesty's ships and vessels at Bermuda with reference to the contingency of the mail-steamer from St. Thomas to Halifax being detained by any Federal cruizer.

Mr. Hammond was to request that we would take these instructions into consideration, and furnish your Lordship at our earliest convenience with our opinion thereupon.

In obedience to your Lordship's commands we have taken these instructions into consideration, and have the honour to report—

That we are of opinion that the principles of existing international law with respect to the status and character of mail-packets in time of war were correctly laid down by your Lordship in your despatch to Mr. Seward of the 23rd January, 1862, to the effect that mail-packets are not, by virtue of their office, exempt from visitation and search by belligerents, and from the consequence of a violation of neutrality; but that, nevertheless, they are objects of special protection to the Government which employs them, while engaged in the discharge of their legitimate function of carrying mail-bags and passengers; and that their seizure and detention, without the gravest reason, is an injury, not merely to private interests but to the public interests of neutral and friendly States.

It cannot therefore be denied, as an abstract proposition of law, that it is competent to the belligerent to seize a British mail-packet, and take her into port for adjudication in the Prize Court, on the ground of her having committed a breach of her neutral obligations.

It remains to be considered whether the act which she is supposed to have done, be or be not such an offence as would justify the belligerent in detaining her.

It must be considered with reference to principle and precedent; and upon both grounds we should entertain no doubt as to the lawfulness of the seizure if the mail-packet had either been hired for the conveyance of soldiers in aid of belligerent purposes, or for the service of the belligerent State, whether for immediate active service against the enemy or not; or even if not hired for that specific purpose, but conveying, though among other passengers,* soldiers to places where they are to exercise military functions. In either of these contingencies, the mail-packet would have forfeited the privileges of her neutral character.

A neutral so acting is not *medius in bello*, but has become a participator in the military acts of a belligerent.

This doctrine is distinctly laid down by Lord Stowell in the cases of the "Orozembo" and the "Friendship,"† and it appears to us to have the warrant of sound principle, as well as the high authority of that great Judge in its favour.

We do not, however, understand that the mail-packet in question is chargeable with such conduct. We assume that she is conveying these Confederate officers as passengers simply, and to a neutral territory.

To this hypothesis very different considerations are applicable. "Under these circumstances," Lord Stowell said in the "Friendship," "I am of opinion that this vessel is to be considered as a French transport. It would be a very different case if a vessel appeared to be carrying only a few individual invalided soldiers or discharged sailors, taken on board by chance and at their own charge." . . . "It is asked, will you lay down a principle that may be carried to the length of preventing a military officer in the service of the enemy from finding his way home, in a neutral vessel, from America to Europe? If he was going merely as an ordinary passenger, as other passengers do, and at his own expense, the question would present itself in a very different form. Neither this Court nor any other British tribunal has ever laid down the principle to that extent."

Lord Stowell, therefore, would have holden the mail-packet innocent of any breach of neutrality, even if, *in such circumstances*, she had been conveying *home* (no blockade being in question) a few soldiers, passengers among other passengers.

Still, it may be said that this position only extends to the liberation of the packet after due judicial inquiry, and that the right of the belligerent to visit and detain, in such circumstances, remains in force.

To this proposition we should accede, if there were, under the circumstances of the particular capture, any room for the captors to contend that the seizure had been made upon any of those grounds which, according to international law, justify the taking in ships for adjudication. And therefore we cannot advise Her Majesty's Government that Admiral Milne's orders to recapture the mail-packet, if taken, should receive their sanction. Such an act, in any circumstances at all ambiguous, would be wrongful, and at variance with those principles for which we ourselves have contended; and it might justly be regarded as a hostile act

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* "The Court is not to scan with minute arithmetic the number of persons that are so carried."—The "Orozembo;" 6 Robinson's "Admiralty Reports," p. 436.

† 6 Robinson's "Admiralty Reports," pp. 426, 428, and 436.

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by the United States. Nor are we prepared to say, however improbable it may be, that a violation of neutrality by a British mail-packet bound to a British port is *a priori* impossible, seeing that there might be such an act as a conveyance of contraband of war *in transitu* to the Confederate States, of which the ultimate destination might or might not be known to the conveying packet.

Therefore, if the cause of the capture were left in any degree of uncertainty, we should advise that the vessel should be permitted to be taken into port, and that Her Majesty's Representative at Washington should be instructed then to represent the case immediately to the proper authorities: asking, on the specific ground that the vessel had been intercepted and detained without any apparent lawful cause in the course of a lawful voyage, and with consequences highly prejudicial to important public and private interests of Great Britain, for her immediate release, and for full indemnity on account of her detention. Should this request be denied, and should it be said that the Prize Court must determine the case, the facts should be brought forward which might tend to show that she had been taken in upon the mere ground of the presence on board her of Confederate officers as passengers, destined to a neutral port; and the United States' authorities should be requested to state whether they had to allege any other ground by which her continued detention could be justified.

If no other ground should be alleged, then we think the demand of Her Majesty's Government for her instant release should become peremptory; notice having been already given in your Lordship's reply to Mr. Seward's despatch in the case of the "Trent," that Her Majesty's Government will not submit even to any adjudication against a British ship by a United States' Prize Court, and will not admit the lawfulness of her detention, on such a ground.

A state of circumstances of greater difficulty may perhaps arise. There might, at the time of the capture, be *avowedly* no other ground than the mere presence on board of the Confederate officers as passengers; so that the circumstances would be attended with no ambiguity. Under such circumstances it will of course be for Her Majesty's Government to judge what the dignity and honour of the country may require. But even in that case we should think it a subject for much regret if any forcible measures were taken by Admiral Milne without any previous communication upon the subject between Her Majesty's Representative at Washington and the United States' Government.

We think however that, inasmuch as Admiral Wilkes appears to have caused it to be publicly made known that he threatens the capture of a British mail-packet, bound for a British port, on the sole ground of her carrying Confederate officers as passengers to that port (being the same ground which was in controversy in the case of the "Trent," and Admiral Wilkes being the same officer who perpetrated the former outrage upon the British flag), there is sufficient danger of his executing the threat to warrant a communication by Her Majesty's Government to the Government of the United States, expressing their firm determination to act upon the principles laid down in your Lordship's reply to Mr. Seward in January 1862; and requesting an assurance from the United States' Government that Admiral Wilkes will be instructed uot to treat any British mail-packet, bound to a neutral port in the ordinary course of her engagements, as liable to capture or detention, upon the sole ground that among the persons whom she has on board, proceeding as ordinary passengers to her proper neutral destination, there may be some (whether officers or civilians) who may belong to the Confederate States.

And it may, if necessary, further be intimated that in case the United States' Government refuse compliance with this most reasonable request, Her Majesty's Government, acting on the principles laid down in your Lordship's despatch, will feel itself at liberty, however reluctantly, to instruct Her Majesty's Admiral on the station to prevent, by all the means in his power, such an interference with the mail-packets, and that the sole responsibility of any consequences which may ensue therefrom must rest with the Government of the United States.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

P.S.—If Her Majesty's Government should think fit to take this course, we wish to add (as the result of some further consideration which we have given to the subject since the meeting of the Cabinet Council on Monday, which we had the honour to attend), that we think there would be no objection to its being intimated to the United States' Government that the Admiral's instructions might be such as would authorize him to take the necessary defensive measures, after enquiring of the United States' Admiral or his officers concerning the cause of any attempted capture, *either in the event of the sole cause alleged being the presence on board of any such passengers as before described, or in the event of no answer, alleging any other cause, being given to such inquiry.* The presumption against the existence of any justifiable cause of capture against a British mail-packet on her way to Halifax, under the circumstances contemplated in the papers before us, is so great as to approach very nearly to absolute certainty; and we think, under such circumstances, that the course above indicated might justifiably be taken, after full notice to the United States' Government, although we clearly are of opinion that if the United States' Admiral should allege any cause of capture other than that which Admiral Milne will be expressly authorized by Her Majesty's instructions to disregard, it will not be proper for him to inquire further into the validity of such cause. This remark, however, is to be taken with the qualification that, if the American officer should simply allege for cause that the packet is "carrying contraband of war," without specifying what he means by "contraband," this ought not to be accepted as an answer to the inquiry, until the nature of the alleged contraband has been stated.

W. A.
R. P.
R. J. P.

No. 54.

The Queen's Advocate to Earl Russell.—(Received February 4.)

UNITED STATES.

My Lord, *Doctors' Commons, February 4, 1863.*

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 28th January ultimo, stating that, with reference to my Report of the 15th November last,* he was directed by your Lordship to transmit to me, together with the previous papers, two further despatches and their inclosures from Her Majesty's Minister at Washington,† respecting the alleged intention of the United States' Government, to appropriate to their own use the British vessel "Bermuda," before the proceedings in the Admiralty Court against that vessel have been brought to a close:

That from the last of those despatches I should perceive that the Prize Court has refused to order the sale of the vessel at present, but Mr. Hammond was, nevertheless, to request that I would take this case into consideration, and furnish your Lordship with any observations I may have to offer upon the papers now submitted to me.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That it appears from Mr. Carlisle's opinion that the power of the Prize Court in the United States, with respect to the sale of vessels is less than that of the modern English Prize Court.

The Judge of the United States' Prize Court appears to have discharged his duty in spite of the pressure from his Government; and I have only to recommend that any attempt to sell the "Bermuda" before judgment of condemnation be resisted steadily by the counsel for the owners of that vessel.

With respect to the purchase of the munitions of war by the Government, if it be fairly made at the proper market value, I think it would be too much in accordance with our practice during the last French war to afford any just ground for complaint.

I have, &c.
(Signed) ROBERT PHILLIMORE.

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* See Reports for 1862, page 281.

† Lord Lyons, No. 565, December 31, 1862; No. 18, January 7, 1863.

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No. 55.

The Queen's Advocate to Earl Russell.—(*Received February* 5.)

BRAZIL.

My Lord, *Doctors' Commons, February* 4, 1863.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter with reference to my Report of the 23rd ultimo,* on the subject of the embargo laid on the property of Mr. Vereker, Her Majesty's Consul at Rio Grande do Sul, on account of certain moneys received by him in his official capacity, from the proceeds of the British vessel "Canrobert," which had been sold by order of a Naval Court. He was directed by your Lordship to transmit to me a draft of a letter to Mr. Vereker founded upon my Report.

That since it was prepared, however, the accompanying despatch has been received from Mr. Vereker; and Mr. Hammond was to request that I would furnish your Lordship with my opinion whether the contents of Mr. Vereker's despatch will induce me to suggest any alteration in the terms of the proposed letter to Mr. Vereker.

Mr. Hammond was pleased to inclose the former papers.

In obedience to your Lordship's commands I have the honour to report—

That it is to be regretted that Mr. Vereker should have so long delayed sending his instructions to Mr. Acting Consul Gollan, who appears, from his letter to Mr. Christie (September 30, 1862), to have been anxiously expecting them at a much earlier period.

That I have had the honour to make an addition to the draft despatch proposed by your Lordship to Mr. Vereker and Mr. Christie, and that the despatch appears to me proper to be sent.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 56.

The Queen's Advocate to Earl Russell.—(*Received February* 9.)

ARGENTINE CONFEDERATION.

My Lord, *Doctors' Commons, February* 6, 1863.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 28th of January last, stating that, with reference to the Reports of my predecessor of the 30th September, 1857, the 14th July, the 31st May, and the 1st of September, 1858, he was directed by your Lordship to transmit to me a despatch from Her Majesty's Chargé d'Affaires to the Argentine Confederation (No. 46), calling attention to a new Decree lately issued by the President of the Republic regarding the administration of intestate estates at Buenos Ayres.

Mr. Hammond was also to inclose the previous correspondence on this subject;† and to request that I would take Mr. Doria's despatch into consideration, and report to your Lordship my opinion as to the instructions which should be sent to Mr. Doria in this matter.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I am afraid the apprehensions of Mr. Parish (December 9, 1862), as to the delay and expense caused by the intervention of the Argentine Courts in matters of intestacy are but too well founded. But the jurisdiction, however exercised, which is claimed by them does not materially differ from that maintained by England over the effects of intestate Argentine subjects in this kingdom.

Nevertheless, I am of opinion that every reasonable effort should be made by Her Majesty's Representative at the Argentine Republic to obtain an alteration of the 13th Article of the President's Decree, by substituting for it the most favoured nation clause. Practically that Article, as it now stands, places Great Britain upon an inferior footing to other nations with respect to the particular subject matter. For at present Her Majesty's Government have no power to grant the reciprocity required; nor would it be easy to attain this end by legislation if such a course were desirable.

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* Page 27.

† Mr. Christie, No. 84, 1857; to Mr. Christie, Nos. 90 and 92, 1857; Mr. Christie, Nos. 23, 63, 68, 70, and 128, 1858; to Mr. Christie, Nos. 21, 36, 37, and 38, 1858; to Mr. Fagan, No. 9 1859.

I think, too, that it may fairly be urged that this part of the Decree of the President is *ultra vires*, inasmuch as the Decree recites that it is "equally stipulated in these and other Treaties with other nations that all their Governments and subjects shall be considered as the most favoured nation, it being the rule of the Argentine Republic to consider all strangers to be in the enjoyment of perfect equality of rights;" while, as I have said, the practical effect of the Decree is to remove Great Britain from this position.

It will no doubt be answered that Great Britain, by refusing the reciprocity which other States grant, puts herself out of the advantages of the most favoured nation clause; but I do not think this answer, if made, should be accepted as satisfactory: the reply being that, as a matter of fact, the Decree has loosened the condition of British subjects.

It is clear that Mr. Parish's position with respect to the interpretation of the 13th Article of the Treaty of 1825 with Great Britain cannot be sustained. Her Majesty's Government have already decided that the expressions "sin intervencion alguna" (without interference) do not warrant the inference that the property of British subjects is entirely exempt from all jurisdiction of the local Courts; and I agree with the interpretation of my predecessor in office, upon which that decision of Her Majesty's Government was founded.

With respect to the 12th Article of the President's Decree, namely, "If there are no heirs *ab intestato*, according to the laws of the country of the deceased, the administrators shall deliver up the property to the State," it is desirable to know —(1.) Whether this be a new regulation, introduced for the first time. If this be so it should be resisted. (2.) If it is to apply equally to British subjects domiciled and not domiciled, or only to naturalized foreigners.

It is, however, proper to state that the goods of a foreigner who is neither domiciled nor naturalized, but who dies in England intestate and without known relations, become the property of the Crown.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 57.

The Law Officers of the Crown to Earl Russell.—(*Received February* 10.)

UNITED STATES.

My Lord, *Temple, February* 9, 1863.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 27th January ultimo, stating that he was directed to transmit to us the papers as marked in the margin,* respecting the case of two boys of colour, British subjects, who were carried off from the Bahamas in an American vessel in March 1861, and sold into slavery, on which occasion a third negro was drowned in endeavouring to make his escape.

That it appears that the name of the man who committed this outrage is Frederic Clark, and the Secretary of State for the Colonies has suggested that every effort should be used to obtain the surrender of Clark to be tried for this crime by the Bahamas Courts, and to request that we would take this case into consideration, and report to your Lordship our opinion how far Her Majesty's Government would be borne out under the Treaty between this country and the United States of the United States of the 9th August, 1842, in claiming the surrender of Clerk for the purpose of being tried on this charge.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That we assume that the act of kidnapping was committed within British jurisdiction, as, unless such were the case, no question of extradition could arise.

With reference, at the same time, to acts committed within such jurisdiction, the right to demand the extradition of criminals under the Treaty of the

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* Lord Lyons No. 15, , 1863; Colonial Office, May 18, 1861; Lord Lyons, No. 175; to Lord Lyons, No. 148; to Colonial Office, May 28; Colonial Office, August 30, 1862; to Mr. Stuart, No. 115; Mr. Stuart, No. 287; Lord Lyons, No. 486; Colonial Office, June 17, 1862.

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9th of August, 1842, is limited, by the Xth Article, to persons charged with the crime of murder, or assault with intent to commit murder, or piracy, or arson, or robbery, or forgery, or the utterance of forged paper, and persons guilty of kidnapping are not included therein. We are, therefore, of opinion that the surrender of Clark cannot be demanded by Her Majesty's Government.

We think that Her Majesty's Government may properly urge upon the United States' Government the duty of taking criminal proceedings against the perpetrators of so grave an outrage upon British subjects if it should now, or hereafter, be in their power to do so.

There is no reason to doubt the willingness of the United States' Government to comply with such a request, which, indeed, sufficiently appears by the papers before us. But if (as we collect from the inclosures Nos. 3, 6, and 7, in Lord Lyons' despatch No. 486 of December 5, 1862), the kidnapper Frederic Clark is a captain of a Confederate vessel, who is now residing at large in the Confederate States, it is manifest that he is not at present within the power of the United States' Government, and that, in order to have him brought to justice, Her Majesty's Government must now address themselves to the authorities of the Confederate States.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 58.

The Law Officers of the Crown to Earl Russell.—(Received February 14.)

My Lord,
Temple, February 13, 1863.

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 29th January last, stating that with reference to the Report of the Law Officers of the 12th January[*] upon the cases of the British schooners "Isabel" and "Teresa," which had been captured by United States' cruizers and taken into Key West for adjudication, he was directed by your Lordship to transmit to us, together with the previous papers,[†] a despatch and its inclosures, from Her Majesty's Minister at Washington,[‡] containing further information respecting the case of Mr. A. P. Laurent, the master of the "Isabel," and to request that we would take these papers into consideration, and furnish your Lordship with any observations which we may have to offer thereupon.

We are also honoured with Mr. Hammond's letter of the 4th instant, transmitting to us a further despatch which your Lordship has received from Her Majesty's Minister at Washington relative to these cases.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we are of opinion that the fact of Captain Laurent's having falsely sworn, for the purpose of obtaining the command of an United States' ship, that he is an United States' citizen, will not, *per se*, deprive him of all his rights as a British citizen:

But that it constitutes a *primâ facie* case in favour of the claim of the United States to consider him as their citizen, which it lies upon him to disprove.

It is a question of fact whether he has been naturalized or not; and after what he has sworn, the United States' Government cannot be expected to accept his present statements as evidence to the contrary.

If there be a register kept of naturalized citizens and his name does not appear therein, or if there be any means of proving the negative, it is for him to have to recourse to them; for instance, if he can prove, as he alleges in his letter to Mr. Archibald (3rd January, 1863), that he was prohibited from using the United States' flag, and that the register of the last United States' vessel he commanded was confiscated and sent by the United States' Consul to Washington, and that such confiscation proceeded on the ground of his not being

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[*] Page 19.

[†] Law Officers, March 3, 1862; to Lord Lyons, No. 102, March 8, 1862; Lord Lyons, No. 511, December 16, 1862; Law Officers, January 12, 1863.

[‡] Lord Lyons, No. 14, January 7, 1863.

naturalized, he would establish the fact that he is not a citizen of the United States.

The fact that he has perjured himself does not authorize his detention as a rebel by the United States' authorities. He may be indicted for perjury, but he cannot be imprisoned for treason, if he disproves his naturalization, and proves his British origin.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 59.

The Queen's Advocate to Earl Russell.—(Received February 17.)

My Lord,
Doctors' Commons, February 16, 1863.

UNITED STATES.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 7th instant, stating that with reference to my Report of the 27th December last[*] respecting the case of the "Will o' the Wisp, he was directed by your Lordship to transmit to me, together with the previous papers, and with the draft of an instruction which was addressed to Lord Lyons on the 3rd ultimo[†] founded upon my Report, two despatches[‡] and the inclosures in No. 541, which have since been received from his Lordship respecting this case.

Mr. Hammond was to request that I would take these additional papers into consideration, and furnish your Lordship with my opinion as to the further steps, if any, which it is desirable that Her Majesty's Government should take on behalf of the parties interested.

In obedience to your Lordship's commands I have taken these additional papers into consideration, and have the honour to report—

That the answer of Mr. Seward with respect to the remedy of an appeal is one which, I believe, the Government of this country have often given in similar circumstances, and technically, at least, it is difficult to gainsay.

Nevertheless, the special circumstances of this case were such as to warrant Her Majesty's Government in expecting a more favourable answer to their application.

With respect to the second answer of Mr. Seward, it is by no means clear that a case of this description could be brought before the Commission which has been proposed.

Upon the whole, I think Her Majesty's Representative at Washington should be instructed to express that Her Majesty's Government have heard with regret the answer of Mr. Seward on the part of the United States' Government, and still hope that he will reconsider the refusal which it contains to their application.

That the circumstances of the case present so clear an instance of unwarrantable seizure, and the ground alleged by the Judge for not awarding costs, at least, if not also damages, is so inadequate on the face of it, as to enable Mr. Seward, upon consulting the Law Officers of the United States' Government, to grant the redress prayed, without referring the injured parties to the delay and expense of further judicial proceedings.

But I do not advise Her Majesty's Government to press the case (for the reasons given in my former Report), further than by making this renewed application.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 60.

The Queen's Advocate to Earl Russell.—(Received February 17.)

My Lord,
Doctors' Commons, February 16, 1863.

UNITED STATES.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 13th instant, stating that he was directed by your Lordship

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[*] See Reports for 1862, page 324.

[†] To Lord Lyons, No. 9.

[‡] Lord Lyons, No. 541, 1862; Lord Lyons, No. 57, 1863.

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to transmit to me the papers, as marked in the margin,* respecting the arrest and imprisonment of Mr. Lingham at New Orleans by order of General Butler; and to request that I would take this case into consideration and report to your Lordship my opinion thereupon.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That as the extreme inaccuracy and material incorrectness of the first statements made to your Lordship in this matter is now admitted, it is expedient to proceed with great caution in taking any further steps with respect to it.

In a city subject to martial law, and in most troublous times, a foreign subject was confined in a room, not alleged to be generally incommodious, though the windows had iron bars, for one night and two days upon a suspicion, perhaps quite erroneous, of misconduct, but certainly not altogether destitute *primâ facie* of some foundation.

I do not think such a proceeding *per se* warrants any further steps than have already been taken by Her Majesty's Government.

I am not sure that I understand clearly for what the bond for 50,000 dollars was exacted, or whether it be still in force since the departure of General Butler for New Orleans. But I presume the bond was exacted to guarantee the holders of the new notes, which it appears from Mr. Lingham's admission were, so far as he was concerned, irregularly, if not illegally, issued.

Upon this point I think Her Majesty's Government must cause further inquiries to be made through Her Majesty's Consul at New Orleans, and require from him a full statement upon the subject, if Mr. Lingham, or his friends acting for him in this country, seek for further intervention of Her Majesty's Government in this matter. I cannot tell from the papers before me whether he or they do so or not.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 61.

The Queen's Advocate to Earl Russell.—(Received February 15.)

My Lord, *Doctors' Commons, February* 16, 1863.

UNITED STATES.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 7th instant, stating that he was directed by your Lordship to transmit to me a despatch, and its inclosures, from Her Majesty's Minister at Washington (No. 60, January 21, 1863), respecting the case of Mr. Nelson Mc Stea, the owner of some cotton stated to have been destroyed by order of the so-styled Confederate authorities and the authorities of the State of Louisiana, and requesting instructions with regard to certain questions put to him by Acting Consul Coppell relative to the claims of British owners of cotton destroyed under such circumstances.

Mr. Hammond was to transmit to me the instructions of the 25th October, 1861, and the 23rd July, 1862, referred to by Her Majesty's Minister, which were founded on the Law Officers' Reports of the 21st October and 12th July of those years,† and was to request that I would take these papers into consideration and furnish your Lordship with my opinion as to the further instructions which should be addressed to Her Majesty's Minister for his guidance in this matter.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour report—

That Her Majesty's Representative at Washington should be instructed to inform Mr. Coppell that the United States' Government cannot now, or probably ever be, holden responsible by Her Majesty's Government for the destruction of British property in New Orleans by the Confederate authorities.

If, indeed, the United States' authorities should succeed in recovering the territory and places now subject to the Confederate authorities, it might be a question hereafter whether that Government might be not liable to make compensation for these injuries, on the principle that every Government is responsible for the acts of subjects of its territory towards subjects of a neutral State. But it is far safer to say that the demand for redress must be made, if at all, to the Confederate authorities, recognized by Her Majesty as a *de facto* belligerent. But at present, and while the war is still being waged, such a demand cannot be reasonably made. In the event of the war having ceased, and the authority of the Confederate States being *de jure* as well as *de facto* established, it will be competent to Her Majesty's Government to urge the payment of a compensation for the losses inflicted on Her Majesty's subjects by the Confederate authorities during the war, for reasons of State or of military necessity.

In the meantime the property of Her Majesty's subjects in the territory of the Confederates cannot claim to be exempted, as a matter of strict right, from the inconveniences and perils which the *bonâ fide* military necessities of the Confederates have imposed upon the property of their own subjects.

The answer to the question whether compensation is to be claimed, whensoever, from the individual States under the control of the Confederate Government, or directly from that Government itself, in some measure depends what is, and what may be the Constitution of the Confederate States, and the terms of subordination of each State to the general Government; but it appears improbable that whatever that Constitution is, or may be, Her Majesty's Government should not have the right of demanding compensation from the general or controlling Government of these States, to which all international questions must almost of necessity, and by analogy to all other Confederations of the like kind, be submitted.

It may be expedient that Her Majesty's Consul at New Orleans, or elsewhere in the Confederate States, where British property is destroyed, should avail himself of any proper opportunity to declare to the *de facto* Confederate Government the reason why Her Majesty's Government abstains at present from demanding compensation for the injury done to British property, and that they will at some future and fitting opportunity make whatever demands for compensation, international law and usage may warrant them in preferring.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 62.

The Law Officers of the Crown to Earl Russell.—(Received February 18.)

My Lord, *Temple, February* 18, 1863.

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 16th instant, stating that with reference to our Report of the 23rd ultimo, he was directed by your Lordship to transmit to us a letter from Mr. Mason (dated the 16th February), calling your Lordship's attention to the reports received through the ordinary channels of intelligence, that the United States' squadrons blockading the ports of Galveston, in Texas, and Charleston, in South Carolina, were respectively driven off by a superior Confederate force, the one on the 1st and the other on the 31st ultimo, and contending that any alleged pre-existing blockade of those ports was thereby terminated on the above dates. And to request that we would take Mr. Mason's letter into our consideration, and favour your Lordship at our earliest convenience with our opinion as to the bearing upon the blockade of the ports of Galveston and Charleston of the state of things announced in the newspapers.

Mr. Hammond was also pleased to state that the draft of the letter to Mr. Mason quoted by him was inclosed for our information.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That it is difficult to give a satisfactory opinion upon the questions raised in the letter of Mr. Mason to your Lordship without a more exact knowledge than we at present possess of the actual occurrences at Galveston and Charleston. But it may be useful to state to your Lordship the general principles of international law relating to the raising of blockades by a superior force, and to draw your Lordship's attention to the difference between the removal of the blockading fleet effected by such superior force, and the removal of it effected by the accidents of weather.

These points were well considered by Lord Stowell in the case of the

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* Mr. Donaldson, October 15 and 16, 1862; to Mr. Stuart, No. 155, October 16, 1862; to Mr. Donaldson, October 17, 1862; Mr. Donaldson, January 29, 1863.

† See Reports for 1861, page 246; ibid., 1862, page 180.

"Hoffnung" (6 Robinson, 116, 117). And we cannot suggest a clearer explanation of the law than is contained in the following extract from his Judgment:—

"It appears that the ports of Cadiz and St. Lucar were put under blockade by a notification of the 25th of April; but it unfortunately happened that the notification issued at a time when it became equally notorious that no blockade existed, since the British squadron had been recently driven off by a superior force. In a former case a question was raised, whether the notification which had issued was not still operative, at least for the purpose of sustaining the effect of these instructions. But the Court was of opinion that it could not be so considered, and that a neutral Power was not obliged, under such circumstances, to presume the continuance of a blockade, nor to act upon a supposition that the blockade would be resumed by any other competent force.

"It was argued on that occasion that neutrals were bound to act upon such presumptions; and on the same principle on which it has been held that when a blockading squadron is driven off by adverse winds, they are bound to presume that it will return, and that there is no discontiuuance of the blockade. But certainly the two cases are very different. When a squadron is driven off by accidents of weather, which must have entered into the contemplation of the belligerent imposing the blockade, there is no reason to suppose that such a circumstance would create a change of system, since it could not be expected that any blockade would continue many months without being liable to such temporary interruptions. But when a squadron is driven off by a superior force a new course of events arises, which may tend to a very different disposition of the blockading force, and which introduces, therefore, a very different train of presumptions in favour of the ordinary freedom of commercial speculations. In such a case the neutral merchant is not bound to see or conjecture that the blockade will be resumed; and therefore if it is to be renewed it must proceed *de novo* by the usual course, and without reference to the former state of facts, which has been so effectually interrupted. On this principle it was that the Court held the former blockade to have become extinct, and intimated an opinion that there should be a repetition of the same measures, on its re-commencement, to bring it to the knowledge of neutral States, either by public declaration or by the notoriety of the fact."

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 63.

The Queen's Advocate to Earl Russell.—(Received February 20.)

My Lord, *Doctors' Commons, February* 20, 1863.

TURKEY.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 12th instant, stating that with reference to my Report of the 6th of December of last year,* relative to the alleged fraud committed on Messrs. Cababé by Mr. Thomas Walsh, their Agent at Aleppo, he was directed by your Lordship to transmit to me therewith a despatch from Her Majesty's Consul at Aleppo (No. 6), containing the Report which I suggested that he should be desired to make upon the whole subject; and Mr. Hammond was to request that I would take the same into consideration, and furnish your Lordship with my opinion as to the course which Her Majesty's Government should pursue in this matter.

In obedience to your Lordship's commands I have taken this despatch into consideration, and have the honour to report—

That I humbly advise Her Majesty's Government to apprise Messrs. Cababé that Her Majesty's Government have taken their Memorial into consideration, and communicated upon the subject of it with Her Majesty's Consul at Aleppo, and that they see no reason to interfere with the ordinary course of law administered in the Consular Court. They must therefore decline to comply with the prayer contained in the Memorial of Messrs. Cababé.

I have, &c.
(Signed) ROBERT PHILLIMORE.

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* See Reports for 1862, page 304.

No. 64.

The Queen's Advocate to Earl Russell.—(Received February 21.)

My Lord, *Doctors' Commons, February* 20, 1863.

SPAIN.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 18th instant, stating that with reference to my Report of the 26th of December last,* respecting the claim of the Spanish Consul-General at Odessa, for compensation for the damage done to his farm at Kertch by the Turkish Contingent, he was directed by your Lordship to transmit to me a further letter, dated the 13th January ultimo, from the Spanish Minister at this Court, in which he again presses the claim.

Mr. Hammond was also pleased to inclose a letter from the War Office, dated the 14th February, 1863, to whom Señor Gonzalez' communication was referred; and was to request that I would take the case again into consideration, and furnish your Lordship with my opinion whether any arguments are advanced by Señor Gonzalez which would induce me to alter or modify the opinion I have expressed with regard to this claim.

Mr. Hammond was likewise pleased to return the previous correspondence connected with the case for my convenience.

In obedience to your Lordship's commands I have again taken this case into consideration, and have the honour to further report—

That the arguments advanced by Señor Gonzalez in his despatch of the 13th January, 1863, do not induce me to alter or modify the opinion which I have had the honour already to express in my Report of the 26th of December last, respecting the claim of the Spanish Consul-General at Odessa for compensation.

I may here observe that Señor Gonzalez does not controvert—indeed, by implication admits—the justice of the principles upon which that Report was founded; and I am unable to agree with his Excellency that the case of the Spanish Consul is of so exceptional a nature as to exempt it from their operation.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 65.

The Queen's Advocate to Earl Russell.—(Received February 21.)

My Lord, *Doctors' Commons, February* 21, 1863.

BRAZIL.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 18th February instant, stating that he was directed to inform me that the Government of Brazil have instructed their Representative in this country to notify to Her Majesty's Government that he is authorized to pay to Her Majesty's Government, under protest, whatever sum they may demand in the shape of compensation in the case of the British vessel "Prince of Wales," wrecked on the coast of Brazil; that the demands which Her Majesty's Government made on the Government of Brazil in this case are embodied in the instruction to Mr. Christie of which the draft was inclosed for my information; that the responsibility of assessing the compensation which can equitably be demanded from Brazil was not sought by Her Majesty's Government, who, indeed, proposed through Mr. Christie that the question should be referred to arbitration, but that the course pursued by the Brazilian Government leaves Her Majesty's Government no option in the matter.

And Mr. Hammond was pleased to request that I would take this case into consideration, and report to your Lordship my opinion as to the amount at which the compensation should be assessed.

That with a view to arrive at a decision on the point in question, your Lordship has called on Mr. Stephens, the owner of the "Prince of Wales," and who claims to represent all the interests connected with that vessel, and of the families of those who perished in the wreck, to furnish the particulars of the total property lost by the wreck of the vessel, and its results, whether as regards the crew or the cargo.

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* See Reports for 1862, page 321.

Mr. Hammond was also pleased to inclose Mr. Stephens' reply, as well as two letters which your Lordship had previously received from him, and on the strength of which the sum of 6,525*l.* 19*s.* is mentioned in your Lordship's instruction to Mr. Christie; and that as Mr. Stephens is at present in London for a few days, he will be desired to hold himself in readiness to wait upon me at such time as I might appoint, for the purpose of giving any further explanations which I may desire to receive; that Mr. Stephens' address is "Webbs' Hotel, 220, Piccadilly;" and that if I should also desire it, Mr. Hammond would be prepared to request the Board of Trade to direct a gentleman conversant with mercantile details to attend me when I take this matter into consideration; and was also pleased to state that your Lordship considers it very desirable that a decision should be arrived at with the least possible delay as to the compensation to be paid in this case; and to request that I would report to your Lordship my opinion on the point.

I am also honoured with Mr. Hammond's letter of the 19th February instant, inclosing a further letter from Mr. Stephens, together with a Memorandum forwarded to the Board of Trade, and the reply received from that Department regarding the amount at which compensation should be assessed in this case.

In obedience to your Lordship's commands I have taken this matter into consideration, and have the honour to report—

That I am clearly of opinion—

First. That Her Majesty's Government ought not to make any demand in excess of the sum mentioned by Mr. Christie to the Brazilian Government.

Secondly. That no demand should be made on account of freight.

Thirdly. That no demand should be made on account of the loss of the vessel.

It remains that the amount of compensation should be founded upon the plunder of the cargo, of the effects of the crew, and upon the too probable murder of some or all of them.

It appears that the wreck was of a character to enable the cargo to have been carried off comparatively uninjured. The crew were fifteen in number, including master and mate: 40*l.* (5*l.* to captain, 35*l.* to rest of the crew) appears to have been due for wages. I estimate the probable value of their personal effects (captain 100*l.*, mate 20*l.*, thirteen seamen at 10*l.* each) at 250*l.* Their actual loss (wages and effects) therefore at 290*l.* I estimate (roughly of course) their compensation for their probable murder, which is to be paid to their surviving relations, captain 300*l*, mate 150*l.*, thirteen sailors 30*l.* each; total, 640*l.*[*]

As to the cargo, originally estimated at 5,500*l.*, it must be remembered that, besides deductions for probable and necessary damage, large salvage would have been due to the inhabitants of the coast, if they had been salvors instead of robbers.

I therefore estimate the compensation by a *rusticum justicium* (to borrow Lord Stowell's phrase), on the best evidence I have been able to procure, at 2,360*l.*, making a total of 3,000*l.*[†]

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 66.

The Queen's Advocate to Earl Russell.—(Received February 24.)

My Lord, *Doctors' Commons, February* 23, 1863.

UNITED STATES.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 20th instant, stating that with reference to the Report of the Law Officers of the 18th instant,[‡] on the question of the blockade of the ports of Charleston and Galveston, he was directed by your Lordship to transmit to me,

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[*] Should be 840*l.*

[†] Should be 3,200*l.*

[‡] Page 51.

together with a copy of an instruction which would be sent to Lord Lyons by the next day's mail, two despatches and their inclosures from Lord Lyons on the subject (Nos. 116 and 122); and Mr. Hammond was to request that I would take the same into consideration, and furnish your Lordship with my opinion as to the propriety of publishing in the "Gazette" Mr. Seward's letter to Lord Lyons of the 5th of February, stating, with reference to recent events at Galveston, that the blockade of that port was resumed immediately, and would be continued until further notice.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That the Official Report, dated from the United States' steam-sloop "Hartford," at anchor off New Orleans (January 12, 1863), leaves no doubt that the blockade of Galveston was, *de facto* and *de jure*, raised on the 1st of January this year. The fact is distinctly stated in the concluding paragraphs of that Report.

The same fact is indirectly, though not very ingenuously, admitted in Mr. Seward's despatch to Lord Lyons (February 5, 1863).

The language of that despatch is very important, as, apart from other considerations, it unquestionably entitles neutral vessels, for some time at least, to notice upon the spot that the blockade is *de facto* resumed.

I think that the letter of Mr. Seward should be published in the "Gazette."

With reference to the alleged raising of the blockade of Charleston, there is at present no statement of facts upon which your Lordship could rely.

With reference to the inclosed draft of your Lordship's instructions to Lord Lyons (February 20, 1863), they appear to me quite correctly drawn.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 67.

The Law Officers of the Crown to Earl Russell.—(Received February 26.)

My Lord, *Temple, February* 24, 1863.

CHINA.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 29th January ultimo, stating that he was directed by your Lordship to transmit to us the accompanying letters dated the 16th and 25th January ultimo, and their inclosures, from the Colonial Office, from which we would see that a question had been raised at Hong Kong whether, under the provisions of the Regulations in force in that Island, and of the Treaty of Tien-tsin, the Chinese Government had the right to demand the extradition of persons accused of political offences against that Government.

Mr. Hammond was also pleased to inclose copies of the Treaty of 1843, referred to in these papers, and of the Treaty of Tien-tsin and Convention of Peking, and to request that we would take the matter into our consideration, and favour your Lordship with our opinion as to the instructions which should be sent to the Governor of Hong Kong.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That the crimes for the commission of which, in China, by Chinese subjects, the Government of that country has the right to demand the extradition of the accused, being fugitive at Hong Kong, are, in our opinion, generally crimes against the municipal laws of China. In the Supplementary Treaty of 1844 (which, though abrogated by Article I of the Treaty of Tien-tsin, may properly be referred to on a question of the construction of the later Treaty), this was expressed in terms, "crimes or offences against their own Government" (Article IX); and the Regulations of 20th March, 1850, made for carrying out that Treaty, naturally adopts similar language,—"crime or offence against the laws of China." It is true that the terms of the Treaty of Tien-tsin (Article XXI) are more general, namely, "criminals, subjects of China;" but inasmuch as the crime supposed must have been committed in China, and the criminal must be a person fugitive from China, and taking "refuge" in Hong Kong, in order to make "extradition" applicable, it follows

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that, under the existing as well as under the former Treaty, the "crime" must be a crime against Chinese law. When, therefore, a Chinese is accused at Hong Kong of crimes which in Europe would be described as "political offences," the only question, as regards the nature of the accusation, that appears to us properly to arise is this,—Is the particular offence in its circumstances (if proved) an infraction of the municipal law of China? And this, of course, it *may* be, although ranging under the head of political offence.

In expressing this conclusion we must observe that, in the extradition portions of the Chinese Treaties, a course has been pursued entirely opposite to that which has been followed in the framing of Treaties of Extradition, entered into between Great Britain and various European and American States. In those Treaties a very limited number of the most heinous crimes are enumerated, as those to which alone extradition is to apply, and in such enumeration no "political offences" are ever to be found; whereas (as it seems to us unfortunately) in the Treaties with China the British Government undertake to deliver up fugitive Chinese criminals to the Chinese authorities, whatever the nature of their crime may be, provided only it be a crime against the law of China, and the "guilt" of the accused be "proved." The explanation of this difference is probably to be found in the circumstance that the places in which Chinese criminals might take refuge from the laws of their own country, and from which they would be delivered up under these Treaties, were not territories belonging, by any original and independent title, to the British Crown, but were either British ships, houses, or factories within the Chinese territory itself, or British ships frequenting Chinese waters for trade, or portions of the former territory of China ceded by these Treaties themselves to Great Britain.

As regards the requisite "proof" to be adduced before British authorities at Hong Kong, under the Treaty of Tien-tsin, we think that reasonable evidence ought to be accepted as sufficient; such, for example, as would lead a grand jury in this country to find a true bill, where the evidence is *ex parte* only, or such as, with evidence on both sides, would induce a magistrate to commit for trial. It is at the same time quite clear on the letter of the Treaty (Tien-tsin) that it is only "on proof of their guilt" that Chinese criminals can be demanded by Chinese officers; and the "proof" intended can, of course, be no other than proof satisfying the minds of those, the British officers, who have to determine the question at this preliminary stage.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 68.

The Queen's Advocate to Earl Russell.—(Received February 26.)

Doctors' Commons, February 24, 1863.

My Lord,

UNITED STATES.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 19th instant, stating that he was directed by your Lordship to transmit to me the accompanying correspondence with the Union Association of Underwriters,* relative to a claim put forward by the owners and underwriters of the barque "Symmetry," for damages sustained from a collision with the United States' ship of war "Vanderbilt;" and Mr. Hammond was to request that I would take the case into consideration, and furnish your Lordship with my opinion thereupon.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That this is, in my opinion, a proper case for compensation from the United States' Government.

The protest shows that the "Symmetry" was run down by the United States' steamer "Vanderbilt," who mistook her for the "Alabama."

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* Union Association of Underwriters, January 8, 1863; to Union Association of Underwriters, January 13, 1863; Union Association of Underwriters, February 17, 1863.

According to the papers before me, there can be no doubt the United States' steamer was solely to blame: if this be so, according to universal maritime law the "Symmetry" is entitled to recover against the wrongdoer all the costs and damages incident to her claim and to her reparation.

I presume that the amount specified is not excessive; and it appears from the letter of the 17th of February, 1863 (on the part of the Union Association of Underwriters), that the protest and surveys are attested by the United States' Consul at Belfast.

It is difficult to suppose that, on the representation of these facts by your Lordship to the Government of the United States, any objection will be raised to the payment by them of the sum demanded.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 69.

The Queen's Advocate to Earl Russell.—(Received February 26.)

Doctors' Commons, February 24, 1863.

My Lord,

UNITED STATES.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 17th instant, stating that he was directed by your Lordship to transmit to me a despatch from Her Majesty's Minister at Washington (No. 99, January 30), inclosing a correspondence between Mr. Seward and the Mexican Chargé d'Affaires at Washington, relative to the exportation of articles contraband of war for the use of the French army in Mexico; and Mr. Hammond was to request that I would peruse this correspondence, and furnish your Lordship with any observations which I may have to offer thereupon.

In obedience to your Lordship's commands I have perused and considered the said correspondence, and have the honour to report—

That such correspondence* appears to me valuable to Her Majesty's Government, as furnishing irrefragable evidence of the different principles of law which the Government of the United States applies to her answer to Mexico and to her demands upon Great Britain upon the same subject, namely, the allowing a belligerent to be supplied with the means of carrying on the war from a neutral territory.

In the land war now raging between Mexico and France, waggons are to the latter Power pretty much, to a great extent at least, of the same service as ships in the maritime war between the United States and the Confederate States would be to the latter.

"The shipment of arms" (Mr. Seward says, page 10) "is denied to Mexico on the ground, not of want of them on her part as a belligerent, but on the ground of the military situation of the United States; and, on the other hand, the waggons are allowed to be shipped, not on the ground that France wants them as a belligerent, but on the ground that the military situation of the United States does not demand an inhibition."

Mutatis mutandis, this reasoning might be applied by Great Britain to the remonstrances of the United States in the matter of the "Alabama." But Great Britain, by virtue of the Foreign Enlistment Act, did endeavour to do that which, *according to Mr. Seward's position in this correspondence*, by general international law, would not have been incumbent upon her to do, namely, prevent the "Alabama" from leaving her ports.

Mr. Seward makes no attempt to prevent the transport of the waggons from the ports of the United States.

The answer of Mr. Romero (pages 14, 15) consists in calling upon the United States' Government to apply to Mexico the principles of law which he proves by citations from despatches she has applied to Great Britain.

The answer meets with no reply.

The correspondence in question will be of use whenever the complaints in

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* American Papers: 37th Congress, Ex. Doc., 3rd Session, No. 24. Message of the President of the United States. "Correspondence from the Mexican Government as to Export of Contraband from the United States to France."

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the matter of the "Alabama" be renewed, or any similar complaint be made by the United States.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 70.

The Law Officers of the Crown to Earl Russell.—*(Received February 27.)*

Temple, February 25, 1863.

UNITED STATES.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 7th February instant, stating that with reference to our Reports of the 22nd March, 3rd of April, and 17th of September last,* he was directed by your Lordship to transmit to us, together with the previous papers, the correspondence which had since passed between the Foreign Office and Her Majesty's Minister at Washington,† respecting the case of the "Labuan."

Mr. Hammond was also pleased to state that we would see from Lord Lyons' despatch No. 29 of the 13th ultimo, that the claim of the owners and charterers of that vessel for compensation on account of her seizure was referred to the Court of Admiralty at New York in October last, but that Court has not yet taken cognizance of it. That the agent of the parties interested has now applied to Lord Lyons, urging his Lordship to press the United States' Government for a settlement of the claims; the amount of compensation to be assessed, not by the Court of Admiralty, but by professional persons competent to decide on it.

Mr. Hammond was also pleased to request that we would take the inclosed papers into our consideration, and favour your Lordship with our opinion as to the instructions which should be given to Lord Lyons.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we humbly advise Her Majesty's Government to instruct Lord Lyons to urge upon the United States' Government that, having regard to all the circumstances of this case, the flagrant violation of law committed by the original seizure of this vessel, a violation never, from first to last, denied by the United States' Government, the sending back this vessel to the Prize Court for further adjudication as to costs and damages is, even if technically correct, a practical evasion of the plain duty cast upon the United States' Government to make, without delay, all the reparation in its power for an act of hostility towards a neutral and friendly State, condemned alike by the Government and the legal tribunal of the United States.

That the delay of two months which has already occurred by sending back the case to the Prize Court is a serious addition to the injuries already sustained by the owners of the "Labuan." That the question is now, and in its present state, really and *bonâ fide* one to be settled between the two Governments; as it cannot be supposed that Her Majesty's Government would consider that any sentence of the Prize Court could, in the circumstances of this case, release the United States' Government from the obligation of making ample reparation for so great an outrage upon neutral rights.

That the question of amount of compensation is one manifestly proper to be submitted to experienced and skilful mercantile persons, and that as to the principle, Her Majesty's Government cannot, and do not, entertain any doubt whatever.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

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* See Reports for 1862, pages 70, 83, and 225.

† Lord Lyons, No. 29, 1863; Mr. Stuart, No. 289, 1862; to Mr. Stuart, No. 135, 1862.

No. 71.

The Queen's Advocate to Earl Russell.—*(Received February 26.)*

UNITED STATES.

My Lord, *Doctors' Commons, February* 26, 1863.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 23rd of February instant, stating that with reference to his letter of the 20th instant (upon which I had already had the honour to make my Report, dated the 23rd instant*), he was directed by your Lordship to transmit to me therewith a further despatch from Lord Lyons (No. 133, February 9, 1863), respecting the blockade of Galveston, and to request that I would take the same into consideration, together with the papers previously before me, and report to your Lordship my opinion thereon.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to further report—

That the information as to the resumption of the blockade, contained in the Circular, is so precise, and has been so widely disseminated by Lord Lyons, as, under the general law, and apart from considerations incident to the President's original Proclamation, to go far towards supplying the fresh notification which is required after a raising of the blockade.

Nevertheless, I think it would be expedient that Lord Lyons should be instructed to state to Mr. Seward that Her Majesty's Government expect that vessels approaching Galveston be warned upon the spot; and that instructions to this effect be sent to the United States' naval officers, inasmuch as it is admitted that the blockade has been *de facto* and *de jure* raised; and as the counter statements of the belligerents as to its resumption may tend to embarrass innocent vessels.

Probably the Representatives of France and Spain at Washington would join in such a requisition.

I have already had the honour to express my opinion that it would be expedient to publish the letter of Mr. Seward in the "Gazette."

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 72.

The Law Officers of the Crown to Earl Russell.—*(Received February 27.)*

Temple, February 26, 1863.

UNITED STATES.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 19th instant, stating that, with reference to our Report of the 23rd ultimo,† upon the proposed draft of answer to Mr. Mason's letter of January 1863, complaining of the terms employed by your Lordship in a despatch to Lord Lyons relative to the blockade of the Southern ports, and also with reference to his letter of the 16th instant inclosing a letter from Mr. Mason, in which he stated that he should in the course of a day or two send a reply to your Lordship's letter of the 10th instant, he was now directed by your Lordship to transmit to us a letter from Mr. Mason, dated the 18th February instant, containing that reply, and to request that we would take the same into our consideration, and favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That it does not appear to us that the letter of Mr. Mason calls for any further answer upon the question of blockade from your Lordship. But, in acknowledging that letter, it might perhaps be as well to state that your Lordship did not intend to state that any number of vessels of a certain build or tonnage might be left at liberty freely to enter a blockaded port, without vitiating the blockade, but that the occasional escape of small vessels on dark nights, or under other particular circumstances, from the vigilance of a competent blockading

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* Page 54.

† Page 29.

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fleet, did not evince that laxity in the belligerent which enured, according to international law, to the raising of a blockade.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 73.

The Queen's Advocate to Earl Russell.—(Received March 3.)

Doctors' Commons, March 2, 1863.

UNITED STATES.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 27th January, stating that with reference to my Report of the 1st January,* respecting the case of Captain Sherwin, a British subject who had been imprisoned at Port Delaware, and whom the United States' Government had stated its intention of prosecuting for high treason, he (Mr. Hammond) was directed by your Lordship to transmit to me, together with the previous papers, the drafts of two instructions which were addressed to Lord Lyons on the 10th ultimo (Nos. 15 and 16) respecting this case, and despatches which have since been received from his Lordship (Nos. 42, 71, 72, and 125), from which it appears that the intention of prosecuting Captain Sherwin has been abandoned, and that a question has now been raised as to whether Her Majesty's Government should demand directly from the United States' Government an indemnity for Captain Sherwin's imprisonment.

Mr. Hammond was to request that I would again take this case into consideration, and report to your Lordship my opinion thereupon.

In obedience to your Lordship's commands I have the honour to report—

That the case of Captain Sherwin appears to be as follows:—

A British subject of good character and position, commanding a merchant vessel purchased in the United States, and lawfully employed, is suddenly arrested on a charge of high treason, and detained for twelve weeks in prison. At the end of that period, after a strong remonstrance from Her Majesty's Government, he is released, because the proper Law Officer of the United States advised his Government that he cannot "*at present* be successfully prosecuted for high treason;" but it is added, "his conduct *is believed* to have been unwarrantable and injurious."

He is also required to sign a parole of honour, not to aid or comfort the rebellion against the authority of the United States.

The plain meaning of this is, that the Government of the United States cannot prove the serious charge upon the ground of which alone they have for a long period deprived a British subject of his liberty, most seriously injured his fortunes as the Captain of a trading-vessel, and subjected him and his friends to the gravest anxiety.

Captain Sherwin, both by English and United States' law, is innocent if he is not proved guilty, as Mr. Seward must be perfectly aware. Nor is the injury done to him at all justified by the vague and illegal language that his conduct has been unwarrantable and injurious. There are, moreover, other circumstances in the early history of the case which make it incredible that Mr. Seward ever believed that the charge could be seriously sustained, and which make it credible that it was persisted in for this length of time, in order to cover the injustice of the original seizure of Captain Sherwin.

The imprisonment of this person was moreover continued after remonstrance from Her Majesty's Government, and after an intimation that if the charge proved, as Her Majesty's Government had reason to believe it would prove, wholly untenable, indemnity would be claimed at the hands of the United States' Government.

I am of opinion that in these circumstances Her Majesty's Government should demand from the United States' Government an indemnity for the imprisonment of Captain Sherwin.

It is to be remembered that the necessities of the United States have compelled them to suspend their *habeas corpus* Act, and it is possible that Mr. Seward may allege peculiar circumstances warranting, in the present distracted state of the United States, these arbitrary proceedings: if any such circumstances should be alleged by way of vindication by the United States' Government, they will of course be the subject of further consideration.

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[*] Page 2.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 74.

The Queen's Advocate to Earl Russell.—(Received March 3.)

Doctors' Commons, March 2, 1863.

UNITED STATES.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 28th ultimo, stating that he was directed by your Lordship to transmit to me a despatch from Her Majesty's Consul at New York (No. 34, February 11), inclosing printed copies of the sentence of condemnation pronounced by Judge Betts upon the steamer "Sunbeam" and her cargo, which formed the subject of my Report of the 28th November last, and of the Report of the Law Officers of the 16th ultimo.

Mr. Hammond was to request that I would peruse this sentence, and furnish your Lordship with any observations I may have to offer thereupon.

In obedience to your Lordship's commands I have perused and considered the sentence of Judge Betts, and have the honour to report—

That the general principles of prize law appear to have been correctly applied to this case, and the vessel to have been upon these principles rightly condemned.

It is for the owners to consider whether they will appeal from the sentence; but this is not a case, in the present state of facts, which calls upon Her Majesty's Government for any interference.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 75.

The Law Officers of the Crown to Earl Russell.—(Received March 4.)

Temple, March 2, 1863.

UNITED STATES.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 23rd ultimo, stating that he was directed by your Lordship to transmit to us a printed copy of a letter dated the 9th ultimo from Mr. Adams, the United States' Minister at this Court, inclosing copies of an intercepted correspondence which Mr. Adams states, goes to show a deliberate attempt to establish within the limits of the United Kingdom a system of action in direct hostility to the Government of the United States, the plan embracing, as Mr. Adams observes, not only the building and fitting out of ships of war, but the obtaining from Her Majesty's subjects the pecuniary means essential to the execution of those hostile projects; and to request that we would take this correspondence into our consideration, and report to your Lordship our opinion whether any of the facts alleged in it would, if proved, be punishable in Her Majesty's Courts of Justice.

In obedience to your Lordship's commands we have taken this correspondence into consideration, and have the honour to report—

That the correspondence referred to does not appear to us to contain any sufficient evidence of "a system of action in direct hostility to the United States," on the part of any of Her Majesty's subjects.

It appears to show, that Agents of the Confederate States, resident in this country, have received instructions from their own Government to endeavour to raise money on securities of that Government in England, and to enter into contracts for the purchase of munitions of war and for the building of iron-clad vessels; and it may be supposed that they have been acting upon those instructions. But we cannot discover by these papers, that, either by receiving such instructions, or by acting upon them, those agents have as yet brought themselves within the reach of any criminal law of the United Kingdom. It is not contrary to law for Her Majesty's subjects to lend money, on securities, or otherwise, to "the persons administering the Government of the Confederate States;" nor to sell to that Government ordinary munitions of war. With respect to the building of iron-clad steamers for either belligerent Government, although this is clearly prohibited by the Foreign Enlistment Act, we do not find in this correspondence sufficient information as to anything actually done within this country in pursuance of that intention, to be made the groundwork of any criminal prosecution. We are, therefore, of opinion that as yet no such definite facts are alleged as, if proved, would be punishable in Her Majesty's Courts of Justice.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 76.

The Law Officers of the Crown to Earl Russell.—(*Received March* 4.)

Temple, March 2, 1863.

UNITED STATES.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 17th January ultimo, stating that he was directed by your Lordship to transmit to us the inclosed Report from Mr. Rothery, the legal adviser of the Treasury on Slave Trade matters, with the draft of the Regulations which it is proposed to issue for the guidance of the Mixed Courts of Justice established under the Treaty between Her Britannic Majesty and the United States of America for the suppression of the Slave Trade; and to request that we would take these papers into our consideration, and inform your Lordship, at our early convenience, whether we were of opinion that the Regulations as now proposed are right and proper.

Mr. Layard was also pleased to state that he was directed by your Lordship at the same time to transmit to us, for reference, if required, a copy of the Regulations which were drawn up in 1842 for the guidance of the Mixed Commission Courts established under the provisions of the Treaty of July 1842 between this country and Portugal for the suppression of the Slave Trade, and to state that, if the instructions now drawn up by Mr. Rothery are approved, your Lordship proposes, if we see no objection to such a proceeding, to have the instructions for the guidance of the British and Portuguese Mixed Commission Courts made conformable with those drawn up for the use of the British and American Courts of Justice.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we have perused the Regulations for the guidance of the Mixed Courts of Justice established in pursuance of the Treaty of the 7th April, 1862, between Her Britannic Majesty and the United States of America for the suppression of the African Slave Trade, and are of opinion that they are proper, with the slight alteration and addition suggested by us, to be carried into effect.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 77.

The Queen's Advocate to Earl Russell.—(*Received March* 4.)

Doctors' Commons, March 3, 1863.

UNITED STATES.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 26th ultimo, stating that he was directed by your Lordship to transmit to me the accompanying papers, as marked in the margin,* relative to the capture by the United States' cruizer "Tioga" of the British steamer "Pearl" while on a voyage from St. Thomas to Nassau; and to request that I would take the same into consideration and furnish your Lordship with my opinion thereupon.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That there appears to be no legal ground for the seizure and detention of this vessel.

I think Lord Lyons might be instructed to represent the injustice of this class of seizures, namely, those which are made upon the merest pretext off the Bahamas, and sent to the Prize Court at Key West.

The recent case of the "Rising Dawn," mentioned in these papers, having been seized for having one gross of matches on board, might be cited by Lord Lyons as fairly exemplifying this class.

While the permission to appeal (if it were discretionary, as it would seem to be, with the Court) after the Judge had declared his inability to understand the grounds of the capture, illustrates the hardship inflicted on the owners of these vessels.

The "Pearl" appears to have had no cargo, and to have done no act which amounted to reasonable suspicion, or warranted her detention.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 78.

The Law Officers of the Crown to Earl Russell.—(*Received March* 4.)

Temple, March 3, 1863.

UNITED STATES.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 27th ultimo, stating that with reference to our Report of the 17th ultimo,† he was directed by your Lordship to transmit to us, together with the previous correspondence, a further letter dated the 19th February ultimo, from the United States' Minister at this Court, inclosing a Memorial which has been addressed to the United States' Secretary of State by the New York Mutual Insurance Company, claiming the repayment by Her Majesty's Government of certain policies of insurance upon the United States' vessels "Brilliant" and "Manchester," which have been destroyed on the high seas by the Confederate steam-vessel "Alabama."

Mr. Hammond was to request that we would take these papers into consideration, and furnish your Lordship with any observations we may have to make thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That an answer should be sent to Mr. Adams to the following effect:—

"That Her Majesty's Government entirely disclaim all responsibility whatever for any acts of the 'Alabama,' and had hoped that they had already made this decision on their part plain to the Government of the United States."

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 79.

The Law Officers of the Crown to Earl Russell.—(*Received March* 4.)

Temple, March 3, 1863.

UNITED STATES.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 7th ultimo, stating that he was directed by your Lordship

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* Mr. Archibald, No. 33; Messrs. Loundes and Co., February 17, 1863; Messrs. Johnson's Memorials, February 18 and 25.

† Page 24.

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to transmit to us a despatch from Her Majesty's Minister at Washington (No. 32), inclosing the papers laid before Congress in support of the recommendation of President Lincoln in his last Annual Message, that compensation should be paid to the owners of the Norwegian barque "Admiral P. Fordenskiold," which, in May 1861, was prevented by the blockading squadron from leaving the port of Charleston.

That your Lordship thought it right we should have cognizance of these papers, and Mr. Hammond was therefore to request that we would consider the same, and furnish your Lordship with any observations which we may have to offer thereupon.

In obedience to your Lordship's commands we have considered these papers, and have the honour to report—

That no inference can be drawn from the compensation paid by the United States' Government to the owners of the Norwegian barque, that in ordinary circumstances a vessel which had taken on board a cargo in a blockaded port after the commencement of the blockade, would be allowed to go out with that cargo.

The facts of this case, as to the time when the cargo was taken on board, are not quite clear; but the compensation has been paid, rightly or wrongly, on the ground that an indulgence conceded to a British vessel ought not to be denied to a Norwegian vessel.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 80.

The Law Officers of the Crown to Earl Russell.—(*Received March* 4.)

Temple, March 3, 1863.

My Lord,

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 17th February ultimo, stating that with reference to our Report of the 12th January last,* respecting the case of the steamer "Gibraltar," or "Sumter," he was directed by your Lordship to transmit to us, together with the former papers, a letter dated the 16th February ultimo, from Mr. Adams, the United States' Minister at this Court, stating that he had received information of the arrival of that vessel at Liverpool, and requesting your Lordship's attention to the bearing on this case of Her Majesty's Proclamation limiting the stay of vessels of the respective parties to the present struggle in America within Her Majesty's ports; and to request that we would take this matter into our consideration, and favour your Lordship, at our earliest convenience, with our opinion thereupon.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we think that it is not competent to Her Majesty's Government, upon the facts at present known to them, to assume, as Mr. Adams appears to do, that the ship lately called the "Sumter" has not been legally and *bonâ fide* sold to a British owner for commercial and peaceful purposes; and, unless it were established that the sale was, as Mr. Adams assumes, merely fictitious, we think that Her Majesty's Proclamation, to which his Excellency refers, cannot be treated as now applicable to that vessel in the port of Liverpool.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

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* Page 16.

No. 81.

The Law Officers of the Crown to Earl Russell.—(*Received March* 4.)

My Lord, *Temple, March* 3, 1863.

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 10th February ultimo, stating that with reference to our several Reports upon the case of the "Blanche," he was directed by your Lordship to transmit to us, together with the former papers and with the drafts of instructions which were recently addressed to Her Majesty's Minister at Washington, founded upon our Reports of the 12th and 17th January last (No. 32, January 17, and No. 41, January 23), two despatches and their inclosures which have since been received from Lord Lyons respecting this case (Nos. 39 and 55), and to request that we would take the same into our consideration and favour your Lordship with such observations as we might have to offer thereupon.

We are also honoured with your Lordship's commands signified in Mr. Hammond's letter of the 21st February ultimo, stating that with reference to the case of the "Blanche," he was directed by your Lordship to transmit to us a despatch from Lord Lyons (No. 121, February 5th) in continuation of those on the same subject inclosed in his letter of the 10th February, and to request that we would take the same into our consideration when framing our further Report upon this case.

Mr. Hammond was also pleased to add that your Lordship had approved the course proposed to be pursued by Lord Lyons, as reported in the despatch then sent to us.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That, in our opinion, the course which has been hitherto taken by the Representatives of the English and Spanish Governments has been proper; and we think it will be right still to decline to recognize the proceedings of the United States' Court-martial as being capable of exercising any influence upon the demands of Her Majesty's Government.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 82.

The Queen's Advocate to Earl Russell.—(*Received March* 5.)

My Lord, *Doctors' Commons, March* 4, 1863.

UNITED STATES.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 28th ultimo, stating that he was directed by your Lordship to transmit to me a despatch from Her Majesty's Minister at Washington (No. 131, February 7), inclosing a copy of a despatch from Mr. Acting Consul Coppell, together with a petition addressed to your Lordship by John Hughes, a British subject, who claims compensation from the Government of the United States on account of his arrest and imprisonment at New Orleans by order of the United States' military authorities at New Orleans.

Mr. Hammond was to request that I would take this case into consideration and report to your Lordship my opinion thereupon.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That in a place like New Orleans, under the dominion of martial law, it is not every interference with the liberty of Her Majesty's subjects, or even their temporary imprisonment upon a suspicion, which (though it turn out to be unfounded) calls for the direct intervention of Her Majesty's Government.

It might not unfrequently, perhaps, be fairly answered by the United States' Government that, in their present necessity, they mete out the same measure to their own citizens as they do to foreigners. Nevertheless there must be limits to this concession, and each case of the kind which is laid before Her Majesty's Government must be considered with reference to its own circumstances. And it certainly appears to me that the arbitrary imprisonment (if, indeed, it was as groundless as it is represented in these papers to have been) of this man Hughes for six weeks, was unjustifiable, and beyond the latitude of any concession which might reasonably be made by Her Majesty's Government to the peculiar condition of the United States' Government.

I assume that the facts are correctly stated by Mr. Consul Coppell; though it is to be regretted that a copy of the Report of the Judge Advocate has not been forwarded to your Lordship.

The amount of indemnity claimed appears to me very extravagant. But, as at present advised, I think an indemnity, the amount of which, perhaps, Lord Lyons might estimate, is due to Hughes.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 83.

The Queen's Advocate to Earl Russell.—(Received March 5.)

Doctors' Commons, March 4, 1863.

My Lord,

ITALY.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 28th ultimo, stating that, with reference to my Report of the 2nd October last, relative to the case of the British vessel "Ranger," detained at Messina, he was directed by your Lordship to transmit to me therewith a further despatch from Mr. West, Her Majesty's Chargé d'Affaires at Turin, communicating the refusal of the Italian Government to make any compensation in that case; and Mr. Hammond was to request that I would take this despatch into consideration, and communicate to your Lordship any observations I may have to make thereon.

The former papers relating to this case were inclosed therewith.

In obedience to your Lordship's commands I have considered this despatch, and have the honour to report—

That the answer of the Italian Government is not, in my opinion, satisfactory.

No evidence is offered to prove that the "Ranger" was chartered by the Emancipation Society of Genoa, to aid the operations of Garibaldi; and the immediate orders given, without any suggestion of the kind, for the return of the vessel, by a telegraph from the Italian Minister for Foreign Affairs, on the 8th September (see despatch No. 335 from Sir James Hudson), at the application of Sir James Hudson, appear to be inconsistent with this allegation.

The averments, if accurate, that the captain of the "Ranger" made inquiries as to the progress of Garibaldi (which, probably, most foreigners made at the time), and gave contradictory statements as to his object in coming to Messina, do not amount to the requisite proof, though it would be proper to ask the captain for his version of this part of the story.

If, indeed, the Italian Government can offer any clear evidence that the intention and object of the "Ranger" was to aid the expedition of Garibaldi, the case would be very different, and the detention of the vessel might be considered to be warranted by the exigency of the Government at that time.

The Italian Government should be requested, I think, to furnish this proof, or, in the absence of it, to grant the proper compensation for demurrage, and the costs of the new insurance.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 84.

The Queen's Advocate to Earl Russell.—(Received March 6.)

Doctors' Commons, March 6, 1863.

My Lord,

TURKEY.

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 5th March instant, stating that he was directed to transmit to me

a note from the Turkish Ambassador in this country inclosing a translation of an Ordinance prohibiting the importation of arms, &c., into Turkey; and to request that I would inform your Lordship whether that Ordinance is in regular form, and may be published in the "Gazette."

In obedience to your Lordship's commands I have taken this matter into consideration, and have the honour to report—

That the Ordinance appears to me sufficiently regular in form to be inserted in the "Gazette."

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 85.

The Queen's Advocate to Earl Russell.—(Received March 9.)

Doctors' Commons, March 7, 1863.

My Lord,

UNITED STATES.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 28th February ultimo, stating that he was directed to transmit to me a despatch and its inclosures from Her Majesty's Minister at Washington (No. 74), respecting a claim for damages put forward by the master of the British schooner "Echo," on account of that vessel having been refused a clearance for Matamoros under circumstances similar to those under which the "Labuan" was also detained at New York, and which formed the subject of my Report of the 5th January, and to request that I would take this case into consideration and report to your Lordship my opinion thereupon.

I am also honoured with Mr. Hammond's letter of the 2nd March instant, transmitting a further despatch from Lord Lyons having reference to this case.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I advise your Lordship that the case of the "Echo" does not appear to me to call for any official interference on the part of Her Majesty's Government. It is not distinguishable from the case of the "Labuan," in which I had the honour to tender similar advice to your Lordship.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 86.

The Queen's Advocate to Earl Russell.—(Received March 9.)

Doctors' Commons, March 7, 1863.

My Lord,

UNITED STATES.

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 3rd March instant, stating that with reference to the Report of the Law Officers of the 20th [18th] and to my Report of the 23rd February ultimo,* he was directed to transmit to me, together with the former papers, the accompanying further despatches as marked in the margin,† respecting the question of the blockade of the ports of Charleston and Galveston, and to request that I would furnish your Lordship with any observations I may have to offer thereupon.

He was also pleased to add that in conformity with the advice contained in my Report of the 23rd ultimo, Mr. Seward's letter to Lord Lyons of the 5th of February was inserted in the Gazette of Friday last.

I am also honoured with Mr. Layard's letter of the 5th March instant, transmitting a despatch from Lord Lyons (No. 138) relating to this case.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That, with respect to the blockade of Galveston, it is observable that the note of Mr. Seward speaks of the blockade being *resumed*, and that the language of it appears to recognize the duty of the blockading squadron to give notice on the spot to vessels attempting to enter the port.

With respect to the blockade of Charleston, it certainly appears to have been raised or interrupted upon the 31st of January. But it is also evident from Mr. Consul Bunch's letter of February 1st (No. 16) that upon that day it was *de facto* resumed by a competent blockading force; for the absence of vessels from off what is called the Maffit or Bead's Channel would, I presume, not practically prevent the completeness of the blockade. As to the general law upon a blockade so raised or interrupted, I take the liberty to refer your Lordship to the Law Officers' Report of the 20th February. The Government of the United States appears to have taken no formal notice of this interruption of the blockade of Charleston. I think, however, that Lord Lyons should be instructed to call the attention of the Government to the fact that it has been interrupted, and to the evidence supporting the fact, and to intimate that if the blockade has since been lawfully resumed, neutral States have a right to expect that their vessels will be warned upon the spot, and not seized unless the warning be disregarded. It would of course be very desirable that Lord Lyons should act in concert with the Representatives of other neutral States at Washington in this matter.

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* Pages 51 and 54.

† Lord Lyons, Nos. 154 and 155; Consul Lynn, No. 4; Consul Bunch, Nos. 15, 16, and 17.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 87.

The Queen's Advocate to Earl Russell.—(*Received March* 13.)

Doctors' Commons, March 12, 1863.

My Lord,

UNITED STATES.

I AM honoured with your Lordship's commands signified in Mr. Layard's letters of the 5th and 7th instant, stating that he was directed by your Lordship to transmit to me the despatches, as marked in the margin,* from Her Majesty's Minister at Washington and Mr. Consul Archibald, respecting the case of the "Mont Blanc," a British schooner captured when at anchor at Sand Cay, Bahama Bank, within one mile of the shore.

Mr. Layard was to request that I would take these papers into consideration, and that I would furnish your Lordship with my opinion as to whether compensation should be claimed from the United States' Government in this case, and also as to any steps which should be taken with reference to the "Mont Blanc" having been seized in British waters.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That it is admitted that this vessel was seized according to the statement of the United States' Attorney-General in British waters, and actually (see Lord Lyons' letter to Mr. Seward, January 9th) while at anchor in them.

I am of opinion that Her Majesty's Government ought to require compensation for the plain wrong done to the owners of this vessel, and ought to address a remonstrance to the United States' Government upon the violation of British territory, requesting that orders may be given to the United States' navy to be most careful in abstaining for the future from committing the like very grave offence against international law and the dignity of the British Crown.

The necessity of such orders is shown (as should be pointed out) from the fact that, in this case, the captor, Captain Collins, appears from his letter (December 26, 1862,) to the Secretary of the United States' Navy, to be either entirely ignorant of this law, or entirely to disregard it; and the fact that the "Mont Blanc" was at anchor at the time of the capture renders the wrong inflicted on the owners, and the contempt for British rights exhibited by the captain, very flagrant.

I have, &c.
(Signed) ROBERT PHILLIMORE.

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* Lord Lyons, No. 21, January 9, 1863; No. 93, January 30, 1863; No. 123, February 6, 1863; No. 149, February 12, 1863; Consul Archibald, No. 24, January 30, 1863; Lord Lyons, No. 104, February 2, 1863.

No. 88.

The Queen's Advocate to Earl Russell.—(*Received March* 13.)

Doctors' Commons, March 12, 1863.

My Lord,

UNITED STATES.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 9th instant, stating that he was directed by your Lordship to transmit to me a letter from the Colonial Office, dated the 24th February ultimo, inclosing copies of a correspondence received from the Governor of the Bahamas respecting the capture of the British schooner "Emma Tuttle," by the United States' ship of war "Cambridge," and the subsequent resumption of the command of the "Emma Tuttle" by her proper captain.

Mr. Hammond was to request that I would take the case into consideration and report to your Lordship my opinion thereupon.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I see no just foundation for any claim on the part of the United States' Government against Her Majesty's Government in this matter.

According to general law and usage a captor must take care of his own prize; he has no right to expect or require the authorities of a neutral State, much less of the State to which the prize vessel belongs, to assist him in maintaining his possession.

The statement of the master of the "Emma Tuttle" that he had been entreated by the captor to save the vessel and the lives of those on board from destruction, and had been offered his vessel again as an inducement, seems to me, in the circumstances, very probable.

It is certain that necessity, not choice, drove the captor of a British vessel to seek refuge in a British port.

It is also certain that the captor with nearly all the prize crew abandoned, with whatever object, the vessel for a time. There is no evidence that the Collector of the Customs forcibly or "illegally detained" (as suggested in the second but not in the first letter of the United States' Consul) the vessel.

It was not the duty of that officer to interfere at all in any matter of prize; and it is to be regretted that even the tidewaiter was allowed to go on board, though he appears to have gone there rather as the agent of the captor, or perhaps of both parties, than in any other capacity.

In this state of things the original master of the vessel obtains, without any interference on the part of the local authorities, possession of her, and sails away with her. Whether it be true or false that he broke his promise to the captor, Her Majesty's Government cannot tell, and need not inquire. It is the business of the captor to secure his prize, not of the State to which the prize originally belonged to secure it for him.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 89.

The Law Officers of the Crown to Earl Russell.—(*Received March* 14.)

Temple, March 13, 1863.

My Lord,

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 27th February ultimo, stating that he was directed by your Lordship to transmit to us a letter and its inclosures from Mr. Thomas Stirling Begbie, dated the 27th February ultimo, requesting that Her Majesty's Minister at Washington might be instructed to claim the release of his vessel the "Springbok," which had been seized by an United States' cruizer, while on a voyage from London to Nassau.

Mr. Hammond was also pleased to inclose a despatch from Her Majesty's Consul at New York on the same subject (No. 36), and to request that we would take this case into our consideration, and report to your Lordship our opinion thereupon.

Mr. Hammond was further pleased in a note dated the 2nd March instant

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to state that, with reference to his letter of the 27th ultimo, he was directed by your Lordship to transmit to us a further letter from Mr. Begbie with reference to the case of the British vessel "Springbok."

We are also honoured with your Lordship's commands signified in Mr. Hammond's letter of the 11th March instant, stating that, with reference to his letter of the 27th ultimo respecting the seizure of the British barque "Springbok" by the United States' cruizer "Sonoma," he was directed by your Lordship to transmit to us a further letter from Mr. Begbie, dated 10th March instant, and two letters dated the 25th February and 9th March, 1863, from Messrs. Barter and Co., of Gracechurch Street, inclosing the charter-party of the "Springbok," and extracts of letters from her captain addressed to the owners, and to request that we would take these papers into our consideration, together with those then before us, and favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That there does not appear to be any justification for the seizure of this vessel and cargo. The supposed reason, namely, that there were articles in the manifest not accounted for by the captain, certainly does not warrant the seizure, more especially as the destination of the vessel appears to have been *bonâ fide* neutral. We should be of opinion (if it could be safely assumed that there are no facts in the case besides those before us) that Lord Lyons might be instructed at once to demand her restitution, with proper compensation for the detention. But, inasmuch as it is probable that the "Springbok" has by this time been carried before a Prize Court of the United States for adjudication, and that an adjudication may shortly follow (if it has not already taken place), we cannot advise any other steps being taken by Her Majesty's Government at present than to watch the proceedings and judgment of the Court, and to apprize the owner, Mr. Begbie, that he will do well not to neglect the exercise of his own right to appear, and to establish the true facts of the case, and, in the end, to claim the release of the vessel and cargo, with costs and damages. After the conclusion of the trial, and full information as to its course and results (but not until then), Her Majesty's Government will be in a position to determine whether any, and if so what, application should be made to the Government of the United States.

With reference to the complaints contained in the papers referred to in Mr. Hammond's letter of the 11th March, they appear to us to be of the same character with those which have been made in many other cases; and we do not think that, in this stage of the proceedings, they require any special notice from Her Majesty's Government.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 90.

The Queen's Advocate to Earl Russell.—(Received March 14.)

Doctors' Commons, March 13, 1863.

ARGENTINE CONFEDERATION.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 12th instant, stating that with reference to my Report of the 6th ultimo,* respecting the new Decree issued by the President of the Argentine Confederation regarding the administration of foreign intestate property in Buenos Ayres, he was directed by your Lordship to transmit to me a memorandum on this subject prepared by Mr. Thornton, Her Majesty's Minister at Buenos Ayres, who is now in England on leave of absence; and Mr. Layard was to request that I would furnish your Lordship with my opinion as to the propriety of adopting Mr. Thornton's suggestions as contained in the accompanying paper.

The previous papers,† together with my Report on this case, were returned to me.

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* Page 46.

† February 6, 1863; Mr. Doria, No. 46, December 12, 1862.

In obedience to your Lordship's commands I have taken these papers, together with the Memorandum referred to, into consideration, and have the honour to report—

That I am of opinion that it would be proper to adopt the suggestions contained in the Memorandum of Mr. Thornton.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 91.

The Law Officers of the Crown to Earl Russell.—(Received March 14.)

Temple, March 13, 1863.

SPAIN.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 26th of February ultimo, stating that with reference to our Report of the 3rd of July last* respecting the bankruptcy of Mr. Mould, he was directed by your Lordship to transmit to us a letter dated the 26th of January ultimo, from Mr. Mackenzie, inclosing a copy of the adjudication of the Court of Bankruptcy in this case, and to request that we would favour your Lordship with our opinion whether that document was sufficient for the purpose of furnishing Sir John Crampton with the instructions suggested in our above-mentioned Report.

Mr. Hammond was also pleased to return to us the Report in question for convenience of reference.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That the document inclosed in Mr. Mackenzie's letter to Mr. Layard of the 26th of January last is not an "office copy" authenticated by the seal of the Court of Bankruptcy such as was pointed out in the Report of the Law Officers of the 3rd of July, 1862, as proper to be forwarded to Her Majesty's Minister at Madrid. We think that the suggestions contained in that Report ought to be carried out to the letter if Mr. Mould's assignees are to be assisted by the good offices of the Government; for it should be borne in mind that good offices are all that the Government can, by possibility, use in favour of British suitors or defendants before foreign Tribunals.

We would add that an office copy of the certificate of the appointment of assignees, also under the seal of the Court, had better accompany the office copy of the adjudication of bankruptcy to the Minister at Madrid, to be by him presented (should his interference be thought expedient) to the Spanish Government, together with the copy of the adjudication.

No such application to the Spanish Government, previous to the appointment of assignees of Mr. Mould's estate, as Mr. Mackenzie desires, can, in our opinion, be properly made.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 92.

The Law Officers of the Crown to Earl Russell.—(Received March 16.)

Temple, March 13, 1863.

UNITED STATES.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 12th instant, stating that he was directed by your Lordship to transmit to us a letter from Messrs. Tatham and Co., dated the 3rd March instant, asking, with reference to the stoppage of several vessels lately by Federal men-of-war, what goods, if any, they should refuse to ship in their vessels to Nassau.

Mr. Hammond was also pleased to state, that he inclosed the draft of answer which it was proposed to return to Messrs. Tatham and Co., and that he was

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* See Reports for 1862, page 174.

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directed by your Lordship to request that we would take the same into our consideration, and report to your Lordship whether, in our opinion, it is right and proper.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we are of opinion that the draft of the answer proposed to be returned by your Lordship to Messrs. Tatham and Co. is fit and proper to be sent.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 93.

The Law Officers of the Crown to Earl Russell.—(Received March 14.)

SIAM.

Temple, March 14, 1863.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 17th ultimo, stating that he was directed by your Lordship to transmit to us two despatches and their inclosures from Sir Robert Schomburgk, Her Majesty's Consul at Bangkok (No. 13, May 8, and No. 21, June 21, 1862), respecting the question of the importation and sale of spirits in Siam.

Mr. Hammond was also pleased to inclose a letter, dated the 7th February ultimo, from the Board of Trade, stating the opinion of that Board that Sir Robert Schomburgk's measures should be approved. And Mr. Hammond was to request that we would take the inclosed papers into consideration, and report to your Lordship whether we concur in the proposed approval of the steps taken by Sir Robert Schomburgk in this matter.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we concur in the approval of the Board of Trade as to the steps taken by Sir Robert Schomburgk respecting the importation and sale of spirits in Siam.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 94.

The Law Officers of the Crown to Earl Russell.—(Received March 16.)

UNITED STATES.

Temple, March 14, 1863.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 25th ultimo, stating that he was directed by your Lordship to transmit to me a letter from the Colonial Office, inclosing a copy of a despatch dated the 24th January ultimo, from the Governor of the Bahamas, transmitting a Proclamation which he had issued prohibiting native pilots from serving on board belligerent ships, and stating that he had instituted proceedings against two men who had acted as pilots.

Mr. Hammond was to request that we would take this matter into consideration, and report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That it does not clearly appear whether the Proclamation purports to forbid Her Majesty's subjects from exercising towards the vessels of belligerents the ordinary calling of pilots, that is, from merely piloting vessels of war in and out of the Bahamas harbours, not remaining permanently on board, but returning to their boats as soon as they have safely conducted the vessels within or without the harbour; or whether it is intended to prohibit Her Majesty's subjects from serving permanently as pilots on board belligerent vessels.

In the former case we should think that the prohibition goes beyond the law in this matter; in the latter case it appears to us open to no objection.

It would be inexpedient to recall the Proclamation for the sake of introducing words calculated to remove the ambiguity; but in practice it ought not to be allowed to effect pilots exercising, in the ordinary way, their ordinary vocation.

So far as the Proclamation prohibits the service of seamen not employed as pilots, it is in accordance with the law upon the subject.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 95.

The Law Officers of the Crown to Earl Russell.—(Received March 16.)

ITALY.

Temple, March 14, 1863.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 28th ultimo, stating that he was directed by your Lordship to transmit to us therewith a translation of a letter dated the 28th January ultimo, received at this office from M. Giovanni Mariotti, claiming British protection on the ground that his father was born in Corsica at the time when that island was a British possession, and served as Quartermaster of the Royal Corsican Regiment of His Britannic Majesty; and Mr. Layard was to request that we would take these papers into consideration, and furnish your Lordship with our opinion thereon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we are of opinion that this person having been born in Sicily is *primâ facie* not a British subject; and it does not appear to us that the papers before us contain sufficient facts to show that he is entitled to British protection, or to a certificate of British nationality, under the provisions of the Naturalization Acts, or otherwise.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 96.

The Queen's Advocate to Earl Russell.—(Received March 17.)

UNITED STATES.

Doctors' Commons, March 16, 1863.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 12th instant, stating that he was directed by your Lordship to transmit to me the accompanying letter from the Admiralty, dated the 3rd March instant, inclosing a copy of the instructions issued by the Admiral in command of the United States' Eastern Gulf blockading squadron, to the officers under his orders; and Mr. Hammond was to request that I would take these instructions into consideration, and furnish your Lordship with any observations I may have to offer thereupon.

In obedience to your Lordship's commands I have taken these instructions into consideration, and have the honour to report—

That these instructions are in accordance with the expositions of international law, upon the subject to which they refer, in the English Prize Courts.

It is to be observed that they proceed upon a disregard of the original Proclamation (19th April, 1861) of the President of the United States with respect to notice upon the spot being given in the first instance to all neutral vessels—at least according to my construction of the language used in that instrument.

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But these instructions are agreeable to the law of blockade administered in our Prize Courts.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 97.

The Queen's Advocate to Earl Russell.—(Received March 17.)

Doctors' Commons, March 16, 1863.

My Lord,

UNITED STATES.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of 21st February, stating that he was directed by your Lordship to transmit to me a letter from Mr. Adams, dated the 20th January ultimo, calling your Lordship's attention to another instance of a claim for the restitution of a vessel which seems to have been heretofore made by Her Majesty's Government, under circumstances similar to those of the case of the "Emily St. Pierre," which formed the subject of the Law Officers' Reports of the 28th of April, 3rd of May, 20th of May, and 7th of June of last year.*

Mr. Hammond was to transmit to me the correspondence, as marked in the accompanying manuscript volumes, respecting the case of the "Yonge Albert," which is presumed to be that referred to by Mr. Adams, as well as a short abstract of that case, which has been drawn up at the Foreign Office; and to request that I would take the same into consideration, and furnish your Lordship with any observations I may have to offer as to the bearing of the case of the "Yonge Albert" upon that of the "Emily St. Pierre."

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That a careful examination of the correspondence relating to the "Yonge Albert," contained in the eight volumes sent to me from the Foreign Office, shows that it does not furnish a precedent for the demands of Mr. Adams in the case of the "Emily St. Pierre."

The case of the "Yonge Albert" was of a very extraordinary and anomalous character, and neither Her Majesty's Government nor the Dutch Government appear to have relied upon any express decision or direct precedent in support of their respective opinions.

The Dutch Government eventually gave up the vessel: the British Government, having maintained the principle of their demand, restored the vessel to the Dutch Government. It underwent no jurisdiction, as Mr. Adams supposes, in the Prize Court.

But whatever may have been the merits of that case, it is discriminated by the peculiarity of its facts from that of the "Emily St. Pierre."

The gravamen of the British complaint in the case of the "Yonge Albert," was, that in a Dutch port the Dutch authorities had forcibly detained a British prize vessel, and had, by active aid or by passive connivance, abetted Dutch subjects resident in the port, in overpowering the British prize crew on board the vessel, and in removing the cargo, which, as well as the vessel, belonged *jure belli* to the captor until the adjudication of the Prize Court. The Dutch civic authorities were, in other words, required to undo the wrong they had done.

The complaint was not that a Dutch crew, unaided and uncountenanced by Dutch authorities, had in the open sea overpowered and sent away the prize crew of a British prize, and afterwards brought the vessel into a Dutch port.

This is the case of the "Emily St. Pierre."

If, in these circumstances, England had demanded the aid of Dutch authority to restore the lost prize, the Dutch Government might have replied, as unanswerably as the English Government does now to the United States' Government, "Our municipal law does not furnish us, when neutral in a war, with the power of assisting either belligerent in making or retaining prizes, and international law absolutely forbids us so to do. It admonishes us that the recognized duty of the neutral is (with well-known exceptions incident to the protection of our own territory) *in bello se non interponere.*"

If the neutral magistrate interposed to release or secure a prize, or to adjudicate upon a question of prize, he sins against this rule of law.

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* See Reports for 1862, pages 99, 111, 121, and 143.

The true doctrine is, that the belligerent captor must take care of his own prize. He has no right to call upon the neutral Magistrate to help him in performing the task.

This is a doctrine founded on the reason of the thing, and maintained by all international authorities, conspicuous among whom are the jurists of the United States.

I do not think Mr. Adams can cite a single accredited American authority who contradicts this position.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 98.

The Law Officers of the Crown to Earl Russell.—(Received March 18.)

Temple, March 16, 1863.

My Lord,

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 12th instant, stating that he was directed by your Lordship to transmit to us the accompanying letter from Mr. Adams, dated the 4th March instant, inclosing a copy of a letter addressed to him by the United States' Consul at Liverpool, stating that Mr. M. G. Klingender, the purchaser of the steamer "Sumter," had been acting as agent for the payment of some sailors who have arrived in this country, after having been discharged from the Confederate vessel "Alabama," and to request that we would take these papers into consideration, and furnish your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we are of opinion that the reply of your Lordship should be confined to a simple acknowledgment of the receipt of the letter of Mr. Adams.

It is clear that, although the sailors, who are said to have been paid their wages, through the agency of Mr. Klingender, have been guilty of a criminal offence under the Foreign Enlistment Act, Mr. Klingender has not, by the mere act of paying these wages, violated any provision of that statute, or any other law of this country.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 99.

The Queen's Advocate to Earl Russell.—(Received March 18.)

Doctors' Commons, March 17, 1863.

My Lord,

DENMARK.

I AM honoured with your Lordship's commands signified in Mr. Murray's letter of the 6th instant, stating that he was directed by your Lordship to transmit to me a despatch from Her Majesty's Minister at Copenhagen (No. 38), forwarding correspondence as to the proceedings of the Danish authorities in regard to the property left by Mrs. Strattin, a British subject, lately deceased at Copenhagen; and Mr. Murray was to request that I would take these papers into consideration, and furnish your Lordship with my opinion of the case at my earliest convenience.

Mr. Murray also inclosed a further despatch on the same subject from Her Majesty's Chargé d'Affaires at Copenhagen.

I am also honoured with Mr. Hammond's letter of the 13th instant, transmitting to me a further despatch from Her Majesty's Chargé d'Affaires at Copenhagen on this subject (No. 6).

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That these papers present substantially two questions for consideration:

1. As to the due construction of the Treaty;

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2. As to the correctness of the decision arrived at by the Danish Magistrate upon the national character of Mrs. Strattin.

But for that decision I should have scarcely thought it possible that there could be any doubt that Mrs. Strattin, the wife of a living Englishman, was an English subject in the sense of the Treaty. And if there could be no reasonable doubt on this matter, it is clear from the words of the Treaty, that "the right to possess" the property of the deceased was immediately on her death vested in the English Consul.

It would be inconsistent with the whole tenour and object of the Treaty so to construe it as to hold that in every case the Danish Magistrate is to ascertain, by a preliminary inquiry, whether the deceased intestate is or is not a British subject. Such a construction would deprive the Treaty of much of its value.

On the other hand, in cases of *bonâ fide* reasonable doubt, the Danish authorities may fairly claim time to inquire whether the *casus fœderis* has or has not arisen.

But in the present case the *primâ facie* presumption was very strongly in favour of the British character of the deceased person; and in my opinion the *casus fœderis* arose immediately, and the English Consul ought to have been allowed to have taken immediate possession of the effects of the deceased wife of a British subject.

It follows, of course, that in my opinion the decision of the Danish Magistrate is erroneous.

It does not allege any law of Denmark whereby the wife of a foreigner retains during the life of her husband her national character in Denmark; the existence of such a law might, indeed, furnish grave matter for consideration, which is at present wanting in the case.

It can hardly be disputed that by the general law, and the usages of comity, the wife becomes incorporated in the country of her husband during his life, and acquires his national character.

A return to her own country for one or two years, or more, does not divest her of this character according to the principles of general jurisprudence applicable to this question.

I forbear to enter into the consideration, as to whether the fact of a divorce *a mensâ et toro* would affect this status, both because there was no such divorce in this case, and because the Danish Magistrate, though he erroneously thought that there had been a divorce, did not found his sentence upon this mistake.

I have, &c.

(Signed) ROBERT PHILLIMORE.

No. 100.

The Queen's Advocate to Earl Russell.—(*Received March* 18.)

Doctors' Commons, March 17, 1863.

UNITED STATES.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 12th instant, stating that he was directed by your Lordship to transmit to me three despatches from Her Majesty's Minister at Washington,* inclosing copies of his correspondence with Her Majesty's Consul at Galveston and with the United States' Secretary of State respecting four British schooners which were lying in the Sabine River at the time the pass was occupied by the United States' forces.

Mr. Hammond was to request that I would take these papers into consideration, and furnish your Lordship with my opinion whether, under the circumstances therein stated, these vessels may claim to be allowed to leave the Sabine River.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That Mr. Seward does not appear to dispute the law, or the received usage, as to vessels in blockaded ports, namely, that vessels lying in a blockaded port at the time of the commencement of the blockade are allowed to retire without

* No. 469, December 2, 1862; No. 103, February 2, 1863; No. 141, February 10, 1863.

cargo, unless the cargo were taken on board before the blockade became effective; nor does he dispute that on the 11th day of May, 1861, he communicated to Lord Lyons that fifteen days was specified by him as the period within which vessels would be permitted to leave a port after the actual establishment of a blockade (see Inclosure 5, No. 103; letter of Lord Lyons to Mr. Seward).

Mr. Seward disputes the fact as to the precise period of the commencement of the effective blockade.

Upon this material point he relies upon the statements of Mr. Gideon Welles, Secretary to the United States' Navy.

The two despatches from that gentleman (3rd January and 5th February, 1863) are not satisfactory on the point.

In the former he asserts that there has always been an effective blockade of the Sabine River; in the latter, that the schooners evaded the blockade by "availing themselves of dark nights, and the *impression that our officers appeared to have of the insignificance of the port for some time*." This latter admission seems really to mean what Her Majesty's Consul at Galveston asserts (Inclosure 1 in No. 469, October 9, 1862), that there was no effective blockade before the 4th of October last, that is, until after the schooners had entered the port.

I think Lord Lyons should be instructed that, if any evidence can be procured corroborative of the Consul's statement as to the blockade, he should press Mr. Seward again for the release of the schooners.

I have, &c.

(Signed) ROBERT PHILLIMORE.

No. 101.

The Law Officers of the Crown to Earl Russell.—(*Received March* 19.)

Temple, March 17, 1863.

UNITED STATES.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 28th ultimo, stating that, with reference to our Report of the 2nd October last,* respecting the case of the British schooner "Albert," captured by the United States' cruizer "Harow," for an alleged attempt to run the blockade of a Southern port, he was directed by your Lordship to transmit to us, together with the previous papers,† two despatches from Her Majesty's Minister at Washington,‡ inclosing, together with other papers, the decree of condemnation pronounced in this case, a decree from which it appears the owners of the "Albert" have determined to appeal.

Mr. Hammond was to request that we would again take this case into consideration, and furnish your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have again considered this case, and have the honour to report—

That we are of opinion that while the appeal is pending, and the effect of the new evidence sought to be introduced before the Appellate Court is unknown, Her Majesty's Government ought not officially to interfere in this matter.

The evidence upon which the Judge proceeded is not before us, and without it we are not in a condition to advise satisfactorily upon the validity of the Judgment which is now under appeal.

Assuming, however, the evidence to warrant the representation of its effect, both as to the "cotton cards" and their real destination, and as to the mutilation of the log-book, contained in the Judgment of the Prize Court (facts which were not disclosed in the statement of this case, on which we formally advised), we should be of opinion that the sentence was well founded.

We have, &c.

(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

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* See Reports for 1862, page 237.
† Mr. Stuart, No. 198; to Mr. Stuart, No. 145.
‡ Lord Lyons, Nos. 96 and 133.

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No. 102.

The Law Officers of the Crown to Earl Russell.—(Received March 19.)

Temple, March 17, 1863.

CHINA.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 6th of March instant, stating that he was directed by your Lordship to transmit to us a despatch from Mr. Bruce, Her Majesty's Minister in China (No. 182, December 10, 1862), inclosing a copy of a despatch which he had addressed to Mr. Consul Sinclair, on the course to be pursued in cases in which the Chinese authorities and the Consul differ as to the penalty which by Treaty is to be imposed on vessels breaking the Chinese Customs laws. Also on the power of the Custom-house to seize contraband goods on board ship, without a Consular warrant, and on the liability to confiscation by the Chinese of a vessel which enters a Treaty port with a cargo taken in at a place not open by Treaty.

Mr. Hammond was also pleased to transmit to us copies of the Treaty of Tien-tsin and the Convention of Peking, as well as a previous despatch from Mr. Bruce, respecting the case of the "Pearl" (No. 132), and to request that we would take Mr. Bruce's instructions to Consul Sinclair into our consideration, and report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we are of opinion that the instructions given by Mr. Bruce in his despatch (December 9, 1862) to Consul Sinclair contains a just and proper exposition of the principles which ought to regulate the conduct of Her Majesty's Consuls towards the Chinese authorities in the cases referred to in that despatch.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 103.

The Queen's Proctor to Mr. Layard.—(Received March 18.)

Doctors' Commons, March 18, 1863.

BRAZIL.

Sir,

I HAVE the honour to acknowledge the receipt of your letter of the 5th instant, stating that you were directed by Earl Russell to acquaint me that Her Majesty's Government have been engaged in a discussion with the Government of Brazil regarding the case of some officers of Her Majesty's ship "Forte," who were imprisoned and otherwise ill-treated by Brazilian authorities.

That Her Majesty's Government have accepted the proposal of the Brazilian Government that the question in dispute between the two Governments should be referred to the arbitration of His Majesty the King of the Belgians, on the footing proposed by the Brazilian Government, namely, whether, in applying the laws of Brazil to the officers of the "Forte," there has been any offence to the British navy.

That Her Majesty's Government have consented to submit the case to the King of the Belgians for arbitration, and as His Majesty has deigned to accept the task, Earl Russell has directed that the correspondence should be forwarded to me; and you were to request that I would prepare from it a case to be submitted on behalf of Her Majesty's Government for arbitration at Brussels.

In obedience to Earl Russell's directions I have prepared, and have now the honour to transmit the case on behalf of Her Majesty's Government, and beg to suggest that the same, if approved, should be returned to me, in order that it may be properly printed for the use of His Majesty the King of the Belgians.

I have, &c.
(Signed) F. H. DYKE.

No. 104.

The Law Officers of the Crown to Earl Russell.—(Received March 20.)

Temple, March 19, 1863.

PERSIA.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 27th of February last, stating that he was directed by your Lordship to transmit to us the accompanying despatch, and its inclosures, from Her Majesty's Chargé d'Affaires in Persia (No. 4), respecting a robbery supposed to have been committed by Mirza John Ibrahim, an employé in the British Legation; and Mr. Hammond was to request that we would take into consideration the points referred to by Mr. Eastwick, and inform your Lordship what steps should, in our opinion, be taken in this case.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That we are of opinion that as no Order in Council relating to Her Majesty's subjects in Persia founded on the 6th and 7th Vict., cap. 94, has yet been issued, it is not competent to the Consul, or the Representative of Her Majesty in Persia, to inflict upon Mirza John Ibrahim any punishment, except that of dismissal from his office.

Care would of course be taken that the cause of his dismissal and degradation was made formally known to the Persian Government, and the apprehended evil of his being employed by that Government thus, as far as possible, averted.

Mirza John Ibrahim might be delivered over by the British to the Persian authorities for trial and punishment, but we do not advise this step to be taken.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 105.

The Queen's Advocate to Earl Russell.—(Received March 20.)

Doctors' Commons, March 19, 1863.

MEXICO.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 11th instant, stating that with reference to my letter of the 10th of October last, upon the subject of the blockade of the port of Tampico by the French naval forces, he was directed by your Lordship to acquaint me that your Lordship had instructed Her Majesty's Ambassador at Paris to bring the alleged inefficient nature of that blockade to the notice of the French Government, and to ascertain their intentions upon that subject; and Mr. Hammond was to transmit to me the answer which has been received to the communication which Her Majesty's Ambassador accordingly made to the French Government, and to request that I would furnish your Lordship with my opinion thereupon.

The previous papers were also inclosed.

In obedience to your Lordship's commands I have the honour to report—

That I find the following admissions in these papers:—

That the blockade was announced in the "Moniteur" of the 9th of June, as having been established on the 1st of May ("comme ayant été établi le 1 Mai"). That nevertheless it did not really begin till the 15th of July. That it was kept (if at all) by the single ship "Berthollet," from the 15th to the 29th of July. That even then the "Berthollet" was continually off the blockade for some hours, either warning or pursuing other vessels. That on the 29th of July the "Berthollet" went to Vera Cruz. That no French vessel of war was off the coast of Tampico till the 5th of August. That on the 5th of August a ship of war arrived, and remained till the 18th. That on the 18th of August the "Berthollet" returned.

It is admitted that during the interval between the 29th of July and the 5th of August ("c'est-à-dire, pendant les quelques jours où il n'y a pas eu de croiseur") the American ship "Eugenie" entered the port.

These admissions are, according to the authorities which I have had the honour to cite to your Lordship in my former Report, sufficient to show that the blockade has not hitherto been so kept as to be valid according to the rules of international law upon the subject.

It is important to draw attention to the exposition of international law upon this subject given by the latest accredited French writers, who, by authority, adapted the former treatise of Valin to the usage of modern times ("De Pistoye et Duverdy," vol. i, pp. 374, 375). "Aujourd'hui," they say, "qu'on n'admet plus que des blocus effectifs, on ne déclare de bonne prise que les navires saisis lorsqu'ils essayent de franchir la ligne du blocus; et si une circonstance quelconque fait qu'un navire pénètre, malgré les croiseurs, dans les lieux bloqués, on ne peut plus ensuite le capturer pour ce fait; c'était aux croiseurs à faire meilleure garde; s'ils étaient éloignés par suite de l'état de la mer ou par toute autre cause, alors le blocus n'était plus effectif, et il était permis aux neutres d'entrer dans les lieux précédemment bloqués. Cette doctrine, proclamée par la France en 1838, est celle qui est professée dans la guerre actuelle par les Puissances Occidentales."

M. Drouyn de Lhuys asks what injury a lax blockade inflicts upon the complaining merchants. The answer, of course, is, the injury of uncertainty as to their trade and the employment of their capital. Reports reach them, and they turn out to be true, that during a considerable period the blockade of Tampico has ceased. Ships are freighted, and sent in consequence; but when they arrive the blockade has been restorered, and the loss to the merchant, even if his vessel be not seized, is severe.

It is on the consideration of such consequences as these, incident to a lax blockade, that nations by common consent have required on the part of belligerents that a blockade shall be both continuous and effective, in order to warrant the injury inflicted on neutrals by cutting off their ordinary commerce.

It must be admitted, on the other hand, that the French exercise their right of blockade more leniently than the English, inasmuch as they generally, if not invariably, warn the vessels on or near the spot, and do not seize them until the warning has been disregarded.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 106.

The Queen's Advocate to Mr. Hammond.—(*Received March* 20.)

Doctors' Commons, March 20, 1863.

UNITED STATES.

THE Queen's Advocate presents his compliments to Mr. Hammond, and would be glad to be furnished with the papers laid before him on the 17th of February, upon the subject of "the exportation of articles, contraband of war, for the use of the French army in her war against Mexico from the United States," and upon which the Queen's Advocate wrote his Report dated the 24th February, as these papers would be of service to the Law Officers for reference in cases now before them.

The Queen's Advocate would also be glad if his Report above-mentioned accompanied these papers.

No. 107.

The Law Officers of the Crown to Earl Russell.—(*Received March* 23.)

Temple, March 21, 1863.

UNITED STATES.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 19th March instant, stating that with reference to our Report of the 13th instant,* he was directed by your Lordship to transmit to us therewith, together with the previous papers,† a further letter, and its inclosures, from Mr. Begbie,* urging a reconsideration of the decision come to by Her Majesty's Government in the case of the "Springbok."

Mr. Hammond was also pleased to transmit to us the draft of an instruction which your Lordship had addressed to Lord Lyons on this case; and to request that we would take these papers into our consideration, and favour your Lordship, at our earliest convenience, with such further observations as we might have to offer thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we see no reason to alter the advice which we had the honour to offer to your Lordship in our last Report.

Mr. Begbie points out that the vessel has been very nearly condemned by default: Mr. Begbie should be told that the fact reflects great discredit on those who had charge of her interests.

Mr. Begbie might also be apprized that though Her Majesty's Government has officially interfered upon very rare and special occasions to require immediate restitution of a vessel unjustly captured, that by the general law the fact of the unjust seizure is a question to be determined after hearing both sides by the Prize Court of the belligerents, which every neutral State recognizes as competent for this purpose, and which has in England, during all the wars in which England has been belligerent, exercised the same functions as it now exercises in the United States, with respect to the capture of neutral vessels.

During the present war Her Majesty's Government have often been called upon to interfere upon very strong *ex parte* statements of injury, which subsequent investigation in the Prize Court has proved to be wholly without foundation. The complaint of the delay in the proceedings of the Prize Court might properly form a subject of present remonstrance on the part of Her Majesty's Government, and if justice should not be done by the Prize Courts in the case of the "Springbok," the proper time for official remonstrance with the Government of the United States will have arrived.

We think the proposed letter to Lord Lyons from your Lordship fit and proper to be sent, but that it would be expedient to add a few lines desiring Lord Lyons to inquire into the justice of the complaints of the delays in the Prize Courts, and if they turn out to be well founded to make the fact of such delays the subject of a remonstrance to the Government of the United States.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 108.

The Law Officers of the Crown to Earl Russell.—(*Received March* 22.)

Temple, March 22, 1863.

RUSSIA.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 21st March instant, stating that he was directed to transmit to us therewith three letters from the Russian Ambassador at this Court respecting a vessel expected in the river of which suspicions were entertained that she might be engaged for purposes contrary to law; that these letters were at once forwarded to the Board of Treasury and the Home Department; and to inclose a Report from the Commissioners of Her Majesty's Customs, which has been received from the former of these Departments, stating the result of their inquiries; and to request that we would take the same into consideration, and report to your Lordship our opinion whether any, and if so what, steps should be taken in the matter.

Mr. Hammond was also pleased to add, that he was informed by the Chairman of the Board of Customs that the master of the vessel applied for his clearance, but that the deliverance of his clearance was postponed in consequence of the irregularity, under the Customs Law, of the manner in which the muskets were shipped under a false denomination, but that, the goods being

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* Page 69.

† Consul Archibald, No. 36; Messrs. Barter, February 25; Mr. Begbie, February 27; Messrs. Barter, March 9; Mr. Begbie, March 10; to Mr. Begbie, March 14.

* Mr. Begbie, March 18, 1863.

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removed from the ship, the authorities, under ordinary circumstances, would no longer withhold her clearance. That it is therefore of importance that our opinion on the subject should, if possible, be made known to your Lordship in the course of to-day.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That we are of opinion that Her Majesty's Government ought not to give their sanction to the arrest of the "Ward Jackson" without being in possession of legal evidence sufficient to establish a *primâ facie* case of a violation of the Foreign Enlistment Act in a Court of Law. The passage in the "Globe" newspaper, and the suspicions of Baron Brunnow, however reasonable in themselves, do not constitute such legal evidence. The requisite proof would be, first, that the vessel has been fitted out as a transport (of which we entertain no doubt, and as to which we think the evidence sufficient); secondly (and here arises the difficulty), that the vessel so fitted out was to be employed in the service of some *particular* foreign State, or people insurgent, or otherwise, assuming to exercise powers of Government. On this head the legal proof is, at present, entirely wanting, as there is no evidence pointing to the particular State for the service of which the vessel is destined.

We assume that the forfeiture of the arms which have been seized under the Customs Act will be enforced, and that intimation of this fact will be given to the Russian Government.

In these circumstances no ground at present appears on which the further detention of the vessel would be strictly justifiable by law. But it is for Her Majesty's Government to consider whether it would not be proper to incur such risks as there may be, of liability in damages on account of a further delay in granting the clearance of the vessel, in order thereby to give an opportunity to Baron Brunnow to produce any evidence as to the purpose for which the vessel is equipped, and as to its true destination, which may be in his possession.

We should recommend, if this course be adopted, that the period of delay should not be extended beyond that which may be strictly necessary for this purpose.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 109.

The Queen's Proctor to Mr. Layard.—(Received March 23.)

Doctors' Commons, March 23, 1863.

Sir,

BRAZIL.

I HAVE the honour to acknowledge the receipt of your letter of the 18th instant, stating that you were directed by Earl Russell to request that I would have the goodness to take the opinion of Her Majesty's Law Officers on the case to be submitted for the arbitration of the King of the Belgians in the case of the "Forte."

In reply, I beg to state that I have submitted the case for the approval of Her Majesty's Law Officers, and have now the honour to transmit the same, approved of by them.

I have, &c.
(Signed) F. H. DYKE.

No. 110.

The Queen's Advocate to Earl Russell.—(Received March 23.)

Doctors' Commons, March 23, 1863.

My Lord,

UNITED STATES.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 17th March instant, stating that with reference to that part of my Report of the 7th instant* in which I suggested that Lord Lyons should be

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* Page 67.

instructed to call the attention of the United States' Government to the circumstances attending the late interruption of the blockade of the port of Charleston, he was directed to transmit to me, together with the previous papers, a further despatch from Lord Lyons (No. 181) inclosing an extract from the "National Intelligencer" newspaper containing documents signed by the United States' naval officers which contradict the statements made by the Confederates concerning the dispersion of the blockading squadron off Charleston; and to request that I would take these further papers into consideration, and furnish your Lordship with such observations as I may have to offer thereupon; and to add that your Lordship defers instructing Lord Lyons, as suggested in my Report of the 7th instant, until my further Report has been received.

In obedience to your Lordship's commands I have taken these further papers into consideration, and have the honour to report—

That the letter of Captain Ross to Lord Lyons (February 7, 1863) must be taken as proving that the blockade at Charleston is now well established; that it appears, moreover, to be most probable that the statements of Her Majesty's Consul as to the interruption of the blockade, on which my former Report was founded, were erroneous, though the language and tone of the United States' Admiral Dupont's despatch is such as to disincline me to place implicit belief in its accuracy; nor do I think that despatch sufficient *per se* to convict Her Majesty's Consul of so serious an offence as that of stating a deliberate untruth with respect to the interruption of the blockade. But in my opinion Her Majesty's Consul should be required to state his answer to the charge preferred against him by Admiral Dupont and his subordinate naval officers.

In the mean time I have the honour to express my opinion that the state of facts presented by the papers now before me renders it inexpedient to send the instructions suggested in my former Report, founded on the representation of a contrary state of facts, to Lord Lyons.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 111.

The Queen's Advocate to Earl Russell.--(Received March 23.)

My Lord, *Doctors' Commons, March* 23, 1863.

UNITED STATES.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 16th instant, stating that with reference to my Report of the 24th of November last, advising that compensation should be claimed on account of the forcible occupation, by the United States' authorities, of a house belonging to Mr. Thomas Byrne, at New Orleans, he was directed by your Lordship to transmit to us, together with the previous papers, and with the instructions addressed to Lord Lyons in conformity with my Report,* two despatches, and their inclosures, from Lord Lyons,† the last of which contains the answer of the United States' Government to this claim.

Mr. Hammond was to request that I would take this answer into consideration, and furnish your Lordship with my opinion thereupon.

In obedience to your Lordship's commands I have taken this answer into consideration, and have the honour to report—

That it appears from Captain McClure's Report to Mr. Watson (inclosed in Mr. Seward's despatch to Lord Lyons), that the house of Mr. Byrne, a British subject, was forcibly seized upon by General Butler. That a portion of the house was used by the Military Commission.

It does not appear, from this Report, or from the other papers before me, impartially considered, that any property of Mr. Byrne was taken away, or any of his provisions consumed.

It appears from the letter of Captain McClure that the American Quartermaster was of opinion that the United States' Government ought to pay rent for the use of the rooms in the house.

I have the honour to advise that Lord Lyons be instructed to request the United States' Government to adopt this suggestion, which seems to me, all the

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* To Lord Lyons, No. 306, 1862.

† Lord Lyons, No. 559, 1862, and No. 174, 1863.

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circumstances duly considered, equitable. The amount of the rent should be estimated on the basis, not only of the value of the rooms during the period of their occupation, but of the excessive wear and tear of the furniture incident to the peculiar character of the tenancy, so as to leave open no further demand for specific injury to furniture or the like.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 112.

The Queen's Advocate to Earl Russell.—(Received March 23.)

Doctors' Commons, March 23, 1863.

My Lord,

UNITED STATES.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 19th instant, stating that with reference to my Reports of the 28th of November and the 3rd instant, relative to the case of the steamer "Sunbeam," he was directed by your Lordship to transmit to me, together with the previous papers, a despatch from Her Majesty's Consul at New York (No. 41, February 25), inclosing a copy of a despatch which he had addressed to Lord Lyons on the question whether the point of no warning, under the President's Proclamation of the 19th of April, 1861, had been raised in this case; and Mr. Hammond was to request that I would take the same into consideration, and furnish your Lordship with any observations which I may have to offer thereupon.

In obedience to your Lordship's commands I have taken this point into consideration, and have the honour to report—

That as the point arising out of the language of the President's Proclamation has been raised and overruled by the Prize Court in this and, it appears, in other cases, I have no further advice to offer on this matter of the "Sunbeam."

As I have not seen the grounds upon which the objection was overruled, I cannot form any opinion as to their validity.

It might be useful, for various reasons, to obtain a copy of the Judgment in the case in which this point was first deliberately argued by Counsel, and rejected as untenable by the Prize Court; as also to learn whether the Supreme Court has confirmed the decision of the Inferior Court in this respect.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 113.

The Law Officers of the Crown to Earl Russell.—(Received March 23.)

Temple, March 23, 1863.

My Lord,

RUSSIA.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of this day's date, stating that he was directed to state to us that having, nearly simultaneously with the receipt of our Report of yesterday,* received from the Russian Ambassador the further letter and its inclosure, therewith transmitted, respecting the "Ward Jackson," your Lordship requested the Lords of the Treasury to give immediate directions for the detention of the vessel until further orders, and that your Lordship this morning addressed to the Russian Ambassador the letter of which a copy is inclosed, and to request that we would take this correspondence into consideration, together with the previous letters, and report to your Lordship what course should now be taken in this matter.

We are also honoured with Mr. Hammond's further letter transmitting a letter from the Treasury respecting the search of the "Ward Jackson."

In obedience to your Lordship's commands we have taken these further papers into consideration, and have the honour to report—

That although the further papers confirm us in the opinion that the "Ward Jackson" ought not, for the present, to receive its clearance from the Customs, yet the affidavit of the Consul does not supply evidence of the destination of the ship, nor does he state the ground of his belief that she is destined for any Russian port or coast in the Baltic.

* Page 81.

His Excellency the Russian Ambassador says that the ostensible destination is Libau, and that the intention is to seize that port by a *coup de main.*

His Excellency does not state on what authority or evidence he forms this opinion.

We think his Excellency should be apprised that it will still be necessary for him, in order to furnish ground sufficient to warrant Her Majesty's Government in further detaining the vessel, to forward to them any evidence upon which he relies for proof of a destination hostile to the Russian Government, and when that has been done (if his Excellency should be in possession of such evidence) we should be in a situation further to advise Her Majesty's Government thereupon.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

P.S.—His Excellency should be informed that Her Majesty's Government can only act upon such evidence as will be admissible in an English Court of Justice, which would exclude mere hearsay testimony and common report, such as newspaper paragraphs and the like, and must consist either of facts deposed to by persons themselves cognizant thereof, or speaking of them from admissions made in their presence or in writing by persons concerned in the vessel or her adventure.

W. A.
R. P.
R. J. P.

No. 114.

The Queen's Advocate to Earl Russell.—(Received March 26.)

Doctors' Commons, March 24, 1863.

My Lord,

UNITED STATES.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 17th instant, stating that he was directed by your Lordship to transmit to me the papers, as marked in the margin,* relative to the "Elias Reid," a Confederate schooner, captured, as is asserted, in British waters; and to request that I would take this case into my consideration, and report to your Lordship my opinion thereupon.

Mr. Hammond was also pleased to inclose to me, in his second letter, of the 18th instant, a further despatch from Lord Lyons, and one from Her Majesty's Consul at New York, respecting the case of the "Elias Reid."

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That, according to the affidavit, notarially certified, of Rougley and Williams, the "Elias Reid" was seized by the United States' steamer "Octorora," while at anchor in British waters. Admiral Milnes writes to Lord Lyons (December 16, 1862):—"This case appears to be so clear a violation of neutral territory that I submit it for your Excellency's consideration," &c. The Commander of the "Octorora," however, it would appear from the letter of Mr. Nibbs Brown (November 15, 1862, Inclosure 2 in Lord Lyons' No. 555) to Mr. Nesbitt, made the capture in *bonâ fide* ignorance both of the law and of the instructions of his own Government.† It is suggested that the longitude and latitude given by the United States' Commander Collins to Mr. Secretary Welles does not exactly correspond with that in the protest made by the Captain of the "Elias Reid," but that the log of the "Octorora" upon this point will be found to agree exactly with such protest.

According to the map appended to the depositions of one of the witnesses in the Prize Court, the capture appears to have been made in British waters.

* Mr. G. Ashley, February 16, 1863; Lord Lyons, No. 555, December 30; No. 556, December 30; No. 564, December 31, 1862; to Lord Lyons, No. 26, January 16, 1863; Colonial Office, January 21, 1863; to Lord Lyons, No. 44, January 23, 1863; Lord Lyons, No. 186, February 24; No. 187, February 25, 1863; Mr. Archibald, No. 39, February 22, 1863.

† Despatch of Vice-Consul Butterfield to Consul Archibald; Inclosure in despatch No. 39, February 23, 1863.

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On the whole, it is difficult to arrive at any other conclusion than that the vessel was seized while at anchor in British waters.

The Judge of the Prize Court rightly refused to an alien enemy any *persona standi* in the Court.

It was not competent to the alien enemy to raise the objection that the seizure was invalid because made in neutral British waters.

It is competent to Her Majesty's Government to raise the objection, and it would have been no great act of courtesy on the part of the United States' Government to have allowed Her Majesty's Government to have raised it by way of diplomatic statement, and out of Court. But the United States' Government have a strict right to say, "The case has been tried in open Court; you should have made your claim there. There is an Appellate Court; you may make it there, and it will receive a judicial determination."

It seems to me proper that the claim—assuming the evidence to be clear in its favour—should be preferred by Her Majesty's Government; and if the United States' Government persist in refusing to listen to it out of Court, I think Lord Lyons should be instructed to cause the claim to be properly urged in the Appellate Court, if the case be carried to that Tribunal.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 115.

The Queen's Advocate to Earl Russell.—(*Received March* 26.)

Doctors' Commons, March 25, 1863.

My Lord,

UNITED STATES.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 21st instant, stating that he was directed by your Lordship to transmit to me the papers as noted in the margin,* respecting the case of Mr. Thomas W. Bennett, who was lately in New Orleans, and who is anxious to establish a claim for loss of property, consisting of clothing, which he left behind him in Louisiana. Mr. Bennett also complains that Mr. Coppell, the Acting Consul at New Orleans, refused to grant him a certificate that he was a British subject. That among the papers is a despatch from Mr. Coppell, explaining why he refused to file Mr. Bennett's claim, and to grant him the certificate above referred to; that the substance of this explanation was communicated to Mr. Bennett in a letter dated the 17th instant, to which he has now rejoined.

Mr. Hammond was accordingly to request that I would take Mr. Bennett's case into consideration, and furnish your Lordship with my opinion thereupon.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I am of opinion that Mr. Bennett has made out no case which calls for the interference of Her Majesty's Government; and that Mr. Coppell appears to me to have acted very properly.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 116.

The Queen's Advocate to Mr. Hammond.—(*Received March* 26.)

Doctors' Commons, March 26, 1863.

UNITED STATES.

THE Queen's Advocate presents his compliments to Mr. Hammond, and with reference to his letter of the 24th instant, instructing the Queen's Advocate to confer with the Attorney and Solicitor-General and Admiralty Advocate, with reference to letters of marque about to be issued by President Lincoln, would also be glad to be empowered to call in the Queen's Proctor and Admiralty Proctor, to aid in the investigation of precedents which are chiefly in their possession.

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* Mr. Bennett, December 10, 1862; to Mr. Coppell, No. 1, January 2, 1863; Lord Lyons, No. 172, February 23, 1863; to Mr. Bennett, March 17, 1863; Mr. Bennett, March 18, 1863.

No. 117.

The Law Officers of the Crown to Earl Russell.—(*Received March* 27.)

My Lord, *Temple, March* 27, 1863.

SIAM.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 17th ultimo, stating that, with reference to the Report of the Law Officers of the Crown of the 22nd April, 1859, upon a despatch from Sir R. Schomburgk, Her Majesty's Consul at Siam, respecting certain local regulations for the port of Bangkok which had been issued and enforced by the British Consul, he was directed by your Lordship to state to us that, in conformity with the recommendations contained in that Report, Sir R. Schomburgk was instructed to prepare a revised Code of Regulations for the peace, order, and good government of Her Majesty's subjects being within the kingdom of Siam.

Sir R. Schomburgk accordingly prepared a draft of such Rules and Regulations; and he also submitted for the consideration of Her Majesty's Government a draft of further Rules and Regulations, referring solely to the masters of ships and their crews while in harbour at Bangkok.

That these draft Rules were sent home by Sir R. Schomburgk in a despatch dated the 6th of November, 1860 (No. 42), but he requested that Her Majesty's Government would defer their sanction of them until the King of Siam should have settled certain Rules and Regulations for the government of the inhabitants of Bangkok, which were understood to be then under His Majesty's consideration.

That these last-named Rules and Regulations being, however, now in operation, it appears to your Lordship that it would be desirable that the sanction, or otherwise, of Her Majesty's Government to the Rules and Regulations prepared by Sir R. Schomburgk should now be conveyed to him; and Mr. Hammond was accordingly to request that we would take the same into our consideration, and furnish your Lordship with our opinion thereupon.

Mr. Hammond was also pleased to inclose a despatch from Sir R. Schomburgk (No. 40, November 8, 1861), transmitting the "Bangkok Calendar" for 1861, containing the Rules and Regulations issued by the King of Siam; and a letter from the Board of Trade, of the 30th of January, 1861, conveying the opinion of that Board on the Regulations proposed by Sir R. Schomburgk for the guidance of British merchant captains visiting the port of Bangkok; and Mr. Hammond was to add that the Treaty with Siam, the Order of Her Majesty in Council, and the Act of Parliament afterwards passed to confirm the Order in Council, would be found at pages 557, 577, and 979 of the 10th volume of Hertslet's Commercial Treaties.

We are also honoured with Mr. Hammond's letter of the 18th ultimo, inclosing to us the Report of the Law Officers of the 22nd of April, 1859, mentioned and referred to in his former letter.

In obedience to your Lordship's commands we have considered the Rules and Regulations submitted to us, and have the honour to report—

That we agree with the Board of Trade in thinking that the 7th and 9th Articles of the second set of Regulations require amendment in those respects which are pointed out by their Lordships.

We also think both sets of Regulations require verbal amendments in the manner noted by us in the margin and the body of the Rules.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 118.

The Law Officers of the Crown to Earl Russell.—(*Received March* 27.)

My Lord, *Temple, March* 27, 1863.

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 21st March instant, stating that he was directed to transmit

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to us a despatch and its inclosures from Her Majesty's Minister at Washington (No. 180, February 24th), respecting a Bill now before Congress for authorizing the United States' Government to issue letters of marque; and to request that we would take this matter into consideration, and furnish your Lordship with such observations as we may have to offer thereupon.

We are also honoured with Mr. Hammond's letter of the 24th March instant, stating that with reference to the papers transmitted in his letter of the 21st March instant, respecting the Bill recently passed in the United States empowering the President to issue letters of marque, he was directed to state to us that the American Minister in this country, in reply to some observations made by your Lordship, has stated that although the law had passed, the President had not yet issued letters of marque, nor decided upon doing so; and further that privateers would not interfere with neutral commerce, nor with the laws of blockade, but would be employed in seeking and capturing, if possible, such vessels as the "Alabama" and "Oreto." But that your Lordship will nevertheless instruct Lord Lyons, if the President should decide on issuing letters of marque, to ascertain from Mr. Seward whether in any case they will be authorized to interfere with neutral commerce, and if in any case, in what cases and to what extent; but that as it is desirable that no time should be lost in instructing Her Majesty's naval officers as to the course they should pursue in the event of privateers interfering with neutral commerce, he was to request that we would draw up a memorandum on this subject for the information and guidance of Her Majesty's naval officers employed on the American Station.

We are also honoured with Mr. Hammond's letters of the 24th and 26th March instant, authorizing us to call in the Admiralty Advocate, the Queen's Proctor, and the Admiralty Proctor, to aid in the investigation of precedents bearing on this question.

In obedience to your Lordship's commands we have taken this subject into consideration, and have the honour to report—

That it will be observed that the instructions which are annexed to this Report are confined to ordinary cases such as have arisen in previous wars; if it should be thought necessary to take any measures for the purpose of protecting mail packets from improper molestation by privateers, that subject will require further and careful consideration.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.
TRAVERS TWISS.

Inclosure in No. 118.

Instructions.

NO vessel owned by private persons is entitled to cruize and capture ships on the high seas, unless she is furnished with a letter of marque and reprisal, or with a commission of war.

A private vessel, therefore, without such letters of marque or commission, cannot exercise any of the belligerent rights of visit, search, detention, or capture.

Neither the letter of marque and reprisal, nor the commission of war, one of which ought to be on board of every private ship exercising any belligerent right on the high seas, usually contains any express mention of neutral vessels, but only authorizes the commander by name of each private ship to seize and take all ships, vessels, and goods, belonging to the enemy not being within cannon-shot of the shores of a friendly State. But it is competent to a private ship of war, furnished with letters of marque or a commission of war, to capture neutral vessels carrying contraband of war, or violating a blockade.

Any ship belonging to Her Majesty's navy, if it see a British merchant-ship captured by or in tow of a ship wearing a privateer jack of the United States, may send an officer on board to ascertain the fact that such private ship has letters of marque or a commission of war on board, and if that fact be duly verified, must refrain from any further interference.

Such is the general law, for a private ship is not exempt from the obligation of submitting to have its letters of marque or commission of war verified.

If the private ship, which is the captor, have no such letters of marque or commission on board, it will be the duty of any of Her Majesty's ships to cause the said British merchant-ship to be set free, and, if necessary, to use force for the attainment of that object.

It will also be the duty of Her Majesty's ships to ascertain the name of such private ship, and any circumstances which tend to identify her as the wrong-doer, and to make a report thereupon to Her Majesty's Government.

If the letters of marque or commission of war should assume the novel form of being confined to the capture of any ship or class of ships, specifically mentioned or described, such as the "Alabama," "Oreto," or similar vessels in such a case, the seizure of any British merchant-vessels by such private ships of war bearing such limited letters of marque or commission would be unlawful, and it would be the duty of Her Majesty's ships to cause such British merchant-vessels to be immediately set free.

W. A.
R. P.
R. J. P.
T. T.

No. 119.

The Law Officers of the Crown to Earl Russell.—(Received March 30.)

UNITED STATES.

My Lord,

Temple, March 30, 1863.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 16th instant, stating that he was directed by your Lordship to transmit to us, together with the previous papers,* a further correspondence with Mr. Adams,† respecting the intercepted correspondence which he had laid laid before Her Majesty's Government, as going to show a deliberate attempt to establish within the limits of this kingdom a system of action in direct hostility to the Government of the United States, such further correspondence, consisting of a letter addressed to Mr. Adams on the 9th instant, in conformity with the opinion set forth in our Report of the 2nd instant,‡ and a letter which has been received from Mr. Adams in reply.

Mr. Hammond was to request that we would take this further correspondence into consideration, and furnish your Lordship with such observations as we may have to offer thereupon.

In obedience to your Lordship's commands we have taken the further correspondence into consideration, and have the honour to report—

That Mr. Adams does not controvert the principal positions contained in your Lordship's letter, founded upon the Report which we had the honour to make to your Lordship on the 2nd of this month.

Mr. Adams does not deny, first, that it is lawful for Her Majesty's subjects to lend money on securities or otherwise to either belligerent; secondly, that it is also lawful to sell to either belligerent munitions of war.

It was not later than the 20th November last year that, in answer to the remonstrances of Mexico against the alleged organized system in the United States of aiding France in the war, in which the United States were neutral, Mr. Seward replied by this, among other citations (Mr. Webster to Mr. Thompson), "As to advances, loans, or donations of money to the Government of Texas or its citizens, the Mexican Government hardly needs to be informed that there is nothing unlawful in this, so long as Texas is at peace with the United States, and that these are things which no Government undertakes to restrain." (Page 4, Ex. Doc. 37 to Congress.)

Mr. Adams is, of course, perfectly aware that many decisions of tribunals in the United States fully establish that a like exposition of the law as to

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* Mr. Adams, February 9; Law Officers, March 2.

† To Mr. Adams, March 9; Mr. Adams, March 14.

‡ Page 61.

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munitions of war, and the sale of armed vessels, has been always maintained in the United States when they are neutrals.

Mr. Adams does not state that the information which he communicated to your Lordship as to alleged contracts for constructing war steamers, or the proposed establishment of naval officers to superintend them, would be sufficient to found a criminal prosecution in the United States. Mr. Adams must, we think, be aware that it would not suffice for this purpose. There is therefore no reason why he should complain of your Lordship's statement that the information which he has furnished does not suffice for the like purpose in England.

Mr. Adams is not ignorant that agents have been employed, and munitions of war have been purchased, and even Her Majesty's subjects recruited, for the purpose of aiding the United States against the so-called Confederate States; and so far it might be urged by this, as well as by the other belligerent, as it was substantially urged last year by Mexico against the United States, in vague and popular language, that there is evidence "of a deliberate attempt to establish within the limits of this kingdom a system of action in direct hostility to their Government;" but the question really is, has there been any act done in England both contrary to the obligations of neutrality as recognized both by Great Britain and the United States, and capable of being made the subject of a criminal prosecution? We can only repeat our opinion that no such act is specified in the remonstrance of Mr. Adams.

It may, at the same time, be proper that Mr. Adams should be informed that Her Majesty's Government will, in consequence of the statements contained in the intercepted correspondence, give instructions to the Custom-house authorities of the several British ports where ships of war may be constructed to direct their attention to the subject, and to endeavour to discover and obtain legal evidence of any violation of the Foreign Enlistment Act, with a view to the strict enforcement of that statute, whenever it can really be shown to be infringed. And Mr. Adams may properly be invited to communicate to Her Majesty's Government, or to the local authorities at the several ports, any evidence of illegal acts which may become known to him from time to time.

We have referred generally to the judicial decisions of the United States. We think it may be useful to refer to two of these decisions, selected out of many on account of their bearing, both upon the general question and upon the special case of the sale of ships of war by the subjects of a neutral to a belligerent State.

The first decision is that of the eminent Judge Story, given, it may be well to observe, in a case in which the recognition of the Spanish-American Republics was directly concerned. After admitting that the capture had been made by an United States' ship, built in the United States, originally owned in the United States, he proceeds to say, "The question as to the original illegal armament and outfit of the 'Independence' may be dismissed in a few words. It is apparent that, though *equipped as a vessel of war*, she was sent out to Buenos Ayres on a commercial adventure, *contraband indeed, but in no shape violating our laws or our national neutrality*. If captured by a Spanish ship-of-war during the voyage, she would have been justly condemnable as good prize for being engaged in a traffic prohibited by the laws of nations. But there is nothing in our laws or in the laws of nations that forbids our citizens from sending armed vessels, as well as munitions of war, to foreign ports for sale. It is a commercial adventure which no nation is bound to prohibit, and which only exposes the persons engaged in it to the penalty of confiscation." (5 Curtis' Rep., 373-5.)

This is a case illustrating the law and practice of the United States while neutral in the war between Spain and her Colonies.

The next case (historically the first) illustrates also their law and practice while neutral in the war between Great Britain and France. It is so short that we cite it verbatim and at length*:—"The allegation in this case, as supported by the evidence, was that the privateer which took the British prize in question had been built in New York, with the express view of being employed as a privateer in case the then existing controversy between Great Britain and the United States should terminate in war; that some of her equipments were calculated for war, though they were also frequently used for merchant-ships; that the privateer was sent to Charleston, where she was sold to a French citizen; that she was carried by him to a French island, where she was completely armed and equipped, and furnished with a commission; that she afterwards sailed on a cruize, during which the prize was taken and sent into Charleston.

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* "It is not a violation of the neutrality laws of the United States to sell to a foreigner a vessel built in this country, though suited to be a privateer, and having some equipments calculated for war, but frequently used by merchant-ships."

"Reed, for the plaintiff, in error, contended that this was an original construction or outfit of a vessel for the purpose of war; and that if it was tolerated as legal, it would be easy, by collusion, to subvert the neutrality of the United States, and involve the country in a war.

"The Court, however, without hearing the opposite Counsel, directed the Decree to be affirmed." (Moodie *v.* the ship "Alfred:" 5 Curtis's Reports, pp. 234, 235.)

It seems clear, on the principle of these authorities, that, except on the ground of any proved violation of the Foreign Enlistment Act, Her Majesty's Government cannot interfere with commercial dealings between British subjects and the Confederate States, whether the subject of those dealings be money, or contraband goods, or even ships adapted for warlike purposes.

We have, &c.

(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 120.

The Queen's Advocate to Earl Russell.—(Received March 30.)

My Lord, *Doctors' Commons, March* 30, 1863.

United States.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 25th March instant, stating that with reference to his letter of the 18th instant, he was directed to transmit to me a further despatch from Lord Lyons (No. 221 of the 10th March) inclosing a copy of a further note which has been addressed to his Lordship by Mr. Seward relative to the case of the "Elias Reid;" and to request that I would take the same into consideration, and furnish your Lordship with my opinion thereupon.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That, as I have had the honour already to report,* the map appended to the deposition of one of the witnesses appeared to me to indicate that the capture was made in British waters; that neither the master nor the other witness have, as I understand, denied in any part of their evidence that the capture was so made; whether they understood that it was competent to them to state in express terms in answer to the formal interrogatories that the vessel was seized in British waters, may, I think, be very doubtful.

It would rather seem from the last despatch of Mr. Seward to Lord Lyons (5th March) that the United States' Government would listen to a statement made out of Court by Lord Lyons upon this subject, and, if so, I think his Lordship should be instructed to bring all the evidence on the subject of the place of the capture of the "Elias Reid" to the notice of Mr. Seward. If, on other hand, the owners of the "Elias Reid" prosecute an appeal to the Superior Court, I think, as I have already had the honour to report, that Her Majesty's Government should intervene, if, as I presume, the forms of the Court allow them to do so.

I have, &c.

(Signed) ROBERT PHILLIMORE.

No. 121.

The Queen's Advocate to Earl Russell.—(Received March 30.)

My Lord, *Doctors' Commons, March* 30, 1863.

United States.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 24th instant, stating that he was directed by your Lordship to transmit to me a letter from the Colonial Office, inclosing a despatch from the Governor of the Bahamas, covering a protest from David Owens Sabiston, master of the British schooner "Harkaway," against the detention of that vessel at Wilmington, in North Carolina: and Mr. Hammond was to request that I would take this case into consideration, and report to your Lordship my opinion thereupon.

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* Page 85.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That the principle of law involved in the consideration of this case is of very great importance.

There is no doubt that a purchase, founded on the due condemnation of a vessel by a competent Prize Court, confers a title, which, according to the first and most important principles of international law, all States are bound to recognize. The Confederate States would put in jeopardy their title to the rights of belligerents if they refused to be bound by this rule, which has obtained universal sanction.

I have the honour to advise that Her Majesty's Consul, at or near the place of the detention, should be instructed to demand the release of the "Harkaway" to the British owner who produces the title of purchase after a lawful condemnation in a proper Prize Court.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 122.

The Queen's Advocate to Earl Russell.—(*Received March* 30.)

United States.

Doctors' Commons, March 30, 1863.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 27th March instant, stating that he was directed by your Lordship to transmit to me a despatch from the Acting British Consul at Charleston (No. 24 of the 12th February) inclosing a copy of a letter addressed to him by Brigadier-General Jordan, announcing that it had been officially reported by the commanding officer at Fort Sumter that at the hour of 10·50 on the morning of the 12th of February no vessels of the United States' blockading force were to be seen off the bar of the harbour; and Mr. Hammond was to request that I would take this circumstance into consideration, and furnish your Lordship with any observations which I may have to offer thereupon.

In obedience to your Lordship's commands I have taken the circumstance mentioned into consideration, and have the honour to report—

That I am clearly of opinion that there is nothing in the report of the commanding officer at Fort Sumter to warrant the inference that the blockade of Charleston is legally interrupted; on the other hand, the report of the Consul seems to me to affirm its continuance.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 123.

The Queen's Proctor to Mr. Layard.—(*Received March* 31.)

Brazil.

Doctors' Commons, March 30, 1863.

Sir,

I HAVE the honour to acknowledge the receipt of your letter of the 24th instant, returning me the case to be submitted for the arbitration of the King of the Belgians in the case of the "Forte," which had been approved by Earl Russell, and requesting that that document might be put into a printed form with as little delay as possible.

In reply I beg to state that I have had the same printed accordingly, and have now the honour to transmit twelve copies thereof.

I have, &c.
(Signed) F. H. DYKE.

No. 124.

The Law Officers of the Crown to Earl Russell.—(*Received March* 31.)

United States.

Temple, March 31, 1863.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 21st instant, stating that he was directed by your Lordship to transmit to us a despatch (No. 31 of the 21st February) from Mr. H. Pinckney Walker, an American citizen, who, as British Vice-Consul at Charleston, assumed the charge of Her Majesty's Consulate on the departure of Mr. Consul Bunch, reporting further evasions of the blockade of that port, and of the port of Wilmington in North Carolina; and that he was directed to request that we would take Mr. Walker's despatch into our consideration, and favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we are of opinion that the statements in the despatch of Mr. H. Pinckney Walker, with respect to the occasional evasion of blockade of the port of Charleston, are not such as to warrant the conclusion that the blockade is not lawfully maintained.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 125.

The Law Officers of the Crown to Earl Russell.—(*Received March* 31.)

United States.

Temple, March 31, 1863.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 19th instant, stating that with reference to our Report of the 16th of January* relative to the inducements held out to the seamen of the captured vessel "Sunbeam" to enter the service of the United States, he was directed by your Lordship to transmit to us, together with the previous papers, a despatch from Lord Lyons (No. 184, February 24, 1863), inclosing copies of a note which he has addressed to, and of the reply which he has received from, Mr. Seward on this subject, and to request that we would take the same into our consideration, and favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we think that Lord Lyons should be instructed to state that your Lordship, after a further consideration of the communications of the 12th of November from Mr. Seward, is unable to alter the opinion with respect to that communication which your Lordship expressed to Lord Lyons, and which Lord Lyons conveyed to Mr. Seward in his note of the 19th February.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 126.

The Law Officers of the Crown to Earl Russell.—(*Received April* 1.)

China.

Temple, March 31, 1863.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 6th instant, stating that he was directed by your Lordship to transmit to us a despatch from Mr. Bruce, Her Majesty's Minister in China (No. 176, December 9, 1862), showing, with reference to the confiscation by the Chinese Custom-house, of sixty-three bales of silk, belonging to Messrs. Hanbury

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* Page 23.

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and Co., the course he has pursued in cases of seizure and confiscation of goods, for evasion of duties.

Mr. Hammond was to request that we would take this matter into consideration, and furnish your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we are of opinion that the general course pursued by Mr. Bruce in cases of seizure and confiscation of goods for evasion of duties is right and proper, and that in the individual case of the seizure of the sixty-three bales of silk belonging to Messrs. Hanbury, Mr. Bruce formed a correct opinion upon the evidence, that neither restitution nor compensation can be demanded or required for the confiscation of the silk by the Chinese authorities.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 127.

The Law Officers of the Crown to Earl Russell.—(*Received April* 1.)

Temple, March 31, 1863.

My Lord,

CHINA.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 11th instant, stating that with reference to the Report of Her Majesty's Attorney and Advocate-General of the 29th of August last,* addressed to the Clerk of the Council, in which it was suggested that there should be some understanding with Mr. Lay and Captain Osborn as to the conditions under which officers and men were to be engaged for service in the Chinese fleet, he (Mr. Hammond) was directed by your Lordship to transmit to us a letter (dated 2nd of March instant) from Mr. Lay, inclosing a book, intituled "The Regulations and Instructions for the Government of His Imperial Majesty's Naval Service," and was to request that we would take into our consideration the Agreement made with the officers and men, to be found in the commencement of the book, and to report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands we have taken this Agreement into consideration, and have the honour to report—

That the subject to which reference was made in the former Report was the possible participation of this Anglo-Chinese force, in atrocities perpetrated, in the course of hostilities, by the Chinese against the rebels.

But as the agreement made with the officers and men embodies the observance of all applicable rules of discipline, in force in Her Majesty's navy, and as the force is to be entirely under the command of British officers, the danger of any such participation appears to be guarded against.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 128.

The Law Officers of the Crown to Earl Russell.—(*Received April* 1.)

Temple, March 31, 1863.

My Lord,

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 14th March, stating that with reference to the Report of the late Queen's Advocate of the 18th March, 1861, and to the Reports of the Law Officers of the 30th September and the 31st October, 1861,† on the question of the liability of British subjects to perform military service in the United States; to the Report of the Law Officers of the 19th of November last,‡ on the liability of British subjects to the conscription in the Confederate States; and lastly, to the separate Reports of the Attorney and Solicitor-General, and the Queen's

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* See Reports for 1862, page 210.

† Ibid., 1861, pages 52, 231, and 261.

‡ Ibid., 1862, page 283.

Advocate, of the 31st of January,* on the liability to military service in the United States of British subjects who have exercised the elective franchise; he (Mr. Hammond) was directed by your Lordship to transmit to us a despatch and its inclosures from Her Majesty's Minister at Washington (No. 179, February 24th), respecting a Bill now before Congress for enrolling and calling out the national forces, and for other purposes.

Her Majesty's Minister observes that the exemptions from liability to service are extremely few; that they do not even include clergymen or members of Congress; and that persons of foreign birth who have declared on oath their intention to become citizens of the United States, are expressly declared by the First Article to be liable to military service. Her Majesty's Minister states that applications have been actually made to him by British subjects who are likely to be affected by this Bill, and he requests instructions as to the course which he should take if it becomes law.

Mr. Hammond was to request that we would take this matter into our consideration, and report to your Lordship our opinion as to what instructions should be addressed to Lord Lyons thereupon.

Mr. Hammond was also pleased to inclose, for our information, a copy of the instruction which was addressed to Lord Lyons on the 12th ultimo (No. 79), with reference to the liability to military service in the United States of British subjects who have received the elective franchise.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we are of opinion it would be proper that Lord Lyons should receive instructions to the effect that Her Majesty's Government consider that Her Majesty's subjects who have simply declared on oath their intention to become at a future time citizens of the United States, and who have not as yet exercised the right of suffrage or any other political franchise in consequence of such declaration, ought to be allowed a reasonable period *after* the passing of the Act in question, to exercise their option whether they will leave the United States or continue resident there upon the condition of liability to military service under this Conscription Act. Not having actually renounced their allegiance to their own Sovereign, and not having been admitted to any political franchise in the United States upon the faith of an engagement to do so, they are clearly not bound by a mere prospective declaration, which by itself was incapable of producing, and did not produce, any change in their status or rights. And having been permitted to reside in the United States as foreigners, not liable to compulsory military service, it would now be a breach of faith towards them, and at variance with the comity of nations, to compel them to serve in a war in which their Sovereign is neutral, without at least giving them the opportunity (if they should prefer that alternative) of leaving the country.

We do not think it is possible to admit that the grant of passports to persons so situated will make any difference in the case. It is not the offer of some compensation or equivalent which can justify the Government of the United States in imposing, without fair notice, upon foreigners, who desire to abide by their present allegiance, obligations properly incumbent upon those only who owe a permanent allegiance to the United States.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 129.

The Queen's Advocate to Earl Russell.—(*Received April* 1.)

Doctors' Commons, March 31, 1863.

My Lord,

UNITED STATES.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 24th instant, stating that he was directed by your Lordship to transmit to me a letter dated the 23rd March instant, and its inclosure, from Messrs. Cox and Baker, the owners of the brigantine "Magicienne" and her cargo, requesting that Her Majesty's Government will address to the United

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* Pages 37 and 39.

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States' Government a representation respecting the seizure of that vessel by the United States' cruizer "Onward," and will claim ample compensation for the damages they have thereby sustained.

Mr. Hammond was also pleased to transmit a despatch and its inclosure from Her Majesty's Consul at New York on this case, and was to request that I would take the same into consideration, and report to your Lordship my opinion thereupon.

In obedience to your Lordship's commands I have taken these papers into consideration and have the honour to report—

That as far as I can form an opinion on the papers before me, the capture of this vessel appears to have been an entirely unjustifiable act on the part of the United States' captor.

I think that unless other circumstances appear, Lord Lyons should be instructed to demand the immediate release of the vessel.

Her destination is that of her accustomed trade; her cargo is not contraband; her papers are regular; she is not attempting to break any blockade.

She is entitled, as I am at present advised, to be released, with the costs and damages incident to her unlawful detention.

Lord Lyons might not improperly urge upon the United States' Government that the seizure of a neutral vessel in such strong circumstances of *primâ facie* innocence is really not compensated by costs and damages awarded in a Prize Court; and that the habit of United States' captors of seizing vessels on the chance that something may possibly be discovered *ex post facto* which will prevent their condemnation in damages, renders the practical fulfilment of the obligations of a neutral State to respect the abstract rights of the belligerent a task of daily increasing difficulty.

I have, &c.
(Signed) ROBERT PHILLIMORE.

P.S.—I had written the above Report before the receipt of Mr. Hammond's second letter (dated the 30th instant), containing further papers in this case; and I have thought it best to add, by way of postscript, my Report on the additional papers.

They appear to me to strengthen the justice of the demand for the compensation for the illegal seizure, for which it is clear there was never any plausible excuse.

With respect to the mails seized on board this vessel, and the taking away of the seamen of the "Magicienne," I think on both subjects instructions should be sent to Lord Lyons.

Probably his Lordship would be able to obtain from the United States' Government an amicable arrangement upon the former point, to the effect that mails of a *bonâ fide* character may be immediately forwarded to their destination, while the lawfulness of the capture of the merchant-ship which carried them is still undetermined.

The concession, however, must, I think, be a matter of grace on the part of the United States' Government, as the strict *jus belli* would warrant them in detaining and examining the letters.

As to the taking away of the seamen: according to the usual practice, three of the crew are examined on interrogatories, when a ship is captured. I do not understand why the rest of the crew were taken away, and, as appears to have been the case, sent to Boston, while the ship and three men were sent to Key West.

I think Lord Lyons should be instructed to refer to this fact as one of the many hardships incident to this most unjust seizure; as also to the consumption of the provisions and stores of the "Magicienne" by the "Onward's" crew.

The justice of the case calls for speedy compensation from the United States' Government.

P.S. (second.)—The Report of the United States' District Attorney (dated Key West, February 28, 1863), contained in Mr. Hammond's letter of this date, will, I presume, induce the United States' Government to grant without delay the compensation demanded.

R. J. P.

April 1, 1863.

No. 130.

The Law Officers of the Crown to Earl Russell.—(Received April 1.)

Temple, March 31, 1863.

My Lord,

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 2nd instant, stating that with reference to our Report of the 16th of October last,* respecting the case of Mr. Shaver, he was directed by your Lordship to transmit to us, together with the previous papers, the instruction addressed to Mr. Stuart,† in conformity with our Report, directing him to inform the United States' Government that, in the opinion of Her Majesty's Government, the claim of Mr. Shaver for redress and compensation was fully established, and the despatches, as marked in the margin,‡ which have been received from Lord Lyons in reply.

Mr. Layard was to request that we would take these papers into consideration, and more particularly the note of Mr. Seward of the 7th ultimo (inclosed in Lord Lyons' despatch No. 142 of the 10th ultimo), in which he maintains the position hitherto assumed by the United States' Government in the case of Mr. Shaver, and report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we are unable to modify our former opinion as to the injustice of the incarceration of Mr. Shaver, and as to his claim for compensation.

It is admitted by Mr. Seward that he is a British subject, and we retain our opinion that his legal domicil at the time of his arrest was in Canada.

It is alleged that he was resident in the United States, and being reasonably suspected of treasonable practices was properly imprisoned. That the suspicions were ill-founded may, we think, be assumed from the fact and circumstances of his release.

But upon what basis did they originally rest?

We can find nothing worthy of the name in the despatch of Mr. Seward (February 7th) to Lord Lyons.

No Court of Justice would rely upon the evidence of Thompson for the reasons stated in our last Report.

It is urged that the occupation, in itself lawful, of Mr. Shaver, was such as, if he had been so-minded, would have enabled him to be guilty of treason; but surely the conclusion that he was guilty of treason is very distant from this premises.

The deposition stated to have been made by Noyes does not (even if accepted as true) show that Mr. Shaver ever entertained, or professed to entertain, the intention of visiting any part of the Confederate States without a proper pass from the United States' authorities. Mr. Seward, indeed, infers that he was preparing to do so "without the consent of the United States' authorities." But in the deposition itself, as stated by him, we have failed to discover any foundation for such a surmise. The other deposition, said to have been made by Albert Davis, is open to the gravest suspicion; he was himself, or (on his own showing) professed to be, an active agent of the Southern Confederacy; and the language which he puts into the mouth of Shaver is incredible, and bears upon it the stamp of a fabrication to suit the wishes of those who examined him: at all events, his uncorroborated evidence is not to be relied upon.

Mr. Shaver has had no opportunity of confronting either of these persons; it does not appear that their statements constituted the original ground of his arrest; and full copies of their depositions are not even now given.

Then in what way are the statements of Davis corroborated?

It is said that Shaver had trunks; of their contents (apart from what Shaver himself says, that they contained railway tickets) there is no evidence whatever: that these trunks were heavy when going south, and light when coming north; from this averment the conclusion is drawn that they must have contained treasonable correspondence.

The affidavits upon which this statement, such as it is, is made, are lost.

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* See Reports for 1862, page 251.

† To Mr. Stuart, No. 163, October 23, 1862.

‡ Lord Lyons, No. 5; No. 3; Private, January 3, 1863; No. 19, January 7, 1863; Nos. 142 and 143, February 10, 1863.

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It is clear that no conviction could have been obtained in any Court of Justice upon such evidence as this.

It seems to us also clear that it was wholly insufficient to justify his arrest and imprisonment.

We are still of opinion that Mr. Shaver is entitled to compensation at the hands of the United States' Government; and that if such compensation should still be refused, the claim should be kept alive by proper means on behalf of Her Majesty's Government; reserving to them (if it should not be thought expedient to press for immediate satisfaction now) the right to do so at any future period.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 131.

The Queen's Advocate to Earl Russell.—(Received April 1.)

My Lord, *Doctors' Commons, April* 1, 1863.

UNITED STATES.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 30th March ultimo, stating that he was directed to transmit to me a letter from Mr. David Hawkes Broderick, dated the 26th March ultimo, requesting that Her Majesty's Government will instruct Her Majesty's Minister at Washington to make certain inquiries of the American Government with regard to a property in which Mr. Broderick is interested, and to request that I would take this case into consideration, and furnish your Lordship with my opinion as to whether it is a matter in which Her Majesty's Government should interfere.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That there appears to me no adequate reason why Her Majesty's Government should interfere in this matter. Mr. Broderick must take the same steps as any other individual to bring his private claims, in the proper manner, before the proper Court in the United States. It might be suggested that probably Mr. Broderick would do well to place himself again in communication with the United States' Consul in London; but that Her Majesty's Government must decline referring a matter of this description to Lord Lyons.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 132.

The Law Officers of the Crown to Earl Russell.—(Received April 1.)

My Lord, *Temple, April* 1, 1863.

UNITED STATES.

WE are honoured by your Lordship's commands signified in Mr. Hammond's letter of the 26th March, stating that we are already acquainted with the questions which have arisen in regard to trade with Matamoros, more especially in the case of the "Labuan."

Mr. Hammond was directed by your Lordship to transmit to us letters from parties interested as owners either of the vessel or of the cargo,* relating to the capture of the British vessel "Peterhoff" off the Island of St. Thomas on her voyage from this couuntry to the Mexican port of Matamoros.

Mr. Hammond was also to transmit to us a letter from Mr. Gourley,† requesting to be informed in regard to the right of British vessels to trade with Matamoros, and a letter from "Lloyds" raising generally the question of the assumption of the United States' cruizers to interfere with and capture British vessels, specifying among those captured the "Peterhoff," "Springbok," and "Magicienne" (the last two of which cases we have had already before us), on their voyages to neutral ports.

That this question is a very important one, and deserves the serious consideration of Her Majesty's Government; and your Lordship requested, that in considering the specific case of the "Peterhoff," we would also consider the points raised in the other letters inclosed, and report to your Lordship at our earliest convenience what course Her Majesty's Government should pursue for the protection of British commerce, and for obtaining redress, if it should be improperly interfered with.

We are also honoured with Mr. Hammond's letter dated the 27th ultimo, transmitting to us a further letter from Mr. Spence, inclosing documents, respecting the capture of the "Peterhoff."

Also of a further letter from Mr. Hammond dated the 28th ultimo, transmitting a further letter from Mr. Spence respecting the case of the "Peterhoff," inclosing a Liverpool newspaper containing a Report respecting the decision of the Judge of the Admiralty Court at Key West, in the case of the "Adela."

Also of Mr. Hammond's letter of the 31st ultimo, transmitting to us a further letter from Mr. Spence respecting this case.

In obedience to your Lordship's commands we have taken all these papers into consideration and have the honour to report—

That we are of opinion that it would be proper for your Lordship to reply to the letters of the persons complaining of the detention and capture of these vessels as follows:—

That the Government of the United States has clearly no right to seize British vessels, *bonâ fide* bound from this country, or from any other British possession, to the ports of Vera Cruz and Matamoros, or either of them, or *vice versâ*, unless such vessels attempt to touch at or have an intermediate or contingent destination to some blockaded port or place, or are carriers of contraband of war destined for the Confederate States; and that, in any *admitted* case of such unlawful capture, Her Majesty's Government would feel it their duty promptly to interfere, with a view to obtain the immediate restitution of the ship and cargo, with full compensation, and without the delay of proceedings in a Prize Court.

That Her Majesty's Government, however, cannot, without violating the rules of international law, claim for British vessels navigating between Great Britain and these places any general exemption from the belligerent right of visitation by the cruizers of the United States, nor can they proceed upon any general assumption that such vessels may not so act as to render their capture lawful and justifiable. Nothing is more common than for those who contemplate a breach of blockade, or the carriage of contraband, to disguise their purpose by a simulated destination and by deceptive papers; and the situation of the ports on the coast of Mexico, with reference to the Confederate States, is such as to make it not only possible, but (in many case) probable, that an ostensible Mexican destination would be resorted to as a cover for objects which would really justify capture. It has already happened, in many cases, that British vessels have been seized while engaged in voyages apparently lawful, which have have been afterwards proved in the Prize Courts to have been really guilty of endeavouring to break the blockade, or of carrying contraband to the Confederates.

It is the right of the belligerent to capture all vessels reasonably suspected of either of these transgressions of international law; and whenever any such cause of capture is alleged, the case cannot be withdrawn from the consideration of the Prize Court of the captor. After the case has undergone investigation, it is the duty of the Prize Court to restore any such prizes unlawfully made, with costs and damages; and the proper time for the interference of Her Majesty's Government is (in general), when the Prize Court shall have refused redress for a capture, which the evidence shows to have been unjustifiable.

That Her Majesty's Government cannot, upon *ex parte* statements, deny the belligerents in this war the exercise of those rights which in all wars in which Great Britain has been concerned she has claimed to exercise herself.

That before forming any opinion as to the Judgment stated to have been given in the case of the "Adela," it will be necessary for Her Majesty's Government to be furnished with a correct report of that Judgment; it being impossible to rely on the general representation of its effect, contained in a newspaper

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* Mr. Harding, March 26; Mr. Spence, March 26.

† Mr. Gourley, March 26.

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paragraph founded on private letters,—especially as none of the other Judgments of the United States' Prize Courts which have been reported to Her Majesty's Government during the present war evince any manifest disregard of the established principles of law.

That in the particular case of the "Peterhoff," Her Majesty's Government, having taken into consideration the papers transmitted by her owners, and being satisfied that those documents disclose no *primâ facie* ground of capture, and that there is every reason to believe the voyage to have been lawful and *bonâ fide*, and the seizure of the vessel wholly unjustifiable, will instruct Lord Lyons to make an immediate representation of the circumstances of the case to the Government of Washington; and if no legal ground of capture should be alleged, then to press for the release of the vessel with compensation, and without the delay of proceedings in the Prize Court. But if any legal ground of capture should be alleged, this case, like all others, must unavoidably follow the ordinary course.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

P.S.—The papers since transmitted to us in Mr. Hammond's second letter of the 31st ultimo do not appear to call for any further expression of opinion; but that as regards the "Adela" we are still without any authentic report of the Judgment. We think it would be important to possess such a report for various reasons; and we should be glad if your Lordship would give instructions that it should be obtained and sent to this country.

April 1, 1863.

W. A.
R. P.
R. J. P.

No. 133.

The Attorney and Solicitor-General to Earl Russell.—(*Received April* 2.)

Russia.

Temple, April 2, 1863.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 18th ultimo, stating that, with reference to our letter of the 26th of January last,* respecting the liability to stamp duty in this country of certain bonds of the Russian loan of the 1st of May last, he was directed by your Lordship to transmit to us a further note, dated the 5th March ultimo, from Baron Brunnow, the Russian Minister at this Court, stating, in reply to a request that he would inform your Lordship of the date of the signature of the bonds in question, that he was unable to give this information, as the bonds were stamped and not signed, but that they were inscribed in the Great Book of the Public Debt on the $\frac{\text{19th April}}{\text{1st May}}$, 1862; and to request that we would take this paper into our consideration, together with the former correspondence on this subject, inclosed therewith, and that we would inform your Lordship what answer should, in our opinion, be returned to Baron Brunnow.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That the reason assigned by Baron Brunnow for its being "impossible to indicate the date of the signature of the bonds," viz., "because the signature (being that of a Director of the Commission d'Amortissement) had been impressed on the bonds by means of a stamp," does not seem to us to be very satisfactory. We should have supposed that some record would be preserved in the office of the Russian Government entrusted with the duty of stamping and issuing these bonds of the dates at which they were stamped; and as Baron Brunnow appears to make a distinction between *stamping* and *signing*, and does not say expressly that the date of *stamping* cannot be ascertained, we should advise that his Excellency should be requested to inform Her Majesty's Government whether they are to understand that no means exist of ascertaining when the stamp, in lieu of the signature, was affixed to the bonds, as this would be (for the purpose in view) the date of signature. And also whether the Russian Government are to be understood as representing that, according to the ordinary course of the office from which the bonds were issued, the stamp, in lieu of signature, would be impressed upon them *before* the debts thereby secured were inscribed in the Great Book of the Public Debt at St. Petersburgh (which was done, as his Excellency states, on the 1st of May).

In the event of no satisfactory further information being elicited by these inquiries, the practical point for Her Majesty's Government to consider will be, whether they ought to take advantage of the change in the *onus probandi* which, according to our former opinion, may have been produced by the actual payment of the duty to the Stamp Office. On this point we observe that Baron Brunnow refers to the payment as made, *sous protêt*; and if the payment was made on the faith that it should not prejudice the question, of course no advantage can be taken of it. This renders it material to ascertain when the communication referred to in the following passage of the letter of the Board of Inland Revenue of the 11th of December last took place, "Messrs. Rothschild having intimated the possibility of their raising the question before a Court of Law, or of applying to your Lordships, we gave them an assurance that, in the event of a decision adverse to our views, the amount of the stamp duty should be repaid to them." We assumed that this took place after the payment; but if it was *before*, then we think that the case should be dealt with as if the burden now lay upon Her Majesty's Government to establish, affirmatively, the liability of the bonds to duty, which, we think, they would fail to do unless they could produce some evidence from which it ought reasonably to be inferred, as a conclusion of fact, that they were actually signed after the 3rd of June, 1862.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.

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[*] Page 33.

No. 134.

The Law Officers of the Crown to Earl Russell.—(*Received April* 2.)

United States.

Temple, April 2, 1863.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 21st ultimo, stating that he was directed by your Lordship to transmit to us the papers, as marked in the margin* respecting the arrest at New York and the imprisonment in Fort Lafayette of Mr. Thomas Potts, the Supercargo and Master of the "Hiawatha," a vessel which was captured for breach of blockade shortly after the breaking out of the war in the United States, and formed the subject of the Report of Her Majesty's late Advocate-General of the 31st of October, 1861,† and of his previous Reports therein referred to.

Mr. Hammond was to request that we would take the case of Mr. Potts into consideration, and report to your Lordship our opinion thereupon.

We are also honoured with Mr. Hammond's letter of the 28th ultimo respecting this case, stating that he was directed by your Lordship to transmit to us a letter from Mr. Potts, which had been forwarded to your Lordship by Mr. Horsfall, M.P., and was to request that we would take the same into consideration, together with the other papers before sent to us.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That there can be no doubt that Mr. Potts was imprisoned in the first instance without due process of law by the Marshal, and that he ought to have been duly proceeded against either in a Criminal or Civil Court of Justice.

It is, moreover, difficult to understand how the offence of Mr. Potts could have been justly regarded as a military offence, subjecting him to arbitrary imprisonment by order of the Secretary of War.

Mr. Potts had certainly a right to make his defence in a Court of Law against the charges upon the imputation of which he was, without any opportunity of exercising this right, imprisoned for several months.

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[*] Colonial Office, February 23, 1863; to Colonial Office, March 12, 1863; to Lord Lyons, No. 127, March 12, 1863; Lord Lyons, No. 189, March 1, 1863.

[†] See Reports for 1861, page 262.

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His treatment, also, while in prison (if his own account of it can be relied upon), and the obstacles interposed to his communicating by letter with Her Majesty's Diplomatic Agents in the United States, might, if his case had been meritorious in other respects, have furnished just ground for remonstrance.

The question, however, remains, whether the evidence before us, including that of Mr. Potts himself, does not show such gross misconduct on the part of that person as to disentitle him to any official interference on the part of Her Majesty's Government.

We are of opinion that the evidence does disclose such a case. Mr. Potts has clearly been guilty (to put his offence at the lowest) of a shameful fraud and breach of faith, by taking advantage (as he did, even on his own admission) of an indulgence afforded to him by the liberalty of the United States' Marshal, while the case of the "Hiawatha" was under adjudication, to ship off part of the cargo of that vessel to Liverpool.

The consequences of this unjustifiable act have probably been very prejudicial to the interests of others of Her Majesty's subjects in the United States; and Mr. Potts has been disingenuous and untruthful in his statements on the subject to Mr. Gordon and Lord Lyons.

We observe that Mr. Potts now represents his imprisonment as originally due to his arrest by the United States' Marshal, "upon a charge which he himself withdrew." We find, however, in the papers no trace of any withdrawal of the original charge (*i. e.*, the charge of a fraudulent abstraction of part of the cargo of the "Hiawatha," while the case was before the Prize Court); and as that charge was manifestly well-founded, it seems to us impossible that it should have been withdrawn by the United States' Marshal. And there seems no reason to doubt that, although Mr. Potts was only detained for fifteen days, in the first instance, on the Marshal's authority, his subsequent imprisonment, under the order of the United States' Secretary for War, was still due to the same cause.

It is probable that the value of the property fraudulently abstracted by Mr. Potts may have been equal to any claim for compensation which might otherwise have been substantiated on his behalf; and also that his imprisonment, though arbitrary, and without any process of law, was not longer nor more severe than that which might have been legally inflicted upon him in a United States' Court of Justice.

On the whole, we do not advise your Lordship to instruct Lord Lyons to demand compensation from the Government of the United States for the imprisonment of Mr. Potts.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 135.

The Law Officers of the Crown to Earl Russell.—(Received April 4.)

My Lord, *Temple, April* 4, 1863.

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 31st March ultimo, stating that he was directed by your Lordship to transmit to us a letter from Mr. Adams, dated the 30th March ultimo, inclosing a copy of a letter from Mr. Dudley, the United States' Consul at Liverpool, together with a number of depositions taken before the Collector at Liverpool, going to show that a steamer called the "Alexandra," is being fitted out at that port for the purpose of carrying on war against the United States.

Mr. Adams also submitted for your Lordship's consideration another note from Mr. Dudley, transmitting copies of certain papers which Mr. Adams stated appear to prove quite conclusively the relation of certain persons in Liverpool, whose names appear therein, to the insurgent authorities of the United States.

Mr. Hammond also stated that your Lordship had lost no time in transmitting copies of the papers to the Treasury and the Home Office, with the request that the authorities at Liverpool might be instructed to adopt whatever steps can legally be taken in view of the circumstances thus brought to the knowledge of Her Majesty's Government.

And Mr. Hammond was pleased to request that we would take Mr. Adams' letter and its inclosures into our consideration, and favour your Lordship, at our earliest convenience, with such observations as we might have to offer thereupon.

In obedience to your Lordship's commands we have taken Mr. Adams' letter and its accompanying papers into our consideration, and have the honour to report—

That we regard this case as fairly raising an important question as to the true construction of the 7th section of the Foreign Enlistment Act, which we think it would be proper for Her Majesty's Government, on this opportunity (under all the circumstances of the case) to bring to trial.

The Solicitor of the Board of Customs has reported his opinion that "there does not appear to be any evidence to show that the 'Alexandra' is '*equipped, fitted out, or armed,*' within the meaning of the Act." There is, however, in the deposition of John De Costa sufficient proof, if believed, of admissions by Mr. Miller, jun., one of the builders of the ship, and of statements made in his presence by Captain Tessier, that the "Alexandra" is being built "for the Southern Confederacy;" and that she is "being fitted up as a gun-boat, and is intended for and will be employed as such, in the service of the Confederate States."

The words of the Act are—"If any person shall equip, furnish, fit out, or arm, or attempt or endeavour to equip, furnish, fit out, or arm, or procure to be equipped, furnished, fitted out, or armed, or shall knowingly aid or assist, or be concerned in the equipping, furnishing, fitting out, or arming, of any ship or vessel, *with intent or in order that such ship or vessel shall be employed* in the service of any foreign Prince," &c., the penalties of the Act shall be incurred.

It is to be observed, that what is prohibited is the "fitting out," *with the particular intent*, and that no specific *mode* of fitting out is pointed at. The intent constitutes the gist of the offence; and *any* fitting out, with the illegal intent, would appear to be illegal.

Then the question is, whether the evidence above referred to is not, in itself (if credited), enough to show a "fitting out," with the prohibited intent? We are not aware of any decision upon the construction of this section of the statute which can rule that question; and it seems to us to be one which Her Majesty's Government ought not to assume in the negative without a trial, when the intent (as in this case) is shown by sufficient *primâ facie* evidence.

Independently of this view, there remains a further question, whether the character of the construction and fitting up of the "Alexandra," as described in the depositions of O. R. Mumford and others, is not within the fair meaning of the words of the statute, supposing that any particular *kind* of fitting out ought to be proved. This also appears to us to be a question which, when the *intent* (as in this case) sufficiently appears, ought not to be assumed in the negative by Her Majesty's Government without a trial. On this point there is also an absence of English judicial authority; but we infer from the decision of the Supreme Court of the United States in "The United States *v.* Quincy" (6 Peter's Supreme Court Cases, pp. 448, 449, 450, 465, 466), that a similar question would probably be resolved by that Court in the affirmative, if it were to arise upon the construction of the corresponding statute of the United States.

It is clear that, within the meaning of the Act, there may be a "fitting out," without "arming;" and properly, each expression "equipment," "furnishing," "fitting out," "arming," ought to be construed as capable of a distinct meaning.

Upon these grounds, we advise Her Majesty's Government to act upon the representations made to them, and the evidence furnished by Mr. Adams; and to direct the "Alexandra" to be seized under the Foreign Enlistment Act.

At the same time that we advise the adoption of this course, we must observe that no slight responsibility will be thereby incurred on the part of Her Majesty's Government; with whom the further conduct of the case, both as regards its legal bearings, and the evidence necessary, unless satisfactorily answered, to secure a judgment of forfeiture, will exclusively rest. The seizure will have to be promptly followed by the filing of an information, at the suit of the Attorney-General, in the Court of Exchequer. In that proceeding it will be necessary to allege the material facts of fitting out, &c., with the intent to cruize and make war against the United States' Government and people. Such facts, it may be expected, will be put in issue by persons claiming to be interested in the ship, as owners or otherwise; and the burden of establishing these facts by legal evidence (as contradistinguished from rumour and hearsay) will rest on the Crown. Such being the case, we think that the case for the Crown ought to be strengthened by all the evidence, in corroboration of that on which our present advice is founded, which can be obtained; and that no time should be lost in instructing some competent person on the spot, as the agent of the Government, to ascertain, by diligent and searching inquiry, which of the matters of fact (besides the conversations or admissions to which we have already referred) are capable of being satisfactorily established. Many of these, it appears to us, must come under this description.

We refer, particularly, to the building of the "Oreto" by Miller and Sons, and of the "Alabama" by Messrs. Laird, at Liverpool and Birkenhead; the departure of each of those vessels, without an avowed belligerent destination; the employment of each of them, under the Confederate flag, in the conduct of hostilities against the United States; that Captain Bullock is an officer in the Confederate service, and has acted as such, and superintended the building of those vessels, and that the same Captain Bullock has interfered in the way of superintendence or otherwise in the building of the "Alexandra;" that Captain Tessier commanded the "Bahama," which took out the Captain (Semmes) and part of the crew of the "Alabama," the same Captain Tessier (as is sworn to distinctly) having interfered and given orders with reference to the construction of the "Alexandra."

The great object, it will be understood, of the proofs, thus particularized, will be to connect the "Alexandra" with the Confederate service, through persons shown, by facts, to have acted on former occasions as the Agents of the Confederate Government, and shown also to have interfered in the construction of the "Alexandra." Messrs. Fraser, Trenholm, and Co. are described by the United States' Consul as being agents for the Confederate States; and it is also alleged that those persons supply means for the building of the "Alexandra."

These facts, if proved, would, of course, have a most important bearing upon the case for the Crown; and, in the absenee of proof of the former fact of agency, the proved interference of Mr. Welsman in the building of the "Alexandra," and the list of the persons present at the launch, are of little or no moment. Efforts should, therefore, be made to establish these matters by legal proof, such as Messrs. Fraser, Trenholm, and Co. having acted as such agents with reference to former vessels or otherwise, or having held themselves out, publicly, as being clothed with the character of agents, and the like.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 136.

The Law Officers of the Crown to Earl Russell.—(Received April 5.)

My Lord, *Lincoln's Inn, April* 5, 1863.

TURKEY.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 16th of March ultimo, stating that he was directed by your Lordship to transmit to us, with reference to our Report of the 12th December last, the draft of an Order in Council regulating the exercise of jurisdiction over native Indian subjects in the Ottoman dominions. That this draft has been privately submitted to the India Office, and that we should find in the margin of it the observations which it has elicited, written in red ink. Mr. Hammond was also pleased to inclose an explanatory private letter from Mr. Merivale, the Under-Secretary of State in the India Office; and to request that we would take this draft into consideration, with reference to the Capitulations between

Great Britain and Turkey, the Foreign Jurisdiction Act, and the Order in Council of January 9, 1863, and report to your Lordship our opinion as to the manner in which it should be definitively framed, so as to meet, as far as possible, the views of the India Office, as expressed in their previous letters and in that of Mr. Merivale. The former papers were also inclosed.*

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we are of opinion that the draft of this Order in Council is proper as it now stands, with the exception of the last paragraph but two, which relates to the trial of criminal offences committed by native Indians in Turkey. We are disposed to agree with the view taken by the India Office on this subject, and to think it expedient that native Indians who have not chosen to register themselves should not be exempt from the criminal jurisdiction of the Turkish authorities. We think that no British subject, accused of a criminal offence, should be sent for trial to Bombay without a full and careful statement of the case from the proper Consular authority. But we also think that the duty of making such a statement should form the subject of a circular addressed to the Consular authorities, accompanying the Order in Council, and not of a clause in the Order itself.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 137.

The Law Officers of the Crown to Earl Russell.—(Received April 6.)

My Lord, *Temple, April* 6, 1863.

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 16th ultimo, stating that with reference to our Report of the 3rd ultimo,† respecting the case of the steamer "Gibraltar," or "Sumter," he was directed by your Lordship to transmit to us, together with the former papers, the draft of a letter which was addressed to Mr. Adams on the 9th ultimo, stating that in the present state of their information on the subject Her Majesty's Government were unable to assume that that vessel had not been legally and *bonâ fide* sold to a British owner for commercial purposes, and a letter dated the 14th March ultimo, which has been received from Mr. Adams in reply, remonstrating against this decision.

Mr. Hammond was to request that we would take this further correspondence into consideration, and furnish your Lordship with such observations as we may have to offer thereupon.

In obedience to your Lordship's commands we have taken this further correspondence into consideration, and have the honour to report—

That it is very difficult to understand how Mr. Adams can have supposed that, in the passage in the work referred to, he has found any support for the propositions which he maintains, namely, that Her Majesty's Government are bound to consider both that the "Sumter" has been illegally sold, and that she has been sold for the purpose of being used in carrying on hostilities against the United States.

If Mr. Adams had considered that the passage referred to applies to the law administered by the Prize Court of a belligerent, and if Mr. Adams had cited the whole section, he would have escaped the error into which he has fallen.

The whole section is as follows:—

"In respect to the transfer of enemies' ships during war, it is certain that purchases of them by neutrals are not in general illegal; but such purchases are liable to great suspicion, and if good proof be not given of their validity by a bill of sale, and payment of a reasonable consideration, it will materially impair the

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* To Sir H. Bulwer, No. 376; to Law Officers, September 3; Law Officers, September 22; to India Office, October 3; India Office, October 29; to Sir H. Bulwer, No. 475; India Office, November 9; to Law Officers, November 11; Law Officers, December 12; to India Office, December 18, 1862; India Office, February 11, 1863.

† Page 64.

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validity of the neutral claim; but if the purchase be made by an agent, his letters of procuration must be produced and proved; and if after such transfer the ship be employed habitually in the enemy's trade, or under the management of a hostile proprietor, the sale will be deemed merely colourable and collusive. But the right of purchase by neutrals extends only to merchant-ships of enemies, for the purchase of ships of war belonging to enemies is held to be invalid, and a sale of a merchant-ship made by an enemy to a neutral during war must be an absolute unconditional sale. Anything tending to continue the interest of the enemy in the ship vitiates a contract of this description altogether."—("Phillimore's Commentaries," vol. iii, sec. 486, pp. 607 and 608.)

Every proposition in this extract is founded on one of the Judgments (referred to in the notes) of Lord Stowell, while sitting as a Judge of the Prize Court when Great Britain was a belligerent.

The substance of the section is that a belligerent has a right to scrutinize vigilantly the transfer of an enemy's merchant-ship during war to a neutral; but that such transfer is not, if *bonâ fide* made, illegal; that a belligerent has a right to consider the sale or transfer of an enemy's ship of war to a neutral as absolutely illegal.

The latter of these propositions may possibly require some qualification; for Lord Stowell, in the Judgment on which it is founded, did not lay down so general a doctrine, but confined himself to the case of a sale to a neutral of an enemy's ship of war, while "rendered incapable of acting as a ship of war by the arms of the other belligerent, and driven into a neutral port for shelter."

But, be this as it may, from neither of these propositions has Her Majesty's Government in the present case expressed any dissent.

Her Majesty's Government have not said that it will not be competent to the Prize Court of the United States to come to the conclusion, upon proper evidence, and after a fair hearing, that the transfer of the "Sumter" was (as against the United States) either illegal, because it was not *bonâ fide* sold as a merchant-ship, or on grounds such as those on which Lord Stowell decided the case of the "Minerva"* already referred to. But the sale may be perfectly good by the laws of England, so as to give the English purchaser a valid title while within Her Majesty's dominions (assuming it to be a real, and not a fictitious transaction, as between the parties thereto), although it may possibly be one which, in the event of a subsequent capture on the high seas, might not be recognized as lawful according to the code of Prize Law administered in the Prize Court of the United States.

Her Majesty's Government have said that in the present state of their "information on the subject, they are unable to assnme that the ship lately called the 'Sumter' has not been legally and *bonâ fide* sold to a British owner for commercial purposes;" a proposition not only not at variance, but in perfect harmony with the passage in the work cited, or rather with the Judgments of Lord Stowell on which that passage is founded, so far as the passage is applicable to the case at all.

For the word "legally" in this passnge has reference to the ordinary law, as administered in the Civil Courts of Gibraltar and of England in time of peace; while, on the other hand, the term "unlawful," as used in the book cited by Mr. Adams, has reference to the law of prize, as administered in the Prize Court of a belligerent Power. No neutral Power ever undertakes to administer prize law in favour of either belligerent. The only question relative to the "Sumter" or "Gibraltar" is whether, Great Britain being neutral, Her Majesty's Proclamation be, or be not applicable to that vessel while in a British port.

It is only applicable to a belligerent's ship of war. There is no evidence that this vessel is now a belligerent's ship of war; but, on the contrary, strong *primâ facie* evidence that she has been sold for peaceful and commercial purposes to a British and neutral subject, and that, although formerly a ship of war, she has, in truth, entirely changed her character, and become, in every sense material for the present purpose, a merchant-ship.

Mr. Adams also says, "I have reason to believe that during the whole of the late war with Russia, Her Majesty's Government steadily refused to recognize the transfer of any vessels of that nation in neutral ports."

This is another error into which Mr. Adams has fallen. The Judge of the Prize Court during that war decided (as we mentioned in our Report of the 1st of January, 1863) "that the sale of a single ship from a belligerent to a neutral was lawful;" adding, "It matters not, generally speaking, where the ship was lying at the period of such a sale, provided she was not *in transitu*, nor lying in a blockaded port." ("The Baltica," Spink's Prize Cases, p. 271.)

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* 6 Robinson, 399.

We have, &c.

(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 138.

The Queen's Advocate to Earl Russell.—(Received April 6.)

UNITED STATES.

My Lord, *Doctors' Commons, April* 6, 1863.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 24th March ultimo, stating that he was directed to transmit to me a despatch from Her Majesty's Minister at Washington (No. 211, March 6), inclosing a copy taken from a newspaper of an Act of Congress relating to *habeas corpus*, and regulating "judicial proceedings in certain cases," and to request that I would take this Act into consideration, and furnish your Lordship with my opinion thereupon, more especially with reference to the manner in which it may operate upon British subjects in the United States.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That assuming the language of this statute to be correctly reported in the inclosed newspaper, the first section of this Statute confers upon the President the power of suspending the writ of *habeas corpus* with respect to all persons in the United States. This section includes, therefore, within its provisions not only natural subjects but foreigners commorant in the country. The second section provides for the release of "all persons *citizens* of States in which the administration of the laws has continued unimpaired in the Federal Courts." It is by no means certain how far the category of "citizens" in this Statute might be construed to extend. But the word "persons" is used in the subsequent portions of the section; and the release from imprisonment is to be granted to "no persons" who do not take the oath of allegiance to the United States.

It is therefore, I fear, at least doubtful whether the United States' Courts of Justice would at any time so construe the words of this Act as to limit them to naturalized or natural-born citizens of the United States; and it is impossible not to apprehend that at the present time, upon such a question, the minds of judges will be, consciously or unconsciously, swayed by political influences. Nor is it quite clear that if they did construe the Act as Mr. Seward anticipates, that decision would be respected by the military authorities. It seems to me, therefore, that Lord Lyons was well-founded in his remonstrance to Mr. Seward, and that the answer of Mr. Seward is far from satisfactory, inasmuch as it is clear that if the words objected to were not intended to apply to the case of foreigners, and if, nevertheless, the words were either such as possibly to render necessary (as Mr. Seward admits) hereafter a judicial decision respecting them, or such as to require an extraordinary exertion of the executive in favour of foreigners, the insertion of an explanatory clause was a precaution so simple, a remedy so certain, that the refusal to introduce it while there was an opportunity to do so is not easy to understand.

It appears to me desirable that the remonstrances and objections of Lord Lyons, and the answer and promises of Mr. Seward, should be embodied in a written memorandum, acknowledged by both parties to be a fair representation of what took place upon the occasion.

The necessity hereafter of a reference to this conversation between Lord Lyons and Mr. Seward is but too probable, and the inconvenience of relying upon oral statements at a period of any distance from the time when they were first made is, in such a matter, obvious and considerable.

I would humbly suggest that Lord Lyons should be instructed to apprise Mr. Seward that Her Majesty's Government participate in the apprehension expressed by his Lordship as to the ambiguity incident to the language of the

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second section of the Act, and as to the possible embarrassment which may hereafter ensue from it.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 139.

The Law Officers of the Crown to Earl Russell.—(Received April 11.)

Temple, April 10, 1863.

My Lord,

PERSIA.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 25th November, 1862, stating that, with reference to our Report of the 23rd of June last,* he was directed by your Lordship to transmit to us the accompanying despatch from Her Majesty's Consul-General at Tabreez (No. 174), containing observations upon the subject of Consular jurisdiction in Persia, and pointing out how far the provisions of the Levant Order in Council might be made applicable to Persia.

Mr. Hammond was also pleased to state that your Lordship directed him to observe that, considering how few British subjects appear, from Mr. Abbott's Report, to be resident in Persia, it seemed doubtful whether it was worth while to give authority to Her Majesty's Consuls in that country to carry out the provisions of the Foreign Jurisdiction Act; but he was to request that we would take this question into our consideration, in conjunction with what is stated by Mr. Abbott, and favour your Lordship with our Report thereupon.

We are also honoured with your Lordship's commands signified in Mr. Hammond's letter of the 27th February, 1863, stating that he was directed by your Lordship to transmit to us a further despatch received from Her Majesty's Chargé d'Affaires in Persia (No. 7), relating to the question of establishing British Consular jurisdiction in Persia, and also a Vice-Admiralty Court at Bushire; and to request that we would take the same into our consideration, along with the papers referred to us in his letter of the 25th of last November.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That, although the number of Her Majesty's subjects in the dominions of the King of Persia is comparatively small, we are of opinion that cases might arise both with respect to the relation between Great Britain and Persia, and the due administration of justice generally, which ought not to be practically incapable of being adjudicated upon; and, therefore, that it would be expedient to invest Her Majesty's Consuls in Persia with the same kind of jurisdiction, *mutatis mutandis*, over British subjects, which is exercised by Her Majesty's Consuls in Japan.

We have therefore prepared a draft Order in Council, applicable to Persia, based upon the Japan Order in Council, dated the 23rd January, 1860, and to which we have appended our initials. We have omitted from the draft the Regulations in the Japan Order numbered 1, 28, 32, and 33 respectively, as being inapplicable; and we have inserted two regulations in the Persian draft Order, which are not to be found in the Japan Order, and which are numbered in the draft Persian Order 13 and 28 respectively. The utility of these two latter regulations will probably be thought to be self-evident. In framing the draft Order we have assumed that there are in Persia, as in Japan, several Consuls; and that one of them is "Consul-General." We have also substituted the British Minister in Persia as an appellate tribunal for the Court at Hong Kong, provided for that purpose in the Japanese Order, and Constantinople in lieu of Hong Kong, for various purposes of imprisonment and the like.

We would suggest that, before submitting the Order in Council for Her Majesty's consideration, it would be prudent to send the draft, as settled by us, to the Consul-General in Persia, inviting him to make such observations on the various clauses, and their adaptation, or otherwise, to the actual requirements, as his knowledge and experience may suggest.

We have thought that Her Majesty's Government would not be prepared, even if existing Treaties would permit it, to establish a Consular Court, with all the necessary officers and appliances, in Persia, as has been done, under peculiar circumstances, at Constantinople; and "Slave Trade" Regulations, in particular, ought, it seems to us, to be kept distinct from ordinary criminal and civil jurisdiction. We have, therefore, not provided, in the draft Order in Council, for the establishment of a "Court," notwithstanding the suggestion to that effect contained in Mr. Eastwick's despatch of the 18th of December, 1862.

It will be perceived that our draft Order, in providing for pecuniary penalties, and the like, assumes that *dollars* are a current, or known, denomination of money in Persia. Care must, of course, be taken that there is no inaccuracy in this respect.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 140.

The Law Officers of the Crown to Earl Russell.—(Received April 11.)

My Lord, *Temple, April* 10, 1863.

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 2nd instant stating that he was directed by your Lordship to acquaint us that your Lordship had addressed a letter to Mr. Adams, in reply to his letter of the 14th ultimo, respecting the intercepted correspondence, in conformity with the observations contained in our Report of the 30th ultimo,* and that your Lordship, however, desired Mr. Hammond to refer for our consideration and observations the inclosed memorandum suggested by a perusal of our Report.

In obedience to your Lordship's commands we have the honour to report—

That in your Lordship's memorandum it is stated "that the principle contained in the British and American laws and practice is this: a neutral may furnish all the implements of war, ships, cannon, powder, waggons, &c., &c., to be used by the belligerent, and to be sold as articles of commerce; but the neutral must not carry on war itself." With this statement we have the honour to express our entire concurrence.

The allegation with respect to the equipment of the vessel is that she was fitted *from* a British port, by which we understand that the materials for the armament, which she received in foreign waters, were conveyed to her from a British port.

This by itself is clearly not a carrying on of war by British subjects, and we will therefore pass on to the next allegation, namely, as to the manning of the vessel. It is said that the crew consisted of British sailors, and that, with the exception of perhaps two officers, she was altogether a British ship of war.

As to this allegation, it is scarcely necessary to observe that if she were really proved to be acting as a British ship of war, or privateer, in which British subjects were carrying on war of their own authority against the United States, she would clearly violate the principle above laid down.

In that case it would be both the duty and the right of Her Majesty's Government to employ force upon the high seas to capture the ship carrying on such lawful warfare in violation of Her Majesty's neutrality.

The question, however, is whether the facts as to the crew and ownership of the vessel warrant any such conclusion.

We understand that, in point of fact, she has been sailing ever since she received her armament under the Confederate flag, as a Confederate vessel of war, and under the command of a Confederate captain, and that as long as she carried the British flag she was not engaged in actual operations of war.

In these circumstances we cannot discover any ground for presuming that she is not now, as she purports to be, the property of the Confederate States, and navigated as one of their ships of war. The mere fact of the crew, with the exception of two officers, being British subjects (if the fact be so, of which we have no evidence), cannot possibly constitute the ship a British ship of war,

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* See Reports for 1862, page 160*.

* Page 89.

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although, by so acting, the persons composing the crew would be violating the Foreign Enlistment Act.

In the American case of the "Independencia," referred to in our Report, the captain and the greater part of the crew were American citizens, who left Baltimore with a ship ready equipped as a vessel of war, and entered at Buenos Ayres into the belligerent service of that State in pursuance of an intention proved to have been formed before she left Baltimore. Nevertheless, Judge Story held that she had not violated the law of nations or the neutrality of the United States.

We do not think that the circumstances of the engagement of the crew having been made at a British port, or the combination of that fact with the fact that the equipments were also supplied from a British port, can make any difference in the application of the principle.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 141.

The Queen's Advocate to Earl Russell.—(Received April 13.)

Doctors' Commons, April 13, 1863.

My Lord,

UNITED STATES.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 11th April instant, stating that he was directed to transmit to me therewith, a letter dated the 4th April instant from Mr. James Wetherell, relative to goods which have been shipped by him for Matamoros on board the "Sea Queen," together with the draft of answer which your Lordship proposes to return to him; and to request that I would take the same into consideration, and report to your Lordship as to whether the proposed answer is suitable.

In obedience to your Lordship's commands I have taken this letter into consideration, and have the honour to report—

That I am of opinion that the answer of your Lordship to Mr. Wetherell is quite proper to be sent.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 142.

The Queen's Advocate to Earl Russell.—(Received April 14.)

Doctors' Commons, April 13, 1863.

My Lord,

SPAIN.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 10th April instant, stating that with reference to my Report of the 29th of April, 1861, respecting the question as to the validity, under existing circumstances, of marriages performed by civil contract in St. Domingo, he was directed to transmit to me a despatch, and its inclosures, from Her Majesty's Consul at St. Domingo (No. 16, 15th March, 1862), containing the further information on this subject requested in my Report, and also a despatch from Mr. Hood (No. 3, 16th February), inclosing copies of his correspondence with the Wesleyan missionary at Puerto Plata on this question; and to request that I would take these papers, together with those previously sent to my predecessor, into consideration, and furnish your Lordship with my opinion as to the course which Her Majesty's Government should take, and as to the instructions which should be sent to Mr. Hood in this matter.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I agree with the opinion expressed by my predecessor in office that the Decree of General Santana, whatever be its legal effect, does not violate the rights of British subjects secured to them by Treaty. The competency of General Santana to issue such a Decree appears to be very doubtful, to say the least; but this is, after all, a grave question of the Constitutional law of St. Domingo, or of that law and the law of Spain taken together, which can only be determined by the proper authority of the State to which St. Domingo is subject, which I understand now to be the Kingdom of Spain.

I humbly advise Her Majesty's Government to pursue the following course: to instruct Her Majesty's Representative at the Court of Spain to represent to the proper Minister of that Court the distress and uncertainty created by the Decree of General Santana; to request to know what law on the subject of the marriage of foreigners, not Roman Catholics, now prevails at St. Domingo—whether the old law which permitted the civil contract, or General Santana's Decree; and what the effect of the Decree of the Queen of Spain of the 6th October, 1861, upon the old law or upon the Decree of Santana, may be.

Her Majesty's Representative should also be instructed to press upon the proper authorities the injury which the sudden change of the law, *if such should be the case*, has inflicted upon Her Majesty's subjects at St. Domingo, and the absence of any reasonable necessity for such an alteration.

When Her Majesty's Representative at the Court of Spain has reported to Her Majesty's Government the result of these inquiries and communications, Her Majesty's Government will, perhaps, be in possession of materials sufficient to furnish an answer to the despatch of Mr. Consul Hood, to which I cannot otherwise see clearly my way.

I presume that no communication with the Spanish Ambassador here would prevent the necessity of referring eventually to the authorities at Madrid.

Mr. Consul Hood is quite correct is saying that marriages under the Consular Act are not necessarily valid without the limits of Her Majesty's dominions. It would, therefore, be desirable that the civil contract should be valid by the *lex loci* of Domingo, but this validity cannot be insisted upon as a right, nor even *originally* as a matter of international comity, though the abolition of such a privilege, *subsequently* to its establishment by the law, does justify earnest remonstrance on the part of those States whose subjects are thereby affected.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 143.

The Queen's Advocate to Earl Russell.—(Received April 14.)

Doctors' Commons, April 13, 1863.

My Lord,

ECUADOR.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 8th April instant, stating that he was directed to transmit to me a despatch from Her Majesty's Chargé d'Affaires in Ecuador (No. 5), on the subject of a claim preferred against the Government of that Republic by Mrs. Abitbol, and also the other papers respecting this claim; and to request that I would take the matter into consideration, and report to your Lordship what course Her Majesty's Government should pursue respecting it.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I assume that the despatch (No. 5 of February 20, 1863) from Mr. Fagan correctly represents the nature and character of the debt to Mr. Abensur (from whom I understand that Mrs. Abitbol derives her claim), and I am of opinion that the three Independent States into which the original Republic of Columbia has been subdivided are liable for the repayment of the loan originally contracted on the public faith of this individual Republic for the services of the State.

This would be a correct inference, from the general principles of public law applicable to such a case.

In the present instance this inference is strengthened by a formal recognition of it on the part of the Joint Commission of Bogotá (referred to in the

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despatch of Mr. Fagan), which established the proportions in which each of the three subdivisions of the original Republic of Columbia should contribute to the discharge of the public debt. I think a portion of the sum due to Mr. Abensur should be claimed, relatively to these proportions, from each of these three States; and at all events the Republic of Ecuador cannot fairly be made responsible for more than its own quota, so calculated.

With respect to the time fixed by the Republic of Ecuador for the conversion of Columbian into Equatorian bonds, and the fact that the period so fixed has elapsed, I am of opinion that such lapse does not constitute a bar to the person claiming through Mr. Abensur, and that it is not competent to the Republic of Ecuador by any such limitation to defeat the just claim of a public creditor.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 144.

The Law Officers of the Crown to Earl Russell.—(Received April 14.)

Temple, April 14, 1863.

UNITED STATES.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 24th ultimo, respecting the question of the liability of British subjects to perform military service in the Confederate States, and stating that he was directed by your Lordship to transmit to us a despatch from Her Majesty's Minister at Washington (No. 218, March 10, 1863), inclosing Reports received from Her Majesty's Consulates at Richmond and Mobile, respecting the ill-usage to which British subjects are exposed, and the means which are adopted to force them into the ranks of the Confederate army.

Mr. Hammond was to request that we would take these papers into consideration, and furnish your Lordship with our opinion as to the measures which should be adopted with a view of remedying the state of things therein set forth.

We are also honoured with Mr. Hammond's letter of the 25th ultimo, transmitting to us further papers relative to this matter, for our consideration.*

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That Mr. Benjamin does not appear (in his letter to Mr. Moore, February 1863) to controvert the position of law which we had the honour to state in our former Report on this subject; or that the neutral foreigner had a right to exercise his option whether he would leave the belligerent country, or enlist in its military service, if he had entered the country when no such obligation was imposed on him by law.

The Act, however, of the Legislature of Mississippi is certainly at variance, in the letter at least, with that position of law, and on that account furnishes matter of just complaint to the Government of the foreigner.

Mr. Benjamin's objection to the non-diplomatic character of the Consul is, however harsh in the circumstances, legally sound; and the refusal to allow foreigners to pass the military line into the territory of the belligerent may be quite justified by the exigencies of the war. But the abstract proposition of law enunciated by Judge Meredith, that the soldier acquires a civil domicil in the country in whose service he is enlisted, however true in its relation to the affairs of civil life, is pressed far beyond its due and reasonable limits when urged as a reason for compelling a foreigner to serve in a war against a State with which his own country is at peace. Such a proposition confounds two distinct things, recognised as distinct by all jurists, the doctrine of allegiance and the fact of domicil.

There can of course be no doubt that the representations of Consul Moore, with respect to the cruel treatment of British subjects, call for the interference of Her Majesty's Government; but in the present state of affairs, in the absence of any Diplomatic Representative of Her Majesty in the Confederate States, or of any accredited Representative of the Confederate States at this Court, we have great difficulty in suggesting any channel through which that interference can be effectually exerted.

It is, of course, a matter for the grave consideration of Her Majesty's Government whether any, and what communication should be opened upon the subject with the unaccredited Agent of the Confederate States in this country.

In the meanwhile, we can only suggest that any difficulty which may exist as to Mr. Consul Moore's authority to interpose for the protection of British interests in the State of Mississippi, or elsewhere where it may be desirable to employ his agency, may be removed (as far as practicable) by express instructions from Her Majesty's Government, giving him such authority; and that he should be directed to follow, as far as possible, the instructions contained in the last despatch to him from Lord Lyons, and according to the best discretion he can exercise, to continue to interfere on behalf of British subjects. He might also be instructed to draw up and forward to Mr. Benjamin a formal statement of the grievances upon these persons, and a strong protest upon the principles of international law against their continuance.

We must observe, however, that the case of British subjects who have voluntarily served in the Confederate armies, is not one entitling them, as of right, to the protection of Her Majesty's Government from any inconvenient consequences which may result to them from such voluntary service; which was, itself, a breach of the neutrality enjoined by Her Majesty's Proclamation.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

P.S.—The further papers which accompany the letter of Mr. Hammond of the 7th instant* do not appear to us to call for any alteration of the Report which we had already drawn. The language of the certificate of exemption in Nelson's case is very reprehensible, and the whole proceeding extremely harsh; and if any proper opportunity should present itself, would justify the interference of Her Majesty's Consul on behalf of the person so treated.

W. A.
R. P.
R. J. P.

No. 145.

The Law Officers of the Crown to Earl Russell.—(Received April 14.)

Temple, April 14, 1863.

UNITED STATES.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 24th ultimo, stating that he was directed by your Lordship to transmit to us a letter dated the 20th March ultimo, from Mr. Samuel Maples, a Notary and Commissioner of Chancery at Nottingham, inclosing a correspondence with the United States' Minister at this Court respecting an undue advantage which, if your Lordship understands the matter correctly, Mr. Maples contends has been given to Mr. Rawson over other Notaries at Nottingham, by the fact of his having been appointed United States' Consular Agent in that town; and to request that we would take this matter into our consideration, and favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we see no reason for your Lordship's intervention in this matter. It is a question which chiefly relates to the due construction of an American Statute; and we can perceive no grounds, either in fact or law, why your Lordship should interfere with the Consular arrangements of the United States

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* Lord Lyons, No. 236, March 13, 1863.

* Lord Lyons, No. 256, March 24, 1863.

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in this country, as to the choice of their Agents or Commissioners for taking affidavits.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 146.

The Queen's Advocate to Earl Russell.—(*Received April* 14.)

My Lord, *Doctors' Commons, April* 14, 1863.

HONDURAS.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 9th April instant, stating that he was directed to transmit to me the Report of the Commission appointed to adjudicate on certain land-claims preferred by British subjects against the Government of Honduras; and also a letter, dated the 6th April instant, from Mr. Frederick Upton, whose claims have been rejected by the Commission, asking for a copy of the Report; and Mr. Hammond was pleased to request that I would furnish your Lordship with my opinion whether there is any objection to acceding to Mr. Upton's request.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I have perused the Report of the Commission, and I see no objection to acceding to the request of Mr. Upton that he may have a copy of that part of it which relates to the Judgment given against his claim.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 147.

The Queen's Advocate to Earl Russell.—(*Received April* 15.)

My Lord, *Doctors' Commons, April* 14, 1863.

UNITED STATES.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 4th instant, stating that with reference to my Report of the 4th of February,* and to previous communications on the case of the "Bermuda," he was directed by your Lordship to transmit to me, together with the former papers, a despatch from Her Majesty's Minister at Washington (No. 247, March 16), from which it appears that the vessel has been condemned by the United States' Prize Court; that notice of appeal has been given; but that the ship has, nevertheless, been taken possession of by the United States' Government.

Mr. Hammond was to request that I would take the case into consideration, and furnish your Lordship with any observations I may have to make thereupon.

I am also honoured with Mr. Hammond's letter of the 7th instant, stating that with reference to his former letter respecting the case of the "Bermuda," he was directed by your Lordship to transmit to me the accompanying despatch from Her Majesty's Minister at Washington (No. 246, March 16), inclosing copies of two Acts of Congress recently passed relative to the disposal of vessels and goods captured and condemned as prize of war, and which seem to be at variance with the instructions the draft of which Mr. Hammond was also pleased to transmit,—which were addressed to Her Majesty's Chargé d'Affaires in November last, founded on my Report of the 15th of that month;† and Mr. Hammond was to request that I would take these papers into consideration, and furnish your Lordship with my opinion thereupon.

In obedience to your Lordship's commands I have taken these several papers into consideration, and have the honour to report—

That the papers before me raise two distinct questions:—

1. The conduct of the United States' authorities with respect to the "Bermuda;"

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* Page 45.

† See Reports for 1862, page 281.

2. The character of the new Prize Act, and its bearing upon neutral States.

With respect to the first question I have to observe, that the United States' Government appears to have paid into Court a sum which I presume represents the appraised value of the "Bermuda," and that sum, I also presume, will abide the event of the Judgment which may be given by the Court of Appeal.

In the meanwhile the United States' Government has possessed itself of the vessel; and this is a proceeding so much in accordance with our own law and practice in similar cases (as referred to in my Report of the 15th of November, 1862), that it affords no just ground of complaint on the part of Her Majesty's Government.

With reference to the second question, namely, the Prize Acts recently passed by Congress (or rather to the first Prize Act, for the second has only an incidental bearing on the question, and a strictly municipal character), I have the honour to express my opinion that the first section is in accordance with the usual practice in such cases, enabling the Court to sell when the vessel is likely to become injured, when the costs of keeping it would be disproportioned to its value, or when all the parties interested agree to the sale.

The second section does furnish ground for remonstrance on the part of Her Majesty's Government, especially after the communication made by Lord Lyons to Mr. Seward, to which I understand Mr. Seward has as yet made no real answer. (See letter of Lord Lyons to Mr. Acting Consul Crump, March 7, 1863.)

I had the honour to point out in my former Report (hereinbefore referred to) that the true doctrine on the subject of sale *before* condemnation was, that the interests of the vessel required it; and the words, "any other sufficient cause," in our last Prize Act (recited in that Report), taken with the context, evidently refer to those interests.

It is manifest, upon principles of natural justice, that the sale of the vessel of a neutral owner *before any sentence of condemnation* has been passed upon it—before the owner has been found guilty of any offence against the belligerent, is an act which cannot be fairly justified by reference to necessities of the belligerent, or necessities other than those incident to the state of the neutral vessel itself. The jurisdiction of the Prize Court, the obligation of the neutral to submit both to it and to the right of capture, is founded upon the doctrine that he will be fairly tried, not by the captor who seizes him, but by an impartial Judge, who tries both parties. But if a neutral vessel be sold *for the good of the captor or the captor's State*, before trial, this obligation of the belligerent and this corresponding right of the neutral are much impaired, because compensation in money, however fairly assessed on the abstract value of the property, may afford no practical protection to an innocent owner, in the particular circumstances of his case, from considerable loss.

I think, therefore, that Lord Lyons should be instructed to express the dissatisfaction of Her Majesty's Government at the extent to which this clause derogates from the usual rights of neutral States, to express their hope that it will not be put in practice, and at the same time to express his regret that such a clause should have been passed after his communication upon the subject, so late as the 3rd of January last, without any notice (except a mere formal one) being taken of his communication or any mention whatever made to him of the measure which was about to be proposed by the United States' Government. And if Lord Lyons should find, as I believe he will, that this power of appropriating the vessel *before* condemnation be a novel power, not conferred by former United States' Prize Acts, his remonstrance will be much strengthened.

It would also be proper for him to point out what an encouragement such a clause may afford to making seizures, known at the time when they are made to be unwarrantable by law, because the seized vessels may now in every case minister to the necessities of the belligerent, and the seizor is not likely to be severely rebuked by his Government for conduct which, however unjustifiable and intolerable to the neutral, has had so patriotic an object; nor is it to be wholly laid out of consideration that the knowledge that the vessel has been already appropriated by his Government to satisfy urgent necessities, presents to the Judge of the Prize Court some temptation, especially in the time of high excitement generated by a civil war, to pass a sentence which the act of his Government appears to have anticipated.

It is true that the last English Prize Act enabled (as I pointed out in my

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Report of the 15th of November) the Judge to deliver up the captured vessel to the claimant, on his giving good security to the captor. This would often prove a great mitigation of the hardships incident to the neutral in time of war.

It would have been only reasonable and fair in the United States' Government, especially after the communication of Lord Lyons, to have inserted a similar clause in their Statute.

I cannot, however, say that the absence of such a clause, however unfriendly and harsh to neutral States, is so contrary to strict international usage and law on the subject as to warrant any formal remonstrance on the part of Her Majesty's Government.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 148.

The Queen's Advocate to Earl Russell.—(*Received April* 15.)

Doctors' Commons, April 14, 1863.

My Lord,

SWITZERLAND.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 8th instant, stating that he was directed by your Lordship to transmit to me therewith a despatch and its inclosures received from Her Majesty's Minister at Berne (No. 37), respecting the claim put forward by two brothers named Fournier, resident at Geneva, to exemption from compulsory military service, for which it appears that the Swiss authorities hold them liable, on the ground that their father is a naturalized Genevese citizen.

Mr. Hammond was to request that I would take this case into consideration, and furnish your Lordship with my opinion thereupon.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That by the Vth Article of the Treaty between Great Britain and Switzerland (September 6, 1855), it is provided that "the subjects or citizens of either of the two Contracting Parties in the territories of the other shall be exempted from all compulsory military service whatever, whether in the army, navy, or national guard, or militia."

The young Messrs. Fournier are English subjects, born in England of an English father. So far, therefore, they are clearly subjects of Great Britain, and within the exemption of the Treaty.

Their father has, however, subsequently to their birth, become a Genevese citizen, and the question arises as to whether the sons have not thereby, while resident in Geneva, lost their privilege of exemption from service in the Militia.

I am not informed at what time the father became a naturalized Genevese, but it appears from the despatch of Admiral Harris (April 4, 1863, No. 37), that these sons are both of full age. They had done no act to forfeit their national character, which is English. Each of them is *sui juris*; and I am of opinion that it is competent to them to claim the exemption of the Treaty in their favour, and I have the honour humbly so to advise your Lordship.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 149.

The Law Officers of the Crown to Earl Russell.—(*Received April* 16.)

Temple, April 15, 1863.

My Lord,

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 21st ultimo, stating that he was directed by your Lordship to transmit to us the accompanying papers* respecting the case of James Carlin,

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* Mr. C. Turner, M.P., September 8, 1862; Mr. Stuart, No. 296, October 16, 1862; Lord Lyons, No. 27, January 13; No. 28, January 13; No. 111, February 4; No. 190, March 1; No. 209, March 6, 1863.

a British subject, who was on board the British steamer "Memphis," as a passenger, when that ship was captured on the 31st of July last by the United States' gun-boat "Magnolia." That it appears that on the arrival of the "Memphis" at New York, James Carlin was detained, and afterwards imprisoned in Fort Lafayette, whence he has only lately been discharged, and that he now claims compensation from the United States' Government at the rate of about 140*l*. per diem during the period of five months that he was kept in prison.

Mr. Hammond was to request that we would take this case into consideration, and report to your Lordship our opinion thereupon, more especially with reference to the propriety of supporting Mr. Carlin's claim.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That we are clearly of opinion that Mr. James Carlin is entitled to pecuniary compensation for an imprisonment of five months, founded originally upon a slender presumption of his being a citizen of the United States, and continued long after even that presumption had been removed.

The reasonable inference is that there was never any serious intention of instituting a criminal prosecution against him, and that the suggestion of such intention was a mere pretext for his detention, really desired upon other and legally inadmissible grounds.

The papers do not supply the means of determining the measure or rate of compensation which it may be proper to demand. Mr. Carlin's own estimate appears to be very extravagant, and is not likely to be listened to by the Government of the United States.

He should be content to put forward, through Lord Lyons, a moderate demand for the loss of profits of employment during the time of his imprisonment, to which should be made a reasonable addition on account of the personal annoyance, the loss of personal liberty, and the plain injustice of the sentence under which he suffered imprisonment.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 150.

The Queen's Advocate to Earl Russell.—(*Received April* 16.)

Doctors' Commons, April 15, 1863.

My Lord,

UNITED STATES.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 6th instant, stating that he was directed by your Lordship to transmit to me, therewith, two despatches from Her Majesty's Consul at Porto Rico (Nos. 13 and 18, February 24 and March 14, 1863), relative to the case of the British steamer "Aries," which vessel is stated to have run the blockade of Charleston, and inclosing the correspondence which has taken place on the subject between the United States' Consul at Porto Rico and Her Majesty's Consul; and Mr. Hammond was to request that I would take these papers into consideration, and furnish your Lordship with my opinion as to the nature of the instruction which should be issued to Her Majesty's Consul on this matter.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That Mr. Consul Cowper should be instructed that he expressed very correctly the law upon the subject of the alleged offences of the "Aries," when he apprised the United States' Consul that the maintenance of the blockade was the duty of the United States' navy; and he should be further instructed to decline altogether to interfere in the manner requested by the United States' Consul. He may not improperly say that if the "Aries" be captured while endeavouring to enter or leave a duly blockaded port, and the case alleged be established against her, she will probably suffer the penalty of condemnation in the Prize Court.

He may further add, that the United States' Consul is incorrect in his statement of the English municipal law, but that if he were correct the conduct of the "Aries," if she be captured, is one for the exclusive consideration of the Prize Court, which, according to international law, can only exercise jurisdiction in the territory and under the authority of the belligerent.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 151.

The Queen's Advocate to Earl Russell.—(*Received April* 16.)

UNITED STATES.

Doctors' Commons, April 15, 1863.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 7th instant, stating that he was directed by your Lordship to transmit to me, therewith, two letters, one from Messrs. Joyce and Co., dated the 31st March ultimo, who are loading the ship "Danubio" for Matamoros, and the other from Messrs. Wade and Robson, dated the 2nd April instant, who are loading the ship "Camelford" for Nassau, together with drafts of the answers which your Lordship proposes to return to them; and Mr. Hammond was to request that I would take the same into consideration, and report to your Lordship my opinion as to whether the proposed answers are suitable.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I am of opinion the letters which your Lordship proposes to send are proper and suitable for their purpose. The only doubt which has presented itself to my mind is whether such a letter as that of Messrs. Wade and Robson deserves any answer at all.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 152.

The Queen's Advocate to Earl Russell.—(*Received April* 15.)

PERU.

Doctors' Commons, April 15, 1863.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 13th April instant, stating that he was directed to transmit to me a translation of a letter, dated the 11th April instant, from the Peruvian Minister at this Court, requesting to know the grounds on which a Peruvian soldier named Manuel Oliva, has been tried in this country for an act which took place during the recent mutiny of Peruvian soldiers on board the hulk "Venus;" and that I should find among the accompanying papers an account of the manner in which the "Venus" was handed over to the crew of the Peruvian frigate "Arica," for their temporary accommodation while their vessel was being docked; and to request that I would take the application of the Peruvian Minister into consideration, and furnish your Lordship with my opinion as to the answer that should be returned to it.

In obedience to your Lordship's commands I have taken this application into consideration, and have the honour to report—

That I humbly advise your Lordship to answer the letter of the Peruvian Minister to the following effect, namely, that the offence for which Manuel Oliva has been committed to prison, and for which he is to be tried, is of a criminal character, and therefore an offence against the public peace and order of the realm; that the offence was committed on board one of Her Majesty's ships, and also in a British port; that it is in the same category as an offence committed within any part of Her Majesty's territory; that upon these grounds, according to the Municipal Law of England, which in this matter coincides with the Law of Nations, the offender is amenable to the jurisdiction of Her Majesty's Courts of Justice in this country.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 153.

The Law Officers of the Crown to Earl Russell.—(*Received April* 17.)

UNITED STATES.

Temple, April 16, 1863.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 9th April instant, stating that he was directed to transmit to us, together with the papers to which it refers, the accompanying draft which your Lordship proposes to address to Mr. Adams in reply to certain statements with regard to the sale of the "Sumter" at Gibraltar to a British owner, which are contained in the letter from Mr. Adams of the 14th ultimo; and to request that we would take the same into consideration, and report to your Lordship our opinion as to whether the proposed answer is a proper one.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That the proposed answer, with certain additions which we have had the honour to make in the margin, is proper to be sent.

(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 154.

The Queen's Advocate to Earl Russell.—(*Received April* 17.)

SPAIN.

Doctors' Commons, April 16, 1863.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 11th instant, stating that he was directed by your Lordship to transmit to me a despatch with its inclosures from the Acting British Consul-General at Havana (No. 5), relative to the sentence pronounced by the Royal Audiencia or Supreme Court at Havana, against Mr. Thomas Couch Stephens, Head Captain of the Consolidated Mining Company at Cobre, in consequence of two Englishmen and eighteen Chinamen having lost their lives by the breaking of the cable in one of the shafts while some of the miners were in the act of descending into the mine.

That a case somewhat similar to the present one occurred at the Spanish port of Huelva in 1862, in consequence of the accidental death of a Spanish soldier on board the British vessel "Ann Catherine;" and with reference to my Report thereupon, which, with the papers relating to the case,* were, with Mr. Hammond's letter, inclosed, he (Mr. Hammond) was to request that I would furnish your Lordship with my opinion as to the steps which it will be right and proper to take on the present occasion.

Mr. Hammond was also to add that the answer of the Spanish Government to the representation which Her Majesty's Minister at Madrid was instructed to make in the case of the "Ann Catherine" has not yet been received.

In obedience to your Lordship's commands I have the honour to report—

That it is much to be regretted that Mr. Stephens did not cross-examine the witnesses referred to in Mr. Beattie's despatch, who are said, with apparent probability, to have been unworthy of credit in either of the Inferior or Superior Courts.

I think that in any answer which may be sent to Her Majesty's Consul at Havana, this regret should be expressed; and, further, that Mr. Beattie (Acting Consul at St. Jago de Cuba) should be informed that he is quite wrong in supposing that the mode of procedure, or the evidence allowed by English criminal law, was applicable to the case of Mr. Stephens.

It is clear, however, that the Inferior Court, with the amplest means of investigating into the whole circumstances of the case, and after maturely weighing them, both acquitted Mr. Stephens and absolved him from all payment of costs; it is manifest, therefore, that they placed no reliance upon those particular witnesses who were not cross-examined, and Mr. Stephens might very

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* Sir J. Crampton, No. 390, 1862; Queen's Advocate, December 27, 1862; to Sir J. Crampton, No. 2, 1863; Sir J. Crampton, No. 2, 1863.

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naturally expect that such a sentence would not be disturbed by any other tribunal.

I am not sure whether I am right in supposing that Mr. Stephens did not appear before the Superior Court. It does not appear that he was summoned before it.

The sentence of that Court appears to me extremely unjust; first, in finding Mr. Stephens criminally responsible at all in the circumstances; and, secondly, in the infliction of the enormous pecuniary fine, which is wholly disproportioned to the only evidence of any value which seems to have been before that Court, that of Mr. Castro, the Mining Engineer of the Spanish Government; he says "*that the Director of the works of the Consolidated Company's mines, although not to be made directly responsible for the accident, because the cable that was broken in the Richard's shaft fulfilled all the conditions of safety by its dimensions, form, and quality, and had not been too excessively long in use, he still has committed an imprudence in not changing it after one year's wear.*"

It can scarcely be denied that after this evidence, to find Mr. Stephens criminally responsible and to subject him to a ruinous fine was a grievous miscarriage of justice.

It appears that as the sentence limits the term of imprisonment to two years, the injured person is deprived of his right of appeal to Madrid, and that his only hope of escaping the effects of such an injustice is an application for the pardon ("indulto") of the Queen of Spain.

I humbly advise your Lordship that it would be proper to instruct Her Majesty's Representative at Madrid to support, as strongly as he may be able, such an application to the Crown of Spain.

Her Majesty's Representative at that Court will find valid grounds for his application in the following, among other points of the case, the favourable sentence of the Court which first inquired into the case, and which had from its position ample means of investigating the whole truth in the Report of Mr. Castro, to which I have referred, and in the preposterous and ruinous amount of the fine which has been inflicted.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 155.

The Law Officers of the Crown to Earl Russell.—(*Received April* 17.)

Temple, April 16, 1863.

My Lord,

PERU.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 31st ultimo, stating that with reference to our Report of the 4th of November last,* upon an application of the Peruvian Minister at this Court, that effect might be given in this country to certain legal citations in connection with a law suit pending at Lima, he was directed by your Lordship to transmit to us a further letter, dated the 24th of March, from M. Sanz, saying what was done in a similar case in 1861.

Mr. Hammond was to request that we would take this case again into consideration, and inform your Lordship whether the papers now sent to us† induce us to alter the opinion we gave on M. Sanz's previous application.

In obedience to your Lordship's commands we have taken this case again into consideration, and have the honour to report—

That the documents now sent to us confirm the opinion which we have had the honour to express in our former Report. By these documents it appears that Sir C. Cresswell declined, from want of jurisdiction, to issue the citation prayed in the case of Juan José Concha, and that in consequence a Notary Public was employed in England by the parties who had failed in procuring the intervention of the Court.

This course is perfectly open to the parties for whom M. Sanz requests the intervention of the Foreign Office.

Probably if they employ a Notary Public or Solicitor here they will attain the object which they seek; and as in this case no direction has been given by

the Peruvian Court that application should be made to any particular English Court or Judge (the address being to "one of the Judges of London," and there being no Judge of London who has any jurisdiction to act in the matter), no preliminary step can be taken (as in the case of the application to Sir Cresswell Cresswell) for the purpose of having its failure authenticated by a judicial act.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

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* See Reports for 1862, page 268.

† M. Sanz, October 14, 1862; to M. Sanz, November 8, 1862; Law Officers, November 4, 1862.

No. 156.

The Law Officers of the Crown to Earl Russell.—(*Received April* 18.)

Temple, April 17, 1863.

My Lord,

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 16th April instant, stating that he was directed to transmit to us therewith a letter, dated the 16th April instant, from the Admiralty, inclosing a despatch from Rear-Admiral Milne, who requests instructions in regard to four vessels holding British registers, but occasionally sailing as Confederate vessels, and under different names from those inserted in the British register. That the Board of Admiralty have already consulted the Queen's Advocate and the Admiralty Advocate in this matter, but that your Lordship thinks it desirable that the whole of the Law Officers should consider the question in conjunction with the Admiralty Advocate, and with Mr. Farrer, of the Board of Trade, who may be able to offer any explanation which the Law Officers may desire upon the construction put by that Department on the clauses of the Merchant Shipping Act bearing on the subject; and to request we would take this matter into our immediate consideration, so that we may report upon it early on Saturday, on which day there is an opportunity of sending instructions to Admiral Milne.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we are of opinion that the 52nd Section of the Merchant Shipping Act (17 and 18 Vic., cap. 104) does not apply to the four vessels in question, inasmuch as the British certificates of registry were legally granted to those vessels, and the section does not apply to any foreign certificate of registry.

We are also of opinion that, as it appears from the papers before us that the four vessels in question have changed their nationality, and, as we must assume, have become the property of Confederate citizens, their case falls under the first and not the second branch of the 103rd Section of the Merchant Shipping Act. It does not appear that, under these circumstances, they have since used the British flag, or assumed the British national character, for any other purpose than that of escaping capture by an enemy, or by a foreign ship-of-war in exercise of some belligerent rights.

We are therefore of opinion that it will not be proper for the naval officers under Admiral Milne's command to interfere with these ships on the ground of their having incurred any forfeitures or penalties under the Merchant Shipping Act.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.
TRAVERS TWISS.

No. 157.

The Law Officers of the Crown to Earl Russell.—(*Received April* 18.)

Temple, April 18, 1863.

My Lord,

United States.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 6th instant, stating that he was directed by your Lordship to transmit to us a letter, dated the 31st March ultimo, from the Colonial Office, inclosing a copy of a despatch from the Governor of the Windward Islands, forwarding copies of correspondence which had taken place between his Excellency and Rear-Admiral Wilkes respecting a complaint made by the latter that undue partiality had been shown by the Governor to the Confederate vessel "Oreto," and to request that we would take the same into our consideration, and favour your Lordship with our opinion whether there has been any breach of Her Majesty's Regulations.

Mr. Hammond was also pleased to state that he was directed by your Lordship to inclose a previous letter (March 23, 1863) from the Colonial Office on the same subject.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we are of opinion that his Excellency the Governor of the Windward Islands does not appear to have been guilty of showing any undue partiality to the "Oreto," or to have committed any literal breach of Her Majesty's Regulations. We would take the liberty of observing, further, that his Excellency owes no account to Admiral Wilkes of his conduct in the matter of his discharge of his duties towards Her Majesty; and that the very offensive tone and language of that officer's letter ought to apprize his Excellency of the inexpediency of long personal interviews and explanations with him. It is manifest that, upon this as upon other occasions, these interviews and explanations are made the pretext for writing subsequent letters of this description, intended to be used hereafter very disingenuously, as proof of charges made at the time of the favour shown by Her Majesty's officers to the Confederate States.

We feel ourselves called upon, while giving to Governor Walker full credit for honest and impartial conduct, to add that, in our opinion, the letter and spirit of Her Majesty's Regulations (quoted in Rear-Admiral Wilkes' despatch of the 6th March, 1863) have not been adhered to with sufficient strictness in either of the cases mentioned,—that of the "San Jacinto" or that of the "Oreto." The limits, of the supply of coal in particular, prescribed by that regulation ought to observed, both as to the quantity of coal to be supplied in the first instance, and as to the interval of time which, in the absence of "special permission" (a permission not contemplated, except under "special" circumstances, of a kind different, in our opinion, from those which occurred in the two cases in question), ought to elapse between two successive supplies of coal from British ports.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 158.

The Law Officers of the Crown to Earl Russell.—(*Received April* 21.)

Temple, April 21, 1863.

My Lord,

United States.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 10th instant, stating that he was directed by your Lordship to transmit to us a letter from Messrs. Bennett and Wake, who are about to dispatch a ship for Matamoros, together with the draft of an answer which your Lordship proposes to return to them; and Mr. Hammond was to request that we would take the same into consideration, and report to your Lordship our opinion as to whether the proposed answer is suitable.

We are also honoured with Mr. Hammond's second letter of the same day's date, stating that, with reference to his former letter, he was directed by your Lordship to transmit to us a letter from Mr. Spence, requesting that steps may be taken for the protection of the British ship "Sea Queen" on her voyage to Matamoros; and Mr. Hammond was to request that we would take the same into consideration, and acquaint your Lordship with the answer which we think it would be advisable to return to Mr. Spence.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That we think the proposed letter is proper to be sent.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

P.S.—We think it would be proper to send a similar letter to Mr. Spence.
W. A.
R. P.
R. J. P.

No. 159.

The Law Officers of the Crown to Earl Russell.—(*Received April* 21.)

Temple, April 21, 1863.

My Lord,

United States.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 7th instant, stating that he was directed by your Lordship to transmit to us a despatch and its inclosures from Mr. Consul Archibald (No. 54, March 24), respecting a vessel called the "Georgiana," which is stated to be equipping at Nassau for the service of the Confederate Government; that we should see from the correspondence which passed respecting the vessel in question, when she was about to sail from Liverpool, and which Mr. Hammond was also pleased to inclose, that the attention of Her Majesty's Government was called to the suspicious nature of this vessel by Mr. Adams previously to her departure from this country, but that sufficient cause was not shown for her detention.

And Mr. Hammond was now to request that we would take the case into consideration, and furnish your Lordship with our opinion, at our earliest convenience, as to the course which should be adopted with regard to the alleged equipment of the "Georgiana" for warlike purposes at Nassau.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That neither the statements in Mr. Consul Archibald's letter, nor the extracts of newspapers which he incloses in it, furnish us with any sufficient materials for advising your Lordship to take any particular course of action with respect to the matter complained of in them.

To build ships in British ports, and sell them to either belligerent, as an article of commerce, is not, as we have already had the honour to observe, an act which infringes the rules of international law; nor is it, without more, sufficient to constitute a violation of any British law

If, subsequent to their construction and sale here, they have in some foreign port been equipped for war, that is not a matter with which Her Majesty's Government can in any way interfere.

The "Georgiana" was not shown, and does not appear to have been fitted out or equipped in such a manner or with such an intent as to justify her seizure when she left Liverpool. It does not now appear that she has guns fitted for belligerent purposes, or that she has received any at Nassau: it is at present all conjecture on the part of the Consul.

We cannot assume that the authorities at Nassau will permit the law to be broken there.

As to the allegation that Confederate cruizers are sheltered and assisted at Nassau and Jamaica, we have no evidence that they are not treated in these places upon precisely the same footing as Federal cruizers.

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As to the averment that there is connivance in these ports at expeditions of merchant-vessels destined to break the blockade, we are unable to understand exactly the nature of the offence imputed.

The neutral State lies under no obligation, and often, as in this case, has no power, to prevent merchant-vessels from sailing to blockaded ports: it is not her duty, but the duty of the belligerent, to preserve the blockade, and to capture vessels endeavouring to violate it.

It would be proper to give instructions to watch the construction of the "South Carolina" in the Clyde, and the proceedings of Captain Davison with respect to her. But at present we are not in a condition to offer further advice.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 160.

The Law Officers of the Crown to Earl Russell.—(*Received April* 21.)

Temple, April 21, 1863.

My Lord,

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 9th instant, stating that with reference to our Reports of the 2nd and 30th March last,* on the subject of the intercepted correspondence, which Mr. Adams states goes to show a deliberate attempt to establish within the limits of the United Kingdom a system of action in direct hostility to the Government of the United States, he (Mr. Hammond) was directed by your Lordship to transmit to us, together with the previous papers, a further letter, dated the 6th April instant, which has been received from Mr. Adams in reply to one founded on our Report of the 30th ultimo, which your Lordship addressed to him on the 2nd instant; and Mr. Hammond was to request that we would take the same into consideration, and furnish your Lordship with any observations we may have to make thereupon.

In obedience to your Lordship's commands we have taken these further papers (together with the former ones) into consideration, and have the honour to report—

That the letter of Mr. Adams would appear to be properly answered by an acknowledgment of its having been received, and by a simple statement that your Lordship, while entirely assenting to the principles laid down in the authorities to which he refers, is still unable to perceive their application to any facts which have occurred in this country within the cognizance of Her Majesty's Government; no evidence having, as yet, been furnished to the Government of any abuse of Her Majesty's territory, "for the conduct of the war directly from her ports," as distinguished from mercantile dealings in shipping, or other articles, contraband of war; which acts ought not, in our opinion, to be confounded with warlike adventures or operations, the character of which Mr. Adams seeks to ascribe to them. We conceive that any transaction between a belligerent and a neutral which would have been of a commercial nature if it had taken place within the territory of the belligerent, is still of a commercial nature when it takes place within the territory of the neutral. Nor can we perceive how the character of such a transaction is capable of being affected by the circumstance that the ports of the belligerent Power concerned therein may, at the time, be rendered difficult of access by means of a blockade.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

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* Pages 61 and 89.

No. 161.

The Law Officers of the Crown to Earl Russell.—(*Received April* 23.)

Temple, April 22, 1863.

My Lord,

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 14th April instant, stating that he was directed to transmit to us a letter (dated the 13th April), and its inclosures, from Mr. William T. Grazebrook, of Liverpool, calling your Lordship's attention to the seizure of his vessel, the "Dolphin," by the United States' steamer "Wachusetts," off the Island of St. Thomas, and requesting that steps may be taken to obtain her immediate release with compensation; and to request that we would take this case into consideration, and furnish your Lordship with our opinion thereupon.

We are also honoured with Mr. Hammond's letter of the 15th April instant, stating that he was directed to transmit to us a letter from the Admiralty, inclosing a copy of a Report on this case which has been made by Commander Williams, the Mail Agent on board the contract steamer "Atrato;" and to request that we would take the same into consideration, and furnish your Lordship with our opinion as to the right of the belligerent cruizer to take men out of the neutral ship, as appears to have been done in this case.

We are also honoured with Mr. Hammond's letter of the 16th April instant, transmitting a letter dated the 15th April, from the General Post Office, inclosing a Report addressed to the Postmaster-General by the Mail Agent on board the "Atrato," respecting this case, and a further letter dated the 15th of April from Mr. Grazewood, inclosing attested copies of protests made before the British Consul at St. Thomas and a Notary Public at Liverpool; and also a correspondence respecting the proceedings of the United States' cruizer "Tuscarora" in the case of the British merchant steamer "Thistle," which formed the subject of the Queen's Advocate's Report of the 6th January last,* and to call our attention to the notes which passed between Lord Lyons and Mr. Seward in regard to the manner in which the Commander of the "Tuscarora" had exercised the belligerent right of visit in that case.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That as far as we can form any opinion upon the papers submitted to us the "Dolphin" appears to have been improperly seized; and we think that Lord Lyons may be instructed to represent the case to the United States' Government with a view to obtain the release of the vessel, unless some valid ground for taking her before a Prize Court be assigned. It is possible, however, that there may be circumstances of which your Lordship, and perhaps the owner, has not been informed, in the conduct of the master, which may, notwithstanding the papers on board, have justified the detention of the vessel. But, if we correctly understand the statement of Commander Williams, the United States' steamer "Wachusetts" was guilty of a grave offence against neutral rights in using a neutral port as a place wherefrom to capture vessels of another neutral State as they passed the limits of three miles from the shore of that port.

This is a very gross abuse (as we have before had occasion to observe) of the power of the belligerent, and identical with that committed by the "Tuscarora," and since, as we collect from these papers, apologized for by the United States' Government.

Moreover, the taking out sixteen of the crew of the "Dolphin," and treating them as prisoners of war, is an additional injury inflicted upon neutral rights. Such a course could only be justified by a well-founded apprehension on the part of the belligerent that the crew of the captured vessel were about to overpower their captor and to escape with their vessel. There appears to exist no such justification in the present case, all the circumstances of which, taken together, constitute a strong *primâ facie* case of unwarrantable conduct on the part of the captor.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

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* Page 7.

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No. 162.

The Law Officers of the Crown to Earl Russell.—(Received April 23.)

Temple, April 22, 1863.

My Lord,

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 18th April instant, stating that he was directed by your Lordship to transmit to us, therewith, a letter from Mr. Harding, one of the parties interested in the steamer "Peterhoff," inclosing a copy of a letter, exhibited in Lloyds' Room, from Mr. Adams to the Federal Admiral Dupont, being in the nature of a safe-conduct for a vessel proceeding to Matamoros, and inclosing also other papers respecting the case of the "Peterhoff."

Mr. Hammond was also pleased to send with the above-mentioned papers those which we have already had before us in the case of the "Peterhoff," together with the instructions given to Lord Lyons, and the communications made to various parties founded on our Report of the 1st instant,* together with some further despatches received from Lord Lyons and Mr. Consul Archibald; and to request that we would take the statements in Mr. Harding's letter and its inclosure, together with those contained in other papers then sent us, into our early consideration, and favour your Lordship with any observations and suggestions which might occur to us on the matter to which they relate.

We are also honoured with your Lordship's commands signified in Mr. Hammond's letter of the 20th April instant, stating that with reference to his letter of the 18th instant he was directed by your Lordship to transmit to us a despatch which had been that day received from Her Majesty's Minister at Washington (No. 291), inclosing copies of further correspondence respecting the case of the "Peterhoff," as well as two despatches from Her Majesty's Consul at New York (Nos. 68 and 69) on the same subject, and to request that we would take these papers into our consideration, and favour your Lordship with our observations thereupon.

Mr. Hammond was further pleased, in a note of the 21st April instant, to state that he was directed by your Lordship to transmit to us the accompanying despatch from Her Majesty's Consul at New York (No. 57, March 30th) to be added to the papers which were inclosed in his letter of the 18th instant relative to the case of the "Peterhoff."

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That the further papers now submitted to us tend to confirm the opinion which we had the honour to express in our former Report, that the circumstances of this case justify Lord Lyons in applying for the immediate release of the captured vessel, with proper compensation. If, as is probable, the case be nevertheless submitted to the adjudication of the Prize Court, it should be carefully watched in its progress before that tribunal; as upon the present evidence the mere restitution of the vessel without proper costs and damages would be a matter for the serious consideration of Her Majesty's Government.

The extract from the letter of Mr. Adams to Admiral Dupont appears to us to raise a question of a very grave and important character. It is, as far as we are aware, an entirely novel proceeding on the part of an Ambassador accredited to Her Majesty to hold interviews with Her Majesty's subjects, to examine their commercial speculations, and to grant certificates of their lawfulness addressed to the Commanders of the navy of the country which he represents. The practice appears to us to be not only without precedent but to be open to the most grave objections on principle.

In the first place such a practice has a manifest tendency to lower the respect due to the Ambassadorial office, the duties of which Mr. Adams has so ably discharged in this country. The relations of the Ambassador of a foreign State are with the Government and not with the private subjects of the State to which he is accredited.

Separate communications and special arrangements between the United States' Ambassador and certain merchants of Great Britain are wholly inconsistent with the impartiality which ought to characterize all official intercourse which may be necessary between the Representative of a foreign State and the individual subjects of the Court in which he is called upon to exercise the functions incident to his high office.

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* Page 98.

He becomes the patron or partisan of a particular firm of merchants; other merchants, either from a consciousness of the integrity of their conduct, or from unwillingness or inability to approach the Ambassador, or from other causes (into which we need not more particularly enter) suffer, in consequence of the favour shown to their competitors, great damage, both as to obtaining insurances in this country and also as to the risk they incur of an unjust capture, because they have not the certificate of the Ambassador. This observation leads us to the next consideration. The position of Ambassador of a belligerent granting certificates or safe-conducts to certain merchants of a neutral State tends to disturb in the most serious manner the legal relations between the belligerent and the neutral.

It is the right of the belligerent to visit the neutral vessel on the high seas, and if the result of this visitation be that the ship presents from her papers, or her cargo, or her condition, real *bonâ fide* grounds for suspecting that she is engaged in traffic prohibited by international law to a neutral vessel (which is the meaning of the expression "reasonably suspected," used in our former Report on the case of the "Peterhoff"), then to proceed from visitation to capture, and to take the vessel into a belligerent port, in order that she may undergo her trial in the Prize Court. It is the corresponding duty of the neutral ship to submit to this visitation and capture, because she has herself presented just and fair grounds of suspicion that she has so conducted herself as to have forfeited her neutral character. But if the grounds upon which this right of capture is allowed, do not exist; if it is not pretended (or cannot without manifest dishonesty be pretended) that upon visitation the ship herself has furnished a legal justification for seizure, the act of capture becomes a severe oppression and injustice, and a gross violation of neutral rights, even though the Prize Court condemn the captor in costs and damages; but if this be not done, it becomes an intolerable injustice. If the seizure be made upon the ground not of the state of the vessel herself but upon evidence derived, as lawyers say, *aliunde*—for instance on the ground that the name of the vessel is on a list of suspected vessels, or is not on a list of favoured vessels, or not armed with a certificate furnished by the Ambassador at the Court of the neutral—if the seizure be so justified, then those principles of international law, which found equally the right of the belligerent and the obligation of the neutral, are set at nought, and the only consequence must be that neutrality will become impossible.

No independent nation will remain neutral in order that she may suffer, without retaliation or compensation, all the privations of war.

We cannot conclude this Report without expressing our serious apprehension (founded upon late occurrences) that Admiral Wilkes is now acting towards British vessels on this system, although the pretension to do so was last year disclaimed by the United States' Government; and it is our duty to say that it is a system against which, if it should be avowed or proved, British subjects have a right to be protected.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 163.

The Law Officers of the Crown to Earl Russell.—(Received April 23.)

Temple, April 22, 1863.

My Lord,

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 15th April instant, stating that he was directed to transmit to us a letter from Messrs. Bennet and Wake, calling your Lordship's attention to the fact of merchant-vessels being allowed to clear from New York to the port of Matamoros; and to request that we would take this fact into consideration, and furnish your Lordship with our opinion thereupon, with reference to its bearing upon the case of the "Peterhoff," and of any other vessels which may be under engagement to proceed from this country to Matamoros.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That it does not appear that British vessels are refused clearances from New York to Matamoros, or that these United States' vessels would not be seized and detained if suspected of an illegal destination to a blockaded port. The mere fact of the advertisement of the United States' vessels about to run from New York to Matamoros, unless it can be shown that British vessels are not allowed so to advertise, does not, of course, furnish ground for any remonstrance on the part of Her Majesty's Government.

Such a fact, however, coupled with a manifest unjust seizure of innocent British vessels, and the non-seizure of United States' vessels bound to the same port, and carrying on the same commerce, may fairly be made use of in any remonstrances addressed by Her Majesty's Government to that of the United States, upon cases where the seizure is admitted, or proved, to be unjustifiable. At the same time, it is to be observed that the United States' Government cannot be supposed to claim the right to stop the trade between this country and Matamoros, in the case of vessels having no other destination; and, therefore, the fact that they treat such a trading as legal at New York is irrelevant to any question which recent captures may raise.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 164.

The Law Officers of the Crown to Earl Russell.—(Received April 23.)

Temple, April 23, 1863.

My Lord,

United States.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letters of the 21st April instant, stating that he was directed by your Lordship to transmit to us a letter of the same date, from Messrs. Gregory and Champion, calling your Lordship's attention to the detention and imprisonment at New York of Mr. Elsworth and Mr. Redgate (members of the firm of Messrs. Galbraith, Redgate and Co., of London and Glasgow), who were passengers for Matamoros on board the British steamer "Peterhoff," and Messrs. Gregory and Champion requested that directions might be given for obtaining from the United States' Government some compensation for the losses sustained by Mr. Elsworth and Mr. Redgate through the wrongful acts of that Government.

Mr. Hammond was also pleased to state that, in requesting us to take this claim into our consideration, and to favour your Lordship, at our earliest convenience with our opinion thereupon, he was to refer us specially to the explanation made by Mr. Seward to Lord Lyons, which we would find among the "Peterhoff" papers then before us, that the persons who were taken out of the "Peterhoff" and were detained at New York, were so detained, in order that they might give the necessary evidence before the Prize Court.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That the detention of Mr. Elsworth and Mr. Redgate appears to us, as far as we can judge from the statements before us, to warrant Her Majesty's Government in requesting Lord Lyons to make a special representation to the United States' Government of the damage which the detention, apparently unjustifiable, of these gentlemen, has inflicted upon the firm of Messrs. Galbraith and Co., as well as the injury inflicted upon Mr. Redgate by his imprisonment at New York.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 165.

The Law Officers of the Crown to Earl Russell.—(Received April 24.)

Temple, April 24, 1863.

My Lord,

United States.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 6th instant, stating that he was directed by your Lordship to transmit to us a letter dated the 4th instant, from the United States' Minister at this Court, inclosing a copy of an affidavit which has been voluntarily made by J. Clarence Randolph Yonge, the late paymaster of the Confederate vessel "Alabama," giving an account of the circumstances attending the building, fitting out, and proceedings of that vessel until the termination of his connection with her; and Mr. Hammond was to request that we would take the same into consideration, and furnish your Lordship with our opinion whether any of the persons mentioned in Yonge's statement can be prosecuted under the Foreign Enlistment Act.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That the evidence of Yonge, considered in connection with that of Passmore in the "Alabama" case, as originally transmitted by Mr. Adams to your Lordship, tends strongly to show that Captains Bullock and Butcher have been actively concerued not only in superintending the construction of vessels of war at Liverpool, but also in inducing Her Majesty's subjects to serve in the navy of the Confederate States.

We do not, howevor, think that the evidence of Yonge is sufficiently precise as to acts done within the dominions of Her Majesty to make it safe to rely upon that evidence for a conviction of these persons, if prosecuted under the Act; but the evidence is important as in aid of the prosecution pending in the case of the "Alexandra;" and we think the subject is one to which the attention of Her Majesty's Government ought to be directed, with a view to prevent so serious a violation of the laws and neutrality of this realm as is involved in the enlistment by the agents of the Confederate States of Her Majesty's subjects in this country.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 166.

The Queen's Advocate to Earl Russell.—(Received April 25.)

Doctors' Commons, April 24, 1863.

My Lord,

United States.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 17th instant stating that, with reference to my Report of the 2nd ultimo,* respecting the case of Captain Sherwin, he was directed by your Lordship to transmit to us, together with the draft of the instruction which was addressed to Lord Lyons founded thereupon (No. 124, March 7th), a letter from his Lordship dated the 24th March ultimo, stating his reasons for doubting the expediency of his addressing to Mr. Seward a note entirely in the sense of that instruction.

Mr. Hammond was accordingly to request that I would take Lord Lyons' letter into consideration, and furnish your Lordship with my opinion on the points to which Lord Lyons calls attention.

The previous papers were also inclosed for reference if required.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I am of opinion that the instructions already sent to Lord Lyons are, with an exception presently to be mentioned, proper and sufficient.

First, I think the remonstrance as to the alleged ground of imprisonment properly expressed.

Whether the United States' Government, originally or subsequently, declared that the ground of his arrest was a charge of high treason does not

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* Page 60.

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appear to me to affect at all the nature of the remonstrance which should be addressed to them.

Captain Sherwin was arbitrarily arrested for aiding the "rebels;" he was then transferred from military to civil custody, and (see Mr. Seward's letter, January 17, 1863,) eventually discharged, because the Attorney for the United States, "after a deliberate investigation of the case, determined that at present he cannot probably be successfully prosecuted for treason against the United States."

I am unable to discriminate the original charge of aiding the "rebels" from the subsequent expansion of it into the charge of "high treason." At all events, the whole imprisonment, military and civil, proceeded upon grounds found to be legally untenable, and which were therefore abandoned.

Secondly, I state there that the charge preferred by Mr. Seward on the 17th of January was vague, and that the vagueness was not cured by the preceding note of the 11th of November, in which it was stated that cargo purchased ostensibly for a lawful trade "*was believed*" to have an unlawful destination.

As to the third point, it appears that the remonstrance which Lord Lyons was instructed to make was, for the sufficient reason which his Lordship states, never delivered. That portion of the instruction would therefore, of course, be modified by Lord Lyons.

As to the fourth point, if no further peculiar circumstances have arisen which in the opinion of Lord Lyons warrant these arbitrary proceedings, then the contingency which that portion of the instructions was adapted to meet does not apply, and no embarrassment can arise from it to Lord Lyons.

As to the fifth point, I am clearly of opinion that Her Majesty's Government cannot reasonably dispute the authority of the United States' Government to suspend, impartially as to all persons, the Habeas Corpus Act, and therefore no objection to the instruction arises upon this ground.

Upon the whole I am of opinion that Lord Lyons should be requested to act upon the original instructions, with the exception of that part which relates to the continuance of the imprisonment after the remonstrance of Her Majesty's Government.

Lastly, it is to be observed that of course Lord Lyons will not be tied to a verbal adhesion to the terms of the instructions, and will use some discretion in the mode and form of pressing upon the United States the particular points of them.

Substantially, with the exception mentioned they appear to me adequate and proper.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 167.

The Law Officers of the Crown to Earl Russell.—(*Received April* 25.)

Temple, April 24, 1863.

My Lord,

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 18th instant, stating that he was directed by your Lordship to transmit to us a despatch from Her Majesty's Consul at Baltimore (No. 8, 30th of March) relative to questionable transfers which are being made of vessels from the American to the British flag; and to request that we would take this matter into consideration, and furnish your Lordship with any observations which we may have to offer thereupon.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we see no reason for the interference of Her Majesty's Government in the matter of the transfer of vessels from the United States' to British owners.

Vessels so transferred incur the risk of capture by Confederate cruizers; and both the reality and the lawfulness of such transfers may be questions raised hereafter in the Prize Courts of the Confederate States.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 168.

The Law Officers of the Crown to Earl Russell.—(*Received April* 25.)

Temple, April 24, 1863.

My Lord,

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 17th instant stating that he was directed by your Lordship to state to us, with reference to our Report of the 12th of November last,[*] respecting the course which it would be proper to pursue with regard to the prisoner accused of the murder at Gibraltar of the principal officer of the "Sumter" steamer, that a copy of our Report was sent on the following day to the War Office, who were at the same time informed of the grounds upon which Her Majesty's Government were of opinion that the "Sumter" was entitled to be regarded as a man-of-war.

That it was afterwards thought advisable to ascertain from the Confederate Government what course it was desired should be pursued with regard to the prisoner, and accordingly, on the 30th of December last, Her Majesty's Consul at Richmond was instructed to ascertain in what manner that Government would wish the case to be dealt with.

That Mr. Consul Moore's despatch conveying the answer of the Confederate Secretary of State was received in due course at the Foreign Office, and was communicated to the War Office, by whom it was forwarded in copy to the Governor of Gibraltar.

That we should observe from the papers sent therewith[†] that Mr. Benjamin, the Confederate Secretary of State, has stated that a Confederate ship of war will be instructed to proceed to Gibraltar and bring away the prisoner, but offers the alternative of his being transported in a British ship of war to the Southern States, in order that he may be tried by the Confederate tribunals.

That the Governor of Gibraltar, however, regards this as a strong, if not an illegal measure, and he requests that he may be furnished with express and specific instructions as to whether he should, irrespectively of any legal opinion, deliver the prisoner over, as proposed by Mr. Benjamin.

Mr. Hammond was accordingly to request that we would take this case again into consideration, and furnish your Lordship with our opinion as to the instructions which should be addressed to the Governor of Gibraltar.

In obedience to your Lordship's commands we have taken this case again into consideration, and have the honour to report—

That we are afraid that neither of the two courses suggested by the Confederate Secretary is free from difficulty and embarrassment; but that on the whole we are of opinion that it would be most expedient to send the prisoner on board one of Her Majesty's ships of war to a port of the Confederate States, in order that he may undergo his trial for murder.

The right of the belligerent to prevent the entrance of neutral vessels of commerce into a blockaded port does not extend to ships of war belonging to a neutral State.

The neutral Government has a right to hold communication with the belligerent whose port is blockaded; and the reason of the belligerent right of blockade does not apply to a neutral ship of war, which is bound, of course, to carry no merchandize or relief to the blockaded port. The abstract right of the neutral ship of war to enter the port, however wise it may be to abstain from the exercise of it, cannot be questioned.

We believe, moreover, that during this war the right of a neutral ship of

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[*] See Reports for 1862, page 275.

[†] War Office, November 3; Admiralty, November 4; to War Office, November 13; War Office, December 6 and December 18; to War Office, December 30; to Consul Moore, No. 13; Consul Moore, No. 14; to War Office, March 24; War Office, April 11.

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war to pass through the blockading lines has not been questioned, and that it has not been waived or controlled by a contrary usage; and if so, the ship which conveys the prisoner should abstain from any communication with any United States' ship, as to the cause of her visit to the blockaded port.

If we are wrong in this belief, and if the invariable usage has been during this war for the neutral ship of war to communicate with the blockading force previously to entering the blockaded port, then the captain of the conveying ship must apprize the proper officer of the blockading force that he is conveying a prisoner charged with having committed murder while on board a Confederate ship of war in one of Her Majesty's ports; but all further and more detailed communication should be avoided, as likely to raise irritating questions in connection with the particular vessel the "Sumter," on board of which the crime is alleged to have been committed.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 169.

The Queen's Advocate to Earl Russell.—(Received April 25.)

Doctors' Commons, April 25, 1863.

My Lord,

SIAM.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 23rd April instant, stating that he was directed to transmit to me, with reference to my Report of the 9th September last* respecting the proceeding of Sir R. Schomburgk, Her Majesty's Consul at Bangkok, in regard to the British barque "Canada," together with the previous papers, and with the correspondence which has since passed between the Foreign Office, the Board of Trade, and Sir R. Schomburgk, in relation to this case, a letter dated the 18th April instant, from Messrs. Clarkson, Son, and Cooper, requesting that your Lordship will instruct Her Majesty's Consul to remit to the Registrar of the High Court of Admiralty the proceeds arising from the sale of the "Canada;" and to request that I would take this case into consideration and furnish your Lordship with my opinion as to the answer which should be returned to Messrs. Clarkson, Son, and Cooper, and as to any further proceedings which should be taken by Her Majesty's Government in this case.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I think there is no necessity for the intervention of Her Majesty's Government in this matter. Messrs. Clarkson, Son, and Cooper should institute a suit in the High Court of Admiralty on behalf of the mortgagee, against the proceeds of the ship in the hands of the Consul.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 170.

The Law Officers of the Crown to Earl Russell.—(Received April 25.)

Temple, April 25, 1863.

My Lord,

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 25th April instant, stating that he was directed to call our attention to the passages in Mr. Seward's letter to the Secretary of the United States' Navy, dated August 8, 1862, in which Mr. Seward lays down rules for dealing with mail-bags found on board captured vessels; and to request that we would take the same into consideration, and report to your Lordship our opinion as to whether the course pointed out by Mr. Seward is justified by the law of nations.

In obedience to your Lordship's commands we have taken this letter into consideration, and have the honour to report—

That we are unable to give any other answer than the following to your Lordship's letter:—

The practice of sending Government mails by commercial vessels is of comparatively modern date, and gives rise to questions to the solution of which it is difficult to apply with perfect precision the principles of international law as expounded in books of authority, or as hitherto established in practice. We think that in these circumstances no general and positive rule applicable to mail-bags sealed with Her Majesty's seals can be laid down as certainly established by international law. But we think that, having regard to the comity due from one friendly State to another, and to the credit which ought to be given to the seal of the neutral Sovereign, mail-bags so authenticated addressed to a neutral destination, and not open to any reasonable suspicion of having been tampered with, ought not to be opened by any belligerent Power, but ought, in the case of the capture of the vessel conveying them, to be forwarded to their proper destination.

We think that in such cases Her Majesty's Government should not be parties to any understanding that the mail-bags shall be opened, except at their proper destination; and we think that Her Majesty's Government cannot undertake that at any time the seal of private letters in these mail-bags having a neutral address should be broken for the purpose of ascertaining their contents.

With respect to bags addressed to persons resident in either of the belligerent States the case is different. As to these, we think that the instructions given by Mr. Seward in his letter of the 8th of August, 1862, to Mr. Welles, concedes as much as Her Majesty's Government can reasonably require. It would therefore follow that, in our opinion, some discretion must be left in such cases to Her Majesty's Consuls or officers to whom the bags may be delivered, to open them and to determine, as far as possible from the addresses of the letters, whether any of them are of such a character that the existence of them ought to be communicated to the Secretary of State at Washington; leaving him to require, if he thinks fit, that such letters themselves should be sent to him.

It is possible, also, that in bags having a neutral destination, there might be found on their being opened, packets or letters addressed to persons in the belligerent States of a character similar to those of which we have last spoken. As to these it is impossible to avoid questions of considerable difficulty, but we doubt whether it could be safely laid down that the stipulation of the United States' Government for the transmission to it, in the circumstances supposed, of such letters is unreasonable or contrary to the principles of international law.

If, however, Her Majesty's Government should think it necessary to insist upon the position that all bags bearing Her Majesty's seal, with a neutral destination, are to be deemed inviolable, whatever may be the ulterior destination of any of the letters which they contain, we are not aware of any authority which can be said directly to militate against that position, but we regard the assertion of such a claim as a matter of policy rather than of law.

Mr. Seward's letter to Mr. Welles proceeds upon a principle which is clearly right so far as it provides for the delivery of mail-bags, with the seals unbroken, to Her Majesty's Agents. With respect to the terms on which, according to that letter, such delivery is to be made, we are not sure whether they are intended in a sense consistent or inconsistent with the opinion which we have expressed as to the course proper to be pursued by Her Majesty's Government. And we think it desirable that an understanding should be arrived at on this subject before Her Majesty's Agents in the United States are instructed to act according to the tenor of that letter.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

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* See Reports for 1862, page 219.

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No. 171.

The Law Officers of the Crown to Earl Russell.—(*Received April* 27.)

UNITED STATES.

Temple, April 27, 1863.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 21st April instant, stating that, with reference to his letters of the 14th and 15th instant, he was directed by your Lordship to transmit to us a further letter, dated the 21st April instant, from Mr. Grazebrook, respecting the case of his vessel the "Dolphin;" and to request that we would take the same into our consideration, together with the other papers in the case then before us, and favour your Lordship with our opinion thereupon.

Mr. Hammond was also pleased to request that our Report might likewise be directed to the case of the "Adler," so that your Lordship might be enabled to return an answer to Mr. Grazebrook on that particular point.

In obedience to your Lordship's commands we have the honour to report—

That we have taken into our consideration the letter of Mr. Hammond of the 21st instant, inclosing a letter from Mr. Grazebrook, both received since our Report was written. With respect to the "Dolphin," we have nothing to add to our Report upon that subject which we have had the honour to make.

With respect to the "Adler," we think an answer should be sent to Mr. Grazebrook to the effect that Her Majesty's Government can make no promise of affording any special protection to that vessel; that they will not fail to protect, according to the principles of international law, and in the proper manner, the vessels of all Her Majesty's subjects engaged in a lawful trade, and observing the obligations of neutrality.

We have, &c.

(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 172.

The Queen's Advocate to Earl Russell.—(*Received April* 27.)

UNITED STATES.

Doctors' Commons, April 27, 1863.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 18th instant, stating that he was directed by your Lordship to transmit to me a letter dated the 19th March ultimo, from Mr. Wylie, of the firm of Messrs. Crow, Wylie, and Co., addressed to Mr. Horsfall (by whom it was communicated to your Lordship), relative to Mr. Wylie's endeavours to place in security certain timber owned by him at Pensacola; and Mr. Hammond was to request that I would take this letter into consideration, together with the inclosed correspondence* which took place last year between the Foreign Office, Lord Lyons, and Messrs. Crow, Wylie, and Co., on the same subject, and furnish your Lordship with my opinion as to any further steps which it would be desirable should be taken with the view of rescuing Messrs. Crow, Wylie, and Co.'s property.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That in this case the timber in question appears to have been purchased some months before the war broke out, the greater part of it to have been sold in England, the ships destined to convey it to have appeared off the port soon after the blockade had begun, and it does not seem to be doubted that this property belongs *bonâ fide* to one of Her Majesty's subjects.

It would, therefore, be in accordance with established usage to permit the export of this timber, and I do not see clearly upon what definite grounds this permission is refused.

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* Messrs. Crow and Wylie, May 7, 1862; to Lord Lyons, No. 205, May 9, 1862; to Messrs. Crow and Wylie, May 9, 1862; Lord Lyons, No. 373, May 27, 1862; to Messrs. Crow and Wylie, June 20, 1862; Mr. Stuart, No. 155, August 15; No. 168, August 19, 1852; to Messrs. Crow and Wylie, September 15, 1862; Lord Lyons, No. 521, December 17, 1862.

I presume it will be alleged that the military exigencies of the United States render the refusal for the present necessary.

Such a general answer, however, would be very unsatisfactory, and the United States' Government may fairly be required to state some particular reasons why the subject of a neutral and friendly State should not be allowed to take away property purchased before the beginning both of the war and the blockade, and unconnected with the enemy of the United States.

Having regard to what has already been done by Lord Lyons, I can only advise that he should be instructed not to allow the matter to sleep, but using his discretion as to the time to press the claim of Messrs. Crow to remove their timber, again upon the United States' Government, pointing out that it is difficult to understand upon what legitimate grounds the claim is rejected.

I have, &c.

(Signed) ROBERT PHILLIMORE.

No. 173.

The Queen's Advocate to Earl Russell.—(*Received April* 27.)

UNITED STATES.

Doctors' Commons, April 27, 1863.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 23rd instant, stating that with reference to my Report of the 7th ultimo,* respecting the validity of the blockade of Galveston and Charleston, he was directed by your Lordship to transmit to me, together with the previous papers, a despatch from Her Majesty's Consul at Galveston (No. 6 of the 29th of January, 1863), inclosing a proclamation issued by General Magruder, announcing that the ports of Sabine Pass, Lavaca, and Valasco, have ceased to be blockaded, and also one issued by the Commander of the United States' steamer "Brooklyn," declaring the whole coast of Texas to be still under blockade; and Mr. Hammond was to request that I would take these papers into consideration, and furnish your Lordship with my opinion as to whether it would be advisable for Her Majesty's Government to take any notice of these proclamations.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I am opinion that it would not at present be advisable that Her Majesty's Government should take any official notice in this country of the proclamations referred to.

I have, &c.

(Signed) ROBERT PHILLIMORE.

No. 174.

The Queen's Advocate to Earl Russell.—(*Received April* 27.)

UNITED STATES.

Doctors' Commons, April 27, 1863.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 23rd instant, stating that he was directed by your Lordship to transmit to me a letter dated the 24th March ultimo, from Mr. J. W. Franklin, *alias* Charles Lewis, claiming redress on account of his forcible abduction from British territory on the 19th April, 1861, and the imprisonment he subsequently underwent in consequence of his having been convicted in an American Court on a charge of larceny.

Mr. Hammond was also pleased to transmit to me a despatch (No. 47 of the 6th July, 1862), and its inclosures, which were received some months ago from Her Majesty's Chargé d'Affaires at Washington, respecting this case; and was to request that I would take the same into consideration, and report to your Lordship my opinion thereupon.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

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* Page 67.

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That, in my opinion, Her Majesty's Government ought not to interfere in this matter.

It is certain that this man committed the larceny for which he is undergoing imprisonment.

It is doubtful whether he was forcibly or voluntarily brought within the jurisdiction of the United States' Court which passed sentence upon him.

The evidence mentioned in Mr. Consul Murray's despatch does not amount to adequate legal proof of compulsory abduction from a British territory.

At all events the objection to the jurisdiction ought to have been, and might have been urged at the time of the trial.

It was never urged, but the defence was an averment of innocence, subsequently, it should seem, retracted.

The man was not *inops consilii*, but fairly protected by an advocate, who appears to have quite disharged his duty towards his client.

I see no ground for the interference of Her Majesty's Government.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 175.

The Queen's Advocate to Earl Russell.—(Received April 28.)

Doctors' Commons, April 27, 1863.

United States.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 24th instant, stating that with reference to my Report of the 10th of October last,* respecting the imprisonment of Mr. Francis Carroll, he (Mr. Hammond) was directed by your Lordship to transmit to me, together with the previous papers, a despatch from Her Majesty's Minister at Washington (No. 281, April 7th), inclosing copies of his further correspondence respecting this case.

Mr. Hammond was pleased to state that I should observe that after considerable delay, Mr. Carroll has been released from confinement, and that he now seeks to obtain an indemnity from the United States' Government.

And Mr. Hammond was to request that I would again take this case into consideration, and report to your Lordship my opinion whether Mr. Carroll's claim to receive an indemnity should be supported by Her Majesty's Government.

In obedience to your Lordship's commands I have again taken this case into consideration, and have the honour to report—

That the original imprisonment of this person appears to have been caused by the extreme violence of his language (though perhaps maliciously reported by his enemies) against the United States' Government, at a time when the necessities of the State had rendered necessary the general suspension of the Habeas Corpus Act.

Her Majesty's Government requested the United States' authorities to release him. They offered to do so, if he would find a guarantee for his good conduct, or leave the country.

Her Majesty's Government accepted the offer as reasonable, and as containing as large a concession as, in the circumstances, they could reasonably desire.

Mr. Carroll declined to avail himself of either alternative.

This imprisonment was *therefore* continued, and finally he is released upon terms which he considers more favourable to himself.

Looking at all the circumstances of the case, I do not advise your Lordship that Her Majesty's Government ought to support Mr. Carroll's claim for an indemnity against the United States' Government.

I have, &c.
(Signed) ROBERT PHILLIMORE.

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* See Reports for 1862, page 248.

No. 176.

The Law Officers of the Crown to Earl Russell.—(Received April 28.)

Temple, April 27, 1863.

United States.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 18th instant, stating that he was directed by your Lordship to transmit to us a despatch and its inclosures received from Lord Lyons (No. 276, March 31) respecting the case of the British barque "Springbok," whose capture while on a voyage from this country to Nassau formed the subject of our Reports of the 13th and 21st ultimo.*

Mr. Hammond was also pleased to state that he inclosed the previous papers and the drafts of the two instructions (Nos. 134 and 150) which have been already addressed to Lord Lyons respecting the "Springbok," and that he was directed by your Lordship to request that we would take the papers now received from Washington into our consideration, and favour your Lordship with our opinion as to any further instructions which should be addressed to Lord Lyons.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That Lord Lyons appears to have taken all the steps which could properly be taken in this case, and that we do not think any further instructions should be at present sent to his Lordship. The owners of the "Springbok" will of course take the necessary steps to establish the innocence of that vessel before the Prize Court, and apply under the advice of their Counsel for costs and damages.

As to the alleged stealing of the seamen's clothes, we presume this is a matter for which, if the statement be true, redress will not be withheld.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 177.

The Queen's Advocate to Earl Russell.—(Received April 30.)

Doctors' Commons, April 30, 1863.

United States.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 27th April instant, stating that he was directed to transmit to me the accompanying despatch from Her Majesty's Consul at New York (No. 78, April 14th), reporting the capture of the British vessel "Granite City" by the United States' ship of war "Tioga," and stating that the "Granite City" had been brought to New York, and, while waiting for the action of the Prize Court, taken by orders from Washington, for the service of the United States' Government; and Mr. Hammond was to request that I would take this case into consideration, and furnish your Lordship with my opinion thereupon.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I am of opinion that Lord Lyons should be instructed to address a formal remonstrance to the United States' Government against the appropriation by that Government of this vessel before *any* sentence of condemnation has been passed upon her.

It will be seen by the answer to that remonstrance whether the United States' Government have any valid reason to allege in justification of this act.

I think that in the case of the "Bermuda" (submitted to me January 28, 1863), it appeared from the opinion of Mr. Carlisle that the sale of a captured vessel, *even after condemnation* in the first Prize Court, pending an appeal, was contrary to the practice of the United States.

I have, &c.
(Signed) ROBERT PHILLIMORE.

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* Pages 69 and 80.

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No. 178.

The Queen's Advocate to Earl Russell.—(Received April 30.)

Doctors' Commons, April 30, 1863.

My Lord,

ITALY.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 29th instant, stating that he was directed by your Lordship to transmit to me a despatch from Her Majesty's Consul-General at Naples (No. 28, April 22), requesting instructions respecting a marriage which an English gentleman, named Townley, wishes to contract with an Italian lady of the Protestant religion. That a case similar to the present occurred in France in 1858; and Mr. Hammond was pleased to inclose therewith, together with the correspondence, an instruction which was addressed by the Earl of Malmesbury to Lord Cowley upon the subject, which instruction was founded upon a Report from Her Majesty's Advocate-General (Sir John Harding).

Mr. Hammond was to request that I would take the accompanying papers into consideration, and at my earliest convenience report to your Lordship my opinion as to the answer which it may be right and proper to return to Mr. Consul-General Bonham.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I agree with the opinion of my predecessor in office with respect to marriages of British subjects with foreigners in countries which permit a valid marriage to be contracted before proper authorities, whatever may be the religious faith of the contracting parties. I think, with him, that in such countries the marriage according to the *lex loci* should precede the marriage under the British Consular Act. But in the present case the *lex loci* does not sanction a marriage between a Roman Catholic and a member of the English Church; and I do not think that the Consul will do wrong in allowing the provisions of 12 & 13 Vict., cap. 68, to be put in force in behalf of these persons, both of whom desire to be so married, and both of whom are of full age, and who have complied with the requisitions of the 1st and 2nd sections of the above-cited Statute.

At the same time I think that the Consul should formally apprize the Italian lady that though the marrige will be holden valid throughout Her Majesty's dominions, it will, at present at least, be treated as invalid by Italian authorities in Italy, and probably in some other Continental States.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 179.

The Queen's Advocate to Earl Russell.—(Received April 30.)

Doctors' Commons, April 30, 1863.

My Lord,

SWEDEN.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 28th of April instant, stating that he was directed to transmit to me the accompanying despatches from Her Majesty's Minister at Stockholm (Nos. 44, 45, 49, and 59), relative to the arrival of the steam-vessel "Ward Jackson" in the port of Malmö, and to the embargo laid upon her by the Swedish Government, and with reference to the intimation contained in Mr. Jerningham's No. 59 of the 17th instant, that the owners of the vessel had applied to the British Vice-Consul at Malmö for assistance to obtain her release, Mr. Hammond was to request that I would inform your Lordship whether, in my opinion, Her Majesty's Government would, if formally applied to, be justified in making any application to the Swedish Government on behalf of the owners of the "Ward Jackson."

In obedience to your Lordship's commands I have the honour to report—

That taking into consideration all the circumstances of this case, I am of opinion that Her Majesty's Government would not be justified in making any

application to the Swedish Government on behalf of the owners of the "Ward Jackson."

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 180.

The Law Officers of the Crown to Earl Russell.—(Received May 1.)

Temple, April 30, 1863.

My Lord,

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 20th April instant, stating that he was directed to transmit to us, together with the previous correspondence which has passed on the subject, a letter dated the 15th April instant, from the United States' Minister at this Court, inclosing copies of depositions which have been made by two British subjects, who appear to have been solicited to take service on board the "Japan" or "Virginia," the vessel which recently left the Clyde with the supposed intention of acting hostilely against the United States. That Mr. Adams likewise incloses lists of the officers and men who left Liverpool to join this vessel, and of those who refused to take service on board of her; and Mr. Hammond was to request that we would take the papers into consideration, and furnish your Lordship with our opinion as to any steps which Her Majesty's Government can properly and legally take in the matter.

We are also honoured with Mr. Hammond's letter of the 21st April instant, transmitting a despatch from Her Majesty's Consul at Brest respecting this case.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That, in our opinion, it is not competent to Her Majesty's Government at present to take any steps in the matter to which Mr. Adams' despatch of the 15th April refers.

So far as relates to British seamen who have accepted the proposal made to them in French waters to engage in the belligerent service of the Confederate States, we think that they have offended against the second section of the Foreign Enlistment Act, and will be liable to be proceeded against for a misdemeanour, if they should be found within British jurisdiction; the first part of that section (which applies to the persons *entering into* such engagements) being in the form of an absolute prohibition, applicable generally to British subjects, without reference to the place where the act prohibited may be done. But inasmuch as these seamen are not, at present, within British jurisdiction, no steps can now be taken for their prosecution.

With respect to the seamen who have returned to this country, it seems clear that their conduct has been laudable and not criminal. They were induced by false and fraudulent representations to enter into engagements at Liverpool for a perfectly lawful voyage, and afterwards when apprised of the deception which had been practised upon them, and invited to enter an engagement of a different character, they refused to do so.

With respect to Captain Hitchcock and any other persons who may have been instrumental in inducing the crew of the "Japan" to take service in her before her departure from this country, it is clear that (howsoever censurable their conduct may have been) they did nothing contrary to the Foreign Enlistment Act; for it was not until the ship was in *French* waters that any proposal appears to have been made to any of the men to enter into the belligerent service of the Confederate Government, and the latter part of the first section of the Foreign Enlistment Act (which applies to the case of persons "*hiring, retaining, engaging, or procuring*" others to enter into the belligerent service of a foreign State) is expressly limited to acts done within the territorial jurisdiction of the British Crown.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

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No. 181.

The Law Officers of the Crown to Earl Russell.—(*Received May* 1.)

Temple, April 30, 1863.

My Lord,

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 7th April instant, stating that with reference to our Report of the 13th of February last, he was directed to transmit to us, together with the previous papers, a further despatch and its inclosures from Lord Lyons (No. 252, March 23), respecting the imprisonment of Captain Laurent, and that we should see from this despatch that Lord Lyons has suggested that evidence should be procured from England in order to prove that Captain Laurent is a British subject by birth; and Mr. Hammond was pleased to request that we would furnish your Lordship with our opinion as to the propriety of taking this step, and also with any observations we may have to offer on the case generally.

In obedience to your Lordship's commands we have taken this case into conssderation, and have the honour to report—

That we think your Lordship might properly cause evidence as to Captain Laurent's British birth to be procured, and, being authenticated as Lord Lyons suggests, to be transmitted to New York. Some statement or statements should be made in the statutable declarations to be sent out, *identifying* the person whose baptismal register is verified, as the individual of the *same* name on whose behalf the interference of Lord Lyons takes place.

It would appear from the letter of Captain Laurent (No. 12) that this gentleman's aunts, Miss Martha and Susan Mundy, are resident at Oxford; they, as well as Mr. Slatter the publisher, might be applied to and desired to procure a proper baptismal certificate, which is probably to be procured in the parish of St. Giles in that city.

It is desirable to procure this testimony in order to obtain the release of Captain Laurent from imprisonment, but if there be any record of his being forbidden to fly the United States' flag at Havana in June 1861, by the United States' Consul, and on the ground alleged, that evidence ought of itself to suffice to prove the injustice of detaining him longer on the ground of his being a citizen of the United States.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 182.

The Queen's Advocate to Earl Russell.—(*Received May* 2.)

Doctors' Commons, April 30, 1863.

My Lord,

BRAZIL.

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 29th instant, stating that with reference to my Reports of the 17th of November and 8th of December, 1862* (which Mr. Layard returned to me), he was directed by your Lordship to transmit to me a letter dated the 24th of April, ultimo, from Mr. Reed calling attention to a protest laid by Messrs. Bieber, against the seizure by the Brazilian authorities of property at Pernambuco, in connection with the bankruptcy of Messrs. Rostron and Co.; and that your Lordship apprehends that the Brazilian Government should be called upon to apply in this case the decision at which they ultimately arrived in the instance of the property at Bahia, but that there remains the question whether damage has not been done to the general creditors by the forced and illegal sale of the property; and Mr. Layard was to request that I would take this subject into consideration, and that I would report to your Lordship my opinion on the above-mentioned points, in time to enable your Lordship to furnish instructions on the subject to Mr. Eliot by the mail of the 8th of May.

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* See Reports for 1862, pages 282 and 305.

The previous papers connected with the case were returned for my information.

In obedience to your Lordship's commands I have taken this subject into consideration, and have the honour to report—

That I entirely agree in the opinion of your Lordship that the Brazilian Government should be required to apply to this case at Pernambuco the principles of the decision which after remonstrance from your Lordship they have arrived at with respect to the illegal sequestration of property at Bahia.

I infer from the letter of the Marquis of Abrantes to Mr. Christie (25th of February, 1863), that this request of Her Majesty's Government will be assented to by the Brazilian Government.

With regard to the question of damage inflicted by a forced sale of the assets of the estate, referred to in the letter of Mr. Layard, it does not appear that the sale has as yet actually taken place; nor does Mr. Reed at present request, on behalf of his client, compensation upon this ground.

It would, therefore, I think, be sufficient if your Lordship apprised Her Majesty's Representative at Rio de Janeiro that this is a question which Her Majesty's Government may be hereafter compelled to consider.

I have &c.
(Signed) ROBERT PHILLIMORE.

No. 183.

The Law Officers of the Crown to Earl Russell.—(*Received May* 2.)

Temple, May 1, 1863.

My Lord,

GREAT BRITAIN.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 21st March last, stating that he was directed to transmit to us a letter from the Admiralty, and a correspondence with the Colonial Office,* on a question asked by Vice-Admiral Milne as to the limits of the territorial jurisdiction of Great Britain over the Bahama Banks; and to request that we would take the same into consideration, with reference to our Reports of the 31st of October and 3rd of December last, on a similar question with regard to the reefs at Bermuda, and furnish your Lordship with our opinion as to the answer which should be returned to Vice-Admiral Milne.

In obedience to your Lordship's commands we have taken this correspondence into consideration, and have the honour to report—

That it is not easy, even with the aid of the charts which have been furnished us, to answer precisely the questions raised by Admiral Milne and his Grace the Duke of Newcastle.

In other words, though we have no doubt as to the general principles of the law which govern these questions, the application of them requires, to a certain extent at least, a practical knowledge of that locality, which we do not possess.

In answering these questions, moreover, we assume: 1st. That the Great Banks referred to have not been heretofore claimed, or in any sense occupied, as British territory. 2ndly. That (if in any part capable of being occupied and inhabited, which we do not suppose to be the case) they are uninhabited in fact.

Upon these assumptions we are of opinion that, as a general rule, British jurisdiction would not extend beyond the distance of three miles from an inhabited island or cay. This general proposition, however, must be subject to exceptions. For instance: any part of the Great Banks which may be inclosed within inhabited cays, though beyond the distance of three miles from each cay, might be considered within British jurisdiction. Any part of the Great Banks capable of sustaining a fort, which, if built, would command the entrance or threaten the security of an inhabited cay, might also be considered to be within British jurisdiction. In fact, having regard to the peculiar formation and position of these cays, we incline to adopt the expressions of Sir Frederic

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* Admiralty, January 29, 1863; to Colonial Office, February 27 and March 18, 1863.

Rogers in his letter to Mr. Hammond, that "the conditions of contiguity and dependence must be considered separately in each case or group of cases."

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 184.

The Law Officers of the Crown to Earl Russell.—(Received May 4.)

My Lord,

Temple, May 1, 1863.

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 23rd ultimo, stating that he was directed by your Lordship to transmit to us a letter dated the 22nd April ultimo, and its inclosures, from Mr. Robert Bowden, requesting Her Majesty's Government to claim for him from the United States' Government a compensation of 10,000*l.*, on account of his capture on board the "Peterhoff," and his subsequent ill-treatment by the United States' authorities, and to request that we would take Mr. Bowden's case into our consideration and favour Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we are clearly of opinion that Her Majesty's Government ought not to adopt Mr. Bowden's own estimate of the compensation which he claims, wholly unsupported as it is by any evidence. The claim for 10,000*l.* appears to us at present very extravagant. But at all events Mr. Bowden must set forth in a proper manner and form, accompanied by the necessary evidence, the exact pecuniary loss which he has sustained, and which he vaguely describes in his letter of the 22nd ultimo, as "the loss of profitable results to myself in the business in which I was engaged."

When the actual amount of positive loss has been ascertained, it will be for Her Majesty's Government to consider whether any, and if any what, addition should be made to the compensation (whatever that may be) proper to be claimed upon this ground, from consideration of the personal ill-treatment which Mr. Bowden alleges that he has suffered.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 185.

The Law Officers of the Crown to Earl Russell.—(Received May 5.)

My Lord,

Temple, May 4, 1863.

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 27th ultimo,* stating that with reference to our Report of the 16th ultimo, reporting that the proposed reply respecting the sale of the "Sumter," with certain additions to it which we had made in the margin, was proper to be sent, he was directed by your Lordship to transmit to us, together with the previous papers, a note from Mr. Adams, dated the 22nd April, by way of rejoinder to that reply, and to request that we would take the same into our consideration, and favour your Lordship with our opinion as to any further which should be made to Mr. Adams.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we think your Lordship should reply to Mr. Adams to the effect that your Lordship has not stated any intention on the part of Her Majesty's Government to deviate in the case of the "Sumter" from any acknowledged principles of international law, or from the exposition of those principles hitherto given in Courts administering that law. But that, on the contrary, it is the firm intention of Her Majesty's Government, both in the case of the "Sumter" and in every other case, to abide by those principles which they have hitherto most scrupulously maintained during the whole course of the present war.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

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* Page 119.

No. 186.

The Law Officers of the Crown to Earl Russell.—(Received May 7.)

My Lord,

Temple, May 6, 1863.

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 1st May instant, stating that he was directed to transmit to us therewith, with reference to our Report of the 25th ultimo,* two further despatches received from Lord Lyons respecting the case of the "Peterhoff" (Nos. 321 and 322). That it appears from those despatches that the Government of the United States will not restore the vessel without trial, but that they have ordered the proceedings to be pushed forward without delay. And that it further appears that the mails on board the "Peterhoff" are forthwith to be forwarded to their destination, and that, pending an attempt which is about to be made by the Government of the United States to come to some general understanding on the subject with Her Majesty's Government, the mails of friendly Powers, on board captured vessels, will be forwarded in like manner.

Mr. Hammond was also pleased to state that your Lordship would be glad to be informed whether, under these circumstances, any further instructions should be sent to Lord Lyons than to watch the proceedings in the case of the "Peterhoff," and report the result. The previous papers were inclosed for convenience of reference.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we are of opinion that in the present circumstances Lord Lyons should be instructed to watch the proceedings in the case of the "Peterhoff," and to report the result, but that no further instructions should at present be sent to his Lordship in this matter.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 187.

The Queen's Advocate to Earl Russell.—(Received May 7.)

My Lord,

Doctors' Commons, May 7, 1863.

UNITED STATES.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 6th instant, stating that with reference to the Law Officers' Reports of the 22nd and 27th ultimo,† respecting the case of the "Dolphin," he was directed by your Lordship to transmit to me, together with the previous papers, a letter, dated the 29th April ultimo, from Mr. Grazebrook, in which, among other things, he calls attention to the fact that the "Dolphin," with a prize crew on board, had called at Havana; and Mr. Grazebrook contends that this is in itself a ground for her release, inasmuch as, he states, two prizes of the Confederate steamer "Sumter," with prize crews on board, having been driven by stress of weather into Cienfuegos, in Cuba, was claimed by the American authorities, "and restored on the ground that Spain was neutral, and that prizes were not to be taken into neutral ports."

Mr. Hammond also transmitted to me as bearing upon this question, a despatch from Her Majesty's Consul-General in Cuba, dated the 17th of July,

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* Page 132.

† Pages 125 and 134.

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1861 (No. 28), reporting the arrival at Cienfuegos of a number of prizes from the Confederate cruizer "Sumter," and a despatch from Her Majesty's Chargé d'Affaires at Madrid, of the 20th of June (No. 104) of that year, inclosing, in original and translation, a Royal Decree which had appeared in the "Madrid Gazette," announcing the neutrality of Spain in the contest between the Federals and the Confederates, and specifying the conditions upon which prizes were allowed to be taken into Spanish ports.

Mr. Hammond was to request that I would take Mr. Grazebrook's letter into consideration, and furnish your Lordship with my opinion as to the answer which should be returned thereto.

Mr. Hammond was also pleased to inclose a despatch from the Acting Consul-General in Cuba (No. 10), reporting the arrival of the "Dolphin" at Havana.

In obedience to your Lordship's commands I have taken Mr. Grazebrook's letter, &c., into consideration, and have the honour to report—

That I humbly advise that an answer should be sent to Mr. Grazebrook to this effect:—that he has been misinformed as to the legal consequences which are supposed to follow from the fact that the "Dolphin" touched at Havana, a neutral port, on her way to Key West, a belligerent port.

If the prizes made by the Confederate steamer "Sumter" were ever restored by Spanish authorities to the Federal owners, the circumstances must have been materially different from those which attended, according to Mr. Grazebrook's statement, the touching of the "Dolphin" at Havana. That as to that part of his letter which relates to injuries alleged to have been inflicted upon the captain and engineer, they are matters which may be properly inquired into at Key West, where the "Dolphin" appears now to be; and that Her Majesty's Government will send proper instructions to Her Majesty's Consul at Key West, relative to the investigation of these complaints.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 188.

The Queen's Advocate to Earl Russell.—(Received May 7.)

Doctors' Commons, May 7, 1863.

My Lord,

UNITED STATES.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 4th May instant, stating that, with reference to my Report of the 2nd February last,* respecting the case of the "Telegraph," he was directed to return to me the previous papers, and a correspondence between Lord Lyons and Mr. Seward,† respecting the demand for compensation which I recommended should be claimed from the United States' Government on account of the detention of the "Telegraph," and the ill-treatment of the sailor W. Fisher; and to request that I would again take this case into consideration, and furnish your Lordship with my opinion upon the reasons assigned by Mr. Seward for declining to give compensation in this case.

In obedience to your Lordship's commands I have again taken this case into consideration, and have the honour to report—

That the apology offered by Mr. Seward for the act of the captor, in compelling the papers of the "Telegraph" to be taken on board his ship, is satisfactory. The admission that such an act is illegal may, if the present war should continue, be of great importance. The American recognition of this principle of international law has not, during former wars, been always very certain or explicit.

I regret to say that, with regard to the other subjects of complaint, namely, the seizure of the vessel, and the placing the British seaman in irons, the answer of Mr. Seward appears to me unsatisfactory.

I am not quite certain whether Mr. Seward intends to found his defence of the captor, and his refusal to pay compensation, upon the ground that the "Telegraph" committed a breach of municipal or of international law. His letter seems to me designedly ambiguous in this respect. I must assume, however, that it has reference, as the demand had, to the law of nations. It is to be remembered, in the first place, that it is not competent to the belligerent to enforce *fiscal* or *municipal* regulations upon the neutral, by the exercise of the strictly *belligerent* right of visitation, search, or detention.

Mr. Seward justifies the seizure of this vessel by saying, "It seems to me that the United States could not accede to the demands of Her Majesty's Government in this case, without admitting that they have no right to forbid and prevent vessels under a neutral or friendly flag, even in a time of blockade and civil war, from landing, when and where they please, upon the American shores, for the purpose of rendering aid and assistance to insurgents, and to detain for examination vessels which infringe its established military and naval regulations."

I am at a loss to understand how this reasoning, be it ill or well founded, is to be applied to the particular case of the "Telegraph." That vessel has not even been accused of having rendered aid or assistance to insurgents; nor is it a question whether the United States have a right to forbid the subjects of friendly States from visiting their shores; but it is a question whether the severe rights of visitation, search, and detention which interfere with the general liberty of commerce, and which are conceded by neutral States to belligerents only, are not to be exercised according to acknowledged principles and precedents of the law of nations, and not according to the private military and naval regulations of the particular belligerent State.

In this case the captor, according to Mr. Seward, asserted "that it was illegal for the 'Telegraph' to deviate from her outward-bound voyage, and to enter the (Florida) Keys." Mr. Seward cannot mean to say that a neutral ship is not at liberty to deviate from her outward-bound voyage, if by so deviating she does not interfere with the belligerent rights of blockade. Such a doctrine would be, indeed, alarming to all neutral States. But there is no suggestion in this case that the "Telegraph" intended to break the blockade, that her cargo was suspicious, or her papers irregular. Moreover, when taken back to Key West, it turns out that her clearance was regular, and her conduct perfectly and in every respect innocent.

It would be indecent to suppose that the United States' Prize Courts would not have administered justice in this case, and, applying the recognized principles of maritime international law to the circumstances of it, have dismissed the "Telegraph" with her costs and damages.

With respect to placing a British sailor in irons for three days and three nights, the defence is that, while smarting under the provocation of the seizure of his ship, since admitted to have been perfectly innocent, the man swore, *on board his own ship*, when ordered to obey some directions of the captor, and that his own captain said he could not prevent him from doing so; whereupon he was taken out of his own ship and placed in irons on board the captor's ship *for three days and three nights*. It is said that it was apprehended that the man would do some act of violence, but no attempt to commit any act of the kind is alleged.

It is not pretended that any rescue was apprehended, and the belligerent has no right to expect that neutral States will allow their subjects to be treated with ignominy and a severity not far removed from cruelty, upon such slender grounds as these.

The answer of Mr. Seward, therefore, does not appear to me to be satisfactory, either as to the seizure of the ship or the treatment of the sailor.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 189.

The Law Officers of the Crown to Earl Russell.—(Received May 8.)

Temple, May 7, 1863.

My Lord,

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 23rd ultimo, stating that he was directed by your Lordship to transmit to us the draft of an instruction which, in conformity with our Report of the 14th of April last,* your Lordship proposes to address to Her

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* Page 41. † Lord Lyons, Nos. 222 and 325.

* Page 112.

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Majesty's Consul at Richmond respecting the ill-usage to which he states that British subjects are exposed under the Conscription Act of the Confederate States.

Mr. Hammond was also pleased to state that in requesting us to take this draft instruction into our consideration, he was directed by your Lordship to call our special attention to the concluding words of it, and to request that we would favour your Lordship with our opinion as to whether the instruction is right and proper to be sent.

Mr. Hammond was further pleased to add, by way of postscript, that he inclosed a further despatch and its inclosure which had just been received from Her Majesty's Minister at Washington on this subject (No. 302).

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we are of opinion that the letter is proper to be sent.

We also think that the proposed heading or preface to any protest it may be necessary to put forth, is correct.

With regard to the further despatch and inclosure from Washington, we have to observe that, in the present state of things, it would appear to us expedient that unaccredited Consular Agents should be sent to the Southern States in which there is no Consul. It would of course, so far as the protection of Her Majesty's subjects is concerned, be yet more desirable that accredited Consuls should (if possible) be sent to those States. But this appointment, as well as the question respecting the reception of Mr. Mason in this country, involves, or may involve, considerations of policy as to the relations of this country towards the Confederate States, which will no doubt present themselves to your Lordship's mind.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 190.

The Queen's Advocate to Earl Russell.—(Received May 8.)

My Lord, *Doctors' Commons, May* 8, 1863.

UNITED STATES.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 6th of May instant, stating that he was directed to transmit to me a letter dated the 22nd of April ultimo, from Mr. Worley, respecting the trade in British vessels at Nassau; and to request that I would take the same into consideration, and furnish your Lordship with my opinion as to the answer which should be returned to Mr. Worley.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I humbly advise that a letter to the following effect be sent to Mr. Worley:—

That the war at present existing between the Federal and Confederate States in America does not render unlawful any traffic at any time lawful between Great Britain and any British Colony or Possession.

That the Federal and Confederate States are entitled to exercise the rights of belligerents, and that Great Britain and all other neutral States are under an obligation to recognize those rights, however severely they may press for a time upon their commerce.

That no belligerent right is more indisputable than that of visiting neutral vessels upon the high seas; and if this visitation should furnish legal grounds of suspicion that a vessel is about to attempt to break a lawfully-constituted blockade, or to carry contraband to the enemy, the belligerent may lawfully detain and send her to the Prize Court for adjudication.

That if this right should be in a few instances vexatiously or inconsiderately exercised, Her Majesty's Government would expect that the Prize Court, which is bound to administer justice according to recognized principles and precedents of international law, would, as far as possible, give redress to the owners of the vessel by condemning the captor in costs and damages.

Perhaps your Lordship, having regard to the number and nature of these applications, and the probable publicity which will be given to your Lordship's reply, might think it expedient to add upon this subject the following paragraphs:—

If vessels belonging to Her Majesty's subjects, *bonâ fide* engaged in a lawful trade between different ports of Her Majesty's dominions or elsewhere, were habitually and designedly seized by the cruizers of the belligerent, upon suspicion not alleged to be founded upon legal grounds, Her Majesty's Government would of course take, with promptitude, the proper measures to vindicate the honour of the Crown, and the rights and liberties of Her Majesty's subjects.

Her Majesty's Government, however, cannot, with reference to the application of Mr. Worley, and to others of a like character, leave out of their consideration the fact that, unhappily, several British vessels, with apparently lawful papers, and destinations for the British Bahamas, have been found, upon a searching investigation, to have been really destined, and often with cargoes of contraband, for the closely-adjoining ports of America, blockaded by the belligerent fleet, and to have been, in consequence, both lawfully detained and lawfully condemned.

It is obvious that this fact has, not altogether unreasonably, operated injuriously to the owners of vessels which were both ostensibly and really destined to the British Bahamas.

That Her Majesty's Government must altogether decline to instruct Her Majesty's Officers of Customs to grant any certificates of the kind required. Such a course would, for obvious reasons, be inexpedient and improper.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 191.

The Queen's Advocate to Earl Russell.—(Received May 8.)

My Lord, *Doctors' Commons, May* 8, 1863.

UNITED STATES.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 28th ultimo, stating that he was directed to transmit to me the papers as marked in the margin,[*] respecting the arrest and continued imprisonment by the United States' authorities of Dr. W. B. Booth, a British subject resident at New Orleans; and to request that I would take this case into consideration, and report to your Lordship my opinion thereupon.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That the parole to do nothing inimical to the United States, which General Banks requires Dr. Booth to give, does not appear to me, in the circumstances, unreasonable, or in any way to conflict with that gentleman's allegiance to Her Majesty.

The course which Lord Lyons and Mr. Consul Coppell have pursued in the matter appears to me to be proper.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 192.

The Law Officers of the Crown to Earl Russell.—(Received May 9.)

My Lord, *Temple, May* 8, 1863.

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 17th April ultimo, stating that with reference to our Reports of the 6th and 26th September last,[†] upon the case of the British steamer "Adela," captured by the United States' cruizer "Quaker City," off Abaco, he was directed to transmit to us, together with the previous papers, a letter dated the 16th April ultimo, from Mr. Forwood, inclosing a certified copy of the sentence of condemnation pronounced upon the "Adela," in the

[*] Mr. Lindsay, March 20; to Lord Lyons, No. 142; Lord Lyons, Nos. 173, 255, and 306.

[†] See Reports for 1862, pages 216 and 229.

Prize Court at Key West, together with a statement of the case, at the end of which Mr. Forwood urges Her Majesty's Government to adopt steps for obtaining the restitution of the "Adela," without requiring any further proceedings to be taken in the United States' Courts; and to request that we would take this case again into consideration, and furnish your Lordship with our opinion thereupon.

We are also honoured with Mr. Hammond's letters of the 18th and 28th of April ultimo, transmitting an instruction to be sent to Lord Lyons (No. 174), and a further letter, dated the 27th April ultimo, from Mr. Forwood, respecting this case.

In obedience to your Lordship's commands we have taken this case again into consideration, and have the honour to report—

That the extract in the statement (page 2) from the Report of the United States' Commander Fraily, to the United States' Secretary of the Navy, seems to require a strong remonstrance on the part of Lord Lyons to the United States' Government.

According to the unquestionable evidence furnished by that extract, this British neutral ship was seized upon a suspicion not founded upon the state of the vessel herself or her papers at the time of capture, but upon statements made, by those who had never seen the vessel, to the captor. Such conduct is a plain and grave violation of the rights of neutrals, and an act of oppression on the part of the belligerent to which no independent State can submit.

The Law of Nations requires that the neutral shall submit to the visitation and search of the belligerent, and authorizes the belligerent (subject to the penalty of costs and damages for an improper seizure), to take the vessel, found upon visitation and search to bear strong *primâ facie* marks of unlawful trading, into port for adjudication; but the Law of Nations does not give the belligerent the arbitrary right of seizing any neutral he pleases upon hearsay evidence, or upon evidence not derived from or connected with the actual state and condition of the vessel; nor does it impose upon the neutral any obligation to submit to such seizure.

If it be true that, under such circumstances, the Judge condemned the vessel without assigning any ground for so doing, merely observing that "in any case there would be an appeal," we think that this also furnishes a further ground of complaint. We can scarcely conceive this to be an accurate Report, though the passing formal sentence of condemnation without reasons, which is all that appears in this case, is a very unusual and unsatisfactory course for the Judge of a Prize Court to adopt. But at present we have not before us the evidence upon which the Judge proceeded, and in the absence of such evidence we cannot presume that he was guilty of the flagrant injustice of throwing the burden of disproof upon the captured ship, instead of requiring the captor to prove his case against the ship. Such a proceeding would be at variance with one of the most valuable principles of prize law, and would destroy the principal safeguard of the neutral in his attempt to obtain justice in a foreign Court.

An appeal, however, has been asserted, and is about to be prosecuted to a superior tribunal, and we think that Her Majesty's Government should wait for the decision of that tribunal before it gives any further instructions in this matter; especially as it would seem that the order for the appraisement and sale of the ship in the meantime was made by the consent of both the parties before the Court.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 193.

The Queen's Advocate to Earl Russell.—(*Received May* 9.)

Doctors' Commons, May 9, 1863.

My Lord,

UNITED STATES.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 6th May instant, stating that he was directed to transmit

to me a despatch from the Acting British Consul at Charleston (No. 58, April 15), inclosing papers respecting a claim against the United States' Government put forward by Mr. Alexander Nicol, a British subject resident at Kingston, North Carolina, on account of the wasteful and wanton destruction of his property by the United States' soldiery; and to request that I would take this case into consideration, and report to your Lordship my opinion thereupon.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That this appears to me be a case which Lord Lyons might be instructed to bring to the attention of the United States' Government, and to ask from the justice of that Government compensation for the injury most wantonly inflicted upon a British subject.

It is distinguished in principle from those cases in which neutral property has suffered in common with the property of native subjects from a general bombardment of a town, or from the regular march of troops, or from any of the inevitable incidents of war. It seems to have been a deliberate act of private plunder resulting from, or encouraged by, lax discipline, and to have been recognized as such by the Federal Provost Marshal, and it is an act for which the strictly neutral and inoffensive conduct of Mr. Nicol afforded not the slightest pretext.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 195.

The Law Officers of the Crown to Earl Russell.—(*Received May* 12.)

Temple, May 11, 1863.

My Lord,

FRANCE.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 26th of March last, stating that he was directed by your Lordship to transmit to us the accompanying papers* concerning a claim put forward by the Director of the postal service of the "Messageries Impériales" to certain harbour accommodation at the Island of Mauritius.

Mr. Hammond was also pleased to state that we should perceive that this claim is founded upon the Postal Convention between this country and France, of which a copy was therewith inclosed; and that he was directed by your Lordship to request that we would take these papers into our consideration, and favour your Lordship with our opinion on the validity of the claim.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we are of opinion that the claim of the Director of the Postal Service of the Messageries Impériales to harbour accommodation and other privileges at the Island of Mauritius cannot be sustained by reference to the Postal Convention of September 24, 1856, between Great Britain and France. We agree with the opinion expressed in the letter of Mr. F. Hill to Sir Frederick Rogers, dated January 26, 1863, viz., that the privileges of that Convention are confined to mail-packets and other vessels conveying mails between England and France.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 196.

The Queen's Advocate to Earl Russell.—(*Received May* 12.)

Doctors' Commons, May 11, 1863.

My Lord,

UNITED STATES.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 7th May instant, stating that with reference to my Report of the 31st March ultimo,† upon the case of the British steamer "Magicienne," he was directed to transmit to me a letter dated the 6th May instant, from Messrs. Lowndes, Bate, and Co., inclosing a statement of the claim of the owners of that vessel; and to request that I would take this statement into consideration, and furnish your Lordship with my opinion thereupon. The previous papers and the instruction to Lord Lyons in this case were also inclosed,* and Mr. Hammond was pleased to transmit for my perusal the despatches, noted in the margin,† which have been received from Lord Lyons respecting the case of the "Magicienne" since the date of my former Report.

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* Colonial Office, January 21, January 31, and March 11, 1863.

† Page 95.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I have thought it right to confer with the Registrar of the Admiralty as to the scale and principle upon which compensation was made to neutrals during the Russian war by our Government when neutral vessels were released, and the captors condemned in costs and damages; and I find that they proceeded in ascertaining the amount of damage occasioned by detention upon much the same principles as those which guided them in the award of damages in civil cases in which the detention had been occasioned by a collision. I will apply this doctrine to the demand made by the owners of the "Magicienne."

The main principle upon which damages have been awarded to neutrals in this country has been to reject all problematical losses, and to accept only such as are proved to have actually taken place in consequence of the detention.

The application of this principle is fatal to the first item of demand made by the owners of the "Magicienne," and in accordance with it the 500*l.* claimed for damages for the seizure which was pronounced by the Court at Key West to be illegal would be struck out.

The first subject of inquiry in these cases is the tonnage of the vessel: the "Magicienne" appears from the protest to have been 229 tons.

The next question is the nature of the cargo, which, in this case, consisted of gunny-bags and Manchester goods, as is stated in the letter of the owners of the 23rd of March last.

The next question is the number of the crew, which appears to have been a captain, a mate, five sailors, and two apprentices.

I find that upon a vessel of this tonnage, cargo, and crew, the demurrage (under which which term would be included the wages of the men, their provisions, and the loss of interest to the owners) would be at about the rate of 3*l.* 10*s.* per diem, which for 46 days, would amount to 161*l.*; add 65*l.* for stores consumed by prize-crew, would make 161*l.* + 65*l.* = 226*l.*, instead of 460*l.* + 65*l.* = 525*l.*

As to the damage done to the ship's sails, this must, of course, be proved to amount, as alleged, to 45*l.*

The next item as to the expense of getting a new crew is, in principle, allowable, inasmuch as six of the men were sent to Boston, and three only were taken to Key West, where the vessel was released. The amount of this expense in procuring a new crew must also be a matter of proof.

The legal expenses (under the head of payment to Mr. Gerard) are also, in principle, allowable, and probably, though they do not seem excessive, would have to be taxed by the Registrar of the Prize Court.

As to the remaining, and largest, item, viz., "estimated loss upon homeward freight from Matamoros by the ship not being out in time, whereby she would lose 1*d.* per lb. on a cotton cargo, 800*l.*,"—this item is also, in principle, allowable; but proof must be given both that the cotton was ready for the owners at Matamoros, and as to the price of it at the time when the vessel was seized, and also as to whether or not cotton could have been procured at Matamoros after the vessel had been released, and at what price, and the amount of damage would be awarded with reference to these facts.

It seems to me that it will be expedient to determine whether in this, and in subsequent cases, the demand is to be referred by the United States' Government to the Registrars of their Prize Courts, assisted by merchants, or whether such claims are to be settled in this country in some manner agreed upon between Her Majesty's Government and the Minister for the United States. Of course, this is a matter as to which the decision must mainly rest with the United States' Government.

I have, &c.
(Signed) ROBERT PHILLIMORE.

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* Messrs. Cox and Baker, March 23; Consul Archibald, Nos. 47 and 49; to Lord Lyons, No. 172.

† Lord Lyons, Nos. 273, 274, 290, and 343.

No. 197.

The Law Officers of the Crown to Earl Russell.—(Received May 12.)

UNITED STATES.

Temple, May 11, 1863.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 5th instant, stating that he was directed by your Lordship to request that we would favour your Lordship, at our earliest convenience, with our opinion upon the following point:—Whether British subjects serving as sailors on board any Federal or Confederate man-of-war in a British harbour can be prosecuted under the Foreign Enlistment Act?

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That, in our opinion, British subjects serving on board any Federal or Confederate man-of-war act in direct violation of the 2nd section of the Foreign Enlistment Act (59 Geo. III, cap. 69), which prohibits in express terms the serving on board ships of war in the service of foreign States, &c., &c. Such persons cannot be taken out of the ships of war in which they are serving; but being found on shore in British ports they may be apprehended under a Magistrate's warrant duly obtained, and committed for trial at the assizes or sessions, as prescribed by the 4th section of Act. The offence is a misdemeanour, punishable, on conviction, with fine and imprisonment (section 2).

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 198.

The Law Officers of the Crown to Earl Russell.—(Received May 12.)

BRAZIL.

Temple, May 12, 1863.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 6th May instant, stating that he was directed by your Lordship to transmit to us a note from the Brazilian Minister in this country, setting forth certain demands which his Government make on Her Majesty's Government on account of the measures in the shape of reprisals which Her Majesty's Government were lately compelled to take owing to the course pursued by the Brazilian Government in the cases of the "Prince of Wales" and the "Forte."

Mr. Hammond was also pleased to state that Her Majesty's Government have determined to refuse these demands as not justified by what has occurred, and to transmit to us the draft of the reply which your Lordship proposed to address to M. Moreira's note, and, at the same time, to request that we would take this draft into our consideration, and report to your Lordship, at our earliest convenience, our opinion whether the answer proposed to be returned would be sufficient, or whether it would be desirable that your Lordship should enter more into argument on the merits of the case.

Mr. Hammond was further pleased to add that your Lordship apprehended that no real injury had been done to the vessels detained, and Her Majesty's Government could not give damages and make excuses without confessing to a wrong which had not been committed.

Mr. Hammond also inclosed the correspondence regarding the cases of the "Prince of Wales" and "Forte," in case we should have occasion to refer to it.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we have taken the draft of the reply which your Lordship proposes to address to M. Moreira's note into our consideration, and, subject to the two

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alterations which we have made and submit for your Lordship's consideration, we think the answer proposed to be returned will be sufficient.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 199.

The Law Officers of the Crown to Earl Russell.—(*Received May* 13.)

My Lord, *Temple, May* 12, 1863.

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 2nd instant, stating that with reference to our Report of the 25th of February last* upon the case of the "Labuan," he was directed by your Lordship to transmit to us, together with the previous papers, two despatches from Lord Lyons (Nos. 272 and 316 of the 17th April), inclosing copies of his further correspondence with Mr. Seward respecting this case; and to request that we would take the same into our consideration, and favour your Lordship with such observations as we might have to offer upon Mr. Seward's note of the 9th ultimo, justifying the course pursued by the United States' Government in respect of the claim for damages.

We are also honoured with your Lordship's commands signified in Mr. Hammond's letter of the 5th instant, stating that he was directed by your Lordship to transmit to us a further despatch, and its inclosures, from Her Majesty's Minister at Washington (No. 332 of the 21st April), relating to the case of the "Labuan," and to request that we would take the same into our consideration, together with the papers on the same case forwarded to us on the 2nd instant.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That in the present state of circumstances we think it reasonable that the award of the Prize Court as to costs and damages should be awaited before any further steps are taken by Lord Lyons in this matter.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 200.

The Law Officers of the Crown to Earl Russell.—(*Received May* 13.)

My Lord, *Temple, May* 12, 1863.

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 4th instant, stating that with reference to our Report of the 24th ultimo,† respecting the prisoner in confinement at Gibraltar on the charge of having murdered the senior officer of the Confederate war-steamer "Sumter," he was directed by your Lordship to transmit to us the papers as marked in the margin,‡ from which we should perceive that it has been determined to send the prisoner to Bermuda, on board Her Majesty's ship "Shannon," and to detain him there pending an arrangement which Lord Lyons has been instructed to make with the United States' Government for his being landed from one of Her Majesty's ships at a Confederate port; that as it may be expected that the prisoner will be detained for some little time at Bermuda, the Admiralty have suggested that, instead of the prisoner being confined for an indefinite time on board Her Majesty's ship "Shannon," the Governor of Bermuda should be instructed to take the prisoner into his custody, pending the reference to the United States' Government; but that before requesting the Duke of Newcastle to issue instructions to the Governor of Bermuda to that effect, your Lordship wished to be advised whether the Governor would have any right to detain the prisoner.

Mr. Hammond was consequently to request that we would take this point into consideration, and furnish your Lordship, at our earliest convenience, with our opinion thereupon.

In obedience to your Lordship's commands we have considered the point submitted to us, and have the honour to report—

That in our opinion it will not be safe or expedient to land the prisoner at Bermuda, although merely for the purpose of detention, and of being forwarded on convenient opportunity to some port of the Confederates, to be there given up to the authorities for trial.

The circumstances as to the custody of the accused man are necessarily singular and exceptional, and we think that the Governor would not, in strict law, have any right to detain him as a prisoner; and therefore that it would be improper to expose either the Governor or the gaoler at Bermuda to the risk of having the technical legality of the British custody decided against him, and the prisoner possibly discharged on application to the tribunals there. There is, of course, little or no risk of any such question being raised, so long as the prisoner remains a close prisoner on board of a man-of-war; and the dictates of common justice require that, if possible, he should be detained and handed over to the Confederate Government.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 201.

The Queen's Advocate to Earl Russell.—(*Received May* 14.)

My Lord, *Doctors' Commons, May* 13, 1863.

UNITED STATES.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 6th May instant, stating that he was directed to transmit to me a despatch from Her Majesty's Minister at Washington (No. 337), inclosing papers relative to a claim against the United States' Government, on account of unjust imprisonment and consequent loss of health and property, put forward by Richard Ranger, a British subject at New Orleans, and to request that I would take this case into consideration and report to your Lordship my opinion thereupon.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That it appears from these papers that Richard Ranger was imprisoned for thirty-one days upon the verbal order of the Provost Marshal at New Orleans; that no definite or distinct charge was ever brought against him; that he was finally released in a manner which must be considered as equivalent to an admission that he was an innocent man and never ought to have been imprisoned.

Mr. Coppell's letter to him on the 19th of December was not judicious in the existing state of circumstances at New Orleans, but it furnished no justification for the imprisonment.

That imprisonment was no doubt injurious to Ranger's health, and to his means of gaining a livelihood.

As far as I can form an opinion upon the papers before me, I think that Ranger is entitled to moderate compensation for the unjust imprisonment and the injuries incident to it. I have not sufficient materials for forming a judgment as to the exact amount of compensation which should be demanded.

I have, &c.
(Signed) ROBERT PHILLIMORE.

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* Page 58.

† Page 131.

‡ To Admiralty, April 29; Admiralty, May 1; to Admiralty, May 1; to War Office, May 1; Admiralty, May 2; to Lord Lyons, No. 236, May 2; Admiralty, Private, May 2; to Consul Moore, No. 5, May 2, 1863.

No. 202.

The Queen's Advocate to Earl Russell.—(Received May 15.)

Doctors Cammons, May 14, 1863.

My Lord,

PORTUGAL. I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 7th May instant, stating that he was directed to transmit to me a despatch from Her Majesty's Minister at Lisbon (No. 7 of the 23rd January) asking your Lordship's opinion on points in connection with the so-called "industrial tax" levied in Portugal on native and foreign merchants; and to request that I would take this case into consideration with reference to the Ist Article of the Treaty with Portugal of the 3rd of July, 1842, and furnish your Lordship with my opinion as to the answer which should be returned to Sir Arthur Magenis' despatch.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I am of opinion that Her Majesty's Minister at Lisbon has rightly complained to the Portuguese Government of the excess of the "industrial tax" above the stipulated 20 per cent., provided always that the English version of the Treaty be, as it appears to have been, recognized as binding upon the Portuguese Government. I say this because I find on examining the Portuguese version of the Article which is explanatory of the Ist Article (6 Hertslet, 624), that the copulative "and" stands in the Portuguese where the disjunctive "or" stands in the English Treaty; "será de 20 por cento a renda das suas casas, lojes, *e* (not *ou*) armazems," while "shall be 20 per cent. on the rent of their houses, shops, *or* warehouses" is the English version. The difference may possibly be material in this case; but I assume at present that it has not been considered so. I think also that Her Majesty's Minister at Lisbon is well founded in his objection to the additional tax imposed, on the ground that these firms carry on the agencies of Insurance Companies. The Treaty imposed a tax on British subjects, from which it recites that "they have hitherto enjoyed special exemption;" it must be construed, therefore, strictly as against the Portuguese Government; and I find no mention in the Treaty of any category under which these agencies can be holden to be taxable. I should here observe that I do not clearly collect from the despatch of Her Majesty's Minister at Lisbon whether the Tribunal of the Treasury has or has not refused to *hear* the appeal of the British merchants; if the latter be the case. it has clearly violated the provisions of the Ist Article of the Treaty.

As to the question put by Her Majesty's Minister at Lisbon as to "whether, when the firms consist of more than one merchant, the house-rents of the several partners should form the total on which the tax is to be levied?" I think this question should be answered in the affirmative, and that the practice which has hitherto prevailed on this point is right.

I have, &c.
(Sinned) ROBERT PHILLIMORE.

No. 203.

The Queen's Advocate to Earl Russell.—(Received May 15.)

Doctors' Commons, May 14, 1863.

My Lord,

UNITED STATES. I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 12th May instant, stating that with reference to my Report of the 6th ultimo,* he was directed to transmit to me, together with the previous papers, a despatch from Her Majesty's Minister at Washington (No. 350), inclosing a copy of a Memorandum in which is recorded his conversation with Mr. Seward respecting the late Act of Congress relating to *habeas corpus;* and also a further despatch from Lord Lyons on the same subject (No. 361); and to request that I would take these papers into consideration and furnish your Lordship with any observations I may have to offer thereupon.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I observe that Mr. Seward does not rely upon, or at least does not

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* Page 107.

cite, any legal authority for his position, that if the proviso in the Act be in conflict with Treaties, the Courts of Law "will regard the Treaties as the supreme law of the land," and I cannot but entertain grave doubts as to the accuracy of this statement. In the statement which accompanies the Memorandum, it is said that the conversations between Lord Lyons and Mr. Seward "are believed to be correctly set forth;" a form of expression which is looser than might have been desired.

Mr. Seward has *informed* Lord Lyons that the Memorandum has the sanction of the President. It would be expedient, I think, that this fact should form a part of the *written* record of the proceeding. Mr. Seward would probably not object to write a formal letter to this effect. It does not occur to me that any other precautionary measure can now be taken.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 204.

The Queen's Advocate to Earl Russell.—(Received May 16.)

My Lord, *Doctors' Commons, May* 15, 1863.

BRAZIL. I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 5th May instant, stating that, with reference to my Report of the 23rd of January last,* he was directed to transmit to me therewith a further letter from Mr. Vereker, Her Majesty's Consul for Rio Grande do Sul, inclosing a Memorandum giving full details on the case of the British ship "Canrobert," on the conduct of the Brazilian authorities in laying an embargo on his property, and on his own proceedings in connection with the case; and to request that I would take these papers into consideration, and furnish your Lordship with any observation I may have to make thereon.

The previous papers in this case were annexed for convenience of reference.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That a perusal of the voluminous report of Mr. Vereker does not induce me to advise your Lordship to make any alteration in the despatch upon this subject to Mr. Eliot.

It is clear to me that Mr. Vereker suffered himself both to become too much of a partisan in these proceedings, and to mix injudiciously and improperly the functions of an advocate with those appertaining to his judicial office as Consul.

The Brazilian Court of Commerce appears to me to have rightly holden him to be personally responsible for the administration of these funds. At the same time I see no reason to doubt that the intentions of Mr. Vereker were good, and, perhaps, in his zeal to discharge the duties of his office he unwittingly overstepped the proper limits of it. There are also in these papers traces of considerable personal irritability, incident probably to a weakened state of health, which may have contributed to this error.

I would humbly suggest that he might be apprised that while Her Majesty's Government saw no reason to doubt the integrity of his motives, or his zeal to discharge the duties of his office, he appeared to have brought himself into unnecessary conflict with the Brazilian Courts of Law, and to have taken too personal and individual a part in these proceedings.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 205.

The Law Officers of the Crown to Earl Russell.—(Received May 18.)

My Lord, *Temple, May* 15, 1863.

UNITED STATES. WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 9th May instant, stating that with reference to our Report

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* Page 27.

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of the 6th instant* upon the case of the "Peterhoff," he was directed to transmit to us, for our information, a despatch and its inclosures from Her Majesty's Minister at Washington (No. 342), from which we should learn what has further passed respecting this case, and that the mails on board that vessel have been delivered to Her Majesty's Consul at New York, to be forwarded to their destination.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That the decision respecting the mail-bags is satisfactory, and should be accepted without comment by Her Majesty's Government; and that the abstract right to send the "Peterhoff" to be tried before the Prize Court cannot be gainsayed.

We would suggest that it might be desirable for Her Majesty's Government to be in possession of an authentic copy of the Judgment on the subject of the mail-bags, for reference on any future occasions.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 206.

The Law Officers of the Crown to Earl Russell.—(Received May 18.)

My Lord, *Temple, May* 15, 1863.

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 11th May instant, stating that he was directed to transmit to us, for our information, the draft of an instruction which, in conformity with our Report of the 6th instant* was addressed to Lord Lyons on the 9th instant (No. 226), directing him to watch the case of the "Peterhoff," and to report the result to Her Majesty's Government; and at the same time to transmit a confidential despatch just received from Lord Lyons (No. 357, April 27), in which he states the nature of certain information which the United States' Government are said to have obtained respecting the "Peterhoff," likely to lead to her condemnation; and Mr. Hammond was to request that we would take the same into consideration and furnish your Lordship with our opinion as to whether it would be right to send for Mr. Spence, the owner of the "Peterhoff," and to communicate to him confidentially the information thus reported by Lord Lyons.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That we do not advise your Lordship to make any confidential communication, in consequence of the despatch from Lord Lyons to the owner of the "Peterhoff."

It appears to us that such a course might hereafter be productive of embarrassment to Her Majesty's Government in this as well as in other cases of a similar kind.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 207.

The Queen's Advocate to Earl Russell.—(Received May 18.)

My Lord, *Doctors' Commons, May* 17, 1863.

UNITED STATES.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 12th instant, stating that he was directed by your Lordship to transmit to me a letter dated the 9th May instant, and its inclosure, from Messrs. Saton and Co., stating the circumstances under which they have been defrauded by Messrs. Souza, Riezenberger, and Co., of Bahia, in connection with the case of a barque called the "Maria," which there is good reason to believe was scuttled and sunk off the Azores, and requesting that Her Majesty's Minister at Washington or Her Majesty's Consul at New York may be instructed to aid them in the measures which they are taking to bring to justice Mr. Riezenberger, who has absconded from Bahia, and is now in the United States; and Mr. Hammond was to request that I would take this case into consideration, and report to your Lordship my opinion whether, under the circumstances stated in the inclosed letter, Her Majesty's Government would be borne out in instructing Lord Lyons or Consul Archibald to give assistance, and if so to what extent, for the prosecution of Mr. Riezenberger.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I am of opinion Her Majesty's Government might give instructions to Lord Lyons to support generally Mr. Peter Herman Berndis, in any legal endeavour made by that gentleman to bring Riezenberger to justice; but the manner in which, and the limits within which, such support is to be given, should be left entirely to the discretion of Lord Lyons, who would, of course, take counsel upon the subject with the legal adviser of the Legation.

Questions of great difficulty will probably arise out of the case.

The answer, therefore, to Messrs. Saton should be to the effect that Lord Lyons will be desired by Her Majesty's Government to assist, if he finds upon full consideration of the circumstances that he can properly do so, Mr. Berndis in his endeavour to bring Mr. Riezenberger to justice.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 208.

The Law Officers of the Crown to Earl Russell.—(Received May 20.)

My Lord, *Temple, May* 20, 1863.

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 6th May instant, stating that with reference to our Report of the 2nd ultimo,* he was directed to transmit to us, together with the previous papers, a further letter dated the 22nd April ultimo, from Mr. Potts, urging his claim for compensation on account of his imprisonment by the United States' Government, and to request that we would take the same into consideration, and inform your Lordship whether we see any reason to alter the opinion we have expressed with regard to this case.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That we see no reason to alter the opinion which we had the honour to express in our former Report. Mr. Potts states, by way of defence for his breach of faith in fraudulently shipping the cargo for England, that the order of the United States' Marshal empowered him "to *remove* the cargo to whatever place he might think fit." This is an untrue representation. The order gave him permission to *store* at whatever place he thought fit, and provided that the *storeage* should be paid by him, and an inventory kept of the bales and packages delivered to him.

To pretend that under this order he had permission "to *remove*" the cargo to England is dishonest. It is quite clear that he had no such permission, and he must have been, and we think the evidence shows that he was, perfectly aware that he had not.

Upon the general question we must refer to our former Report, to which we adhere.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

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* Page 143.

* Page 101.

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No. 209.

The Law Officers of the Crown to Earl Russell.—(*Received May* 21.)

Temple, May 20, 1863.

My Lord,

China.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 4th May instant, stating that with reference to our letters of the 11th of November and 9th of December last,* relative to the measures to be taken for preventing the Chinese insurgents from being supplied with arms and ammunition by British subjects, he was directed by your Lordship to transmit to us, together with the previous papers, a letter dated the 24th April ultimo, from the Colonial Office, inclosing a copy of a despatch from the Acting Governor of Hong Kong, together with a copy of a Proclamation issued by him, prohibiting the exportation of military stores from Hong Kong.

Mr. Hammond was also pleased to state that the Duke of Newcastle requested to be informed whether the Acting Governor should be allowed to grant permits for the exportation of arms on receiving proof that the applicants were duly authorized on behalf of the Imperial Government of China, and it was added that his Grace proposed to approve the omission in the Proclamation of the prohibition to export "provisions or any sort of victual which may be used as food."

Mr. Hammond was also pleased to request that we would take the Acting Governor's Proclamation into our consideration, and favour your Lordship with our opinion upon it generally, as well as upon the points to which attention was specially called in the Colonial Office letter.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we are of opinion that the Acting Governor should be allowed to grant permits for the exportation of arms to applicants proved to be authorized on behalf of the Imperial Government, and that the omission of the prohibition "to export provision or any sort of victual which may be used as food" appears to us to be expedient.

The Proclamation appears to us generally to be proper, and calculated, as far as the circumstances will allow, to attain its object.

We have, &c.

(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 210.

The Queen's Advocate to Earl Russell.—(*Received May* 22.)

Doctors' Commons, May 20, 1863.

My Lord,

France.

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 15th instant, stating that he was directed by your Lordship to transmit to me the accompanying letters from Baron Gros, the French Ambassador at this Court,† complaining of the proceedings of the Governor of Lagos, and claiming compensation from Her Majesty's Government for losses alleged to have been sustained by French subjects, arising out of the destruction of the town of Epé by an armed party acting under the orders of the Governor of Lagos.

Mr. Layard was also to transmit to me the papers, as marked in the margin,‡ which have been received from the Governor of Lagos (who reports to this Department in his capacity as Consul for the Bight of Benin), and from the Colonial Office and Admiralty, from which I should learn the circumstances which have given rise to the French Ambassador's representations; and Mr. Layard was to request that I would take these papers into consideration, and furnish your Lordship with my opinion upon the French claims now brought forward, and generally as to the claims of neutrals in cases of bombardment.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I am of opinion that the claim of the French Ambassador is not well founded. It appears to me to be sustained neither by reference to the facts of the particular case, nor by reference to the general law applicable to facts of this description.

Not by reference to the particular facts of the case,—for the inference which I draw, from all the statements before me, is that, in the first place, the necessity for the attack upon Epé was mainly created by the intrigues of French traders at that place with Possoo; in the next place, that a fair opportunity was given to them to remove their property; and in the last place, that it is most probable that they availed themselves of this opportunity.

Not by reference to the general law applicable to such cases,—for it is, in my opinion, a clear proposition of international law that a belligerent who is obliged to bombard the town of his enemy is neither to be deprived of this *jus belli* by the fact that neutral property may be therein, nor to be afterwards compelled to make compensation for property so destroyed, because it was upon the occasion inevitably mixed up with the *res hostium* upon which the bombardment was intended to take effect.

It was mainly upon this principle that my predecessor in office reported against Mr. Platt's claim (July 15, 1856), whose property was destroyed at Kertch (a case of very great, though necessary, hardship); and that I had the honour to report (26th December, 1862, and the 20th February, 1863), in accordance with Reports of my predecessor (see March 26, October 15, and November 2, 1857) to your Lordship against the claim of the Spanish Consul-General at Odessa, to be compensated for the destruction, during the Crimean war, of his property near Kertch.

I think it right to notice, though my opinion is not specially asked upon the point, that I do not understand upon what authority Mr. Freeman instituted the blockade of the Egbas (Inclosure 1 in No. 6 of the 8th March, 1863) at Porto Novo, and invited the French to assist him in maintaining it. It is of great importance (even in this semi-barbarous place) that no English authority should be given to the proposition that a blockade can exist without war; and I do not find that at the time of this so-called blockade there was any war being carried on.

I have, &c.

(Signed) ROBERT PHILLIMORE.

No. 211.

The Attorney and Solicitor-General to Earl Russell.—(*Received May* 22.)

Temple, May 21, 1863.

My Lord,

Russia.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 8th May instant, stating that, with reference to our letter of the 2nd ultimo,* in which we suggested that certain questions should be put to the Russian Ambassador with regard to the date of the Russian bonds which were negotiated by Messrs. Rothschild, he was directed by your Lordship to transmit to us a note, dated the 30th April ultimo, from Baron Brunnow, containing further information thereupon; and to request that we would take this note into our consideration, together with the former papers in the case, inclosed therewith, and favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That it appears to us that the Commissioners of Stamps have no just claim to retain the duty paid by Messrs. Rothschild on the bonds in question, and paid under protest, on the ground of the "date" of those bonds; for either they are undated, as the Commissioners of Inland Revenue in their Report of the 11th December, 1862, considered them to be, or their date is the 1st May,

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* See Reports for 1862, pages 274 and 309.

† Memorandum from the Marquis de Cadore; Baron Gros, April 27 and May 2, 1863; to Baron Gros, May 7, 1863.

‡ Colonial Office, January 8 and April 20, 1863; Admiralty, April 13, 1863; Memorandum, Foreign Office, May 12, 1863; Consul Freeman, No. 6, March 8, 1863.

* Page 100.

1862; in either of which cases the statute is equally inapplicable under the head of "date."

The question remains, were the bonds "signed" after the 23rd June, 1862? Before returning a definitive answer to this question, we should desire to possess the further information which his Excellency Baron Brunnow in his last note to your Lordship expresses his willingness to endeavour to obtain, namely, what length of time was required for the printing of the bonds issued under the inscription of the 1st May, 1862; or, perhaps, the better form of questions would be (in substance), when the printing commenced, when it was concluded, and whether the Russian Government have the means of knowledge, as regards the particular intermediate dates at which particular bonds were actually printed. On these questions being answered, the point which has been raised may be determined.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.

No. 212.

The Law Officers of the Crown to Earl Russell.—(Received May 22.)

Temple, May 21, 1863.

My Lord,

GREECE.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 6th May instant, stating that he was directed to transmit to us therewith a despatch from Major Stuart, Her Majesty's Consul at Janina (No. 10, April 14), inclosing copies of a correspondence with the Lord High Commissioner of the Ionian Islands relative to the complaint of Mr. G. Manetta, of Corfu, that Major Stuart had refused to act judicially in the manner requested by Mr. Manetta in regard to a bill of exchange. He was also pleased to inclose a copy of a Report made by Sir Henry Storks to the Duke of Newcastle on the same subject; and to request that we would furnish your Lordship with our opinion upon the proceedings of the Consul, and as to the course which he should now adopt.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That, according to the English law, it is not essential to the character of a bill of exchange that it should be negotiable at all. But it is essential to the negotiability of ("per rendere girabile") such a bill (between all persons except the Queen or Government) that it should be payable to order or bearer, or that some equivalent words should be used authorizing the payee to assign or transfer the same to third persons. Although, without such words, the bill be not transferable by indorsement (as in the case before us) so, at least, as to give an action to the indorsee against other parties to the bill, yet the indorsement does give an action against the payee himself, because, in legal effect, it amounts to the drawing of a bill in favour of the indorsee against the drawee, and every indorser of a bill is in the nature of a new drawer.

In this case, however, it appears that the indorsee of a bill not (according to the English rule) negotiable, desired to protest against the original drawee or acceptor; and, according to the English law, this protest would be unavailing.

But we are not certain, from the statements before us, that the law of the Ionian States is identical with the English law; and Mr. Consul Stuart is certainly wrong in supposing that "there cannot, in fact, exist among nations or communities any difference of law and form as to bills of exchange:" differences both in law and form have certainly existed, and, we believe, still do exist, as to these instruments, in England and France. Indeed the law, even of Scotland, differs from that of England, upon the precise point involved in this case: for, in Scotland, the words "or order" are not necessary; and a bill or note is negotiable, and may be effectually endorsed by the payee without those or any equivalent words (see Chitty on Bills, 9th edition, page 159).

At all events, we think that the Consul does not act judicially, but ministerially, in matters of this description, and that he ought, in the first instance, to have accepted and communicated the protest on this bill of exchange, as he appears at last to have done.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 213.

The Law Officers of the Crown to Earl Russell.—(Received May 22.)

My Lord, *Temple, May* 21, 1863.

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 9th instant, stating that with reference to our Report of the 3rd of March,* he was directed by your Lordship to transmit to us, for our information, a despatch from Her Majesty's Minister at Washington (No. 347), inclosing copies of his correspondence with the Spanish Minister and with Mr. Seward respecting the case of the "Blanche;" and to request that we would return these papers after perusal, accompanied with our observations, should we have any to offer upon them.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That the additional papers transmitted to us in this case do not appear to us to call for any special observation, except that the delay on the part of the United States' Government to grant redress in so plain a case of great wrong has reached in our opinion the utmost limits.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 214.

The Law Officers of the Crown to Earl Russell.—(Received May 22.)

My Lord, *Temple, May* 22, 1863.

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 11th instant, stating that with reference to the Report of Her Majesty's Advocate-General of the 30th ultimo† upon the case of the "Granite City," and also with reference to that Officer's Reports of the 15th November, 1862, 4th of February, and 14th of April last,‡ respecting the proposed sale of the British steamer "Bermuda," he was directed by your Lordship to transmit to us the papers as marked in the margin,§ respecting the appropriation by the United States' authorities of the "Granite City," before any decree of condemnation has been pronounced upon the vessel; and he was to request that we would take these papers into consideration, and furnish your Lordship with our opinion upon this proceeding, viewed, whether with reference to the power asserted to be inherent in the Prize Court, of directing such transfer of prize property, or to the Act of the last session of Congress specially conferring that authority.

The previous papers in the case of the "Bermuda," and the volume containing the Prize Act of last session, were inclosed for reference.

We are also honoured with Mr. Hammond's letters of the 12th and 20th instant, transmitting a further despatch from Lord Lyons respecting this case.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

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* Page 65. † Page 137.

‡ See Reports for 1862, page 281: and *ante*, pages 45 and 114.

§ Consul Archibald, No. 78, April 14, 1863; Lord Lyons, No. 323, April 17, 1863; to Lord Lyons, No. 237, May 2, 1863; Lord Lyons, No. 333, April 21, and No. 358, April 27, 1863.

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That the question before us relates exclusively, it is important to observe, to the sale of neutral vessels captured and brought into port. With reference to this class of prize, the reason of the thing, the best institutional writers, and the practice of Prize Courts, agree in establishing the general principle that the property in the captured vessel does not pass from the owner to the captor, except by a sentence of condemnation pronounced by the proper Prize Court.

The same authorities agree that, nevertheless, the Judge of that Court may, by the exercise of his own discretion, with or without the consent of parties, direct that, *pendente lite*, and before a sentence of condemnation, the captured ship or cargo may be sold, if it be proved upon the authority of competent and skilled persons, that either of them be in what is technically termed a "perishable" condition, that is, in a condition in which the property will become seriously deteriorated by delay.

This exercise of discretion in prize cases is similar to that which the Court of Admiralty exercises in cases of a purely civil character.

It is important to bear this practice in mind, because it is by the light which it furnishes, that the language of the English statute, 17th Vict, cap. 18, sect. 24, must be construed. By that section, "whenever it appears desirable, either from the nature of the property, the probable length of the proceedings, *or any other sufficient cause*, that the ship, vessel, goods, or merchandize, or any part thereof, should be sold," the Judge may order the property to be properly appraised, and sold, the proceeds being lodged with the Government. "Any other sufficient cause" means, cause *ejusdem generis*, a cause found in the interests of the ship, of which the Court is Trustee, not in the necessities or convenience of the captor or his Government; and as a matter of fact there is no record in the English Prize Court, of a neutral vessel sold before a sentence, unless in a perishable condition, or with consent of parties.

The 25th section of the English statute further provides that the Judge may allow the vessel to be delivered up to the claimant (that is, the original owner) on his giving security to the captor.

The 26th section provides that the Judge may order, after a sentence of condemnation, the vessel to be sold.

Therefore the English law and practice agrees with that of other States, in affording no warrant for the sale of a captured neutral vessel, before a sentence of condemnation, except in the two instances of—

1. The vessel being in a perishable condition;
2. Of the consent of claimant and captor.

We do not think it necessary to enter at length into the doctrine of the right of pre-emption, exercised by us, as by other States, when belligerents.

It is enough to observe that this right has been confined to the case of provisions or munitions bound to the enemy's ports (the "Haabet," 2 Robinson, 174).

The statute passed by Congress, in so far as it purports to authorize the taking of any captured neutral vessel before adjudication, by the Secretary of the Navy of the United States, for the use of the Government, is therefore a novelty for which no warrant is to be found in accredited authorities, in usage, or in the principles of international law, while it is manifestly open to the objections stated in the former Reports of the Queen's Advocate.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

Notes to the Opinion.

"UNTIL the capture becomes invested with the character of prize, by a sentence of condemnation, the right of property is in abeyance, or in a state of legal sequestration. It cannot be alienated or disposed of, but the possession of it by the Government of the captor is a trust for the benefit of those who may be ultimately entitled. This salutary rule, and one so necessary to check irregular conduct and individual outrage, has been long established in the English Admiralty, and it is now everywhere recognized as the law and practice of nations."—Kent (part 1, lecture 5), vol. i, 110 (103).

"Si la prise est déclarée bonne, la vente en sera faite par devant le juge de l'Amirauté, et le prix en sera délivré aux impétrans, &c.

"*Si la prise est déclarée bonne.*—Or, elle ne peut être déclarée telle, qu'autant qu'elle aura été faite dans les règles et sur des sujets de l'Etat qui aura refusé de réparer le tort à l'occasion duquel les lettres de représailles auront été accordées.

"Ce n'est aussi qu'au Conseil des Prises, où préside M. l'Amiral, que la prise peut être jugée; mais l'instruction se fera par les officiers de l'Amirauté du port où la prise aura été amenée, *comme cela s'observe à l'égard des prises en guerre.*

"*La vente en sera faite.—De même en prise ordinaire la vente ne doit se faire qu'après qu'elle a été déclarée bonne, à moins qu'il n'y ait des effets sujets á dépérissement et qui ne puissent être conservés sans trop perdre de leur valeur; auquel cas la vente doit s'en faire provisoirement.*"—Valin, "Ordonnance de la Marine," vol. ii, page 423.

"Si la prise a été *faite sous pavillon neutre*, ou n'est pas évidemment ennemie, *la vente même provisoire ne pourra avoir lieu sans le consentement du capitaine capturé.*"—Merlin, "Prise Maritime," section 12 (80).

"La prise par lui faite ne peut être considérée sa propriété disponible qu'après lui avoir été également adjugée par le tribunal compétent."

"Mais comme une prise n'appartient aux capteurs que lorsque elle a été jugée valable par l'autorité compétente," &c.—Emerigon (ed. B. Patey), t. i, pp. 440, 442.

W. A.
R. P.
R. J. P.

No. 215.

The Queen's Advocate to Earl Russell.—(Received May 24.)

Doctors' Commons, May 23, 1863.

UNITED STATES.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 20th instant, stating that he was directed by your Lordship to transmit to me three despatches and their inclosures received from Lord Lyons (Nos. 362, 363, and 364, of May 5), in answer to the instruction directing him, with reference to my Report of the 23rd of March last,* to furnish information as to the cases in which the point of "no warning under the President's Proclamation" had been raised before the United States' Prize Court. And Mr. Hammond was to request that I would take these papers into consideration, and furnish your Lordship with such observations as you may have to offer thereupon.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I am obliged by the opportunity of perusing in a more authentic form than has hitherto reached me the Judgment of the Supreme Court of the United States upon this important point. I must take the liberty of saying that this Judgment does not induce me to alter my opinion with respect to the due construction of the Proclamation, namely, that, according to the plain interpretation of the words, notice ought to be given to every neutral ship approaching a blockaded port, before capture.

The reasoning of Mr. Carlisle, and the minority of the Judges, including the most eminent Judge, I believe, in the United States, Chief Justice Taney, which is in accordance with my opinion, appears to me not grappled with, but evaded, by the majority of the Judges.

Your Lordship is aware that the French, in opposition to the English, authorities, hold that such notice is necessary by the general law, and apart from the particular words of the Proclamation.

It is clear, however, that the decision of the Supreme Court upon the Proclamation must be accepted by us as binding upon neutrals, more especially as it is in accordance with the general law maintained by English authorities.

I have, &c.
(Signed) ROBERT PHILLIMORE.

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* Page 84.

No. 216.

The Queen's Advocate to Earl Russell.—(Received May 25.)

My Lord, *Doctors' Commons, May 23, 1863.*

UNITED STATES. I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 20th of May instant, stating that he was directed to transmit to me a despatch and its inclosures from Her Majesty's Minister at Washington (No. 374), respecting the case of Mr. W. Murphy, a British subject, who complains of goods having been stolen from his store at Galveston by Confederate troops; and to request that I would take this case into consideration, and furnish your Lordship with such observations as I may have to offer thereupon.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That Mr. Murphy would be entitled, upon proving that his goods have been stolen, in the manner which he states, from his stores at Galveston by the Confederate soldiers, to compensation from the Confederate Government. The application for this compensation can only be made at present through the channel of Her Majesty's Consul at Richmond. The Confederate Government may refuse to listen to any application not made through a Minister properly accredited to them; but the attempt should, I think, be made to induce them to consider the Consul as, in the circumstances, sufficiently authorized to make the demand.

It would be expedient that Her Majesty's Government should instruct the Consul, not through Lord Lyons, but directly from home, to make this application.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 217.

The Queen's Advocate to Earl Russell.—(Received May 27.)

My Lord, *Doctors' Commons, May 27, 1863.*

UNITED STATES. I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 20th of May instant, stating that he was directed to transmit to me a despatch from Lord Lyons (No. 367, May 5), inclosing copies of his correspondence with Acting Consul Coppell and Mr. Seward respecting the case of the "Antona," a British steamer, which was brought as a prize into New Orleans some months, and whose master has ever since been kept in prison, while the cargo has been advertised to be sold by auction, and the ship has been taken for the United States' naval service without any judicial proceedings. The correspondence with Mr. Grindle respecting his brother's imprisonment at New Orleans was also inclosed; and Mr. Hammond was to request that I would take this case into consideration, and report to your Lordship my opinion thereupon.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That with respect to the sale of the "Antona" and cargo, and the conversion of that vessel into a United States' ship of war, without any judicial sentence of condemnation, I am of opinion that a breach of international law has been thereby committed, which calls for a remonstrance from Her Majesty's Government. I have in several former separate Reports, as well as in a recent conjoint Report signed by all the Law Officers, had the honour to set forth fully the grounds upon which I conceive such a sale and such a conversion of a vessel to be illegal.

With respect to the long captivity of Mr. Grindle (though he appears to have been in some degree the author of his own misfortunes), I think there is much reason for strong complaint and grave remonstrance against the Government of the United States. They are bound to have Prize Courts, or at least the means of taking the necessary evidence of the master and two of the crew, at proper and convenient places; and they have no right to detain as prisoners of war the master of a neutral vessel for three consecutive months.

The whole matter appears to me deserving of very serious consideration.

The fears of Mr. Grindle's brother, arising from his brother's being taken to New York, are probably groundless. I suppose there will be a trial and condemnation of the ship at New York; and that after having made his deposition Mr. Grindle (the master) will be released; but even if this be so, the conduct of the United States' Government in this matter appears to me at present unjustifiable.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 218.

The Law Officers of the Crown to Earl Russell.—(Received May 30.)

My Lord, *Temple, May 29, 1863.*

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 20th May instant, stating that, with reference to our Reports of the 22nd and 27th ultimo, and to the Report of Her Majesty's Advocate-General of the 7th instant,* respecting the capture of the British steamer "Dolphin," he was directed by your Lordship to transmit to us, for our information, a despatch from Lord Lyons (No. 369, May 5), inclosing a copy of a note which he had addressed to Mr. Seward on forwarding to him a copy of the protest made by the master, mate, chief engineer, and purser of the "Dolphin" before the Acting British Consul-General at the Havana. UNITED STATES.

Mr. Hammond was also pleased to annex a copy of the protest as sent home by Acting Consul-General Crawford (No. 10, April 2); and to request that we would have the goodness to return these papers after perusal.

In obedience to your Lordship's commands we have perused and considered these papers, and have the honour to report—

That the note addressed by Lord Lyons to Mr. Seward appears to us quite proper. That if the allegations in the protest be sustained by credible proof, more especially the allegation as to placing the engineer "in double irons," they will call for a special remonstrance from Her Majesty's Government to the Government of the United States.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 219.

The Law Officers of the Crown to Earl Russell.—(Received May 30.)

My Lord, *Temple, May 29, 1863.*

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 13th May instant, stating that he was directed by your Lordship to transmit to us the accompanying despatch from Her Majesty's Ambassador at Constantinople (No. 207), relative to the proceedings of Mr. Petherick, the British Vice-Consul at Khartoom, in taking possession of property belonging to the late Mr. A. Picifico, a British protected subject, whose heirs have only been able to recover a portion of it from Mr. Petherick. TURKEY.

Mr. Hammond was also pleased to state that we should observe from Sir Henry Bulwer's despatch that the matter is undergoing investigation by Sir Edmund Hornby, but that a question is raised by Sir H. Bulwer whether property assumed to belong to Mr. Petherick, and sent by him to Alexandria for sale, can be sequestered in order to meet the claims of Mr. Picifico's heirs.

Mr. Hammond was also pleased to state that he was directed by your Lordship to request that we would favour your Lordship with our opinion on this point.

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* Pages 125, 134, and 143.

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In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That it is not, in our opinion, competent to Her Majesty's Government to take any proceedings, by way of attachment or sequester of goods or money, the property of Mr. Petherick, in the hands of Messrs. Thurburn at Alexandria. Any proceedings of that kind must be instituted, if at all, by the creditors themselves, the representatives of Mr. Picifico; and they must proceed in the Consular Court in Egypt, according to the customary procedure in all respects. We are informed by a Minute of Sir Edmund Hornby given on the 15th October last, in relation to the case of Mrs. Shee's jewels, that the old practice in this respect remains in force in Egypt, unaffected either by the Order in Council of August 1860, or by the rules framed under the provisions of that Order; and that according to such practice, all persons to be affected by the sequester, if issued, must have due notice and full opportunity of resisting the application.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 220.

The Law Officers of the Crown to Earl Russell.—(Received May 31.)

My Lord, *Temple, May* 29, 1863.

TURKEY.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 1st instant, stating that, with reference to our Report of the 26th of January last,* he was directed by your Lordship to transmit to us a despatch from Her Majesty's Agent and Consul-General in Egypt (No. 15, April 15, 1863), furnishing a further explanation of his proceedings in the matter of the complaint made against him by Messrs. Crowder and Co. of undue interference in the dispute between that firm and Mr. Frederick Ayrton regarding Mrs. Shee's property.

Mr. Hammond was also pleased to state that he inclosed the former correspondence on this subject, and that he was directed by your Lordship to request that we would favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That the despatch containing Mr. Colquhoun's further explanation satisfies us that his motives for the course which he adopted were strictly honourable; but that we retain our opinion as to the legal impropriety of his conduct.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 221.

The Queen's Advocate to Earl Russell.—(Received May 30.)

My Lord, *Doctors' Commons, May* 30, 1863.

SIAM.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 21st May instant, stating that with reference to my Report of the 25th ultimo,† he was directed to transmit to me, together with the previous papers, a letter from Messrs. Clarkson, Son, and Cooper, stating that they have instituted a suit on behalf of the mortgagee of the vessel "Canada" against the proceeds of that vessel, and requesting that Her Majesty's Government will instruct Her Majesty's Consul at Bangkok to remit the proceeds to England, in order to the same being paid to the credit of the Registrar of the High Court of Admiralty of England; and to request that I would again take this case into consideration, and furnish your Lordship with my opinion as to whether this application should now be complied with.

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* Page 30. † Page 132.

Mr. Hammond was also pleased to state that your Lordship presumes that if my answer should be in the affirmative, it would be sufficient for your Lordship to instruct Her Majesty's Consul to remit the proceeds to the Admiralty Court by a bill of exchange drawn in favour of Mr. H. Cadogan Rothery.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I am of opinion that Messrs. Clarkson, Son, and Cooper have now placed themselves in a condition which entitles them to the aid of your Lordship in this matter. I think that your Lordship might properly direct Her Majesty's Consul at Bangkok to remit the proceeds to the Registrar of the High Court of Admiralty. There would be no objection to this being done, as proposed, through the medium of a bill of exchange in this instance.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 222.

The Queen's Advocate to Earl Russell.—(Received May 30.)

My Lord, *Doctors' Commons, May* 30, 1863.

BRAZIL.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 25th instant, stating that he was directed by your Lordship to transmit to me the despatches noted in the margin* respecting the arrest and imprisonment in Brazil of Mr. Vionnée, a British subject, and to request that I would take these papers into consideration, and report to your Lordship my opinion whether Her Majesty's Government can take any or what steps in this matter.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I do not advise Her Majesty's Government to take any steps in this matter.

It is clear that Mr. Christie, when he wrote to the Marquis of Abrantes (and, I should hope, also Mr. Consul Hervey, when he wrote to Mr. Christie) must have been kept in ignorance of the letter of Mr. Vionnée, which is entirely exculpatory of the Judge Domini.

That letter disposes altogether of the principal charge, namely, the partiality of the Judge who passed sentence upon Mr. Vionnée.

It seems also very probable from Mr. Christie's letter to Consul Hervey, as well as from other circumstances, that Mr. Vionnée is very unguarded and indiscreet in his language.

It is extremely difficult to decide whether the Marquis d'Abrantes, who is, of course, fortified by the legal advisers of the Government, or Dr. Azevedo, be right in the construction of the particular Article of the Criminal Code, and whether Mr. Vionnée was or was not entitled to a jury.

It is true that in England witnesses are not allowed, above all in a criminal case, to state inferences from words, but are obliged to repeat the words themselves, in order that the Judge may draw the inference.

In Brazil the law appears to be different, and Mr. Vionnée is voluntarily resident in that country, and therefore amenable to that law.

It would seem also, from the letter of the Marquis d'Abrantes, that Mr. Vionnée has sound legal remedy by way of appeal ("dos recursos") if he has been really injured.

But even if this be not so, I should still, in the particular circumstances of this case, be of opinion that Her Majesty's Government ought not to intervene in this matter.

I have, &c.
(Signed) ROBERT PHILLIMORE.

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* Mr. Christie, No. 128; Mr. Eliot, No. 16.

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No. 223.

The Law Officers of the Crown to Earl Russell.—(Received May 30.)

My Lord, *Temple, May* 30, 1863.

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 28th May instant, stating that he was directed to transmit to us therewith a despatch from Her Majesty's Minister at Washington (No. 404), together with a letter from the Board of Admiralty, dated the 26th May instant, respecting the arrest, at the Havana, of a seaman named Charles Ford as a deserter from Her Majesty's ship "Nile;" and as to a claim raised on his behalf by the United States' Consul-General, as being an American seaman, and to request that we would take this case into consideration, and furnish your Lordship with our opinion thereupon, with especial reference to the point raised by the Board of Admiralty.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That we think it would be expedient that Her Majesty's Government should not refuse to give up Charles Ford on the requisition either of the Spanish or the United States' authorities. That we do not intend by the expression of this opinion, to cast any claim upon Captain Barnard, who, in the circumstances of the case, and especially having regard to the acquiescence of the United States' captain, might have not unreasonably considered himself justified in what he did.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 224.

The Law Officers of the Crown to Earl Russell.—(Received June 2.)

My Lord, *Temple, June* 1, 1863.

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 21st ultimo, stating that he was directed by your Lordship to transmit to us a despatch and its inclosures from Her Majesty's Minister at Washington (No. 378, May 5, 1863), respecting a privateer said to be fitting out at Nassau to cruize against the shipping of the United States, and to request that we would take this matter into our consideration, and favour your Lordship with any observations we might have to offer thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That the despatch of Lord Lyons to the Governor of the Bahamas will doubtless be sufficient to induce his Excellency to exercise a proper vigilance in the matter; but it would, we think, be expedient that he should receive instructions from Her Majesty's Government to take, under legal advice on the spot, whatever measures may be necessary to prevent the fitting out of a cruizer in a manner forbidden by the Foreign Enlistment Act.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 225.

The Law Officers of the Crown to Earl Russell.—(Received June 2.)

My Lord, *Temple, June* 1, 1863.

CHINA.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 23rd ultimo, stating that with reference to our Report of the 17th of March,* he was directed by your Lordship to transmit to us, together with the previous papers, three despatches and their inclosures from Sir Frederick Bruce,* respecting a further question which has arisen in connexion with the case of the "Pearl," namely, as to the extent to which under the XLVIIth Article of the Treaty of Tien-tsin, the Chinese authorities have the power of confiscation in the case of a vessel which has taken on board a prohibited cargo at a prohibited port.

Mr. Hammond was also pleased to state that we should observe that Sir Frederick Bruce supports the view taken by the Chinese Government of its right to confiscate both vessel and cargo, but that Mr. Consul Sinclair and the Attorney-General at Hong Kong contend that the vessel is not liable to confiscation, unless she is seized in the act of trading with the port itself at which by Treaty she is not entitled to trade.

And that he was directed by your Lordship to request that we would take this matter into our consideration, and report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we do not see any reason for narrowing the construction of the language of the XLVIIth Article of the Treaty of Tien-tsin, so as to defeat its plain and avowed object. That we agree with the construction put upon this Article by Sir F. Bruce and the Chinese Government, and that we are of opinion that the Chinese authorities have power to confiscate the "Pearl" as well as her cargo.

We have, &c
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 226.

The Law Officers of the Crown to Earl Russell.—(Received June 3.)

My Lord, *Temple, June* 1, 1863.

SPAIN.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 23rd ultimo, stating that with reference to the Queen's Advocate's Report of the 10th of May, 1861,† he was directed by your Lordship to transmit to us a letter from Mr. Robinson, dated the 18th of May ultimo, requesting the interference of Her Majesty's Government in support of his claim against the Government of Spain "for the wrongful condemnation at Mahon of a cargo of maize" shipped by him in the Roman brig "Mio Zio."

Mr. Hammond was also pleased to state that he likewise transmitted to us a despatch received in March of last year from Her Majesty's Consul at Palma (No. 18, March 13, 1862), stating that Mr. Robinson had compromised the case, which was before the Spanish Law Courts; and that he was directed by your Lordship to request that we would favour your Lordship with our opinion whether, under the circumstances, Her Majesty's Government would be borne out in taking any action in the matter.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That there now appears to be a reason, in addition to those given in the Reports of the late Queen's Advocate, against the official intervention of Her Majesty's Government in this case, namely, that a compromise has actually been effected by Mr. Robinson's own directions, through his agent, and that the lawsuit is at an end.

With respect to the misconduct of the Judge who has been removed, we do not think it founds any claim against the Spanish Government for pecuniary compensation to Mr. Robinson which Her Majesty's Government ought to put forward.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

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* Page 78.

* Sir F. Bruce, No. 3, January 6, 1863; No. 10, January 26, 1863; No. 17, February 24, 1863.

† See Reports for 1861, page 93.

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No. 227.

The Law Officers of the Crown to Earl Russell.—(*Received June* 3.)

My Lord, *Temple, June* 3, 1863.

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 1st June instant, stating that the attention of Her Majesty's Government has been for some time directed to a steam-vessel named the "Phantom," which was denounced by Mr. Adams as being probably designed for the naval service of the Confederate States. And Mr. Hammond was also pleased to inclose the representations made by Mr. Adams and the reports which have been made to Her Majesty's Government in regard to the results of the inquiries instituted into the character of the vessel; and to request that we would consider these papers, and furnish your Lordship with our opinion whether the facts disclosed in them are of a nature to call for or to admit of interference on the part of Her Majesty's Government with a view to prevent an infringement of the law.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That it appears to us that no sufficient evidence has yet been produced to warrant Her Majesty's Government in taking any action with respect to the steam-ship "Phantom."

The only new fact alleged (which appears not in the papers accompanying Mr. Hammond's letter, but in the papers accompanying a separate case laid by orders of Sir G. Grey before the Attorney and Solicitor-General) is that on Thursday the 28th of May a police officer visited the "Phantom" and saw "several men at work, together with her officers, all wearing an uniform, believed to be that of Confederate States' Navy." If it were proved as a fact that the uniform seen was really that of the Confederate States' Navy, it might, perhaps, be important; but this seems to us to be very improbable, and no grounds are stated for the officer's belief upon which we can rely.

We have, &c.

(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 228.

The Law Officers of the Crown to Earl Russell.—(*Received June* 5.)

My Lord, *Temple, June* 3, 1863.

CHINA.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 23rd of April last, stating that he was directed by your Lordship to transmit to us a despatch from Sir F. Bruce (No. 185, December 23, 1862), inclosing with other papers a translation of a note from Prince Kung, protesting against the attempt to sue before British tribunals, British subjects in the service of China, for acts done by them in the exercise of the authority confided to them, and to request that we would take these papers into our consideration, and favour your Lordship with our opinion as to the answer which should be returned to Sir F. Bruce.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we are of opinion that Sir F. Bruce has fallen into an error by confounding two distinct questions, namely, a question relating to the infringement of orders made under the Treaty[*] of the 13th of June, 1853, and a question as to alleged civil liability as between British subjects in the Consular Courts in China.

We think that Sir F. Bruce is mistaken in treating (see despatch to Earl Russell of the 23rd of December, 1862, page 2) the question which he refers to your Lordship as depending on the fourth and following Articles of the Treaty.[*] Those Articles relate to the infringement of the Treaty and other

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[*] Should be "Order in Council."

regulations, and to the punishment of such infringements by penalties, and not in any way to civil suits.

But in the present case a difference has arisen between "British subjects;" that is, the complainant and the person complained of are both British subjects. To such a case the 12th Article of the Treaty[*] applies, and the Consul of the District is competent to hear and determine the matter. His decision is subject to an appeal to the Chief Superintendent if the sum in dispute does not exceed 1,000 dollars; but if it exceed that sum, then to the Supreme Court of Hong Kong, and not to the Chief Superintendent. This proceeding before the Consul will be "a suit of a civil nature;" and we therefore think that the suit ought to be entertained under Article 12 of the Treaty.[*] But we think also that the Court which should entertain it would be bound to give judgment for the defendant, upon the fact of his employment as a Chinese functionary in the Chinese Customs being either admitted or proved; for we are of opinion that a British subject so employed is not civilly answerable in the British Consular Courts for acts done by him in his official capacity.

There remains the question as to the power of the Supreme Court at Hong Kong to issue a *mandamus* to the Consular Courts. We cannot find any trace of such an authority in the original Charter (6 Hertslet, 228), which was confined to matters of criminal jurisdiction. Perhaps the Court may by a subsequent Charter have acquired the power of *mandamus*, but if this be so we should desire to see this further Charter. Otherwise, in the absence of any proper authority, plainly conferring the power of controlling the Consular Courts, we are of opinion that it cannot be arrogated by the Court at Hong Kong, which is (without such authority) merely a Court of appellate, and in some cases of concurrent, jurisdiction. These difficulties have arisen from an event not expressly contemplated in the year 1853, namely, the employment of British subjects in the service of the Emperor of China. We think that they do not, by virtue of that service, cease to be "British subjects" under the terms of the Order in Council; although, in respect of acts done by them officially in the service of the Emperor, when such justification is pleaded and proved, they ought not to be holden civilly liable in the Consular Courts.

We have, &c.

(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 229.

The Law Officers of the Crown to Earl Russell.—(*Received June* 5.)

My Lord, *Temple, June* 4, 1863.

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 28th ultimo, stating that, with reference to our Report of the 31st March,[†] he was directed by your Lordship to transmit to us, together with the previous papers, the further correspondence, as marked in the margin,[‡] which has passed between the Foreign Office and Her Majesty's Minister at Washington respecting the Act of the United States' Congress, for "enrolling and calling out the National Forces, and for other purposes;" and Mr. Hammond was to call our attention to the Proclamation which has been issued by the President of the United States, specifying the term of sixty-five days from the date thereof, as the time within which foreigners who have simply declared their intention to become citizens will be allowed to leave the United States, if they wish to avoid the conscription; and he was to request we would take the same into consideration, and furnish your Lordship with our opinion as to the sufficiency of the time allowed; and as to any further instructions which should be addressed to Lord Lyons on this subject.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we are of opinion that the period of sixty-five days is a reasonable

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[*] Should be "Order in Council."

[†] Page 94.

[‡] To Lord Lyons, No. 173, April 3, 1863; Lord Lyons, No. 348, April 24; No. 398, May 8; No. 415, May 11; No. 416, May 11, 1863.

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period, with reference to all the circumstances, to allow for the departure of foreigners, who have simply declared their intention to become citizens, from the United States.

That it does not occur to us to suggest any further instructions which should be addressed to Lord Lyons on this subject.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 230.

The Law Officers of the Crown to Earl Russell.—(Received June 5.)

My Lord, *Temple, June 5*, 1863.

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 1st June instant, stating that he was directed to request that we would inform your Lordship what is the exact position of a vessel like the "Dolphin," sent in by a naval captain on a charge of running the blockade or carrying contraband of war. That your Lordship would be glad to be informed whether it is the captain of the capturing cruizer, or the Naval Department, or the Government, that prosecutes; also whether there is any difference in these respects between British and American proceedings. That your Lordship supposes that when transferred to the Prize Courts, the vessel can no longer be released by the President of the United States. And Mr. Hammond was pleased to request that we would furnish your Lordship with information on these points.

In obedience to your Lordship's commands we have taken these questions into consideration, and have the honour to report—

That according to the usage of international law, all prize, before condemnation, enures to the Sovereign or Government of the State which commissions the captor. The general maxim upon which this usage is founded is usually expressed in the terms, *bello parta cedunt Republicæ*. In England, even since Prize Acts (which practically date from the time of Queen Anne) and Proclamations have given the whole value of the prize to the captor, it is nevertheless a matter of undoubted law that the Crown may at any time *before condemnation* release the prize.* It usually signifies officially to the Queen's Advocate and Queen's Proctor its order to take no further proceedings; and, on the application of these officers, the Judge releases the vessel. The whole law is exhausted in Lord Stowell's Judgment in the "Elsebe" (5 Robinson, 173), and that of Lord Brougham in the case of Alexander *v.* the Duke of Wellington (2 Russell and Mylne's Reports). In the United States of America the Government has the same power, and has lately exercised it; the Prize Court overruling an argument on behalf of the captor, to the effect that the Prize primarily vested in him. The only doubt has been in that country whether, even *after* condemnation, the Government had not the power of release. We believe, however, that the view taken by the United States' Government is that after condemnation the property is vested in the captor, and that the Government can therefore no longer interfere in the matter.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

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* It may depend upon the words of each Prize Act whether the property vests in the captor after first or a final condemnation.

No. 231.

The Queen's Advocate to Earl Russell.—(Received June 8.)

My Lord, *Doctors' Commons, June* 6, 1863.

UNITED STATES.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 5th June instant, stating that he was directed to transmit to me a despatch from Lord Lyons (No. 439, May 19), stating that he had been informed by Mr. Seward that he was engaged in a discussion with the Spanish Government respecting the pretension of Spain that her territorial jurisdiction extended to a distance of two marine leagues from the coast of Cuba and other places, and that Mr. Seward was desirous of knowing what view Her Majesty's Government took of the matter; and Mr. Hammond was pleased to request that I would take Lord Lyons' despatch into consideration, and furnish your Lordship with my opinion as to the expediency of answering it, and if so, in what terms.

In obedience to your Lordship's commands I have taken this despatch into consideration, and have the honour to report—

That according to the universally received axiom of international law, territorial waters extend, as a general rule and apart from all particular considerations as to bays, chambers, and the like, to the distance of one marine league only from the shore.

Throughout this war Great Britain and the United States have adhered to this doctrine. It was indeed originally founded on a rough estimate of this being the usual distance to which cannon-shot would reach,—*quousque tormenta explodi possunt*,—and it may well be that hereafter States may agree to extend the distance to one better suited to the recent improvements in artillery; but at present the general rule certainly is that the jurisdiction of a State extends to one league only. I am not aware of any exceptional circumstance as to Cuba which would take the coast of that island out of the application of the general rule.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 232.

The Queen's Advocate to Earl Russell.—(Received June 8.)

My Lord, *Doctors' Commons, June 6*, 1863.

UNITED STATES.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 2nd instant, stating that with reference to my Report of the 26th January last,* respecting the case of Mr. Crosse, he was directed by your Lordship to transmit to me, together with the former papers,† a subsequent correspondence between that gentleman and the Foreign Office, and a despatch which has been received from Her Majesty's Minister at Washington,‡ in answer to an instruction which was addressed to him, to endeavour to ascertain what had happened to Mr. Crosse's property at Fredericksburg; and Mr. Hammond was to request that I would again take this case into consideration, and furnish your Lordship with my opinion as to the further answer which should be returned to Mr. Crosse.

In obedience to your Lordship's commands I have again taken this case into consideration, and have the honour to report—

That I humbly advise that the further answer to Mr. Crosse be to this effect: that it appears from the communication which Her Majesty's Government have received from Lord Lyons that Fredericksburg has been for many months the scene of continual conflict between the belligerent forces; that he has no means of ascertaining whether or not the property of Mr. Crosse, in common with that of other persons, was or was not destroyed in that town. That your Lordship thinks it right to apprise Mr. Crosse that if his property

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* Page 34.

† Mr. Crosse, January 14.

‡ To Mr. Crosse, February 13; Mr. Crosse, February 17; to Mr. Crosse, February 21; Mr. Crosse, February 23 and April 21; to Mr. Crosse, April 23, 1863; to Lord Lyons, No. 208; Lord Lyons, No. 428, 1863.

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has been so destroyed, Her Majesty's Government would not, in the circumstances stated, be warranted in making any official application for compensation to the Government of either belligerent.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 233.

The Queen's Advocate to Earl Russell.—(Received June 8.)

Doctors' Commons, June 6, 1862.

My Lord,

UNITED STATES.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 4th June instant, stating that he was directed to transmit to me a despatch and its inclosures from Her Majesty's Minister at Washington (No. 438, May 19), respecting the case of Mr. John J. Craven, a British subject, who has been banished by the military authorities from the State of Missouri, and who now seeks to obtain permission to return to that State, as well as compensation for his banishment and the arrests that preceded it, and to request that I would take this case into consideration, and report to your Lordship my opinion thereupon.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I am clearly of opinion that no case has been made out for the official interference of Her Majesty's Government in this case of Mr. Craven. A British subject has no right to expect his Government to protect him from the consequences of writing an offensive, violent, political pamphlet against the ruling authorities in a country torn asunder by civil war, and in a part of that country in which the exigencies of the State have compelled it to introduce martial law over its own subjects.

I think that Mr. Craven has probably been less harshly dealt with than an United States' citizen would have been in the like circumstances.

Possibly at some future period of greater civil tranquillity than the present Lord Lyons may be able to obtain for Mr. Craven permission to return to the State of Missouri. In the meanwhile Mr. Craven must suffer from the consequences of his own grave misconduct.

I have only further to observe, that the defence of the pamphlet, viz., that it was intended to be private, is obviously untrue. The title-page shows that it was not only printed, but "published," and to be "republished in England."

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 234.

The Law Officers of the Crown to Earl Russell.—(Received June 9.)

Temple, June 8, 1863.

My Lord,

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 19th May ultimo, stating that with reference to our Report of the 18th April last,[*] respecting the alleged partiality shown by the Governor of the Windward Islands to the Confederate steamer "Oreto," he was directed by your Lordship to transmit to us, together with the previous papers,[†] a letter from the Colonial Office,[‡] containing the Duke of Newcastle's observations upon the views stated in our Report.

Mr. Hammond was also pleased to transmit to us a despatch and its inclosures which had been received from Her Majesty's Minister at Washington on this subject; and to request that we would again take this matter into our consideration, and favour your Lordship with such further observations as we might have to offer thereupon.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we intended to express by our Report that we thought the communications and explanations of Mr. Walker to Admiral Wilkes, regard being had to the character of that officer, were unnecessary and inexpedient, and that it appeared to us that they were likely to lead, as they appear to have done, to the difficulties which have arisen from the letter of Admiral Wilkes to Mr. Walker.

That with respect to the observance of Her Majesty's Regulations, in answer to the questions of the Duke of Newcastle, we have the honour to state our opinion—

That it is most desirable that the terms of Her Majesty's Proclamation should be strictly adhered to; that coal ought not to be supplied to either belligerent, except in such quantity as may be necessary to "carry such vessel to the nearest port of her own country, or to some nearer destination;" and that by these latter words it is not intended to include a mere cruising destination, but some definite port or place: that, therefore, coal granted at any of Her Majesty's ports, and consumed in cruising, ought not to be replenished under the terms of the Proclamation, but that a vessel whose coal has, owing to real necessities arising from stress of weather, been prematurely exhausted, before she could (if time and weather were the sole obstacles) reach her port of destination, ought not to be forbidden by the Governor to coal, although within the time specified in the Regulations.

It would appear to us that the suggestion of sending an officer on board to verify in each case the necessity for coaling would be likely to give great offence to belligerent men-of-war; but of course it would be competent to Her Majesty's Government, if they thought fit, to make such a verification the condition of liberty to coal in Her Majesty's ports.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 235.

The Law Officers of the Crown to Earl Russell.—(Received June 9.)

Temple, June 9, 1863.

My Lord,

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 4th instant, stating that he was directed by your Lordship to transmit to us therewith, for our immediate consideration, a letter from Mr. Adams, the American Minister at this Court, inclosing depositions respecting a vessel called the "Southerner," suspected of being fitted out for the naval service of the Confederate States; that these papers have been sent to the Treasury and Home Department, with a request that instructions may be sent by telegraph to the proper authorities at the places specified in the depositions, to pay particular attention to the vessel, and if there seem any reasonable ground for interference, to take such steps as can legally be taken to prevent any infringement of the law; but Mr. Hammond was to request that we would communicate to your Lordship, at our earliest convenience, for the guidance of those two Departments, our opinion upon the course that can be pursued in the case as set forth in the inclosed papers.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That we are of opinion that the evidence (such as it is) of Langley (whose very singular description is "Surgeon and Journalist") and Blakiston would not support a charge that the "Southerner" is so equipped, or fitted out, or destined, as to constitute a breach of the provisions of the Foreign Enlistment Act; and that they are not, therefore, sufficient to warrant Her Majesty's Government in ordering the arrest of this ship.

We think it would be expedient to represent to Mr. Adams that by far the greater portion of the two depositions which he has forwarded contain hearsay

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[*] Page 132.

[†] Colonial Office, March 23 and March 31, 1863.

[‡] Colonial Office, May 15, 1863.

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matter, or statements of mere belief, which, equally, according to the American and British law, are inadmissible in a Court of Justice, and upon which, therefore, the Government of Her Majesty could not legally act.

The only points of any materiality (to use a legal expression) are the facts that the vessel had two guns on board, and perhaps (but this does not seem quite certain) that she had port-holes for more; and that Captain Butcher was actively concerned in her fitting out.

But the guns are only two 18-pounders, which Blakiston himself appears to consider inadequate for a privateer, and not unfit for a merchant-vessel to carry.

The information which Langley states that he received on board the vessel was to the effect *that she was destined to carry on commerce between the Confederate States and Great Britain.* Blakiston does not appear to have heard anything from any person whose statements could be evidence which tends to show any illegal purpose. The name, devices, and decorations spoken of, are consistent with a commercial destination.

We cannot advise your Lordship that there is at present evidence sufficient to justify the seizure of the vessel, though the circumstances are suspicious, and it may be desirable that she should be watched, as far as the law permits, in order that if other circumstances should be discovered, supported by proper evidence, and capable of proper proof, tending to show that her equipment and destination are unlawful, orders may be given for her detention.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 236.

The Queen's Advocate to Earl Russell.—(*Received June* 11.)

My Lord, *Doctors' Commons, June* 10, 1863.

GREAT BRITAIN.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 8th instant, stating that he was directed by your Lordship to transmit to me a letter dated 8th June instant, and its inclosure, from a Mr. Phené, asking for certain information respecting passports which he believes to have been issued to his wife and a Dr. Shute in 1858, and Mr. Hammond was to request that I would furnish your Lordship at my earliest convenience with my opinion as to whether Mr. Phené should be supplied with the information he requests.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That in the very special circumstances of this case, I think the information required by Mr. Phené may be properly given.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 237.

The Queen's Advocate to Earl Russell.—(*Received June* 12.)

My Lord, *Doctors' Commons, June* 12, 1863.

GREAT BRITAIN.

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 10th of June instant, stating that he was directed to transmit to me a despatch from Her Majesty's Minister at Frankfort asking for information on a point connected with the protection of naturalized British subjects in the country of their birth; and to request that I would take this despatch into consideration, and furnish your Lordship with my opinion as to the answer that should be returned to Sir Alexander Malet.

In obedience to your Lordship's commands I have taken this despatch into consideration, and have the honour to report—

That a foreigner who has become a naturalized British subject cannot claim British protection against the operation of the law of his native country, so as to exempt himself from any penalties which the law of his native country may inflict upon him when he returns to it.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 238.

The Queen's Advocate to Earl Russell.—(*Received June* 12.)

My Lord, *Doctors' Commons, June* 12, 1863.

UNITED STATES.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 10th instant, stating that he was directed to transmit to me a letter (dated the 15th April ultimo, from Mr. A. A. Nevins (which has been forwarded to your Lordship by Mr. Laird, M.P.), stating the circumstances under which he left Liverpool last December on board the British ship "C. N." for New Orleans. That Mr. Nevins further states that on his arrival at the latter port, he was informed of the intention of the United States' authorities to arrest him, and that acting upon the advice he received, and with a view to save the ship and cargo from heavy loss, he had felt it necessary to abandon his original voyage, and he had accordingly left New Orleans, and had arrived at the Havana. That Mr. Nevins states that he is unaware of any cause whatever to warrant the threatened violence against his person, and that he asks your Lordship to obtain from the Government of the United States a statement of the charges (if any) against him, and the reasons of his attempted arrest; and Mr. Hammond was to request that I would take this case into consideration, and report to your Lordship my opinion thereupon.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I do not advise your Lordship in the present state of facts to make any official application to the Government of the United States in the matter of Mr. Nevins' complaint. That Government so addressed might decline to answer any hypothetical questions as to what it would have done if Mr. Nevins had remained at New Orleans.

There is no evidence before your Lordship that they threatened to arrest Mr. Nevins. He appears to have received some information from his own friends, which is most vaguely stated, and which might have been erroneous. Mr. Nevins should certainly furnish your Lordship with a more detailed statement as to the nature of the information which he received, and the authority upon which it rested, before the propriety of addressing any communication to the Government of the United States or to Lord Lyons can be considered by your Lordship.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 239.

The Law Officers of the Crown to Earl Russell.—(*Received June* 13.)

My Lord, *Temple, June* 13, 1863.

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 5th instant, stating that he was directed to transmit to us the accompanying papers respecting the case of the "Will o' the Wisp," a Nova Scotian vessel which was captured in June 1862 by the United States' cruizer "Montgomery" and taken into Key West, whence she was released on the 19th of the following month under a decree of the United States' Prize Court. That this case has been several times reported on by Her Majesty's

Advocate-General, and that it formed the subject of a discussion in the House of Commons on the 4th June instant, in the course of which a desire was expressed that the papers should be laid before Parliament. But that before, however, your Lordship consents to these papers being given either wholly or in part, your Lordship requested that we would consider them and furnish your Lordship with our opinion as to whether, in the interests of the owners of the "Will o' the Wisp," or on any other grounds, we should see any objection to the papers being published. That of course the letters of the Queen's Advocate will under no circumstances be published.

In obedience to your Lordship's commands we have this case into our consideration, and have the honour to report—

That we see no objection to these papers being laid before Parliament with the exception proposed. There are perhaps some which it would not be expedient to publish *in extenso*, but this is a matter of discretion as to which your Lordship will judge.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 240.

The Law Officers of the Crown to Earl Russell.—(Received June 13.)

Temple, June 13, 1863.

My Lord,

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 11th instant, stating that with reference to our Report of the 9th instant,* he was directed by your Lordship to transmit to us the accompanying papers† respecting the case of the "Southerner," and Mr. Hammond was to call our special attention to the statement contained in the letter from the Mayor of Hartlepool to the Home Office of the 8th instant, that the "Southerner" has two guns at the least on board, and that she has ten port-holes, and adverting to the orders which were recently given for detaining the "Ward Jackson" because she was fitted up with side seats for soldiers; and Mr. Hammond was to request that we would furnish your Lordship with our opinion whether there are not sufficient grounds for also detaining the "Southerner."

The previous papers in this case were annexed for reference, as well as the correspondence relative to the orders given for detaining the "Ward Jackson." ‡

In obedience to your Lordship's commands we have taken these further papers into consideration, and have the honour to report—

That we are still of opinion that there is no evidence at present upon which the "Southerner" could be legally convicted of a breach of the Foreign Enlistment Act.

The opinion of every person employed to examine her is, that she is destined for merchant service; the opinion is founded positively on her build, her fittings up, her cargo; negatively, on the absence of the fittings up and build requisite for a ship of war. It is true she carries two guns, but we are expressly told that they are so light as to be fit only for firing signals with blank cartridge, and common to merchantmen of her class. It is true she has ten port-holes, but we are told that they are not large enough to receive guns, and are adapted for the purpose of letting away the water from the deck; which is itself too small to be fired from. Her cargo is pig iron alone, except the necessary coals.

It is true that Captain Butcher and Messrs. Frazer are concerned with her, and that there is reason to suppose them to be connected with Confederate interests; but this may well be of a commercial character in this case.

With respect to our Report on the "Ward Jackson," it must be remembered that the Custom-house Officers had seized a large quantity of muskets on board of her in cases purporting to contain "hardware;" this material fact, in connection with an internal arrangement, most unusual in *merchant*, and most usual in *transport* ships, justified us in advising Her Majesty's Government to refuse a clearance to the ship until time should be afforded for further inquiry, which is all that we did advise.

The evidence at present obtained in this case does not go at all to the essential point of the *intent* with which the ship is fitted out; and so far as her construction is concerned, we see no ground for supposing that without very material alterations she would be capable of acting as a privateer.

All that we can at present recommend is, that on her arrival at Liverpool she should still be closely watched.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

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* Page 175.
† Treasury, June 8; Home Office, June 9 and June 10; Treasury, June 10 and June 11, 1863.
‡ Mr. Adams, June 3; Treasury, March 21; to Treasury, March 22, 1863.

No. 241.

The Law Officers of the Crown to Earl Russell.—(Received June 13.)

Temple, June 13, 1863.

My Lord,

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 12th June instant, stating that he was directed to transmit to us a letter from Mr. Adams,* again calling attention to the "Gibraltar" or "Sumter," now fitting at Liverpool, and as to the destination of which vessel he entertains suspicion. Mr. Hammond was also pleased to inclose letters from the Home Office and Treasury,† containing the results of the inquiry which their respective officers have made in consequence of Mr. Adams' letter; and to request that we would take the same into consideration, and report to your Lordship what course Her Majesty's Government should adopt under present circumstances.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That we are of opinion that this case has assumed a very suspicious aspect; but that the papers before us furnish no evidence which would warrant Her Majesty's Government in directing the vessel to be seized for the violation of the Foreign Enlistment Act. But we think that, having regard to the previous history of this vessel, and to the request of Messrs. Klingender (10th June, 1863), Her Majesty's Government ought to call upon those persons to furnish them with an explanation as to the necessity of, and reason for, placing these guns and gun-carriages on board, and to give directions to the proper officer of the Customs to refuse the clearance until further orders. We shall be glad to have an opportunity of further considering this case when the communication from Messrs. Klingender shall have arrived.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

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* Mr. Adams, June 3, 1863.
† Treasury, June 8; Home Office, June 8; Treasury, June 8, 1863.

No. 242.

The Queen's Advocate to Earl Russell.—(Received June 16.)

Doctors' Commons, June 15, 1863.

My Lord

UNITED STATES.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 12th instant, stating that he was directed by your Lordship to state to me that a despatch (of which the draft was inclosed, No. 164)

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founded upon my Report of the 24th March,[*] was addressed to Lord Lyons on the 1st of April, instructing him as to the steps he was to take in the case of the "Elias Reid," if he should be satisfied that the evidence was clear as to that vessel having been captured in British waters.

That, in reply thereto, a despatch was received from Lord Lyons (No. 414, May 11), stating the grounds upon which his Lordship was not able to satisfy himself that the evidence to that effect was clear; that it was consequently deemed desirable to request the Colonial Office for further evidence; and that Department replied, under date of the 6th instant, that the Governor of the Bahamas would be asked whether any further evidence could be produced; that a further despatch has, however, now been received from Lord Lyons, inclosing additional evidence obtained from the United States' Government which, in the opinion of the United States' Secretary of the Navy, places it beyond a doubt that the seizure of the "Elias Reid" was not made in British waters.

Mr. Hammond was accordingly to request that I would take the same into consideration, and furnish your Lordship with my opinion as to the further instructions which should be addressed to Lord Lyons.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That the evidence now produced by the United States' Government, if credible, would establish the point of the place of capture of the "Elias Reid" in favour of the captor. It is evidence, however, which is at variance with that which has been formerly laid before me, and I should desire to await the arrival of the expected answer from the Governor of the Bahamas before tendering my final advice to your Lordship on this subject.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 243.

The Queen's Advocate to Earl Russell.—(*Received June* 16.)

Doctors' Commons, June 15, 1863.

DENMARK.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 12th instant, stating that he was directed by your Lordship to transmit to me a despatch from Her Majesty's Minister at Copenhagen (No. 132), forwarding a correspondence which has passed between him and the Danish Government on the subject of the nationality of Mr. Rainals, British Vice-Consul at Copenhagen; and Mr. Layard was to request that I would take this matter into consideration, and furnish your Lordship with my opinion thereupon at my earliest convenience.

In obedience to your Lordship's commands I have taken this matter into consideration, and have the honour to report—

That from whatever motive the demand upon Mr. Rainals was allowed to slumber from the 5th of October, 1860, to the 20th of February, 1863 (as to which I do not find any remonstrance from Mr. Paget to M. Hall), if the demand be well founded in law, it has not been so waived as to be incapable of being put in force against that gentleman.

The true question is, had it ever a legal foundation?

Whatever consequences flow from the status of Borgerkab, and the acceptance of the Borgerbrev, did *at one time* attach to Mr. Rainals; and in my opinion he must (though the absence of the original license be in this case a suspicious fact) be now legally deemed to have taken the oath, to the fact of having taken which his name is indisputably subscribed, though the oath itself was not set forth *in extenso* in the paper which he subscribed.

It is important to consider what legal consequences flow from this act. It is said (letter from Mr. Rainals to Mr. Paget, February 21, 1863), that Her Majesty's then Representative apprised him that by a Treaty or Convention, it was expressly provided that the consequence of taking such an oath, or of the Borgerbrev, did not affect his British national character.

I should be glad to be informed whether this be a correct statement.

It is, perhaps, not altogether unimportant, though it seems to be conceded by the Danish Minister, that the sending back the Borgerbrev does, in ordinary cases, replace the person who had possessed it in his former position.

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[*] Page 85.

But the Danish Minister says (M. Hall to Mr. Paget, February 24, 1863), that Mr. Rainals was born in Denmark, and therefore a Danish subject, irrespectively, as I understand, of the Borgerbrev.

Whether he was born in Denmark, and whether, if so, he be thereby a Danish subject, Her Majesty's Representative at Copenhagen does not state.

But I humbly advise that information be obtained from him as to the fact and as to the law.

I should be glad also to learn if a Danish-born subject was under the necessity of applying for a Borgerbrev.

I think that with this information (though the subject would not then be wholly free from embarrassment), I should be in a better condition to advise your Lordship upon it.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 244.

The Queen's Advocate to Earl Russell.—(*Received June* 17.)

Doctors' Commons, June 16, 1863.

DENMARK.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 12th June instant, stating that, with reference to my Report of the 17th March,[*] relative to the refusal of the Danish Government to give up to the British Vice-Consul the property of Mrs. Strattin, a British subject, deceased at Copenhagen, he was directed to transmit to me two further despatches on the same subject which have been received from Her Majesty's Minister at Copenhagen (Nos. 85 and 136); and to request that I would take the same into consideration, and furnish your Lordship with my opinion thereupon. The previous correspondence in this case was inclosed for convenience of reference.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That it would seem, from the papers now submitted to me, that the marriage itself of the deceased Mrs. Strattin is denied, and that a suit, resembling what is called an interest suit in the English Court of Probate, has been instituted, and, as I conclude, is still pending before the Danish Magistrate; and that the Danish Minister of Justice is of opinion that Mr. Strattin must satisfy the Court,—both that he was married to Mrs. Strattin, and that, according to the English law, the cessation of matrimonial cohabitation does not destroy the English national character of the wife. The law upon this latter point is clear; such cessation, apart from a legal divorce, has no effect upon the national character of the wife. As to the first point, it is clearly an after-thought on the part of those who oppose Mr. Strattin's claim; but it appears that Mr. Strattin, if the Danish Court think the declaration of Captain Christmas too informal, can procure a certificate of his marriage from Australia. I understand, also, that the question of Mr. Strattin's costs is a matter to be submitted to the Danish Tribunal, and, I presume, that he will be deemed entitled to them, on proving his case, from those who have entailed upon him the unnecessary expense of doing so.

In this state of circumstances Her Majesty's Government cannot interfere further at present, but it should be understood and explained by Sir A. Paget to the Danish Minister that they abstain from interference on the ground that there is a *bonâ fide* suit pending, in which the facts of the marriage of Mr. Strattin is disputed, and therefore that at present the Treaty is denied to be applicable, and also in the firm expectation that, if it should turn out as the Vice-Consul has from the first declared, that Mr. Strattin has been put to unnecessary cost and expense by an unfounded litigation, the Danish Tribunal will condemn the adverse party to pay these costs. I do not advise that any attempt be made to graft upon the existing Treaty any additional Convention.

I have, &c.
(Signed) ROBERT PHILLIMORE.

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[*] Page 75.

No. 245.

The Queen's Advocate to Earl Russell.—(Received June 17.)

Doctors' Commons, June 16, 1863.

My Lord,

UNITED STATES.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 13th June instant, stating that he was directed to transmit to me a letter from the Colonial Office, inclosing a copy of a despatch, dated the 11th June instant, from the Governor of the Cape of Good Hope, together with the correspondence therein referred to, respecting a disagreement connected with official matters which had arisen between the Consul and the Vice-Consul of the United States at Cape Town; and to request that I would take this matter into consideration, and furnish your Lordship with my opinion thereupon.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That the Governor of the Cape of Good Hope appears to have acted discreetly and properly in this matter. That with respect to the general question put by his Excellency, it must be generally answered by saying that instances may be supposed in which the Executive Government might properly certify to a Court of Law that a foreign Consul had been duly recognized as such, and that he was entitled to whatever privileges or authority belonged to that character, but that it is not easy to foresee any other manner in which the Executive Government could or ought to interfere in proceedings on behalf of or against a foreign Consul carried on in a Court of Law.

I have, &c.

(Signed) ROBERT PHILLIMORE.

No. 246.

The Queen's Advocate to Earl Russell.—(Received June 18.)

Doctors' Commons, June 17, 1863.

My Lord,

OLDENBURG.

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 10th instant, stating that he was directed by your Lordship to transmit to me a despatch from Her Majesty's Chargé d'Affaires at Hanover (No. 28), asking to be furnished with a reply to certain inquiries on points of law which have been addressed to him by the Oldenburg Minister for Foreign Affairs, with reference to a charge of fraud and perjury against a naval officer in the service of the Grand Duke of Oldenburg; and Mr. Layard was to request that I would take this despatch into consideration, and inform your Lordship, at my earliest convenience, of the answer which should, in my opinion, be returned to M. de Rossing's inquiries.

In obedience to your Lordship's commands I have taken this despatch into consideration, and have the honour to report—

That as to the first question, if the law of Oldenburg required the instrument to be sworn before a Notary Public, in order to give it validity in Oldenburg, it was competent to the Notary Public to administer the oath.

As to the second question:—this question cannot be said to have yet received a clear and binding judicial decision; but the better opinion certainly is, that Captain Sommer would not, on account of a false affidavit, not sworn in any suit or judicial proceeding, be liable to a prosecution for perjury.

I have, &c.

(Signed) ROBERT PHILLIMORE.

No. 247.

The Queen's Advocate to Earl Russell.—(Received June 18.)

Doctors' Commons, June 18, 1863.

My Lord,

UNITED STATES.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 17th June instant, stating that he was directed to transmit to me a copy of a despatch from Her Majesty's Minister at Washington (No. 503, June 2, 1863), together with the previous papers therein referred to, reporting a conversation with M. Mercier on the cotton question, in the course of which M. Mercier suggested that England and France, as neutrals, might call upon the United States' Government to declare at once, in writing: 1st. That cotton, the property of neutrals, should be respected in districts recovered by the United States, without any inquiry from whom it had been bought; and 2ndly. That whatever facilities for removing and exporting cotton were given either to the agents of the United States' Government or to American citizens, should also be given to neutrals; and Mr. Hammond was to request that I would take these papers into consideration, and furnish your Lordship with my opinion as to the lawfulness of either or both of the demands suggested to be made upon the United States' Government.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That both the demands in question are founded upon sound principles of international law. Neutral States have exactly the same rights, and belligerents exactly the same obligations towards them, in this as in any other war.

With respect to the first demand, it is to be observed that property *bonâ fide* transferred from a belligerent to a neutral in the territory of the belligerent, and which is not captured for any breach of maritime international law, is to all intents and purposes the property of the neutral, and just as sacred as any other property of which he has become lawfully possessed. With respect to the second demand, it is to be observed that neutral States are entitled to be placed on the same footing with respect to facilities for removing and exporting the produce of a country whose ports are blockaded, as the subjects or agents of the belligerent who enforces this blockade.

The force of this general proposition of international law is certainly not weakened in its application to a case in which neutral States have loyally submitted to the severe inconvenience of a blockade, extending, it is believed, over 3,500 miles, and 119 ports, of a country with which, previously to the war, there was carried on a commerce of the greatest importance to their own subjects.

I have, &c.

(Signed) ROBERT PHILLIMORE.

No. 248.

The Law Officers of the Crown to Earl Russell.—(Received June 18.)

Temple, June 18, 1863.

My Lord,

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 9th instant, stating that with reference to our several Reports of the dates noted in the margin,* respecting the case of the "Peterhoff," he was directed by your Lordship to transmit to us, together with the previous papers, a letter from Mr. Joseph Spence, containing observations on the case, and requesting to be made acquainted with the result of the instructions which he was informed, on the 3rd of April, had been given to Lord Lyons, and in particular whether any, and if any what, grounds of capture have been alleged by the Government of Washington.

Mr. Hammond was to request that we would take Mr. Spence's letter into consideration, and furnish your Lordship with our opinion as to the answer which should be returned thereto.

In obedience to your Lordship's commands we have taken Mr. Spence's letter into consideration, and have the honour to report—

That the United States' Government having insisted upon their right to have the validity of the capture of the "Peterhoff" inquired into, and adjudicated upon in the Prize Court, have, by so doing, undertaken to bring forward, and must be understood to have expressed a belief that they can establish, legal grounds of capture, sufficient to justify that course of proceeding; but that it

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* Law Officers, April 1, April 22, April 22, May 6, May 15, May 15, and June 6, 1863; pages 98, 126, 127, 143, 155, and 156.

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yet remains to be seen whether they can or cannot do so; and if they should fail to do so, Her Majesty's Government will take all proper measures to obtain due compensation for the owners. That, in the meantime, the rules of international law do not admit of any immediate further interference by Her Majesty's Government; nor are they in a situation to communicate to Mr. Spence any information as to the particular grounds on which the United States' Government may found their expectation of being able to make out a case of violation of neutrality against the vessel.

That Her Majesty's Government feel, however, no apprehension that any erroneous construction will be placed, by any persons acquainted with international law, upon the expression in your Lordship's former reply to Mr. Spence, "contraband of war destined for the Confederate States." No language could more clearly point to the fact that the mere nature of any particular cargo or consignment would not make it contraband, unless it were being carried by the captured vessel to some destination within the Confederate States; and if the vessel were really employed in carrying munitions of war, &c., to any destination within the Confederate States, it would undoubtedly be liable to seizure, although its ostensible and professed destination might be to some neutral port.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 249.

The Queen's Advocate to Earl Russell.—(*Received June* 18.)

UNITED STATES.

My Lord, *Doctors' Commons, June* 18, 1863.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 15th instant, stating that he was directed by your Lordship to transmit to me the accompanying papers* respecting the arrest and imprisonment of Mr. John Tovell, a British subject, at Nashville, Tennessee, and was to request that I would take this case into consideration, and report to your Lordship my opinion thereupon.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That it is very probable that Mr. Tovell did on the occasion of this funeral oration (which appears to have been delivered orally, and not from any written paper) use expressions capable of being considered as exciting disaffection to the military government of Tennessee and the martial law under which that State was placed, and that he has been treated exactly as a citizen of the United States would have been in the same circumstance. It is, moreover, impossible to deny that any oration of the kind, however warranted by facts, was, all the circumstances considered, a most injudicious proceeding.

Nevertheless, it seems to me now a proper case for the interference of Her Majesty's Government, and that Lord Lyons should be instructed to continue his application for the release of Mr. Tovell, and to represent that he has never undergone any form of trial; never had an opportunity of seeing or hearing the witnesses who have deposed against him; that he has always denied the truth of the charges; that the occasion was one naturally leading to the use of strong language, and very capable of being maliciously represented, and that an imprisonment for three months for words spoken on such an occasion, in great and pardonable excitement of feeling, is already an excessive punishment.

I have, &c.
(Signed) ROBERT PHILLIMORE.

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* Miss Tovell, January 6, 1863; to Lord Lyons, No. 38; Lord Lyons, No. 162, February 16; Mr. Tovell, May 25, 1863.

No. 250.

The Queen's Advocate to Earl Russell.—(*Received June* 22.)

FRANCE.

My Lord, *Doctors' Commons, June* 20, 1863.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 17th instant, stating that he was directed by your Lordship to transmit to me a correspondence, as marked in the margin,* which has taken place between the Foreign Office, Her Majesty's Ambassador at Paris, and the Home Office, as to the manner in which certain papers, also inclosed, bearing upon the divorce case of Fitzgerald *v.* Fitzgerald, and which have been furnished by the Préfet de Police at the request of Messrs. Freshfield, should be dealt with; and Mr. Hammond was to request that I would report to your Lordship my opinion whether Lord Cowley can properly transmit the papers in question to Messrs. Freshfield.

In obedience to your Lordship's commands I have taken this matter into consideration, and have the honour to report—

That there does not appear to be any precedent for such a communication between Her Majesty's Representative at a foreign Court, and the solicitor for *one* of the parties in a *contested* suit in this country.

It seems to me on principle, and with a view to possible consequences in other cases, not expedient that your Lordship should make such a precedent, and I therefore do not advise your Lordship to give any directions to Lord Cowley to forward the Report of the French Commissioner of Police to Messrs. Freshfield and Co.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 251.

The Law Officers of the Crown to Earl Russell.—(*Received June* 23.)

UNITED STATES.

My Lord, *Temple, June* 20, 1863.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 16th instant, stating that with reference to our Report of the 13th instant,† upon the case of the "Gibraltar," otherwise "Sumter," he was directed by your Lordship to transmit to us, together with the previous papers,‡ a letter from the Treasury, inclosing a letter from the Commissioners of Customs, forwarding a further report from the Surveyor at Liverpool, and other papers,§ including an explanation from Messrs. Klingender and Co. with regard to the two heavy guns shipped on board that vessel.

Mr. Hammond was to request that we would take these papers into consideration, and furnish your Lordship with our opinion as to the course which should be pursued by Her Majesty's Government in regard to the "Sumter."

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That the letter of Messrs. Klingender and Co. is not satisfactory. Mr. Morgan does not vouch, as Mr. Klingender expects, that the guns in question are unfit for sea use, and he does speak distinctly to the fact of gun-carriages being on board, of which fact Messrs. Klingender declare themselves to be ignorant. We think that Mr. Morgan should be distinctly asked whether the guns are unfitted for sea use, and that Messrs. Klingender's attention should be drawn by Mr. Morgan (to whom they have themselves appealed), to the portions of the gun-carriages and the heavy iron castings now on board, and a further explanation required from them.

The Solicitor to the Customs appears, in his observations on this case, to leave entirely out of sight the previous history of the "Sumter," but we think it better for Her Majesty's Government to incur some possible risk of liability

* Earl Cowley, No. 606; to Home Office, May 30; Home Office, June 3, 1863.
† Page 179.
‡ Mr. Adams, June 3; Home Office, June ; Treasury, June 8, 1863.
§ Treasury, June 12; to Treasury, June 14; Treasury, June 16, 1863.

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in damages for a temporary detention of the vessel, than (having regard to that previous history, and to the questions of maritime law which it may raise when the vessel is at sea) to acquiesce in her taking out what may prove to be a formidable armament, without being satisfied, on reasonable grounds, that the guns, &c., are really intended for a lawful commercial purpose. The names of Messrs. Klingender have appeared, in other transactions which have come under our notice, to be connected with the known agencies of the Confederate States at Liverpool, and no explanation as to the true destination and consignment either of the vessel herself or of the guns, &c., or as to the occasion for shipping goods of this description on board, has yet been sought or offered from the alleged charterer, Captain Blakeley.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 252.

The Queen's Advocate to Earl Russell.—(Received June 22.)

Doctors' Commons, June 22, 1863.

My Lord,

UNITED STATES.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 17th instant, stating that he was directed by your Lordship to transmit to me a despatch and its inclosures from Her Majesty's Minister at Washington (No. 495, June 2, 1863), respecting the case of Mr. Power, a British subject, "who having for a number of years exercised the functions of a citizen of the State of Texas, and claimed and enjoyed the privilege of citizenship, now desires to escape the liabilities of citizenship on the plea of being a British subject;" and Mr. Hammond was to request that I would take this case into consideration, and report to your Lordship my opinion thereupon.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That it appears to me that the opinion expressed by Lord Lyons to Mr. Consul Lynn is well founded; and that Her Majesty's Government ought not to interfere in this matter on behalf of Mr. Power, with the Government of the United States.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 253.

The Queen's Advocate to Earl Russell.—(Received June 22.)

Doctors' Commons, June 22, 1863.

My Lord,

UNITED STATES.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 19th instant, stating that with reference to the Law Officers' Report of the 23rd of April, respecting the case of Mr. Elsworth and Mr. Redgate, who were captured on board the "Peterhoff" and imprisoned at New York, he was directed by your Lordship to transmit to me, together with the previous papers,* a letter from Messrs. Gregory and Champion,† requesting to be informed of the result of the proceedings taken by Her Majesty's Minister at Washington on behalf of Messrs. Elsworth and Redgate.

Mr. Hammond was also pleased to transmit to me the despatches as marked in the margin,‡ from Lord Lyons, inclosing copies of the notes which have passed between him and Mr. Seward respecting the case of these gentlemen; and he was to request that I would take the same into consideration and furnish your Lordship with my opinion as to the answer which should be returned to Messrs. Gregory and Champion.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I think the answer to Messrs. Gregory and Champion should be to the effect that Her Majesty's Government are still in communication with the Government of the United States upon the subject of their letter, and as soon as any definite result has been arrived at, they will not fail to apprise these gentlemen of it.

I must add that I am of opinion that the proposition of Mr. Seward as to referring this matter to the Prize Court ought not to be accepted by Her Majesty's Government.

In the first place it is certainly not a question, as Mr. Seward seems to be aware, which a Prize Court is ordinarily competent to entertain. The jurisdiction of that tribunal is *in rem*, and does not extend to awarding damages to individuals ill-treated by the captor apart from the adjudication upon the guilt or innocence of the vessel seized; and the claim of Her Majesty's Government on behalf of these persons is independent of that circumstance.

In the second place it is a case in which, assuming the truth of the story, immediate redress should be granted by the Executive Government of the United States.

The captor had no right to treat Messrs. Elsworth and Redgate, the subjects of a neutral State, on board a neutral vessel, as prisoners of war.

The captor's right is confined to detaining, not as prisoners of war but as necessary witnesses, such of the crew (usually the master and two of the seamen) as may be required to make depositions as to the circumstances of the case. These gentlemen formed no part of the crew, and do not appear to have been detained for any such purpose, but rather to have been treated as subjects of the belligerent at war with the United States.

I have, &c.
(Signed) ROBERT PHILLIMORE.

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* Messrs. Gregory and Champion, April 21, 1863; to Messrs. Galbraith, Redgate and Co., April 24, 1863; to Lord Lyons, No. 209, April 24, 1863.

† Messrs. Gregory and Champion, June 18, 1863.

‡ Lord Lyons, No. 387, May 8; No. 409; No. 443, May 19, 1863.

No. 254.

The Queen's Advocate to Earl Russell.—(Received June 22.)

Doctors' Commons, June 22, 1863.

My Lord,

GREAT BRITAIN.

I AM honoured with Mr. Hammond's letter of the 20th June instant, stating that he was directed to request that I would furnish your Lordship with my opinion upon the following point,—whether a Power who merely accedes to a Treaty concluded between two or more other Powers has a right to be consulted before the Powers who actually concluded the Treaty can make any alteration in its provisions; whether, in short, a Power who has merely acceded to a Treaty can, by its refusal, prevent the original contracting Powers from cancelling or modifying such Treaty.

In obedience to your Lordship's commands I have taken this question into consideration, and have the honour to report—

That it is difficult to answer this question in the abstract, as the law applicable to it may be affected by the circumstances of the particular case.

If the original Treaty had been substantively and definitively concluded between certain States, and afterwards another State merely acceded to it, I do not think that, as a general proposition, and apart from any peculiar circumstances, this State can prevent the original parties to the contract from modifying or cancelling it; but in the event of a modification, the acceding State unless consulted and approving of it, would be entitled to be relieved from any obligations arising out of the original Treaty by which it would otherwise have been bound; in other words, to be no longer a party in any sense to the Treaty; and in the event of the Treaty being cancelled, might require to be placed in no worse condition than that in which it was before its accession to the Treaty.

I have, &c.
(Signed) ROBERT PHILLIMORE.

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No. 255.

The Queen's Advocate to Earl Russell.—(*Received June* 23.)

Doctors' Commons, June 23, 1863.

UNITED STATES.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 17th instant, stating that with reference to my Report of the 30th of April, and to the Report of the Law Officers of the 22nd ultimo,* upon the case of the "Granite City," he was directed by your Lordship to transmit to me a despatch from Her Majesty's Minister at Washington (No. 423, May 15, 1863), inclosing copies, sent to him by Mr. Seward, of two letters from the United States' District Attorney respecting this case. And Mr. Hammond was to request that I would take these papers into consideration, and furnish your Lordship with any observations I may have to offer thereupon.

I am also honoured with Mr. Hammond's letter of the 22nd instant, transmitting to me, for my consideration, a further despatch from Her Majesty's Minister at Washington (No. 519) relative to this case.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That, with respect to this case of the "Granite City," judgment appears to have passed by default, and therefore she is now at all events lawfully condemned.

I am not apprised of the circumstances of the "Aries" and the "Adela," with respect to their appropriation by the United States' Government before condemnation, but I think that Lord Lyons should be instructed that upon this point Her Majesty's Government entertain a very strong opinion, and that they cannot permit the Law of Congress to set aside the law of nations upon this important question of neutral rights.

It is perhaps for your Lordship to consider whether any Conference should take place between Lord Lyons and the French Ambassador at Washington on this point. The French writers, as pointed out in the last Report, are very clear upon it.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 256.

The Queen's Advocate to Earl Russell.—(*Received June* 23.)

Doctors' Commons, June 23, 1863.

UNITED STATES.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 17th instant, stating that he was directed by your Lordship to transmit to me a despatch and its inclosures from Her Majesty's Minister at Washington (No. 478, May 29, 1863) respecting the case of the British schooner "Tampico," which is stated to have been advertised for sale at New Orleans, although no legal proceedings had been taken against her; and that it would be observed that Her Majesty's Minister had called the attention of the United States' Government to the irregularity of the proceedings in this case, as well with regard to the vessel and cargo as to the long detention of the master, mate, supercargo, and crew, and Mr. Hammond was to request that I would take this case into consideration, and furnish your Lordship with my opinion thereupon.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I am of opinion (as I have had the honour to state in my Report of this day's date, to which I beg to refer, on the "Granite City") that Her Majesty's Government should strongly remonstrate against the appropriation of neutral vessels by the United States' Government before a sentence of condemnation.

With respect to the detention of the whole crew of the "Tampico," I must again express my opinion that the practice of detaining whole crews of captured vessels for a considerable period is an abuse of belligerent power.

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* Pages 137 and 161.

The proper course is to take, as early as possible, the depositions of the necessary witnesses, to detain them as short a time as possible, and not to detain the others at all.

It cannot be too emphatically pressed upon the United States' Government that neutral subjects found on board neutral vessels are not (as some United States' captors appear to think) in the category of prisoners of war; that the authority of the belligerent over them extends only to the detention of the witnesses necessary for the truth of the case; and that with respect to them it is the duty of the belligerent to afford every reasonable facility for their early release, and consequently for a speedy taking of the necessary depositions.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 257.

The Queen's Advocate to Earl Russell.—(*Received June* 23.)

Doctors' Commons, June 23, 1863.

UNITED STATES.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 17th instant, stating that with reference to the Law Officers' Report of the 7th ultimo,* he was directed by your Lordship to transmit to me, for perusal, a despatch from Her Majesty's Minister at Washington (No. 491), inclosing copies of his correspondence with Mr. Acting Consul Walker and with Mr. Consul Moore, relative to the ill-treatment of British subjects in the Confederate States, and to the cavils of Mr. Benjamin on the subject of communications from British Consular authorities; and that your Lordship was disposed to think that Mr. Moore's Report to Lord Lyons of the 24th ultimo (Inclosure No. 24) may be regarded as satisfactory.

In obedience to your Lordship's commands I have considered these papers, and have the honour to report—

That I agree with your Lordship that Mr. Consul Moore's Report is satisfactory, regard being had to the great difficulties of his position.

With respect to the cavil of Mr. Benjamin, I venture to observe that Mr. Benjamin is, perhaps not unnaturally, sensitive upon the point of Consuls not directly accredited to the Confederate States, yet exercising (however unnecessarily) a kind of authority which, strictly speaking, is incident only to the office of a Diplomatic Minister.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 258. Inserted in error

The Attorney and Solicitor-General to Earl Russell.—(*Received June* 24.)

Temple, June 28, 1862.

PERSIA.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammand's letter of the 10th of June instant, stating that he was dircted by your Lordship to transmit to us the accompanying despatch from Her Majesty's Minister in Persia (Mr. Alison's No. 55 of April 29), suggesting whether it would not be advisable to extend to Her Majesty's Consuls in Persia the power granted to the Consuls in Turkey in exercising jurisdiction over British subjects.

Mr. Hammond was also pleased to inclose copies of the Treaties between Persia and Great Britain and between Persia and Russia, and to request that we would favour your Lordship with our opinion whether Her Majesty holds under those Treaties such jurisdiction as to admit of an Order in Council being passed under the Foreign Jurisdiction Act; and if so, whether a short Order "authorizing the application of the Levant Order to Persia, as far as circumstances admit," would not be the best course of proceeding for the purpose of attaining the proposed object.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

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* Page 145.

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That under the Treaties referred to, Her Majesty does, in our opinion possess such jurisdiction as to admit of an Order in Council being passed for Persia under the Foreign Jurisdiction Act. But adverting to the structure and terms of the Levant Order, it does not appear to us that it would be a convenient course to attempt to apply that Order to Persia merely by a reference thereto in general terms "as far as circumstances admit." We think that an Order in Council should be framed with reference to the actual circumstances of the British Consular Establishment in Persia, and to the terms of the Treaty between Russia and Persia, which will constitute the basis of the jurisdiction to be exercised. So many of the provisions and Articles of the Levant Order as may be found applicable, having due regard to these conditions, may be adopted; but we think it would be likely to give occasion to difficulties and questions, which had better be avoided, if the duty of adjusting the machinery of the Levant Order to the circumstances of the Consular Establishment in Persia, and of separating the applicable from the inapplicable parts of that Order, were left entirely to the Consuls themselves.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.

No. 259.

The Law Officers of the Crown to Earl Russell.—(*Received June 27.*)

Temple, June 27, 1863.

My Lord,

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 17th instant, stating that with reference to his letter of the 15th instant he was directed by your Lordship to transmit to us a letter, dated the 13th of June instant, from Mr. Whitlock on the question of the liability to military service in the United States of British subjects who have declared their intention to become United States' citizens, and to request that we would take the same into our consideration, and favour your Lordship with our opinion as to the answer which should be returned thereto.

We are also honored with your Lordship's commands signified in Mr. Hammond's letter of the 20th instant, stating that with reference to his letter of the 17th instant he was directed by your Lordship to transmit to us, for our consideration, a further letter, dated the 19th instant, which your Lordship had received from Mr. Whitlock.

In obedience to your Lordship's commands we have taken these papers into consideration and have the honour to report—

That we are of opinion that the answer to Mr. Whitlock should state that Her Majesty's Government cannot interfere, generally, on behalf of those subjects of Her Majesty who, having been formally apprized that if they remain in the United States six weeks after the notice given to them they will be liable to the same conscription as native subjects, elect to remain in the United States. If, however, there should be special circumstances in any particular case, rendering it difficult for a British subject who is *bonâ fide* desirous of leaving the United States, to do so within the exact time limited by the President's Proclamation, we think that the good offices of Her Majesty's Representative at Washington might properly be used to obtain for any such person reasonable indulgence by way of extension of the time, as the circumstances of his particular case may require. And if Mr. Whitlock's friend has any such special case to make, he ought (we think) to be directed to represent the circumstances to Her Majesty's Ambassador, and to solicit his aid if necessary.

With respect to the further question submitted to us in Mr. Hammond's letter of the 20th instant, we are of opinion that Mr. Whitlock ought certainly to refuse to bear arms against Her Majesty, and that he would by doing so legally incur the penalties of high treason.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 260.

The Queen's Advocate to Earl Russell.—(*Received July* 1.)

Doctors' Commons, June 30, 1863.

My Lord,

UNITED STATES.

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 23rd (dated 30th) instant, stating that he was directed by your Lordship to transmit to me a letter, dated 18th June instant, and its inclosures, from Mr. W. H. Fisher, complaining of the capture of his vessel the "Minnie," while on a voyage from Nassau to Baltimore, by the United States' ship "Lodona;" and Mr. Layard was also pleased to transmit to me two despatches and their inclosures from Lord Lyons respecting this case,[*] from which it would be seen that your Lordship had addressed to the United States' Government a representation relative to the unusual and dangerous manner in which the "Minnie" was brought-to by the capturing ship; and Mr. Layard was to request that I would take this case into consideration and furnish your Lordship with my opinion thereupon, and also as to the answer which should be returned to Mr. Fisher.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That the place where the "Minnie" was taken certainly justified her capture. She was close to the blockaded shore, and the excuse of the chronometer being out of order, and the vessel being leaky, if true on this occasion, is very often falsely alleged; and the captor does not appear to have exceeded the bounds of his duty in taking her in for adjudication.

The manner in which she was alleged to have been brought-to would have been a grave violation of international law, and being believed to have happened was most properly remonstrated against by Lord Lyons; but the balance of evidence, from all the facts, preponderates in favour of the captor's version of the firing.

I advise your Lordship to reply to Mr. Fisher to the effect that the "Minnie" was captured in circumstances of grave suspicion, close to the blockaded coast, that the captor had a right to take her in for adjudication, that the alleged improper firing is at present credibly stated to have been occasioned by the refusal of the vessel to heave-to until fired at four times.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 261.

The Queen's Advocate to Earl Russell.—(*Received July* 1.)

Doctors' Commons, June 30, 1863.

My Lord,

FRANCE.

I AM honoured with your Lordship's commands signified in Mr. Murray's letter of the 26th instant, stating that he was directed by your Lordship to transmit to me therewith a despatch from Her Majesty's Consul at Réunion (No. 5), relative to the difficulties placed by the French Colonial Authorities at Réunion in the way of Indian labourers wishing to proceed to Mauritius at their own expense, on the expiration of their stipulated term of service, instead of availing themselves of their right to a return passage to India at the expense of the Government of Réunion; and Mr. Murray was also pleased to inclose a correspondence which has passed upon the subject between the Foreign Office and the India Office,[†] and was to request that I would take these papers into consideration, and furnish your Lordship with my opinion thereon, with reference especially to the question of the interpretation to be put upon the IXth Article of the Convention of the 10th of August, 1861.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That it is hardly necessary to say, that apart from the consideration of

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[*] Lord Lyons, No. 436, May 19; and No. 480, May 29, 1863.

[†] To India Office, May 9, 1863; India Office, June 15, 1863.

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the Treaty, the detention of British subjects whose contract of service had expired, by the French authorities at Réunion, was unlawful.

The words, therefore, which deprive them of this natural liberty must be clear and express in the Treaty.

But I have the honour to agree with the interpretation put upon Article IX of the Treaty by Sir Charles Wood; and it seems extraordinary that Baron Darrican should not have referred to the conclusion as well as to the beginning of that Article.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 262.

The Queen's Advocate to Earl Russell.—(*Received July* 1.)

Doctors' Commons, June 30, 1863.

UNITED STATES.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Murray's letter of the 25th instant, stating that he was directed by your Lordship to transmit to me therewith, three despatches from Her Majesty's Consul at Bahia (Nos. 15, 16, 17), relative to the proceedings of the Brazilian authorities and the United States' officers towards the British barque "Castor," from which vessel a supply of coal was furnished to two war steamers belonging to the so-called Confederate States; and Mr. Murray was to request that I would furnish your Lordship with my opinion thereupon.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That the Brazilian authorities at Bahia ought not to have prevented the "Castor" from selling coals to the "Alabama" and the "Georgia" at Bahia. It was a legitimate commercial transaction. At the same time much allowance must be made for the anxiety of this State to preserve her neutrality, and for the effect produced by the apparently false statements made by the United States' Consul, as to the "Castor" having conveyed arms and ammunition on board the "Alabama" and "Georgia."

The conduct of the Brazilian authorities and of the United States' steamer "Mohican," as stated in Her Majesty's Consul's letter of the 29th May, present graver matter for consideration.

The United States' war-steamer had no right to make use of the port of one neutral State, so as to pursue from it the vessel of another neutral State as it left that port; and the State of the neutral port ought not to have allowed such a use to be made of its harbour.

It appears to me that Her Majesty's Consul at Bahia should be instructed that Her Majesty's Government desire him to express their hope to the proper authority at Bahia that such a breach of neutrality will not again be permitted in their port, as well as to express their surprise that the "Castor" should have been prevented from completing a legitimate commercial transaction; and that Lord Lyons should be instructed to express to the United States' Government the expectation of Her Majesty's Government that proper orders will be sent to the "Mohican" to prevent a recurrence of such a breach of neutrality as appears to have been committed by that ship.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 263.

The Law Officers of the Crown to Earl Russell.—(*Received July* 2.)

Temple, July 1, 1863.

UNITED STATES.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 12th ultimo, stating that with reference to our Reports of the 24th April and the 12th May,* respecting the disposal of the prisoner charged with the murder of the Senior Officer of the Confederate steamer "Sumter," he was directed by your Lordship to transmit to us, together with the previous papers, a despatch from Her Majesty's Minister at Washington (No. 483 of the 29th May), reporting that he had been informed by Mr. Seward that it was impossible for the Government of the United States to give its consent to the prisoner being passed on board one of Her Majesty's ships of war, through the blockading squadron, to a Confederate port, for the purpose of being delivered up to the Confederate authorities; and Mr. Hammond was to request that we would again take this case into consideration, and report to your Lordship our opinion as to how the prisoner should now be disposed of.

In obedience to your Lordship's commands we have again taken this case into consideration, and have the honour to report—

That as in this case leave has been sought by Her Majesty's Government to take the prisoner within the line of blockade to a Confederate port, and that leave has been refused by the belligerent Government which has instituted the blockade, and as it does not appear probable that Her Majesty's ship which has charge of the prisoner can be at all assured of meeting with any ship of war belonging to the Confederate States on board of which the prisoner might be placed, we are obliged, however reluctantly, to advise your Lordship that the prisoner, being a person over whom no British Court has jurisdiction, ought not to be detained in custody by any British authority longer than may be necessary for the purpose of disposing of him on shore.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 264.

The Law Officers of the Crown to Earl Russell.—(*Received July* 2.)

Temple, July 2, 1863.

UNITED STATES.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 29th ultimo, stating that, with reference to our Report of the 20th ultimo,* pointing out that the explanations respecting the guns to be shipped on board the "Gibraltar" (or "Sumter") were not satisfactory, he was directed by your Lordship to transmit to us, together with the previous papers,† the draft of the letter which was thereupon addressed to the Treasury‡ requesting that further explanations should be called for, and that in the meantime the "Gibraltar's" clearance should be withheld; and also a letter which had that day been received by your Lordship from the Treasury, inclosing further papers received from the Customs in this case.

Mr. Hammond was also pleased to state that he was directed by your Lordship to request that we would take these further papers into our consideration, and favour your Lordship, at our earliest convenience, with our opinion as to the course which should now be pursued by Her Majesty's Government in regard to the "Gibraltar."

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we are of opinion that, as it now appears that the guns on board the "Gibraltar" are not adapted for use on board that vessel, but are to be carried out as merchandize, the clearance of that vessel should be no longer delayed.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

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* Pages 131 and 152.

* Page 185.

† Mr. Adams, June 3; Treasury, June 8; Home Office, June 8; Treasury, June 12; to Treasury, June 14; Treasury, June 16; Home Office, June 23, 1863.

‡ To Treasury, June 23, 1863.

No. 265.

The Queen's Advocate to Earl Russell.—(*Received July* 6.)

Doctors' Commons, July 2, 1863.

My Lord,

COSTA RICA.

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 24th ultimo, stating that he was directed by your Lordship to transmit to me the despatches marked in the margin,* respecting the legality of marriages between British subjects when solemnized in Costa Rica, and also relating to the nationality of the children of British subjects born in the Republic. And Mr. Layard was to request that I would take these papers into consideration, and furnish your Lordship with my opinion as to whether any, and if so what, instructions should be given to Mr. Mathew in the matter.

In obedience to your Lordship's commands I have taken these papers into consideration, and had the honour to report—

That the proposal with respect to the obligations of British subjects born in Costa Rica, contained in Señor Nazario Toledo's letter (February 16, 1859) to Mr. Mathew (No. 20) appear to me fair and reasonable.

With respect to the important question of marriages not according to the *lex loci*, but according to the British Consular Act, the legal effect of that Act is certainly confined to Her Majesty's dominions, though probably the validity of such marriages might be recognized in some other countries. It certainly would be desirable that the validity of such marriages in Costa Rica should be affirmed by Convention, or by Municipal law, or by both, if possible.

There is force in the observation of Mr. Mathews with respect to the possible difficulties which may arise with respect to the effects of British subjects dying intestate, from the local invalidity of such marriages; and for other reasons, also, I think it would be expedient that Mr. Mathews should be instructed to forward, as far as he can, by way of request and representation, but not by way of demand, the obtaining a recognition of the validity of these marriages by Convention or by Municipal law.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 266.

The Law Officers of the Crown to Earl Russell.—(*Received July* 4.)

Temple, July 3, 1863.

My Lord,

CHINA.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 16th of June ultimo, stating that with reference to our Report of the 20th of May last,† and our previous Reports respecting the Proclamation issued by the Governor of Hong Kong, prohibiting the export of munitions of war from that Colony, he was directed by your Lordship to transmit to us, together with the previous papers,‡ two letters from the Colonial Office, dated the 12th and 13th of June ultimo, the first transmitting a copy of a letter from Messrs. Barnett and Sons, of the Minories, claiming to be allowed a certain time for reshipping arms consigned by them in the ordinary course of business to China, and which were landed in Hong Kong in December and February last, and the second letter inclosing a copy of a despatch from the Governor of Hong Kong, in which he described the position of the local Government in reference to the Proclamation, and suggested that it should be published in this country for the information of shippers of warlike stores; and to request that we would take these papers into our consideration, and favour your Lordship with our opinion upon the several points therein referred to.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

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* To Mr. Wyke, No. 19, 1858; Mr. Wyke, No. 13, 1859; Consul Wallis, No. 15, 1861; to Mr. Mathew, No. 6, 1861; Consul Wallis, No. 18, 1861; to Consul Wallis, No. 2, 1862; Mr. Mathew, No. 27, 1862; to Mr. Mathew, No. 44, 1862; Mr. Mathew, No. 20, 1863.

† Page 158.

‡ Sir F. Bruce, No. 94; to Sir F. Bruce, No. 177; to India and Colonial Office, November 13, 1862; Colonial Office, November 22, 1862; to Colonial Office, December 17, 1862; Colonial Office, April 24, 1863; to Colonial Office, May 22, 1863; Sir F. Bruce, No. 26.

That we think it reasonable that the Governor of Hong Kong should permit the export of arms introduced into the Colony previously to the issue of the Proclamation, provided that care be taken that the arms are shipped in vessels not destined for the Chinese coasts.

It appears to us desirable that the Proclamation should be published in the "London Gazette."

We have, &c.
For myself and the Attorney-General,
(Signed) ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 267.

The Queen's Advocate to Earl Russell.—(*Received July* 4.)

Doctors' Commons, July 3, 1863.

My Lord,

UNITED STATES.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 1st July instant, stating that he was directed to transmit to me a despatch from Lord Lyons (No. 525) inclosing, with other papers, a copy of a note from Mr. Seward, in which, with reference to the case of Mr. John Green, a British subject, who represents that he has been almost totally ruined by the destruction of his property in the State of Arkansas by troops in the service of the United States, Mr. Seward informs Lord Lyons that at the next session of Congress the President will call the attention of that Body to the claims of parties who have been innocently aggrieved in the prosecution of the war with a view to the establishment of some general system which shall be adequate to the emergency; and Mr. Hammond was pleased to request that I would take this matter into consideration, and report to your Lordship my opinion as to whether any instructions to Lord Lyons are required at present.

In obedience to your Lordship's commands I have taken this matter into consideration, and have the honour to report—

That the despatch of Mr. Seward to Lord Lyons (8th June, 1863) upon the subject of granting compensation to the subjects of neutral States whose property has been injured during the prosecution of the war appears to me quite satisfactory, and that I do not advise Her Majesty's Government to send at present any instructions to Lord Lyons.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 268.

The Law Officers of the Crown to Earl Russell.—(*Received July* 4.)

Temple, July 3, 1863.

My Lord,

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 11th ultimo, stating that, with reference to our Report of the 31st of March,* he was directed by your Lordship to transmit to us, together with the previous papers, a despatch from Lord Lyons (No. 448), inclosing a copy of a note from Mr. Seward, in which he stated that the United States' Government continued to be of opinion that there was probable and justifiable cause for the imprisonment of Mr. John Shaver, but that, in the event of a Joint Commission being established for the adjustment of claims, Mr. Shaver's case might be brought before it.

Mr. Hammond was also pleased to state that he was directed by your Lordship to request that we would take Mr. Seward's note into our consideration, and favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That the answer of Mr. Seward appears to us very unsatisfactory. Mr. Seward seems to think that the release of Mr. Shaver without formal trial has no bearing upon the question of his title to compensation. We are of opinion that the release founds a presumption of his innocence which cannot easily be rebutted, and which, at all events, has not been rebutted by any evidence to the contrary produced by the United States' Government. We do not think that the United States' Government is relieved from the duty of making proper compensation to the subject of a neutral and friendly State by a reference to the possible cognizance of the case by a Commission which has been suggested, but which has not yet been, and may never be, set on foot. It will, however, be for Her Majesty's Government to decide whether Mr. Shaver's claim should be further pressed at the present time, or reserved to be hereafter dealt with.

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* Page 97.

We have, &c.
For the Attorney-General and myself,
(Signed) ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 269.

The Law Officers of the Crown to Earl Russell.—(*Received July* 4)

Temple, July 4, 1863.

My Lord,

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 11th ultimo, stating that with reference to our Report of the 15th April* respecting the case of Mr. J. Carlin, he was directed by your Lordship to transmit to us, together with the previous papers,† and with the draft of the instruction which was addressed to Lord Lyons‡ founded upon our Report, a despatch from his Lordship,§ inquiring whether in coming to a decision as to what would be a fair and reasonable compensation for Mr. Carlin to claim, he was to consider that person's occupation as a pilot engaged in running the blockade as a legitimate one; and whether he was to estimate the losses Carlin has sustained on a calculation of the gains he would probably have made had he been following it with average success, instead of lying a prisoner in Fort Lafayette.

Mr. Hammond was also pleased to state that he was directed by your Lordship to request that we would take Lord Lyons' despatch into our consideration, and favour your Lordship with our opinion as to the answer which should be returned thereto.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we are of opinion that Lord Lyons ought to form his estimate of the amount of compensation to be demanded, so far as the loss of time is concerned, upon a calculation of the ordinary earnings of a pilot, and without reference to the extraordinary earnings derived from running the blockade.

We have, &c.
For the Attorney-General and myself,
(Signed) ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 270.

Report on Glover v. *Persigny, July* 4, 1863.

[See Appendix.]

No. 271.

The Law Officers of the Crown to Earl Russell.—(*Received July* 6.)

Temple, July 4, 1863.

My Lord,

UNITED STATES AND URUGUAY.

WE are honoured with your Lordship's commands signified in Mr. Murray's letter of the 25th ultimo, stating that with reference to our Report of the 24th of April last,* he was directed by your Lordship to transmit to us two despatches from Her Majesty's Chargé d'Affaires and Consul-General at Monte Video (No. 22, April 11, 1863, and No. 23, April 20, 1863) reporting the circumstances under which the United States' ships "Carolina" and "Kanawka" had assumed and had navigated under the British flag, as well as a despatch from Her Majesty's Consul at New York (No. 90, May 8, 1863), relative to the increasing number of transfers of American-built ships to British purchasers.

Mr. Murray was also pleased to state that he likewise inclosed two letters from the Board of Trade (dated June 16, 1863), to whom the above papers were referred, setting forth the views of that Department upon the subject; and that he was directed by your Lordship to request that we would take these papers into our consideration, and favour Lordship with our opinion as to the steps which Her Majesty's Government should take thereon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we agree in substance with the opinions stated in the Reports of the Lords of the Committee of Privy Council for Trade, and that we adhere to the opinion expressed in our former Report on this subject.

We do not advise Her Majesty's Government to take any steps in this matter.

We have, &c.
For the Attorney-General and myself,
(Signed) ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 272.

The Law Officers of the Crown to Earl Russell.—(*Received July* 6.)

Temple, July 6, 1863.

My Lord,

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 3rd July instant, stating that he was directed by your Lordship to transmit to us therewith a letter from the Colonial Office, inclosing a copy of a despatch (dated the 3rd July instant), from the Governor of the Bahamas, relative to the sinking by a United States' vessel of war, off Eleuthera, of a Confederate ship called the "Margaret and Jessie;" and to request that we would take these papers into our consideration and favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That, assuming the statements in the protest of the Master of the steamship "Margaret and Jessie" to be worthy of credit (and they appear to receive confirmation from Governor Bayley's despatch), there is no doubt that the armed vessel of the United States, supposed to have been the "Rhode Island," committed a gross breach of international law by firing upon the vessel the "Margaret and Jessie," not only within the territorial waters of Her Majesty, but within a few yards of the actual shore of one of Her Majesty's possessions; and it will be the duty of Her Majesty's Government to seek for and obtain immediate redress for the offence which has been committed.

We have, &c.
For the Attorney-General and myself,
(Signed) ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 273.

The Law Officers of the Crown to Earl Russell.—(*Received July* 9.)

Temple, July 7, 1863.

My Lord,

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 12th ultimo, stating that, with reference to our Report of the 21st May,† and to our previous Reports, respecting the case of the

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* Page 116.

† Mr. Turner, September 8; to Mr. Stuart, No. 119; Mr. Stuart, No. 296; Lord Lyons, Nos. 27, 28, 111, 190, and 209.

‡ To Lord Lyons, No. 207, April 22, 1863.

§ Lord Lyons, No. 446, May 25, 1863.

* Page 130.

† Page 161.

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"Blanche," he was directed by your Lordship to transmit to us, together with the previous papers, a despatch from Her Majesty's Minister at Washington, inclosing a copy of a note addressed by Mr. Seward to M. Tassara, together with a printed copy of the proofs, depositions, and correspondence therein referred to,* conveying the views of the United States' Government with regard to the claims upon it advanced by the British and Spanish Governments in connection with this case; and Mr. Hammond was to request that we would take these papers into consideration, and furnish your Lordship with our observations thereon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That the intentional violation of the neutral waters of Spain by the United States' Commander Hunter is at least recognized, not only by the letter of Mr. Seward, but by the dismissal of the officer who was guilty of it from the service of the United States.

That with respect to that part of the letter of Mr. Seward which refers to the evidence taken before the United States' Court-martial, and the conclusions which he founds upon it, we have to observe that Her Majesty's Government, having taken no part in those proceedings, cannot admit that the evidence formerly laid before the United States' Government by Her Majesty's Government, as to the circumstances of the seizure and destruction of the vessel, is at all displaced by those proceedings; and we think that Her Majesty's Government must continue to express its opinion that the vessel so seized, in plain and intentional violation of international law, was also destroyed by the wrongdoers upon that occasion.

In the presence of contradictory statements on the one side and on the other with reference to this part of the subject, it seems to us sufficient for all practical purposes to observe, that the destruction of the vessel would certainly never have occurred but for the wrongful and violent attempt of Commander Hunter to seize her, in avowed contempt of international law, within Spanish waters; that, even if she were actually fired, under these circumstances, by her own crew, the responsibility of the wrongdoer for this consequence of his unlawful act would remain the same; and that no presumption can be admitted as to any doubtful question of fact in favour of the aggressors in such a case. The practical question is, whether the United States' Government is internationally responsible for the loss sustained by the injured parties; and we think that Her Majesty's Government ought not to treat this as an open or doubtful question. We hope that the Government of Spain will arrive at a similar conclusion.

There remains, however, a subject of the gravest importance, to which we adverted in our former Report, but to which we think the attention of Her Majesty's Government should again be most particularly directod. Mr. Seward now expresses his formal opinion "that the 'Blanche' was an American vessel lawfully belonging to American citizens, from whom she had been piratically taken by armed insurgents of the United States, and that she was in possession of such insurgents at the time of her destruction, and that her cargo also belonged, not to British subjects, but to such insurgents."

We have in vain endeavoured to discover the grounds on which Mr. Seward rests this assertion, either from his letter to M. Tassara of the 21st of May itself, or from the correspondence and proceedings of the Court martial on Captain Hunter, as printed by the authority of the United States' Government. By the documents (at pages 134 to 138 inclusive, of the printed Correspondence, &c.), it clearly appears that the ship in question, which had previously been navigated as Confederate property, under the name of the "General Rusk," was, on the 31st July, 1862, transferred at Havana, by bill of sale, under a regular power of attorney, from W. L. Smith, of Galveston, her Confederate owner, to Mr. George Wigg, of Liverpool, a British subject, for the valuable consideration of 50,000 dollars, and that she received on the same day, from the British Consul at Havana, a temporary certificate of registry as a British ship, in accordance with the provisions of the Merchant Shipping Act, 17 & 18 Vict., cap. 104, sect. 54.

It further appears that she was, from that time, until she was destroyed, navigated under the name of the "Blanche," as a British ship, with British papers. Nothing whatever appears in this "Correspondence, &c.," or in any other of the documents before us, as to her prior history; and if at any earlier period she was owned by citizens of the United States, there is a total absence of particulars, and of evidence, as to the fact of such ownership, and also as to the circumstances under which the ship afterwards came into the hands of W. L. Smith, who sold her to her British owner.

The papers to which we have referred, and the actual possession of the ship under them, establish a clear case of British ownership, which, at present, there is nothing whatever, beyond Mr. Seward's bare assertion, to displace; and we think that Her Majesty's Government cannot for a moment acquiesce, upon the bare assertion of Mr. Seward, in the refusal of the United States' Government to recognize such British ownership, and the claims to compensation thence arising.

It is to be observed, that in the proceedings before the Court-martial no evidence was offered on this subject, except the statements (almost entirely hearsay) of a single witness, James Speirs, who appears to have been a fireman on board the "Blanche," and who took upon himself to state his belief as to the *nationality* of the captain, officers, and crew; making out the captain to be, "as he understood," an American; and the rest of the crew, men of various European nations, with only one Englishman and three Irishmen.

In answer to questions put to him, he added, that he "*had heard it said* that before she began to run the blockade she was a rebel gun-boat;" that he *had heard it said* she was owned by a man of the name of Morgan, in New York." He "*heard this* while on board of her;" and he gave an account of a transaction which he represented to have taken place while she was at Port Lavaca, in Texas, which (if true) amounted to no more than this, that some Confederate soldiers there took temporary possession of her (turning out her captain and crew, and stores), with the view of making use of her for some warlike purpose; and that after keeping such possession for a week, they gave her up again to the crew, who then proceeded to finish her lading with a cargo of cotton. (Correspondence, &c., pages 313, 314.)

We deem it impossible that Mr. Seward can suppose himself warranted in building any conclusion upon this "evidence" (if such it can be called), in opposition to the ship's papers and to her British register. Still less can we suppose that Mr. Seward adopts the argument used by Commander Hunter in his defence (Correspondence, &c., page 339), that this was not a British ship, because "the Act of the British Parliament, recognized by our Department of State, as the one in force on the subject of provisional register, requires that the captain and three-fourths of the crew be native-born British subjects." We presume that Commander Hunter was then referring to 12 and 13 Victoria, cap. 29, sect. 7, in ignorance that this statute had been repealed by 17 and 18 Victoria, cap. 120; and that the Merchant Shipping Act, 17 and 18 Victoria, cap. 104 (sections 17 to 54), contains no similar requirements.

In the absence of any explanation of the real grounds on which the British ownership of the "Blanche" is disputed by Mr. Seward, we can only conjecture that he may possibly be proceeding upon the same ground, to which reference was made in Lord Lyons' despatches of December 22, 1862 (No. 539), and March 6, 1863 (No. 208); and that the facts on which his assertions are founded may, on further explanation, prove to be, that this vessel, having been originally owned in the United States, was captured by a cruizer of the Confederate States, and after being regularly condemned as lawful prize by a Confederate Prize Court, was sold to the person by whom she was afterwards transferred to her present British owner; and that Mr. Seward (as he left Lord Lyons to collect, from his conversation in March last), refuses to recognize the validity of any sale made under a Decree of a Confederate Prize Court. The same point appears to be indicated by that part of Commander Hunter's defence, in which he suggested, for the decision of the Court-martial, "whether a transfer made by an insurgent in Havana could, consistently with existing Treaty provisions, *transfer stolen American property* to a British subject."

Under these circumstances, it being (as has been already intimated by Lord Lyons to the United States' Government), impossible for Her Majesty's Government to acquiesce in a pretension, contrary to the clearest principles of international law, we think it indispensably necessary that the title of the

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* Lord Lyons, No. 464, May 25, 1863; and printed Papers.

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British purchaser of the "Blanche" should be maintained, and the question promptly brought to a distinct issue.

The pretension amounts to this:—That the Government of the United States, while it claims from all neutral States the rights, at the same time refuses to acknowledge the corresponding obligations, of a belligerent Power.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 274.

The Law Officers of the Crown to Earl Russell.—(*Received July* 9.)

Temple, July 7, 1863.

My Lord,

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 25th of June ultimo, stating that with reference to our Report of the 8th of May,* he was directed to transmit to us, together with the previous papers, four further despatches and their inclosures from Lord Lyons (Nos. 385, 407, 456, and 517), respecting the case of the "Adela," and to request that we would take the same into consideration, and furnish your Lordship with our opinion upon the following position: That the decision of the Judge in the case of the "Adela" does not give the grounds of condemnation. That if the Judge saw no sufficient grounds for condemnation, he ought to have released the vessel, and have left it to the United States' authorities to detain her, and appeal to a Superior Court. And Mr. Layard was further pleased to request that we would inform your Lordship whether your Lordship is right in this view.

We are also honoured with Mr. Layard's letter of the 25th of June ultimo, stating that he was directed to state to us that in conformity with the opinion expressed in the concluding paragraph of our Report of the 8th ultimo, that Her Majesty's Government should wait for the decision of the Superior Tribunal before giving any further instructions in the matter, that your Lordship had abstained from issuing any further instructions to Lord Lyons; but that your Lordship would now be glad to be favoured with our opinion as to whether it would be proper that an intimation to that effect should be conveyed to Mr. Forwood, whose letter of the 16th day of April has remained up to the present time without any further answer than that it should be considered by Her Majesty's Government.

In obedience to your Lordship's commands we have taken these questions into consideration, and have the honour to report—

That we are of opinion that your Lordship's view is correct, and that if the Judge saw no sufficient grounds for condemnation, he ought to have given sentence in favour of the vessel; the *onus probandi* lies upon the captor.

With respect to the sale of the vessel after a sentence of condemnation, such a proceeding is in accordance with the practice of Prize Courts, and in this case it appears, upon the face of the sentence, to have been consented to by the claimants; a fact of which we think Mr. Forwood can hardly have been aware when he made the order for sale a ground of special complaint. We think that Mr. Forwood should be officially apprised that Her Majesty's Government are waiting for the decision of the Court of Appeal before they determine what course it will be proper for them to pursue.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

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* Page 147.

No. 275.

The Law Officers of the Crown to Earl Russell.—(*Received July* 9.)

Temple, July 9, 1863.

My Lord,

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 15th ultimo, stating that he was directed to transmit to us a letter addressed to Mr. Roebuck, M.P., by Mr. Alfred Sellers, whose case, as a British subject who had declared his intention to become a United States' citizen, formed the subject of our Report of the 18th of October last; in which he urges Mr. Roebuck to try and get some definite answer from Her Majesty's Government with regard to his position under the recent Proclamation of the President of the United States, declaring that foreigners who had stated their intention to become citizens are liable to be included in the conscription unless they shall remove from the United States within sixty-five days of the date of the Proclamation; and to request that we would take Mr. Sellers' letter into consideration, and furnish your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That we see no reason to alter the opinion which we have had the honour to express upon this question,—that the period of sixty-five days cannot be assumed to be an unreasonable period to allow for the departure of foreigners who have simply declared their intention to become citizens of the United States. That, nevertheless (as we have already advised in another case), we think the good offices of Her Majesty's Representative at Washington might properly be interposed to obtain an extension of the time so allowed in any particular case in which it would be productive of special and manifest hardship to refuse such extension to British subjects *bonâ fide* intending to leave the United States.

We do not, however, find any special circumstances in the case of Mr. Sellers (as at present stated) which would entitle him to be exempted from the operation of this order of the United States' Government. The order does not, in our opinion, constitute any breach of the Treaty of the 3rd of July, 1815. The liberty to reside in the United States thereby given to British subjects cannot be deemed to exempt them from the general obligation of all residents to obey the laws of the country in which they live, nor to involve any engagement on the part of the United States' Government not to make these laws, by subsequent legislation, more onerous than they may have been when particular British subjects commenced their residence: Provided always, that such British subjects are not more unfavourably dealt with than citizens of the United States, and that they have a reasonable opportunity given them of leaving the country if they do not like to submit to such new laws. That Treaty cannot be fairly construed as preventing the United States' Government, in a time of great national peril, from offering to foreigners (and especially to those who have declared on oath their intention to become citizens) the alternative of either leaving the country within a reasonable time, or remaining there on the condition of sharing the burthens which an extraordinary necessity imposes on the citizens of the Republic. It would be a different question if any such foreigners were required to bear arms against their own country; but that question has not arisen, nor can we assume that it will ever practically arise.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 276.

The Queen's Advocate to Earl Russell.—(*Received July* 11.)

Doctors' Commons, July 10, 1863.

My Lord,

UNITED STATES.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 29th ultimo, stating that with reference to my Report of

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the 27th day of April,* respecting Messrs. Crow and Wylie's timber at Pensacola, he was directed by your Lordship to transmit to me, together with the previous papers,† two despatches, and their inclosures, from Lord Lyons,‡ from which I should perceive that the United States' Government continues to decline to allow the timber in question to be exported. And Mr. Hammond was to request that I would take this further correspondence into consideration, and report to your Lordship my opinion thereupon.

In obedience to your Lordship's commands I have taken this further correspondence into consideration, and have the honour to report—

That I think Lord Lyons should be instructed to express the regret of Her Majesty's Government at the reply of the United States' Government, and to say that the reasons assigned for their refusal to allow the exportation are not satisfactory.

The objection to the insufficiency of the title does not appear to have been raised in June 1862, when Mr. Crow sought permission from the authorities at Washington to export the timber.

I do not think, however, that Lord Lyons should be instructed to go beyond this.

I observe that the Agent of Messrs. Crow and Wylie is admitted, in their Memorandum of the 7th day of May, 1862, to have *some* interest in the timber, and to be a person whose political sympathies are probably on the side of the Confederates.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 277.

The Queen's Advocate to Earl Russell.—(*Received July* 11.)

Doctors' Commons, July 10, 1863.

UNITED STATES

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 29th June ultimo, stating that with reference to my Report of the 23rd June,§ he was directed to trasmit to me the papers, as marked in the margin,‖ respecting the case of the British steamer "Aries," stated to have been taken into the United States' service before condemnation, and to request that I would take the same into consideration, and report to your Lordship my opinion thereupon.

Mr. Hammond was also pleased to add that if I should be of opinion that it would be advisable that these papers should be submitted to the Law Officers, in connection with his letter of the 29th June on the subject of the appropriation of vessels before condemnation, your Lordship requested that I would so submit them.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That it cannot be conceded to Mr. Seward that the fact of the "Aries" having been condemned after she was appropriated as a gun-boat by the United States' Government removes the original ground of complaint in this case.

One of the evils attendant on this novel and irregular practice is the bias which the knowledge of the appropriation must leave, or must be not unreasonably supposed to leave, on the mind of the Court which, subsequently to the appropriation, tries the case on its merits. This observation belongs to the present case. But as it has lately appeared that the United States' Government intend to discontinue this practice, it may properly be left to the discretion of Lord Lyons whether he would further press the particular case of the "Aries," which is now condemned, upon the attention of the United States' Government.

I have, &c.
(Signed) ROBERT PHILLIMORE.

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* Page 134.

† Messrs. Crow and Wylie, May 7, 1862; to Messrs. Crow and Wylie, May 9; to Lord Lyons, No. 205; Lord Lyons, No. 273; to Messrs. Crow and Wylie, June 20; Mr. Stuart, No. 155; to Mr. Stuart, No. 168; to Messrs. Crow and Wylie, September 5; Lord Lyons, No. 521; Mr. Wylie to Mr. Horsfall, March 19, 1863; to Lord Lyons, No. 232.

‡ Lord Lyons, No. 449, May 25, 1863; No. 510, June 8, 1863.

§ Page 188.

‖ Consul Lousada, Nos. 19 and 21; Lord Lyons, Nos. 458, 479, and 518.

No. 278.

The Queen's Advocate to Earl Russell.—(*Received July* 13.)

Doctors' Commons, July 11, 1863.

NETHERLANDS.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 7th July instant, stating that he was directed to transmit to me a note, dated the 17th June ultimo, from the Netherlands Minister at this Court, making inquiry as to the nationality of a Mr. Uhlenbeck, who was born in Ceylon in 1820, of Dutch parents, together with a letter, dated the 3rd July instant, on the subject from the Colonial Office; and to request that I would furnish your Lordship with my opinion as to the answer which should be returned to Baron Bentinck's inquiry.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That Mr. Uhlenbeck, having been born in one of Her Majesty's possessions, has the rights and privileges of a natural-born British subject.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 279.

The Law Officers of the Crown to Earl Russell.—(*Received July* 14.)

Temple, July 13, 1863.

UNITED STATES.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 6th instant, stating that with reference to his letter of the 4th instant, he was directed by your Lordship to transmit to us a letter from the Treasury inclosing a copy of an application from Messrs. Fletcher and Hull, on behalf of Messrs. Fawcett, Preston, and Co., for permission to recaulk the decks and sides of the "Alexandra," on the ground that she is taking daily and increasing damage by reason of the present hot weather, and Mr. Hammond was to request that we would take this application into consideration, and furnish your Lordship, at our earliest convenience, with our opinion as to the answer which should be returned thereto.

In obedience to your Lordship's commands we have taken this application into consideration, and have the honour to report—

That we think permission may be given to Messrs. Fawcett, Preston, and Co. to recaulk the decks and sides of the "Alexandra," on their giving a written undertaking to the Collector of Customs at Liverpool not to endeavour to use such permission in any way to prejudice the pending claim of the Crown.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 280.

The Law Officers of the Crown to Earl Russell.—(*Received July* 15.)

Temple, July 13, 1863.

PERU.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 8th July instant, stating that with reference to our Reports noted in the margin,* and to the Report of Her Majesty's Advocate-General dated 1st November, 1862, he was directed by your Lordship to state to us that Her Majesty's Government have come to an agreement with the Government of Peru that the question as to the amount of compensation to be paid by the latter to Mr. Melville White should be referred to the arbitration of a friendly

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* June 25, July 15, and November 12, 1861; see Reports for 1861, pages 133, 148, and 279.

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Power, and it is proposed that the Government of the Hanseatic States should be invited to undertake this responsibility.

Mr. Layard was also pleased to state that we would see from the note from the Peruvian Minister in this country, which was likewise inclosed (dated July 2, 1863), that M. Sanz has suggested that steps should be taken to record the terms on which the reference to arbitration should be made, and your Lordship was of opinion that this could best be done by the exchange of a *note verbale* between your Lordship and M. Sanz.

Mr. Layard further stated that your Lordship had accordingly directed the inclosed draft of such a *note verbale* to be drawn up and submitted for our earliest consideration, and he had only further to add that the mode in which your Lordship proposed to refer the question, on behalf of Her Majesty's Government, to the Arbitrator had been adopted in view of the necessity to free Her Majesty's Government from all responsibility as regards Mr. Melville White's statements or assessment of damages.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That the proposed note of your Lordship appears to us fit and proper to be sent.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 281.

The Queen's Advocate to Earl Russell.—(Received July 15.)

Doctors' Commons, July 15, 1863.

My Lord,

United States.

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 13th July instant, stating that he was directed to transmit to me a letter dated the 8th July instant from Mr. Joseph Battersby, stating that on the 19th of December, 1861, he despatched the British ship "Consul" on a voyage to Halifax, with an assorted cargo suitable for one of the southern ports of the United States; that the cargo was shipped for account and risk of his firm of William Battersby and Co. of Savannah; that the "Consul" was sent out to Halifax with the expectation that the war would not be of any continuance; that he has not had, nor has now, the slightest intention of running the blockade with the "Consul," which is utterly unsuited for such a trade; but that as the war does not seem likely to terminate soon, he is desirous of sending the vessel and cargo to Nassau, there to sell the cargo and seek employment for the ship; that he is, however, apprehensive that if he should do so, United States' cruizers may seize the "Consul," on the ground that the goods of a resident in the Confederate States are liable to seizure and condemnation, as enemy's property; and that Mr. Battersby therefore requests to be informed whether, if the "Consul" should proceed to Nassau, he may consider that she is legally safe from capture, and whether if she should be captured he may rely that Her Majesty's Government will see that he and his brother, as British subjects, are compensated by the United States' Government;—and Mr. Hammond was pleased to request that I would take Mr. Battersby's application into consideration with reference to the Report of the late Queen's Advocate of the 22nd of October, 1861,* in the case of the "Aigburth," and report to your Lordship my opinion as to the answer which should be returned to Mr. Battersby.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I am of opinion that an answer should be returned to Mr. Battersby to the following effect:—That inasmuch as Mr. Battersby belongs to a firm locally established in the Confederate States, his vessel would be liable to capture by the cruizers of the United States, as enemy's property, although it should be proved that she had no intention of breaking the blockade.

I have, &c.
(Signed) ROBERT PHILLIMORE.

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* See Reports for 1861, page 247.

No. 282.

The Law Officers of the Crown to Earl Russell.—(Received July 17.)

Temple, July 16, 1863.

My Lord,

United States.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 13th June ultimo, stating that he was directed to transmit us a despatch from Her Majesty's Minister at Washington (No. 482, 29th May), and a copy of the despatch from Mr. Vice-Consul Butterfield therein referred to, respecting the capture by the United States' cruizer "Sonoma" of the British schooner "Clyde," on the ground, as it is asserted, that her cargo was Confederate property.

Mr. Hammond was also pleased to transmit the correspondence respecting international maritime law (North America, No. 3), laid before Parliament last year, which contains the two despatches to which Her Majesty's Minister specially refers, and from which may be deduced the acknowledgment by the Government of the United States, of the doctrine of the IInd Article of the Treaty of Paris, that the neutral flag covers enemies' goods; and to request that we would take the case of the "Clyde" into consideration, and furnish your Lordship with our opinion thereupon.

We are also honoured with Mr. Hammond's letters of the 3rd and 14th July instant, trasmitting further papers respecting this case.*

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That the statement as to the cause of the seizure of the "Clyde" is one which, assuming it to be correct, appears to us to require the immediate attention of Her Majesty's Government.

It is the first intimation which Her Majesty's Government has yet received of any intention on the part of the United States' Government to adhere to the old practice with respect to enemy's goods found in neutral bottoms; and though it cannot be said that the United States' Government had expressly bound itself by a formal declaration in writing to adhere to the principles of the Declaration of Paris upon this subject, yet the language of Mr. Seward, in the correspondence referred to, had necessarily been understood by neutral States as a declaration that those principles would be acted upon by the United States during the present war.

It would not seem desirable to wait for the decision of the Prize Court in the case of the "Clyde," in order to ascertain the course which the United States' Government intend to pursue upon this very important point, but that Lord Lyons should be instructed to communicate directly with Mr. Seward upon the subject, and to represent that Her Majesty's Government feel they would have reason to complain if the ancient rule were acted upon by the United States' cruizers, or in their Prize Courts, after what has passed, without some reasonable notice of an intention to depart from the understanding which was supposed to have been established.

It would appear from the last despatch of Mr. Consul Butterfield that the Prize Court does intend to enforce the old law as to enemy's goods in neutral bottoms. We are therefore confirmed in the opinion which we have expressed to your Lordship in this Report.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 283.

The Queen's Advocate to Earl Russell.—(Received July 17.)

Doctors' Commons, July 16, 1863.

My Lord,

Denmark.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 7th instant, stating that with reference to my letter of the 15th ultimo, on the question of the nationality of Mr. Rainals, he was directed

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* Lord Lyons, No. 549, June 16; Consul Archibald, No. 97, June 8; No. 104, June 29.

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by your Lordship to transmit to me two despatches from Her Majesty's Minister at Copenhagen (Nos. 148 and 151), supplying the further information relating to this matter which I had requested might be obtained from him.

Mr. Hammond was also pleased to inclose the former papers for convenience of reference.

In obedience to your Lordship's commands I have further considered these papers, and have the honour to report—

That it now appears that there is no such Treaty or Convention in existence as that which Mr. Rainals invoked in favour of his claim from exemption from the tax in question.

It is not denied that he was born in Denmark, and the opinion of the Danish lawyer so far coincides with that expressed by M. Hall (June 2, 1863, Inclosure 8 in No. 132) that the renunciation by Mr. Rainals of his rights as a citizen of Elsinore does not relieve him from the obligations of allegiance to the Crown of Denmark.

It is admitted that he obtained the Borgerbrev; and I have already expressed my opinion that he must, in the circumstances, be deemed to have taken the usual preliminary oath.

I infer also that he obtained this Borgerbrev on the footing of a Danish subject, and without the delay of five years which would have been necessary for a foreigner. It appears that though, by returning the Borgerbrev, he is replaced in his former position, he nevertheless remains subject to whatever obligations attach to a person born in Denmark, and subsequently resident there.

Looking, therefore, at the whole of the evidence before me, I cannot advise your Lordship that Mr. Rainals can claim, as a matter of strict right, exemption from the tax in question; though, as a matter of comity, regard being had to the position which he holds, such an exemption might, perhaps, have been reasonably conceded to him.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 284.

The Queen's Advocate to Earl Russell.—(Received July 18.)

SPAIN.

Doctors' Commons, July 18, 1863.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 10th July instant, stating that he was directed to transmit to me a letter dated 7th July, 1863, from Messrs. Littledale, Ridley, and Bardswell, setting forth the circumstances under which the Spanish Consul at Liverpool has called upon their client Mr. Inman, the managing director of the ship "New York," of Liverpool, to hand over to him in his capacity of Spanish Consul, the effects of Mr. Joseph Wotterding, who died at sea on board the "New York." That it is stated that amongst the effects of the deceased was a copy of his will in Spanish, and that the deceased was supposed to be a Spanish subject.

Mr. Hammond was also pleased to inclose a volume in which I should find correspondence as to the right, under Treaty, of interference on the part of British Consuls in the Spanish dominions, and Spanish Consuls in Her Majesty's dominions, in cases of intestate property; and to request that I would take Messrs. Littledale's letter into early consideration, and report to your Lordship my opinion as to the answer which should be returned to them.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That the answer to Messrs. Littledale should be to the effect that the Treaty invoked by the Spanish Consul applies to the case of Spanish subjects dying intestate in Her Majesty's dominions, and that Mr. Wotterding appears to have died testate; and if this be so, the request of the Spanish Consul is not founded upon the Treaty.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 285.

The Queen's Advocate to Earl Russell.—(Received July 18.)

UNITED STATES.

My Lord, *Doctors' Commons, July* 18, 1863.

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 13th July instant, stating that with reference to my Report of the 14th of May,* he was directed to transmit to me a further correspondence with Lord Lyons† on the questions arising out of the late Act of the United States' Congress relating to Habeas Corpus; and to request that I would take the same into consideration, and furnish your Lordship with any observations I may have to offer thereupon.

The previous papers were inclosed for convenience of reference.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That the despatch of Lord Lyons confirms the opinion which I had the honour to express in my former Report as to the necessity of a carefully written and recognized Memorandum, embodying the record of the engagement given by Mr. Seward to his Lordship, that the United States' Executive at least would consider, so far as their action was concerned, the provisions of the Treaties as not repealed by the express words of the Act of Congress. It appears to me that the decision of Taylor and Morton (2 Curtis, 434), cited in the able opinion of Mr. Carlisle, renders this precaution the more necessary. I collect from the statement of that case that the Court decided that an Act of Congress subsequent to a Treaty, and conflicting with it, did supersede and abrogate it, which appears plainly to contradict the construction which Mr. Seward put upon the law in his conversation with Lord Lyons.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 286.

The Queen's Advocate to Earl Russell.—(Received July 18.)

UNITED STATES.

My Lord, *Doctors' Commons, July* 18, 1863.

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 13th July instant, stating that with reference to my Report of the 27th of May,‡ he was directed to transmit to me, with the previous papers, the further despatches and their inclosures which have been received from Lord Lyons (Nos. 516, 424, 446, 457, and 578), respecting the case of the "Antona," and the imprisonment of Mr. Grindle; and to request that I would take the same into consideration, and report to your Lordship my opinion as to whether any, and if so what, further instructions should be addressed to Lord Lyons in this case.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That as the "Antona" has been condemned by default, nobody appearing to claim the vessel, it must be presumed that she was lawfully captured; and as your Lordship has already given full instructions to Lord Lyons upon the subject of the sale of vessels previously to a sentence of condemnation, and as Mr. Seward has, I think, undertaken, since the sale of the "Antona," that this practice shall not be repeated, it does not occur to me that there is any necessity to send further instructions to Lord Lyons in this matter.

With respect to the detention of Mr. Grindle, it is accounted for to a great extent by Mr. Seward as arising out of a peculiar emergency, and I observe that the right to detain him as a prisoner of war is not asserted.

I have, &c.
(Signed) ROBERT PHILLIMORE.

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* Page 154. † To Lord Lyons, No. 314; Lord Lyons, No. 569. ‡ Page 164.

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No. 287.

The Law Officers of the Crown to Earl Russell.—(*Received July* 21.)

Temple, July 21, 1863.

UNITED STATES.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 4th instant, stating that with reference to our Report of the 4th of April,* he was directed to transmit to us the accompanying letter, dated the 4th of July instant, from the Treasury, inclosing an application from the owners of the "Alexandra" for the restoration of that vessel to them, and for payment of the costs of the recent trial, together with a Report from the Solicitor of Customs, to whom this application had been referred; and Mr. Hammond was pleased to request that we would take these papers into consideration, and furnish your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That it appears from the letter of the Solicitor to the Customs that even in the event of the ruling of the Lord Chief Baron at the late trial being holden to be erroneous, Her Majesty's Government would not be in a condition to adduce the same, or equally strong evidence against the ship, with that which was given at the trial; and we concur with him in thinking that if this should be so, it would be probably unadvisable to proceed to trial again. It is still, however, important in our opinion to proceed with the Bill of Exceptions, in order to obtain a definite settlement of the law: and in these circumstances, the question whether the ship should be retained in the mean time, or delivered up on proper terms to the claimants, appears to us to be one attended with considerable difficulty. If this question were to be determined on grounds unconnected with the particular evils which the Foreign Enlistment Act was intended to prevent, and without reference to considerations of policy, as between this country and the United States, we should think it desirable to avoid the heavy and accumulating claim for damages to which Her Majesty's Government may render themselves liable by a prolonged detention of the vessel, in the event (which is to be anticipated) of an ultimate failure to establish the title of the Crown; and at the same time we should think it most just, and most consonant with general principles, not unnecessarily to retain an interim possession, which (according to our present estimate of future contingencies) it may be necessary ultimately to relinquish without another trial, even in the event of the Chief Baron's ruling being held to be erroneous. If, therefore, the claimants were willing to give a bond, in a proper form, to restore the vessel or her value in the event of the still-pending litigation terminating in favour of the Crown, we should think (apart from the considerations which we shall next proceed to notice), that it would be proper to deliver her up to them on these terms; it being, of course, understood that the Crown should not be prejudiced in the litigation by that course.

Before, however, this course is determined upon (the question being a practical one, on which the discretion of Her Majesty's Government must be exercised), it seems necessary to weigh maturely the situation in which the Crown may be placed, in events which might possibly flow, as consequences, from such a course. It is possible, for example, that after being delivered over upon the terms above mentioned to the claimants, the "Alexandra" might be sent to sea from Liverpool, fully and unequivocally equipped as a vessel of war, and might (perhaps even while the question of law was being argued, and while a decision might be pronounced on that question favourable to the Crown) be actually and notoriously engaged in hostile operations against the United States. To provide against this, it might perhaps be made part of the terms of the delivery up of the ship, that the claimants should engage that she should not be thus employed, and that the Crown might retake possession if anything should be done inconsistent with the terms or spirit of such an engagement. But it is obvious that these are terms to which the owners would not be likely to accede, as their object must be, either to deliver the ship to the Confederate Government (if, as we believe, she was originally intended for them), or to sell her to some other willing purchaser; and it would not be consistent with such an object that they should enter into any undertaking as to her subsequent employment.

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* Page 102.

In this choice of difficulties, it has occurred to us that a solution might possibly be found in a purchase of the vessel (subject to a proper engagement for repayment of the price in the event of a final judgment passing for the Crown in the pending litigation) by Her Majesty's Government; and we have reason to believe that in a letter which has been communicated by Mr. Horsfall to Lord Palmerston, the claimants have expressed their willingness to make such a sale. We cannot but think that such an arrangement would be highly desirable, if the ship, when so purchased, can be turned to any useful purpose.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 288.

The Law Officers of the Crown to Earl Russell.—(*Received July* 23.)

UNITED STATES.

My Lord, *Temple, July* 22, 1863.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 4th instant, stating that he was directed by your Lordship to transmit to us a correspondence, as marked in the margin,* between the Treasury and the Foreign Office, respecting a vessel called the "Lord Clyde," which lately cleared at Cardiff, under circumstances which gave rise to a suspicion that she was intended to act hostilely against American commerce. That we should observe that sundry packages on board the "Lord Clyde" were opened and searched by the Custom-house officers, and that a claim for demurrage, &c., has been preferred by her owners in consequence. Mr. Hammond was to request that we would take this claim into consideration, and report to your Lordship our opinion thereupon.

We are also honoured with Mr. Layard's letter of the 14th instant, transmitting to us further papers relative to this matter.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we are of opinion that, in the circumstances of this case, the demurrage claimed ought to be allowed and paid by Her Majesty's Government. It appears to have been supposed by the Customs authorities at Cardiff, and by the American Consul, that the export of articles contraband of war was a violation of the municipal law of this country, which it clearly was not.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 289.

The Law Officers of the Crown to Earl Russell.—(*Received July* 22.)

UNITED STATES.

My Lord, *Temple, July* 22, 1863.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 6th July instant, stating that with reference to our Report of the 1st of May† upon the claim of Mr. Robert Bowden against the United States' Government, arising out of his capture on board the "Peterhoff," he was directed by your Lordship to transmit to us, together with the former papers,‡ the draft of a letter which was addressed on the 5th of May to Mr. Reed, Mr. Bowden's Agent, founded upon our Report, and a letter which had been received from Mr. Reed, inclosing papers and stating particulars respecting Mr. Bowden's claim, and to request that we would take the same into our consideration, and report to your Lordship our opinion thereon.

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* Treasury, May 28; to Treasury, May 29; Treasury, May 30; to Treasury, June 1; Treasury, June 4 and June 25, 1863.

† Page 142.

‡ Mr. Bowden, April 22; to Mr. Bowden, April 23; Mr. Bowden, April 28 and May 1, 1863.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That the calculation by which Mr. Bowden's claim is made to amount to 6,250*l.* 5*s.* 8*d.* appears to us very doubtful, and too hypothetical to be relied upon. We should be glad to receive the assistance of some competent and disinterested merchant or person skilled in mercantile accounts before we make our Report to your Lordship.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 290.

The Law Officers of the Crown to Earl Russell.—(Received July 23.)

Temple, July 22, 1863.

TURKEY.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 6th instant, stating that he was directed by your Lordship to transmit to us therewith a correspondence which had passed between the Foreign Office, the Board of Trade, and Her Majesty's Consul-General at Constantinople,* upon the subject of a proposed alteration in certain fees levied by Her Majesty's Consuls in the dominions of the Sublime Ottoman Porte.

And also a draft of a proposed Order in Council intended to carry that alteration into effect; and to request that we would take these papers into our consideration, and favour your Lordship with our opinion whether the proposed draft is right and proper.

We are also honoured with your Lordship's commands signified in Mr. Mundy's letter of the 20th instant, stating that he was directed by your Lordship to request that we would favour your Lordship at our earliest convenience with a reply to Mr. Hammond's letter of the 6th instant, relative to the proposed Order in Council regarding the contemplated alteration in certain fees levied by Her Majesty's Consuls in the dominions of the Sublime Porte, as it was important that the Order should be passed at the next Council, which would very shortly be held.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we have perused the inclosed draft Order in Council, and are of opinion that it is right and proper for the purpose for which it is intended.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

Inclosure in No. 290.

Draft of Order in Council.

WHEREAS by the 4th section of the Act of the sixth year of the reign of King George IV, cap. 87, intituled "An Act to regulate the payment of salaries and allowances to British Consuls at foreign ports, and the disbursements at such ports for certain public purposes," it is amongst other things enacted "that it shall and may be lawful for all Consuls-General and Consuls appointed by His Majesty, and resident within the dominions of any Sovereign, or any foreign State or Power in amity with His Majesty, to accept, take, and receive, the several fees particularly mentioned in the Tables to the said Act annexed, for and in respect or on account of the several matters, and things, and official acts and deeds particularly mentioned in the said schedules; and that it shall and may be lawful for His Majesty by any Order or Orders to be by him made, by and with the advice of his Privy Council, from time to time, as occasion may require, to increase or diminish, or wholly to abolish, all or any of the fees aforesaid, and to establish and authorize the payment of any greater or smaller, or new or additional fees or fee, for or in respect of the several matters and things mentioned in the said schedules, or any of them, or for or in respect of any other matters or things, or matter or thing, to be by any such Consul-General or Consul done or performed in the execution of such his office."

And whereas by an Order in Council made on the 1st of May, 1855, it was ordered that certain fees mentioned in the Table thereunto annexed should be taken, and whereas one of the fees mentioned in the said Table was 10*s.* for a bill of health, and whereas it is expedient in certain cases to abolish the said fee so ordered to be taken, and to establish and authorize the payment of other fees in lieu thereof: Now therefore, in pursuance of the said Act, and in execution of the powers in Her Majesty in Council in that behalf vested by the said Act, it is hereby ordered by Her Majesty, by and with the advice of her Privy Council, that, in so far as regards British ships in the dominions of the Sublime Ottoman Porte, the said fee of 10*s.* for a bill of health shall be abolished, and, in lieu thereof, the fees hereinafter mentioned shall and may be taken in respect of every such ship on each occasion of her entering or clearing at any port in the said dominions, namely, on her entry inwards 5*s.*, on her clearance outwards (including a bill of health if required) 5*s.*

W. A.
R. P.
R. J. P.

No. 291.

The Queen's Proctor to Mr. Layard.—(Received July 24.)

Doctors' Commons, July 23, 1863.

PERU.

Sir,

I HAVE the honour to acknowledge the receipt of your letter of the 6th instant, stating that you were directed by Earl Russell to transmit to me a collection of correspondence between his Lordship on the one part, and Her Majesty's Chargé d'Affaires at Lima and the Peruvian Minister in this country on the other, regarding the case of Mr. Melville White.

That the question between the two Governments is now practically limited to a decision as to the amount at which compensation should be assessed, for M. Sanz has admitted to Lord Russell that whilst his Government could not agree to the principle involved, he was ready to pay 1,000*l.* to Mr. White.

That Her Majesty's Government, acting on the Report of Her Majesty's Advocate-General, had assessed the compensation to be demanded for Mr. White at a much larger sum, but they have accepted the proposal of the Peruvian Government that the matter should be referred to the arbitration of a friendly Power; and steps would shortly be taken to request the Senate of Hamburgh to accept the responsibility.

That the course which Earl Russell considered would be most conveniently adopted to bring this matter, so far as Her Majesty's Government are concerned, under the consideration of the arbitrator would be as follows:—

1. A statement of the case, so far as the intervention of Her Majesty's Government and of Her Majesty's Legation in Peru are concerned, would be prepared and laid before the arbitrator.

2. Mr. White, as the party concerned, would be called upon to furnish a statement of his own case, and this statement Lord Russell would cause to be laid before the arbitrator, holding himself, however, free from all responsibility, both as to the facts therein set forth, and as to any amount of compensation which might be therein claimed.

That with a view to carry this arrangement into effect, you were to request that I would lose no time in preparing the statement No. 1 to be laid before the arbitrator on behalf of Her Majesty's Government.

In obedience to Earl Russell's directions, I have prepared, and have now the honour to transmit the case on behalf of Her Majesty's Government, and beg to suggest that the same, if approved of, should be returned to me with

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* Consul-General Cumberbatch and Sir E. Hornby, No. 15; to Consul-General Cumberbatch, No. 6; Consul-General Cumberbatch, No. 18; to Board of Trade, April 17; Board of Trade, May 1; to Consul-General Cumberbatch, No. 14; Consul-General Cumberbatch, No. 29; to Board of Trade, June 2; Board of Trade, June 20, 1863.

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directions as to submitting it to the Law Officers of the Crown, and procuring the same to be printed for the use of the Senate of Hamburgh.

I have, &c.
(Signed) F. H. DYKE.

No. 292.

The Law Officers of the Crown to Earl Russell.—(*Received July* 24.)

UNITED STATES.

Temple, July 24, 1863.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 13th instant, stating that he was directed by your Lordship to transmit to us the accompanying letter dated the 11th July instant and its inclosures from Mr. Adams, respecting a steam-vessel of war which is stated to be in process of construction at Liverpool for the use of the Government of the so-styled Confederate States; and to request that we would take the same into our consideration, and furnish your Lordship at our earliest convenience with our Report thereupon. And Mr. Layard was to add that copies of these papers had been forwarded to the Treasury and Home Office in order that such steps may be taken in the matter as can legally and properly be adopted.

We are also honoured with Mr. Layard's letters of the 14th, 15th, and 17th instant, transmitting to us, for consideration, further papers and correspondence relative to this matter, and also to another vessel of a similar character.

In obedience to the commands of your Lordship we have taken these papers into consideration, and have the honour to report—

That we are clearly of opinion that Her Majesty's Government ought not to detain, or in any way interfere with, the steam-vessels in question.

Not only is there no reliable evidence that the vessels are destined to be employed in the service of the Confederate States, but there is the positive statement of the French Consul that the vessels are *French property*. The alleged superintendence of Captain Bullock, as deposed to, stops far short of proof of an intent that the vessels shall be employed to cruize against the United States, while the opposite view derives countenance and probability from the statements which have come to the ears of Mr. Edwards, the Inspector of Customs at Liverpool, to the effect that the destination of these vessels is the service of some foreign non-belligerent Government. (See his letter to the Commissioners of Customs of the 11th July.)

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 293.

The Law Officers of the Crown to Earl Russell.—(*Received July* 24.)

UNITED STATES.

Temple, July 24, 1863.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 1st instant, stating that he was directed by your Lordship to transmit to us the accompanying despatches,* and their inclosures, respecting the revocation by the Confederate Government of Mr. G. Moore's exequatur as Her Majesty's Consul at Richmond; and also respecting the determination of that Government not to permit communication between Consuls in those States, and the "functionaries of their Governments residing within the enemy's lines;" and also stating that your Lordship does not see that the British Government can complain of the act of revoking Mr. Moore's exequatur, nor of the rule that Consuls in the Confederate States must not correspond with Her Majesty's Minister in the Northern States.

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* Lord Lyons, No. 537, June 12, 1863; No. 551, June 16, 1863; Consul Moore, No. 23, June 9, 1863.

Mr. Hammond was, however, to request that we would take these papers into consideration, and to report to your Lordship our opinion thereupon.

In obedience to your Lordships commands we have taken these papers* into consideration, and have the honour to report—

That we are of opinion that neither the revocation of the exequatur of Mr. Moore, nor the prohibition issued to British Consuls to correspond with Her Majesty's Representative in the United States, do, in the particular circumstances, constitute any valid or legal ground of complaint on the part of Her Majesty's Government against the Government of the Confederate States.

The Confederate States' Government has a right, in the state of its present relations to this country, to adopt this course of proceeding with respect to British Consuls.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 294.

The Law Officers of the Crown to Earl Russell.—(*Received July* 25.)

SPAIN.

Temple, July 24, 1863.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 13th of June ultimo, stating that he was directed by your Lordship to transmit to us the correspondence marked in the margin† respecting the case of the British vessel "Anne Catherine," the master of which had been fined by the Spanish authorities at Huelva, in consequence of the accidental death of a Spanish soldier on board his vessel at that port; and to request that we would take these papers into our consideration and favour your Lordship with our opinion as to what further steps can be taken by Her Majesty's Government in this matter.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That though it was undoubtedly competent to the Spanish Court to deal with the question of the forfeiture of the bail and to disregard the proceedings before the British Vice-Consul, we think the mode of inquiry warranted the remonstrance of Her Majesty's Representative at Madrid, but we do not think that any further steps can be taken by Her Majesty's Government in this matter.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 295.

The Law Officers of the Crown to Earl Russell.—(*Received July* 27.)

PERSIA.

Temple, July 24, 1863.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 8th instant, stating that with reference to our Report of the 19th of March last‡ upon the case of Mirza John Ibrahim, suspected of having committed a robbery on the British Legation at Tehran, he was directed by your Lordship to transmit to us a further despatch on that subject from Mr. Thomson (No. 48), inclosing a copy of a statement made by Mirza John Ibrahim in answer to the charges brought against him, and to request that we would take these papers,

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* Also letter from Mr. Layard, dated the 8th instant, containing further papers.

† Mr. Owen, October 30, 1862; Sir J. Crampton, No. 390, December 3, 1862; Consul Brackenbury, No. 26, November 28, 1862; to Consul Brackenbury, No. 3, November 10, 1862; Queen's Advocate, December 27, 1862; Sir J. Crampton, No. 55, February 22, 1863; Mr. Edwards, No. 42, May 18, 1863; Board of Trade, June 9, 1863.

‡ Page 79.

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together with the former ones therewith inclosed,* into our consideration, and favour your Lordship with our opinion thereupon.

Mr. Layard was also pleased to add, by way of postscript, that since the above was written the despatch inclosed had been received from Mr. Alison (July 6).

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That as far as we can form an opinion upon the evidence laid before us upon so serious a charge, we think that the conclusion at which Mr. Thomson has arrived is correct; namely, that Mirza John Ibrahim received and used property which he must have known to be stolen: but that he cannot, upon the evidence of such discredited and discreditable persons as his servants now are proved to be, be considered guilty of having instigated the commission of the robbery.

The credentials afforded by Mr. Alison are no doubt worthy of consideration, but they can weigh very little against the positive evidence to which Mr. Thomson refers; and there is a fact, in itself perhaps not of a very grave nature, but relatively to the effect of credentials as to general character important, referred to by Mr. Eastwick (December 16, 1862, No. 4), and not, we believe contradicted, namely, that the portfolio of John Ibrahim was found to contain several engravings cut out from works belonging to the Mission Library.

What the award of punishment should be, and whether any *locus pœnitentiæ* on account of former services should be accorded to John Ibrahim, regard being had to the present diminution of the offence with which he was originally charged, are matters which perhaps might be best left to the discretion of Her Majesty's Representative at Tehran.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 296.

The Law Officers of the Crown to Earl Russell.—(*Received July* 25.)

Temple, July 24, 1863.

My Lord,

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 11th instant, stating that he was directed by your Lordship to transmit to us a despatch, and its inclosures, from Her Majesty's Minister at Washington (No. 572, June 22, 1863), respecting the case of Mr. J. Hardcastle, a British subject, who lately met with his death through being fired at by a sentry while incarcerated in the old Capitol Prison at Washington; and to request that we would take this case into consideration, and furnish your Lordship with such observations as we may have to offer thereupon.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That so far as relates to the lamentable death of Mr. Hardcastle there seems good ground for believing that it is sincerely regretted by the United States' authorities, and that a proper and *bonâ fide* inquiry will be made into the circumstances with a view to the punishment of the person guilty of the homicide, if it should appear that the shot which caused it was fired without justifying cause.

We cannot, however, abstain from remarking that this unhappy occurrence makes it, in our opinion, only the more necessary for the United States' Government to offer some justification for the imprisonment of Mr. Hardcastle, which they do not appear to us to have yet done. As we understand the facts, he was permitted by the United States' authorities to cross the lines from the Confederate States openly, under a flag of truce, and he was then arrested for so doing as a prisoner of war, and was detained in a military prison where he met his death.

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* Mr. Eastwick, No. 4, 1862; Mr. Thomson, No. 16, 1863.

Such treatment of a foreigner coming into the United States' territory under a flag of truce, and accused of no civil offence, strikes us as an apparent violation of good faith, and we are at a loss to understand how it can be justified.

We think, also, that the facts stated in the letter of Captain Mix (Inclosure 20 in Lord Lyons' No. 572) ought not to be suffered to pass without grave remonstrance. It would appear that in consequence of the building called the Carroll Prison being situate in a public avenue, and otherwise ill adapted to the purposes for which it is used, the sentinels guarding the outer walls of that prison have received orders to warn all prisoners to keep their heads within the windows, and if they persist in disobeying to fire their pieces.

Mr. Hardcastle's death was apparently owing to these barbarous orders, which (if the account given in the same letter be true, although the prisoner, whose head was put out of window, was not Mr. Hardcastle) were but too faithfully obeyed.

It is hardly possible that under such circumstances the sentinel can justly be found liable to any punishment; the blame seems really to rest with the superior authorities by whom such instructions were issued.

The whole case leaves upon our minds a very painful impression.

The liberty of a British subject has been interfered with without any serious cause, and in apparent breach of good faith. No prompt attention was paid to the representations of Her Majesty's Ambassador in his behalf, and in the end, his life was causelessly sacrificed by the accidental result of a tyrannical system of prison discipline, excused on the ground of the unsuitableness and the overcrowded state of the United States' military prisons, in which we fear other British subjects may be confined, on grounds not less slight and unsatisfactory than those which were alleged in the case of Mr. Hardcastle.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 297.

The Law Officers of the Crown to Earl Russell.—(*Received July* 27.)

Temple, July 24, 1863.

My Lord,

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 29th June ultimo, stating that he was directed by your Lordship to transmit to us a Memorial (dated the 22nd June) from Messrs. Barr and Williamson and Mr. Charles Mc Ewen, merchants of Glasgow, which had been forwarded to your Lordship by Mr. Dalglesh, M.P., respecting the case of the British barque "Hiawatha," which had been condemned by the United States' Prize Courts for breach of the blockade of the Southern ports, and that this case had already been reported on by Her Majesty's late Advocate-General, under dates of the 10th June, 5th July, and 31st October, 1861, and the 21st March, 1862, and that it had also been incidentally brought before us in connection with the complaints of Mr. Potts, which formed the subject of our Reports of the 2nd April and 20th May last, and that it is stated in the inclosed Memorial in which, as well as in the previous papers sent therewith, the case of the "Hiawatha" is fully set forth; that the Judgment of the Admiralty Court condemning the "Hiawatha" had recently been affirmed by the Supreme Court, and the memorialists therefore state that having failed to obtain relief in the Law Courts of the United States, they now ask for the assistance of Her Majesty's Government to bring this case before the United States' Government with a view of obtaining a remedy for the injury they have sustained.

Mr. Hammond was also pleased to state that he was directed by your Lordship to request that we would take the inclosed Memorial into our consideration, and favour your Lordship with our opinion as to the course which Her Majesty's Government should pursue in regard to it.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we regret that we have not a copy of the Judgment of the Supreme Court in order to ascertain upon what grounds it proceeded. We assume, however, that they were substantially the same as those upon which the sentence of the Supreme Court was founded.

The Judge of that Court suggested that application should be addressed to the United States' Government asking upon equitable grounds for the release of the vessel. He must therefore have been satisfied of her moral innocence (so to speak), though he was or considered himself bound to enforce against her the strict law, without taking into consideration the official and diplomatic communications which had led the "Hiawatha" into the *bonâ fide* belief, however erroneous, that she was at liberty to depart with her cargo from Richmond, and though Lord Lyons pressed in vain these considerations upon the United States' Government after the decision of the Inferior Court.

We think that he should be instructed, now that every remedy afforded by Courts of Law has been exhausted, to urge again upon the United States' Government the peculiar hardship of the case of the "Hiawatha."

The Memorial of Messrs. Barr and Williamson appears to us temperate and well-reasoned, and might perhaps be submitted to the United States' Government, accompanied by observations from Lord Lyons. But this is a matter which would naturally be left to the discretion of his Lordship.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 298.

The Law Officers of the Crown to Earl Russell.—(*Received July* 27.)

Temple, July 24, 1863.

My Lord,

CHINA.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 8th instant, stating that with reference to our Report of the 3rd instant,* on the subject of the prohibition imposed on the export of arms and munitions of war from Hong Kong, he was directed by your Lordship to transmit to us, together with the previous papers, a letter which your Lordship had caused to be addressed on the 26th ultimo to the Colonial Office and India Office, requesting that instructions might be sent by the mail of that evening to the Acting Governor of Hong Kong and to the Governor of Singapore, enjoining them "to prohibit the export of arms, no matter to what quarter, unless for the ascertained use of the Chinese Government, so long as the existing differences between Great Britain and Japan are pending;" and to request that we would again take this question into our consideration, with especial reference to those instructions, and favour your Lordship with any further observations which we might have to offer thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That the letter addressed, by your Lordship's directions, to the Colonial and India Offices appears to us proper to have been sent. It does not occur to us to make any observations upon the general subject in addition to those contained in our former Report.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 299.

The Law Officers of the Crown to Earl Russell.—(*Received July* 27.)

Temple, July 25, 1863.

My Lord,

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 11th July instant, stating that he was directed by your Lordship to transmit to us a despatch and its inclosures from Her Majesty's Minister at Washington (No. 583, June 26), respecting the case of Mr. John Macalister Vernon, a person declaring himself to be a British subject, who has been seized and detained by the United States' authorities in prison, under the circumstances set forth in the inclosed papers; and to request that we would take this case into our consideration, and report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That it is clear that the mere fact of having been engaged in breaking or running the blockade does not entitle the United States' Government to treat any foreign subject as a prisoner of war.

As a contrary position appears to be asserted in this case, and to have been asserted in other cases, we think it important that this position should be distinctly laid down.

We have next to address ourselves to three other questions arising out of these papers:—

1. Whether Mr. Vernon be a British subject?

2. Whether he has claimed and exercised the privileges of a subject of the United States?

3. Whether, if the first question be answered in the affirmative, and the second in the negative, Mr. Vernon has not so conducted himself, and so identified himself with the subjects of the Confederate States as to render himself subject to the treatment of a belligerent by the United States?

With respect to the first and second questions it appears, upon the present evidence, that Mr. Vernon is a born British subject, and it does not appear that he has obtained naturalization in the United States, or that he has exercised any political privileges as a subject of the United States.

With respect to the third question, we are of opinion that the United States' Government are justified in treating him as a *de facto* belligerent. He has been for twenty-three years resident in the Confederate States; and though, during that period, he paid occasional visits to England, the whole evidence shows that he had no intention of returning to permanent residence in his native country, and certainly ever since the outbreak of the war he has identified himself in the strongest manner with the fortunes of these States, and was, at the time when he was taken on board a United States' man of war, actively employed in aiding the Confederate Government in procuring military stores and munitions, though he was to derive a commercial profit from so doing. He was, in fact, practically a willing citizen of the Confederate States engaged in rendering material assistance to the Government in the equipment of their army. He was *de facto* a subject of the Confederate States.

We do not think that, in these circumstances, his release can be claimed as a matter of right merely because he was born a British subject; but we think that Lord Lyons might be instructed to use, according to his discretion, any endeavour in his power to mitigate or shorten his captivity.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 300.

The Law Officers of the Crown to Earl Russell.—(*Received July* 28.)

Temple, July 28, 1863.

My Lord,

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 21st instant, stating that he was directed by your Lordship to transmit to us a despatch and its inclosures from Her Majesty's Minister at Washington (No. 607, July 3), respecting a promise to observe neutrality which is exacted by the United States' military authorities from foreigners visiting Key West. And to request that we would take this matter into consideration, and report to your Lordship our opinion thereupon.

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* Page 194.

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In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we are of opinion that the letter of Lord Lyons to Mr. Consul Archibald was, in the circumstances, right and proper. We think that the exaction of a promise so limited and guarded from foreign subjects, while in the dominions of the United States and under their authority, does not, in the present circumstances of the United States, constitute any violation of international law.

We have, &c.
For myself and the Attorney-General,
(Signed) ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 301.

The Law Officers of the Crown to Earl Russell.—(Received July 28.)

Temple, July 28, 1863.

My Lord,

CHINA.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 26th June ultimo, stating that he was directed by your Lordship to state to us that, before addressing to Sir Frederick Bruce an instruction founded on our Report of the 3rd ultimo, respecting the question of suing before British tribunals British subjects in the service of China for acts done by them in the exercise of the authority confided to them, your Lordship thought it better to ascertain whether the Colonial Office was able to furnish any information as to the power of the Supreme Court at Hong Kong to issue a mandamus to the Consular Courts in China, and to transmit to us, together with the previous papers,* a letter from the Colonial Office,† stating that neither the Duke of Newcastle nor Sir Hercules Robinson are aware of the existence of any charter or other instrument conferring this power on the Supreme Court; and at the same time to transmit to us, in case it should contain any information bearing upon the point, a despatch from Sir Frederick Bruce,‡ inclosing a copy of a Report respecting the Order in Council of the 13th of June, 1853, addressed to him in 1859 by the Acting Chief Justice of Hong Kong; and that these papers formed the subject of the Law Officers' Report of the 26th of November of that year.

Mr. Layard was also pleased to state that he was directed by your Lordship to request that we would take these further papers into our consideration, and favour your Lordship with any further observations which we might have to offer on the subject to which our Report of the 3rd ultimo relates.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That the additional papers now submitted to us, do not, we think, render any change in our former Report necessary.

That they do, however, confirm our opinion that the power of mandamus is not possessed by the Supreme Court at Hong Kong.

We have, &c.
For myself and the Attorney-General,
(Signed) ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 302.

The Law Officers of the Crown to Earl Russell.—(Received July 28.)

Temple, July 28, 1863.

My Lord,

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 29th ultimo, stating that with reference to our Report of the 22nd May last,§ he was directed by your Lordship to transmit to us, together with the previous papers, the accompanying further despatches and their

inclosures from Her Majesty's Minister at Washington,* on the question of the appropriation of captured vessels before condemnation under the recent Prize Act of the United States' Congress. And to request that we would take these further papers into our consideration, and favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That as the remonstrance of Lord Lyons appears to have elicited an engagement from the authorities of the United States that the whole matter will be gravely considered, and that in the meantime no further sales of the character objected to will take place, Her Majesty's Government are not at present called upon to send any further instructions upon the subject to Lord Lyons.

We have, &c.
For myself and the Attorney-General,
(Signed) ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 303.

The Queen's Advocate to Earl Russell.—(Received July 28.)

Doctors' Commons, July 28, 1863.

My Lord,

CHINA.

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 21st of July instant, stating that he was directed to transmit to me a letter from the Colonial Office (dated July 13), inclosing a copy of a despatch from the officer administering the Government of Hong Kong, respecting the arrival off that port of the Federal war-steamer "Wyoming," and asking for instructions, in the event of a similar case occurring again; and to request that I would take these papers into consideration with reference to the Rules of Neutrality issued by Her Majesty's Government on the 31st of January, 1862, and furnish your Lordship with my opinion as to the answer which should be returned to the Governor of Hong Kong.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That the fact of the anchorage of the "Wyoming" being nearer to the Chinese shore than to the shore of Hong Kong raises a question of some difficulty and embarrassment as to the application of the general rule of international law. Forming my opinion upon the map which accompanies the papers, as well as upon the statements in the papers, I do not advise Her Majesty's Government to insist, as a matter of strict right, that the place of anchorage adopted by the "Wyoming" is within those waters over which the jurisdiction of Her Majesty, in its relation to vessels of foreign independent States, extends.

But I do advise Her Majesty's Government that the Governor of Hong Kong should be instructed to put in force any local Ordinance such as that referred to in paragraph 10 of Mr. Mercer's despatch, which may prevent supplies being taken from Hong Kong to belligerent vessels anchored where the "Wyoming" was, other than such as are within the limits of the permission accorded by Her Majesty's Proclamation.

It would, I think (but this is, perhaps, a question for the exercise of discretion upon the spot), also be proper that the United States' Consul should be apprised of Her Majesty's Government's intention in this respect; and if existing local Ordinances should be insufficient for this object, it would be expedient that others should be framed which may be sufficient for it. It must also be observed that it would not be competent to the ships of war of either belligerent to lie off the mouth of the harbour of Hong Kong for the purpose of exercising hostilities against vessels entering into that port or going out of it. Such a proceeding and practice would be a plain violation of international obligations, and of the neutral rights of Great Britain.

I have, &c.
(Signed) ROBERT PHILLIMORE.

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* Sir F. Bruce, No. 185, December 23, 1862.

† Colonial Office, June 24.

‡ Sir F. Bruce, No. 18, May 23, 1859.

§ Page 161.

* Lord Lyons, No. 386, May 8, 1863; No. 408, May 11, 1863; No. 528, June 12, 1863; No. 529, June 12, 1863.

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No. 304.

The Queen's Advocate to Earl Russell.—(*Received July* 28.)

Doctors' Commons, July 28, 1863.

My Lord,

UNITED STATES.

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 21st instant, stating that with reference to my Reports of the 31st March and 11th of May* respecting the case of the "Magicienne," he was directed to transmit to me the papers as marked in the margin,† from which I should see that the owners of that vessel have accepted a proposal of the United States' Government, that that Government and some British authority should each designate a person to ascertain and agree upon the damages to be awarded:

That I should also see from the further papers‡ that this course has likewise been proposed by the United States' Government in the case of the "Mont Blanc," which formed the subject of my Report of the 12th March last.§ That Mr. Samuel Baker, acting for himself and his co-owner of the "Magicienne," states that they have appointed as their Agent Mr. Edwin Gerard, who was to proceed to Washington by the mail of last Saturday. and that Mr. Baker requests to be informed whether any other step is necessary on his part for the furtherance of the claim; and Mr. Layard was to request that I would take this matter into consideration, and furnish your Lordship with my opinion as to the reply which should be made to Mr. Baker, and also as to whether any special instruction should be sent to Lord Lyons beyond a direction to inform the United States' Government that the offer of that Government is accepted by the owners of the "Magicienne."

In obedience to your Lordship's commands I have taken this matter into consideration, and have the honour to report—

That it does not occur to me that any other step is at present necessary to be taken by Mr. Baker for the furtherance of his claim. I presume that the Agent bears with him proper credentials, but I think it would be expedient that your Lordship should apprise Lord Lyons that Mr. E. Gerard is the referee selected by Mr. Baker.

There does not appear to be any provision made for the contingency of a difference between the referees as to the amount of damages which should be awarded.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 305.

The Law Officers of the Crown to Earl Russell.—(*Received July* 31.)

Temple, July 28, 1863.

My Lord,

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 8th July instant, stating that with reference to our Report of the 18th ultimo,‖ and to our previous Reports respecting the case of the "Peterhoff," he was directed by your Lordship to transmit to us, together with the former papers, a letter dated the 5th July instant from Mr. Paget, M.P., inclosing a letter from Mr. Mundella, of Nottingham, asking to be informed what course he should take in order to obtain restitution of his property on board that vessel, with compensation for the losses he has sustained.

Mr. Layard was also pleased to transmit to us two further despatches from Lord Lyons upon the same case (Nos. 580 and 581, June 22), the first of which inclosed the report of the Special Commissioners on the discharge and examination of the cargo, and the second has reference to the reported refusal of the captain of the "Peterhoff" to testify with regard to the assertion that papers had been thrown overboard from that vessel, and to request that we would take these papers into our consideration and favour your Lordship—

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* Pages 95 and 149.

† Lord Lyons, No. 579; to Mr. Baker and Mr. Cox, July 11; Mr. Baker, July 13 and 16.

‡ Lord Lyons, Nos. 455 and 532.

§ Page 68.

‖ Page 183.

1st. With our opinion as to the answer which should be returned to Mr. Mundella; and

2ndly. With such observations as we might have to offer upon Lord Lyons' further despatches.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That Mr. Mundella should be informed that Her Majesty's Government have no power to interfere directly with the proceedings of the Prize Court at New York, but that they have given instructions to Lord Lyons to cause the case of the "Peterhoff" to be carefully watched, and that they have reason to believe that the Special Commissioners appointed by the Prize Court to examine the cargo have made their Report, and that the case is now being tried. It may also be expedient to state that there is an allegation as to throwing papers overboard by the captain, which allegation, uncontradicted, has always been considered by Prize Courts as a very unfavourable circumstance for the vessel.

With respect to the despatch of Lord Lyons, we have only to observe that the apprehension of his Lordship's informant as to the inference which would be drawn by the Prize Court from the refusal of the captain to explain a circumstance in itself so suspicious as the throwing overboard of papers is well founded.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 306.

The Law Officers of the Crown to Earl Russell.—(*Received July* 31.)

Temple, July 29, 1863.

My Lord,

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 26th June ultimo, stating that with reference to our Reports of the 22nd and 27th of April and 29th May* respecting the case of the "Dolphin," he was directed to transmit to us, together with the previous papers, the despatches which have since been received from Lord Lyons on this case (Nos. 410, 411, 427, 435, 481, 520, and 527). Mr. Layard was also to call our special attention to Lord Lyons' despatch of the 12th instant, which incloses an authenticated copy of the decision of the Prize Court at Key West, condemning the "Dolphin" and her cargo as prize of war; and to request that we would take the same into consideration, and furnish your Lordship with such observations as we may have to offer thereupon.

In obedience to your Lordship's commands we have taken these further papers into consideration, and have the honour to report—

That we have perused the sentence of the District Court, have referred to the authorities therein cited, and have considered what appear to have been the admitted facts and circumstances of the case. We are not prepared to arraign the justice of that sentence. The principle of decision laid down in the introductory part of the Judgment is unexceptionably correct; it being expressly admitted that "if there was no intention on the part of the owner *that the vessel should proceed with the cargo* to a port of the enemy, there would be no ground whatever to justify the capture or condemnation of either of them." The question was properly treated as one of fact, viz., whether the vessel had or had not a *bonâ fide* neutral destination. It does not appear that the owners of the "Dolphin" applied for leave to establish, by further proof, the *bonâ fide* destination of the vessel to Nassau, or to explain the grave suspicion arising from the false entry as to the rifles and swords, and from the third and last letter as contrasted with the two former letters which were found on board. It seems that the Judge has granted a reasonable time for appeal to the condemned vessel. The former averments as to the vessel being seized in neutral waters, and as to the ill-treatment of the crew, do not appear to be substantiated.

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* Pages 125, 134, and 165.

We are clearly of opinion that Her Majesty's Government are not at present called upon to interfere in this case.

We have, &c.
For the Attorney-General and myself,
(Signed) ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 307.

The Law Officers of the Crown to Earl Russell.—(*Received July* 31.)

GREAT BRITAIN.

My Lord, *Temple, July* 29, 1863.

IT may be in your Lordship's recollection that we were honoured with your Lordship's commands signified in Mr. Hammond's letter of the 28th of January last, stating that he was directed by your Lordship to acknowledge the receipt of our Report of the 16th of that month,* expressing our concurrence in your Lordship's suggestion that in addition to certain amendments to the Foreign Enlistment Act proposed in our Report of the 12th of the same month,† a co-ordinate power should be given to the Secretary of State for the Home Department to seize a vessel infringing the provisions of that Act; and Mr. Hammond was accordingly directed by your Lordship to request that we would frame a Bill to be proposed to Parliament during the then approaching session for giving the force of law to those amendments.

With reference to this subject we have now the honour to report—

That we had made some progress in the preparation of a draft Bill for this purpose, when it came to our knowledge, from papers laid before Parliament early in the session (North America, No. 3, 1863, page 48), that Her Majesty's Government had arrived at the conclusion that it was not necessary to propose any alteration in the existing law; and that a communication to that effect, and intimating that no further proceedings need for the present be taken upon the subject, had been made by your Lordship to Mr. Adams, early in February.

Under these circumstances we abstained from proceeding to complete the draft which we had been instructed to prepare; and the session of Parliament having now come to an end, it has appeared to us proper to make this Report upon the subject, in order that, if we should still be desired to proceed further in this matter, we may be favoured with your Lordship's instructions to that effect.

We have, &c.
For the Attorney-General and myself,
(Signed) ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 308.

The Law Officers of the Crown to Earl Russell.—(*Received July* 31.)

JAPAN.

My Lord, *Temple, July* 29, 1863.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 19th June ultimo, stating that, with reference to the Report of the Law Officers of the Crown of the 27th January, 1862,‡ upon the question of visiting with additional punishment persons who might return to Japan in disregard of a Consular sentence banishing them from that country, he was directed by your Lordship to transmit to us, together with the former paper,§ a further correspondence which had passed on this subject between the Foreign Office and Her Majesty's Legation in Japan.‖

Mr. Hammond was also pleased to state that, in requesting us again to take this matter into our consideration, he was to call our attention to the reasons assigned by Mr. Winchester for considering that Her Majesty's Consuls in Japan ought to be armed with power to inflict additional punishment upon such persons—an opinion in which Mr. Winchester is supported by Sir Rutherford Alcock; and if we should also concur in that opinion (in which case your Lordship presumed we would advise that a similar power should also be conferred upon Her Majesty's Consuls in China and upon Her Majesty's Consul in Siam), your Lordship further requested that we would have the goodness to prepare drafts of three short Orders in Council applicable to China, Japan, and Siam respectively, and containing a provision for meeting the case similar to that which has been introduced into the Levant Order in Council of the 9th of January last.

Mr. Hammond was further pleased to state that copies of that Order in Council, and of the Japan Orders in Council of the 23rd of January, 1860, and 4th February, 1861, were sent therewith; and that the Orders in Council relating to China are published in Hertslet, vol. ix, page 210, and vol. x, pages 732 and 1073; and the Order in Council relating to Siam in vol. x, page 577.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we agree with the opinion expressed by Mr. Winchester and Sir Rutherford Alcock; and that we think the Consuls in Japan, China and Siam ought to be armed with power to inflict additional punishment upon persons deported and returning after deportation to these countries. We have therefore prepared the additional Orders in Council mentioned in your Lordship's letter, and annexed them to this Report.

We have, &c.
For the Attorney-General and myself,
(Signed) ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 309.

The Law Officers of the Crown to Earl Russell.—(*Received August* 1.)

UNITED STATES.

My Lord, *Temple, July* 31, 1863.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 24th instant, stating with reference to the Report of the Attorney and Solicitor-General of the 6th of January last, addressed to the Secretary of State for the Colonies, that he was directed by your Lordship to transmit to us, together with the previous papers,* a letter from the Colonial Office,† inclosing, with a despatch from the Lieutenant-Governor of New Brunswick, a copy of an Act of the Legislature of that Colony, providing for the better management of the local fisheries, to which are appended Regulations made by the Government and Council for carrying out the provisions of the Act; and to request that we would take this Act and the Regulations annexed to it into our consideration, and report to your Lordship whether, in our opinion, they contain anything at variance with the Treaties between this country and the United States.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we are of opinion that the Act and Regulations in question do not contain any provisions at variance with the Treaties between Great Britain and the United States.

We have, &c.
For the Attorney-General and myself,
(Signed) ROUNDELL PALMER.
ROBERT PHILLIMORE.

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* Page 23. † Page 14. ‡ Page 16.

§ Mr. Alcock, No. 89, September 27, 1861.

‖ To Sir R. Alcock, No. 20, February 18, 1862; Consul Winchester, No. 26, May 17, 1861.

* Colonial Office, December 3; to Colonial Office, December 12, 1862; Colonial Office, January 17; to Colonial Office, January 26, 1863.

† Colonial Office, July 17, 1863.

No. 310.

The Law Officers of the Crown to Earl Russell.—(*Received August* 1.)

Temple, July 31, 1863.

UNITED STATES.

My Lord,

WE are honoured with Mr. Layard's letter of the 18th instant, stating that he was directed by your Lordship to transmit to us, for our information, a letter dated the 16th July instant, from Mr. Mason, inclosing a list of vessels which had arrived at Nassau from American blockaded ports, from the 18th of July, 1862, to the 2nd of June, 1863.

We have perused the same, and have the honour to report to your Lordship—

That Mr. Mason, in furnishing the list of vessels in question, intends, no doubt, to suggest the inefficiency of the existing blockade by the forces of the United States; but that question, if taken up, would have to be dealt with as a whole, and upon evidence free from any reasonable suspicion of bias; and we presume that for the present the plan of respecting the blockade by the British Government will be persevered in.

We see, therefore, no reason to depart from the advice which we have previously given to Her Majesty's Government on this subject.

We have, &c.
For the Attorney-General and myself,
(Signed) ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 311.

The Law Officers of the Crown to Earl Russell.—(*Received August* 3.)

Temple, July 31, 1863.

UNITED STATES.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 13th instant, stating that with reference to our Reports of the 27th ultimo and 9th instant,* and also to our previous Reports on the question of the liability of British subjects to military service under the recent Conscription Act of the United States' Congress, he was directed by your Lordship to transmit to us a despatch from Her Majesty's Minister at Washington (No. 555), inclosing copies of a despatch from Mr. Consul Archibald, and of three letters addressed to him by British subjects, who, having declared their intention to become United States' citizens, have since been made liable to military service by the Conscription Act, and the President's Proclamation of the 8th of May. And Mr. Layard was to request that we would take these cases into consideration, and report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands we have taken these cases into consideration, and have the honour to report—

That we are of opinion that the cases referred to by Lord Lyons do not call for any interference on the part of Her Majesty's Government.

Upon the general subject, we adhere to the opinion expressed in our former Reports; and the special circumstances applicable to the two classes of cases mentioned in the inclosures accompanying Lord Lyons' despatch are so far from having a contrary bearing that they afford additional reasons for that opinion. Those who have been permitted to acquire land in the United States, on the faith of a declaration that they intended to become citizens, and who could not have acquired it without such declaration, have (in that respect) become partakers of the special privileges of citizenship; and it is certainly not unreasonable, in the abstract, for any nation to require the owners of land, acquired under such circumstances, to share the military burdens of citizens.

The other class of cases, of which Mr. Scott is an example, is still less meritorious.

Mr. Scott's own account of the reason why he declared on oath his intention to become an American citizen, and to renounce his British allegiance, is that a war was at that time expected to break out between Great Britain and

the United States. So that, if such a war had actually broken out (and this, it is to be observed, was after the commencement of the present civil war, namely, at the time of the affair of the "Trent"), it was his intention to adhere to the United States against his own Sovereign; and, nevertheless, he now asks his Sovereign to interfere in his behalf with the Government of the United States, in order to relieve him from a burden (then unforeseen) which the United States has since imposed upon him, in consequence of that declaration.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 312.

The Law Officers of the Crown to Earl Russell.—(*Received August* 5.)

Temple, August 4, 1863.

UNITED STATES.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 24th July ultimo, stating that he was directed to transmit to us a despatch and its inclosures from Her Majesty's Minister at Washington, No. 606, July 3rd, respecting the refusal of the Custom-house authorities at New York to clear a vessel, the "John Freeman," which had been chartered by Mr. Joseph N. Harvey for the purpose of conveying live stock at Bermuda, under a contract with Her Majesty's Government, such refusal being based upon directions issued by the United States' Secretary of War in pursuance of an order of the President of the 20th of November last, prohibiting the exportation of arms, ammunition, or munitions of war, and to request that we would take this case into consideration, and report to your Lordship our opinion thereupon.*

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That inasmuch as the prohibition is imposed by the United States' Government equally upon all persons, whether citizens or foreigners, and inasmuch as it is within the abstract competence of every State, in the case of severe domestic necessity, both to issue such a prohibition and to bring it without previous notice into immediate operation, we do not think that Her Majesty's Government can insist, as a matter of right, upon its relaxation in the particular instances mentioned. At the same time we think that Lord Lyons should be instructed to express the regret of Her Majesty's Government at a proceeding attended with so much inconvenience to Her Majesty's troops, and one which the terms of the prohibitory Proclamation had given them no reason to anticipate or provide against. Whether more than this should be done must depend (we think) upon the course which Her Majesty's Government may have pursued in dealing with any remonstrances or claims to compensation made to them on behalf of citizens of the United States under similar circumstances. One such case (relating, we think, to a cargo of saltpetre, detained in India under the Proclamations issued at the beginning of 1862, when war was apprehended with the United States in consequence of the "Trent" affair), was formerly referred to and reported on by us, but we are not aware whether Her Majesty's Government did or did not ultimately make compensation in that case. If they did so, then we think Lord Lyons may properly and consistently be instructed, in the present case, to express the expectation and conviction of Her Majesty's Government that the United States' Government will not fail to make that compensation to the individuals concerned which is just and equitable in a case in which the necessities of the Government compel it to have recourse to a law practically retrospective, and severely affecting the interests of the subjects of a friendly State.

We speak of this prohibition as practically retrospective, because it was so suddenly brought into operation as to prevent the exportation on board the "John Freeman" of live stock previously purchased for exportation, and ready for immediate shipment, in fulfilment of a prior contract with Her Majesty's

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* Pages 190 and 200.

* Further letter from Mr. Layard, July 29, 1863, with additional despatch.

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Government. It cannot be seriously contended that the words "arms, ammunition, and munitions of war," as occurring in the President's Order of the 21st of November, 1862, were capable of being construed, on any principle of *interpretation*, as extending to sheep and cattle, or indeed to live stock of any kind. The letter, therefore, of the Secretary of War of the United States dated the 13th May last (which we understand to have been since ratified by the President and brought into operation on the 30th of May, without previous notice to the public), must be regarded as an entirely new order, prohibiting, for the first time, the exportation of live stock from the United States.

We have, &c.
For the Attorney-General and myself,
(Signed) ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 313.

The Queen's Proctor to Mr. Layard.—(Received August 5.)

Doctors' Commons, August 5, 1863.

PERU.

Sir,

I HAVE the honour to acknowledge the receipt of your letter of the 31st ultimo, stating that you were directed by Earl Russell to transmit to me the correspondence noted in the margin[*] between his Lordship and the Peruvian Minister, from which I should perceive that Lord Russell had consented to extend the terms of reference to arbitration in Mr. Melville White's case so as to include an examination into the general merits of the case.

That a modification therefore becomes necessary in the case which I had prepared to be submitted to the Arbitrator on behalf of Her Majesty's Government, and you were accordingly to return that document to me, together with the previous correspondence, and to request that I would at my earliest convenience prepare and forward a revised draft.

In obedience to Earl Russell's directions I have prepared, and have now the honour to transmit, a revised draft, extending the terms so as to include an examination into the general merits of the case.

I have, &c.
(Signed) F. H. DYKE.

No. 314.

The Law Officers of the Crown to Earl Russell.—(Received August 6.)

Temple, August 5, 1863.

UNITED STATES.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 13th July ultimo, stating that he was directed by your Lordship to transmit to us a despatch from Lord Lyons (No. 556) inclosing copies of despatches from Consuls Kortright and Bernal, asking for instructions as to the title to British protection of certain classes of persons residing in the United States, and Mr. Layard was to request that we would take these despatches into consideration, and furnish your Lordship with our opinion as to the answers which should be returned thereto.

The previous despatches to which Lord Lyons referred were also inclosed for reference,[†] they forming respectively the subject of the Law Officers' Reports of the 4th of November, 1861, and 31st January last.[‡]

In obedience to your Lordship's commands we have taken these despatches into consideration, and have the honour to report—

That two cases are submitted for our consideration:—

The first, that put by Mr. Bernal, is the case of a son born in England, but of a British father, subsequently naturalized in the United States, which son has attained his majority in the United States, according to the *lex loci*, but has not exercised any rights of a citizen.

We are of opinion that, having regard to the principles of international law the minor child follows the domicil of the father, and to the facts that, in this case, the father was naturalized by the law of the United States, and that the child, after attaining majority, has continued his domicil in the United States, and is considered as naturalized by the law of the United States, the son must be considered, for the purpose of the present inquiry, as a naturalized United States' citizen, and not entitled to claim, *as against the Government of the United States*, the protection of Her Majesty's Government.

The second case, that put by Mr. Kortright, is that of a son attaining his majority in the United States, born of a British father living in the United States, but not naturalized, neither father nor son having made any declaration of intention to become citizens.

Having regard to the law of England as to persons born in Her Majesty's dominions, we are of opinion that Her Majesty's Government cannot insist, as against the United States' Government, that such a person shall be considered by them as a British subject, and exempt from the liabilities incident to the status of a United States' citizen.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

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[*] To M. Sanz, June 30; M. Sanz, July 2; to M. Sanz, July 18; M. Sanz, July 22; to M. Sanz, July 27; M. Sanz, July 29, 1863.

[†] No. 523 of 1861, and No. 11 of 1863.

[‡] See Reports for 1861, page 269: and *ante*, page 37.

No. 315.

The Law Officers of the Crown to Earl Russell.—(Received August 8.)

Temple, August 7, 1863.

UNITED STATES.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 30th ultimo, stating that, with reference to our Report of the 6th ultimo,[*] he was directed by your Lordship to transmit to us, together with the previous papers,[†] the annexed further correspondence respecting the case of the "Margaret and Jessie,"[‡] and that we should observe that your Lordship has been furnished by Mr. Mason with an original protest made by the Master and crew of the "Margaret and Jessie," setting forth the circumstances, both as to time and place, under which she was chased, fired into, and sunk, by an United States' man-of-war, and also with twelve affidavits, made by passengers on board that vessel, and by residents on the Island of Eleuthera, confirming the declarations made in the protest.

Mr. Layard was also pleased to state that your Lordship had informed Mr. Mason, and also Lord Lyons, that as Mr. Seward had promised that if it should appear, on inquiry, that any act of hostility or power was committed on the occasion in question within the marine jurisdiction of Great Britain, the act would be disavowed and redress be promptly given, Her Majesty's Government would await the result of that inquiry.

Mr. Layard was, however, pleased to state that he was directed by your Lordship to request that we would take into our consideration the further papers transmitted to us, and favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That the evidence laid before us in these papers appears to put beyond all doubt the facts of a very grave violation of international law, and of Her Majesty's territorial rights and jurisdiction.

We think it is a case which Lord Lyons should be instructed to press for immediate redress. The fact (which appears certain) that the shot and shell of the United States' steamer struck repeatedly the shore, and objects on the shore, of Her Majesty's territory, makes it very difficult to understand how the captain of that vessel could have honestly informed Mr. Seward, that "he did not chase the 'Margaret and Jessie' within British jurisdiction."

We have, &c.
For the Attorney-General and myself,
(Signed) ROUNDELL PALMER.
ROBERT PHILLIMORE.

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[*] Page 197.

[†] Colonial Office, July 3, and Inclosures.

[‡] Lord Lyons, No. 559; Mr. Mason, July 6; to Lord Lyons, No. 394; to Mr. Mason, July 10; Mr. Mason, July 16; Lord Lyons, No. 638.

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No. 316.

The Law Officers of the Crown to Earl Russell.—(*Received August* 11.)

UNITED STATES.

Temple, August 10, 1863.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 21st ultimo, stating, that with referrence to the case of the "Virginia" or "Japan," which formed the subject of our Report of the 30th of April last,* he was directed by your Lordship to transmit to us an extract of a note (dated the 7th July instant) from Mr. Adams, calling attention to the circumstance that that vessel had continued, until very lately, to be the property of a British subject.

That your Lordship had lost no time in communicating this extract to the Home Office and the Treasury, and Mr. Layard inclosed to us the letters which had been received from those Departments in reply; and was to request that we would take this correspondence into consideration, and furnish your Lordship with our opinion thereupon, and also as to the answer which it will be proper to return to Mr. Adams.

In obedience to your Lordship's commands we have taken this correspondence into consideration, and have the honour to report—

That we are of opinion that the recent cancellation, at the request of Mr. Thomas Bold, of the British register of the "Japan," furnishes no legal evidence of Mr. Bold's having remained the owner of the vessel until the time of such cancellation, or of the application to have it effected. The entire evidence of ownership rests on admission—the written admission of Mr. Bold, contained in his note to the Collector of Customs, at Liverpool, dated the 23rd of June, 1863, and inclosing the certificate of registry of the "Japan" as a British ship. But that admission, importing (as, indeed, the registry had done) that Mr. Bold owned the vessel at the date of registry, is coupled with the qualifying statement (which cannot be rejected from the admission) that in the meantime he had "conveyed" the vessel to an "alien." But as to who or of what nation the alien was, or *when* the conveyance was made, Mr. Bold's minute is silent; and the date of the return of the certificate of registry to the Collector at the port whence it was issued is no proof of the date of actual transfer of the property in the ship.

It is further to be observed that, to whomsoever, technically, the vessel may have belonged she was, we presume, when engaged in "committing ravages upon the commerce" of the United States' (Mr. Adams' letter to your Lordship of the 7th of July, 1863), a cruizer in the Confederate service, sailing under the flag of the Confederate marine, commanded by officers commissioned by the Confederate Executive; in short, a part of the Confederate navy. But, to acts of force committed by a vessel of this kind against the commerce of the United States, Her Majesty's Government, which has admitted that the Confederate States are lawful belligerents, cannot attach the incident of private personal responsibility. They are acts of public war; and, according to the law of nations, can only be so dealt with. In this view, Mr. Bold stands clear of the "extensive ravages" to which it is said the commerce of the United States has been subjected; and that equally whether, if the truth could be arrived at, it should be found that the ship was "conveyed," previous to her entering upon a course of hostilities, or that during some part of these hostilities the strict property remained in Mr. Bold; who in that case might, or might not, be consenting to the use to which his ship was applied.

We therefore think that your Lordship should answer the letter of Mr. Adams, to the effect that your Lordship is advised by the Law Officers of the Crown that no evidence has, as yet, been brought to their knowledge which would justify any criminal prosecution of Mr. Bold; and that the vessel itself, whatever be its character, is not within the jurisdiction of Her Majesty.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

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* Page 139.

No. 317.

The Law Officers of the Crown to Earl Russell.—(*Received August* 17.)

UNITED STATES.

Temple, August 15, 1863.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 3rd August instant, stating that with reference to our Report of the 24th ultimo,* respecting the revocation by the Confederate Government of Mr. G. Moore's exequatur as Her Majesty's Consul at Richmond, and also respecting the determination of that Government not to permit communication between Consuls in those States and the functionaries of their Governments residing within the enemy's lines, he was directed by your Lordship to transmit to us a letter dated the 24th July ultimo from Mr. Mason, inclosing a copy of a despatch from Mr. Benjamin, the Confederate Secretary of State, in which Mr. Mason was instructed to call the attention of Her Majesty's Government to the objectionable manner in which Mr. Cridland had been appointed Acting British Consul at Mobile, and to intimate that that gentleman could not be permitted to exercise Consular functions there. The circumstances under which Mr. Magee was dismissed by Her Majesty's Government from his position as Acting Consul at Mobile are also dwelt upon, and Mr. Benjamin, after stating that President Davis had in these facts seen renewed reasons for adhering to his determination above referred to, expressed the hope that Her Majesty's Government would choose some other mode of transmitting its orders and exercising its authority over its Agents within the Confederacy.

Mr. Layard was also pleased to transmit to us a Memorandum showing the course heretofore pursued by the British Government with reference to the appointment of Consular Agents in countries not acknowledged by Great Britain as independent States, and the draft of a letter which your Lordship proposed to address to Mr. Mason, suggesting, in answer to his letter, that it would be in conformity with what has been done in other cases, and with the amity professed by the so-styled Confederate States towards Her Majesty and the British nation, if arrangements could be made for correspondence between Agents appointed by Her Majesty's Government to reside in the Confederate States and the authorities in those States, and to request that we would take this proposed letter into our consideration, and report to your Lordship our opinion whether it is right and proper to be sent.

In obedience to your Lordship's commands we have taken the proposed letter into our consideration, and have the honour to report—

That we are of opinion that your Lordship's letter is fit and proper to be sent. We have ventured to suggest one verbal alteration.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 318.

The Queen's Advocate to Earl Russell.—(*Received August* 17.)

FRANCE AND SPAIN.

Doctors' Commons, August 15, 1863.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 14th August instant, stating that he was directed to transmit to me a despatch and its inclosures from Her Majesty's Chargé d'Affaires at Madrid (No. 19, July 31, 1863), respecting a demand that has been made by the French Ambassador there for the extradition of a person named Paul Gailhard Fisse, stated to be a condemned French criminal, who has claimed the protection of Her Majesty's Mission at Madrid, on the ground that he is a naturalized British subject. Also a letter and its inclosures from the Home Office, stating the circumstances under which Fisse obtained letters of naturalization in this country, and to request that I would take these papers into consideration, and furnish your Lordship with my opinion whether or not this person should be protected by Her Majesty's Chargé d'Affaires against the

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* Page 212.

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demand for his extradition which has been made by the French Ambassador at Madrid.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That it appears that this person being a born French subject was naturalized *de facto* in England upon a false affidavit as to his residence in this country, and that the falsehood must have been deliberate and intentional. It would also seem from the letter of the French Ambassador that he was naturalized under a false name, "Fisse" being added to his real name of "Gailhard" for the purpose of concealment. It appears that at the time of his *de facto* naturalization, he had been pronounced, though so long ago as in 1852, by a competent Court of his own country guilty of forgery, and had been sentenced to twenty years' hard labour; that at the time of this sentence he was in Madrid; that on the 3rd of January last the French Government had made a demand upon the Spanish Government for his extradition; that he escaped to England; obtained letters of naturalization dated 11th May, 1863, and a passport dated 23rd May, 1863, both many years subsequent to the sentence of the Criminal Court, and some months subsequent to the demand for extradition.

I humbly advise your Lordship that Her Majesty's Government ought not to protect this person against the demand of his native Government. These letters of naturalization were obtained by means of a false affidavit; and I think it worthy of consideration whether they should not be cancelled as having been so obtained. Moreover, they were obtained after he had been found guilty of a crime which, according to the Treaties between England and France, and France and Spain, had given France a right to demand his extradition. I do not think that this right could be taken away by subsequent letters of naturalization fraudulently obtained.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 319.

The Queen's Advocate to Earl Russell.—(Received August 17.)

My Lord, *Doctors' Commons, August* 15, 1863.

NEW GRANADA.

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 14th of August instant, stating that with reference to the Report of my predecessor of the 1st of September, 1859, respecting the claims of Messrs. Cotesworth and Powell against New Granada, he was directed to transmit to me a letter, dated the 11th of August instant, and its inclosure, from that firm, stating the circumstances under which they ask for the official support of Her Majesty's Government to the claim they are preferring against the Government of New Granada for indemnity for the losses entailed upon them by the illegal acts of the New Granadian judicial authorities at Barranquilla.

That I should see, by referring to the previous correspondence, that Her Majesty's Chargé d'Affaires has been hitherto only authorized to afford his unofficial support to the agent of Messrs. Cotesworth and Powell during the progress of the case through the Granadian Courts; but as those proceedings are now terminated, he was to request that I would furnish your Lordship with my opinion whether the facts stated by them are sufficient to warrant the official interference of Mr. Griffith on their behalf in the present stage of the matter, and if so, how far he should be instructed to interfere.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That it appears that Messrs. Cotesworth and Powell have exhausted all the means of redress afforded by the Courts of Columbia, and that claims, just in themselves, have been defeated by the admitted iniquity of the Judge before whom they were duly and properly brought for adjudication, and that this Judge has actually been degraded on account of his misconduct. The case, therefore, I think, has in some respects a different complexion from that which it wore when my predecessor in office reported upon it. I think that Her Majesty's Government may properly instruct Her Majesty's Chargé d'Affaires to give official support to the agent of Messrs. Cotesworth and Powell in his application to the existing Government for redress of a wrong which they cannot, as it appears, deny was caused by a scandalous perversion of justice in the Tribunals of the State. At the same time I think that the official support should be at present limited to a representation on behalf of Her Majesty's Government to the effect that they are confident that the existing Government of the United States of Columbia will, in accordance with the spirit of the document of the 11th of January, 1863, issued from the Department of the Interior, decide this claim "in conformity with justice," and that they will not fail to recognize the international duty of repairing a wrong inflicted by the maladministration of justice upon the subjects of a foreign and friendly State. Mr. Griffith might also be instructed generally to assist the agent of Messrs. Cotesworth and Powell in obtaining access to the Government, or in producing their proofs, or the like; exercising, of course, his own discretion upon the spot as to the mode and extent in which it may be expedient and proper to give such assistance.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 320.

The Queen's Advocate to Earl Russell.—(Received August 19.)

My Lord, *Doctors' Commons, August* 17, 1863.

UNITED STATES.

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 12th August instant, stating that, with reference to my Report of the 30th of June* upon the case of the "Minnie," he was directed to transmit to me, together with the previous papers, a letter dated the 6th August instant from Mr. Fisher, containing a further statement relative to the capture of that vessel, and to request that I would take the same into consideration, and report to your Lordship whether it contains anything to induce me to alter or modify the opinion expressed in my previous Report.

In obedience to your Lordship's commands I have taken this case again into consideration, and have the honour to report—

That the letter of Mr. Fisher does not induce me to alter or modify the opinion expressed in my former Report. The sale of the vessel by the United States' Prize Courts, for the reason assigned, was in accordance with the practice of the Prize Court in England.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 321.

The Law Officers of the Crown to Earl Russell.—(Received August 22.)

My Lord, *Temple, August* 19, 1863.

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 11th August instant, stating that he was directed to transmit to us, with reference to our former Reports respecting the question of the liability of British subjects to military service under the recent Conscription Act of the United States' Congress, a despatch from Lord Lyons (No. 664, July 24th), inclosing a correspondence relative to the mode in which foreigners residing in the United States are to establish their claims to exemption from such service; and to request that we would take into consideration the Regulations which have been drawn up by the United States' Government (Inclosure No. 16), as well as the Circular Instruction addressed by Lord Lyons to Her Majesty's Consuls in the Northern States (Inclosure No. 17), and advise your Lordship whether any further facilities should be asked for to enable British subjects to exempt themselves from any draft, present or future. Mr. Hammond was also pleased to add that it does not appear to your Lordship that the case of persons who have declared their intention to renounce allegiance to the Queen, and who have not availed themselves of the opportunities they have had

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to leave the United States since the time when Congress sanctioned the draft, is deserving of much favour, and that the strict question of right is therefore chiefly to be regarded.

In obedience to your Lordship's commands we have taken this case again into consideration, and have the honour to report—

That it does not appear to us that any further facilities should be asked for on behalf of British subjects generally in this matter.

We agree generally with the opinions expressed by Lord Lyons in his despatch, July 24, 1863 (No. 664), and we do not think that any remonstrance should be made to the United States' Government upon the subject of their refusing to consider Consular certificates as conclusive evidence of the claim of the holder to exemption from conscription.

We have also the honour to agree with your Lordship that the case of persons who have declared their intention to renounce allegiance to the Queen, and who have not availed themselves of the opportunities which they have had of leaving the United States' territory, is not entitled to any favourable consideration, and that, in this instance, the question of strict right is principally to be regarded. Any cases of which the circumstances may be peculiar and exceptional may (of course) be considered and dealt with according to their own particular circumstances, as suggested in our former Reports.

We have, &c.
For the Attorney-General and myself,
(Signed) ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 322.

The Queen's Advocate to Earl Russell.—(Received August 20.)

Doctors' Commons, August 20, 1863.

TURKEY.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 5th of August instant, stating that he was directed to transmit to me therewith a despatch from Her Majesty's Ambassador at Constantinople (No. 336), stating the particulars of a claim brought against the Porte by a British subject named Dionisio Hippodimatipoulo, on account of a breach of contract, and reporting the steps which have been taken in the matter up to the present time; and to request that I would take the accompanying papers into consideration, and furnish your Lordship with my opinion as to the course which it would be proper for Her Majesty's Government to pursue in this case.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I agree with Sir H. Bulwer that the Commission issued in this case must be considered as having had for its object the final settlement of this claim.

It is impossible to conceive that the Turkish Government themselves intended or meant to convey to the English Embassy the impression that after that Commission had reported, the matter should be referred to a Judicial Tribunal, or to doubt that if the Report had been favourable to the Turkish Government they would have insisted upon its being considered as final and conclusive of the whole matter. This view is strongly supported by the fact that they actually have accepted the award of the very same Commission upon a similar case in which the award was favourable to them. I am of opinion that the Turkish Government cannot now lawfully deny the competence of this Commission to make the award in question. I am further of opinion that there were no errors in point of form which could vitiate the proceedings of it. That as to the general principles upon the Law of Contract, for which reference was made to the French code, they were not peculiar to the municipal law of France, but were maxims of general jurisprudence, necessarily arising from the reason of the thing, and essential to the good faith of all covenants; they moreover appear either to have formed the bases of the Turkish law upon the subject, or to have been at least largely incorporated with it.

If the question, therefore, were connected with the ordinary relations of two European States, and if the principles of public and private law, as between

such States, were to be strictly applied to it, I should have no doubt that it was the right of Her Majesty's Government to call upon the Turkish Government to enforce the award of its own Commission. But it is impossible to read Sir H. Bulwer's letter, and not to be aware that such a course might, in the peculiar circumstances of the Ottoman Empire, work a practical injustice to the Turkish Government, however much they may be to blame in the matter; and I think that the best course which Her Majesty's Government could pursue, would be to adopt in part the suggestion of Sir H. Bulwer, that is to say, to represent to the Turkish Government that though Her Majesty's Government are, strictly speaking, entitled to press for the execution of the award as it stands, yet regard being had to the possibility of some misapprehension having existed as to the extent of the powers of that Commission, Her Majesty's Government consents that a further Commission shall issue, but limited to inquiring—

1. Whether the sum awarded was or was not founded on a just calculation as to the supposed losses of the parties; and if not, to decide upon what basis the calculation should proceed, and rectify it accordingly.

2. That in case of disagreement, provision should be made for invoking an umpire.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 323.

The Queen's Advocate to Earl Russell.—(Received August 20.)

Doctors' Commons, August 20, 1863.

UNITED STATES.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 14th August instant, stating that he was directed by your Lordship to inclose a letter, dated the 4th August instant, from Mr. R. Atkin, Master of the British ship "Dennis Hill," complaining of treatment he states he has sustained at the hands of the United States' authorities at New York, in the case of a charge of assault preferred against him by William Broome, formerly a seaman on board the "Dennis Hill;" and requesting that Her Majesty's Government would make a representation to the United States' Government for the purpose of procuring compensation for himself and his chief mate for the losses they have sustained; and to request that I would take this case into consideration, and furnish your Lordship with my opinion thereupon.

In obedience to your Lordship's commands I have taken this case into consideration and have the honour to report—

That it has, I believe, often been a subject of grave consideiation whether there should not be a Treaty between Great Britain and the United States authorizing the judicial authorities of each country to take cognizance of offences committed on board ships belonging to the other country while upon the high seas. But no such Treaty, I think, exists; and in the absence of it it was not competent to the Judge of the United States to try this case of an alleged offence committed by a British sailor on board a British ship upon the high seas. But I think it would be proper that your Lordship should instruct Lord Lyons to require from the Consul at New York a report of the actual circumstances of this case, and whether, in fact, any such jurisdiction as complained of has been exercised; and if so, upon what grounds.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 324.

The Law Officers of the Crown to Earl Russell.—(Received August 22.)

Temple, August 20, 1863.

UNITED STATES.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 5th instant, stating that, with reference to our Report of the 24th ultimo,* respecting the iron-clads in course of construction at Messrs. Lairds' yard at Birkenhead, he was directed by your Lordship to transmit to us, together with the previous papers,* two notes from Baron Gros and Mr. Adams, and a correspondence which has passed between this Department (the Foreign Office) and the Treasury thereupon;† and Mr. Hammond was to request that we would take these further papers into consideration, and report to your Lordship whether we see any reason to alter or modify the opinion recorded in our former Report, that Her Majesty's Government ought not to detain or in any way interfere with the steam-vessels in question.

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* Page 212.

We are also honoured with Mr. Hammond's letters of the 13th and 14th instant, inclosing to us a further Report, dated the 12th August instant, from the Commissioners of Customs respecting these vessels; and also a deposition of Thomas Sweeney, and a copy of a letter, dated the 14th August, from Mr. Dudley, the United States' Consul at Liverpool, reporting the arrival at that port of Colonel Geo. H. Bier, a lieutenant in the Confederate Navy, with his wife, a man by the name of Joseph N. Barney, and two engineers, with the intention, as asserted by by Mr. Dudley, of going out as officers in the iron-clads; and Mr. Layard was to request that we would also take these papers into our immediate consideration, and advise your Lordship as to the steps which Her Majesty's Government can legally and properly adopt in the matter.

In obedience to your Lordship's commands we have taken these several papers into consideration, and have the honour to report—

That they do not induce us to alter or modify the substance of the opinion which we had the honour to express in our former Report.

If, indeed, the question were, whether Mr. Price Edwards had satisfactorily explained the grounds on which, in his letter to the Commissioners of Customs, under date the 11th July last (adverted to in our former Report), he stated his belief not only that these two vessels were "built for a banker at Paris," but that this banker was paying for them, "*on behalf of a foreign Government, and not America;*" or, whether the account of the nature and extent of the communications of the French Consul at Liverpool with M. Bravay, the "merchant" of Paris who represented himself to be interested in these vessels, given in the letters of Baron Gros (dated the 27th July) and of Mr. Wilding (dated the 24th July), is entirely consistent with the statements reported by Mr. Edwards (in the postscript to his letter of the 8th July), to have been made to him by the French Consul (namely, "that he," the French Consul, "*had aided the owner with respect to the fitments of one of the two ships, and was to provide a crew for her, and would prepare the necessary papers for her departure when ready for sea*"), we should be unable to answer either of those questions in the affirmative. But the facts remain, that M. Bravay, a French merchant, residing at Paris, is represented to be the person for whom these ships have been built, and that he has personally appeared and acted in that character at Liverpool; that there is no evidence against his claim, and nothing to affect M. Bravay with any illegal act or purpose; and that Mr. Price Edwards, the responsible Agent of the Board of Customs at Liverpool, still reports it to be his own opinion and belief that these vessels "were not built for the Confederates, but for Frenchmen;" and still asserts the substantial correctness of his former report of the conversation between himself and the French Consul.

Under these circumstances, and having regard to the entire insufficiency of the depositions forwarded to Her Majesty's Government by Mr. Adams to prove any infraction of the law, we cannot advise Her Majesty's Government to interfere in any way with these vessels.

There is, in fact, no evidence capable of being presented to a Court of Justice of any intention on the part of any persons in this country, that either of these vessels should be employed in the belligerent service of the Confederate Government against the United States; even if it would have been proper (had such evidence been forthcoming) to act upon the assumption that the law recently laid down by the Lord Chief Baron in the case of the "Alexandra" is incorrect, or that his Lordship's ruling is inapplicable to vessels of this description: a point on which it may be better to reserve the expression of our opinion till such a case arises.

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* Mr. Adams, July 11; to Mr. Adams, July 13; Mr. Welby, July 13; to Treasury and Home Office, July 13; Treasury, July 14; Mr. Adams, July 16; Treasury, July 17; to Mr. Adams, July 17, 1863.

† Mr. Adams, July 25; Baron Gros, July 27; to Treasury, July 28; Treasury, August 4, 1863.

With respect to the further letters from Mr. Layard, dated 13th and 14th of August, they appear to us to contain nothing but hearsay evidence and common gossip in the ship-builder's yard and on board the steamer which conveyed Mr. and Mrs. Bier, upon which it would be impossible to advise Her Majesty's Government to place any reliance.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 325.

The Law Officers of the Crown to Earl Russell.—(Received August 22.)

UNITED STATES.

Temple, August 20, 1863.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 14th ultimo. stating that with reference to our Reports of the 8th of May and 7th of July last,* respecting the case of the "Adela," he was directed by your Lordship to transmit to us, together with the previous papers, two further despatches from Lord Lyons (Nos. 586 and 587 of the 26th June), in one of which was inclosed an opinion filed at an earlier stage of the proceedings by Mr. Marvin, the Judge of the Prize Court at Key West; and Mr. Layard was to request that we would reconsider the case of the "Adela," with reference to this opinion of Judge Marvin, and furnish your Lordship with our opinion thereupon.

We are also honoured with Mr. Layard's second letter of the 27th ultimo, transmitting to us, by direction of your Lordship, a despatch from Her Majesty's Minister at Washington (No. 630), inclosing copies of further papers respecting the case of the "Adela" for our consideration.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That with respect to the preliminary Judgment giving an opportunity for further proof in the case of the "Adela," we have to observe that it was consistent with the due administration of prize law.

The stress laid by the Judge upon the missing paper packages was not improper, however the fact itself may be accounted for.

With respect to the final sentence of condemnation, we have to observe that it appears from the evidence before us (though we have unfortunately not the Judgment itself) that the most material portions of that kind of proof, which the Judge intimated he should expect to be given, in order that the vessel might escape condemnation, were not produced at the final hearing of the case.

The bill of lading, the copy invoice, and the policy of insurance, were produced; but the power of attorney given by Mr. Forwood and his co-owners to the agent at Liverpool as to the disposal of the vessel, and its destiny after reaching Nassau, was not produced, and Mr. Forwood *had no copy of it.*

The provisional letter of instructions sent by him to the consignees at Nassau was not produced, and Mr. Forwood *had no copy of it.*

The private agreement with some of the officers (the existence of which was denied by the master, but which is proved by Mr. Forwood, as it had been by Carpenter) was not produced; it had been "handed to our agents," Mr. Forwood says, and *he had no copy of it.*

Yet, in the circumstances, this was a document of the last importance in order to establish the innocence of the ship.

The evidence of Benson, the chief officer, at the time of capture was well known, and, if believed, it was to the effect that a bonus was to be paid over and above the monthly wages "for each voyage in running the blockade after her arrival at Nassau;" and that an additional three months' pay was guaranteed in case of capture; and that he believed the ship was going from Nassau to Charleston, to which place he had a private letter, as well as to Savannah, and which letters he burnt on the morning of the capture.

Mr. Forwood, indeed, verbally denies this part of the agreement; but he admits that the aptitude of the "Adela" for running the blockade was discussed by the owners, and that there was a private agreement in writing. All the crew profess to be ignorant of the future destiny of the "Adela" after her arrival at Nassau.

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* Pages 147 and 200.

The master, Walker, was ignorant, or swore that he was, that Mr. Forwood was a co-owner, though Benson appears to have known it.

Walker did not know what interest any of the shippers or consignees had in the merchandize; he did not know the names of the shippers, nor of the owners, nor to what country they belonged.

The statement, also, of Benson as to the letters addressed to Charleston and Savannah, which he destroyed, was confirmed, with additional circumstances, by the second officer, Carpenter, who did not, indeed, mention the addresses of the letters, but said that Benson threw overboard two letters on the morning of the capture, which were afterwards picked up by one of the men, and were, as he believed, afterwards put in the fire by Benson.

The final sentence, we presume, was founded on the basis laid in the preliminary Judgment, namely, that all the circumstances, including Benson's positive testimony, established the fact that the "Adela" left England with the intention of breaking the blockade.

It must be remembered that the opportunity of clearing up the very suspicious circumstances which belonged to the case at the first hearing, after the evidence of Benson, was rather an act of favour towards the "Adela," and, at all events, was an act which, according to the well-known rules of prize law, admonished the owners in the most emphatic manner as to the consequences of not producing evidence to remove these suspicions, more especially if documentary proof was, or ought to have been, in the hands of the owners, or of their agents, which might have gone far towards establishing (if the fact were really so) the innocence of the vessel.

The whole case shows how little reliance can be placed upon the representations of the proceedings of the United States' Prize Court which are so often made by interested parties in this country.

We cannot advise your Lordship that the sentence was unwarranted by the rules of evidence and the practice of Prize Courts.

We have, &c.
For the Attorney-General and myself,
(Signed) ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 326.

The Law Officers of the Crown to Earl Russell.—(*Received August* 22.)

My Lord, *Temple, August* 20, 1863.

UNITED STATES

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 12th instant, stating that with reference to our Report of the 30th of April last,* and to our previous Reports respecting the case of Mr. Laurent, he was directed by your Lordship to transmit to us, together with the former papers, the accompanying further despatches from Lord Lyons (Nos. 506, 535, and 573), from which we should perceive that Mr. Laurent at length obtained his liberty through being exchanged by the United States' authorities for one of their own men taken prisoner by the Confederates; and that he has addressed to Lord Lyons from Havana, a letter claining on indemnity of 20,000*l.* for his imprisonment; and Mr. Layard was to request that we would take Mr. Laurent's letter into consideration, and report to your Lordship our opinion thereupon.

Mr. Layard was also to add that your Lordship had not received from Mr. Laurent the statement of claim which he informed Lord Lyons he should forward to the Foreign Office.

In obedience to your Lordship's commands we have taken Mr. Laurent's claim into consideration, and have the honour to report—

That having regard to the fact that all Mr. Laurent's troubles arose from his own perjury in having, more than once, either sworn or signed a declaration practically equivalent to an oath that he was an American citizen,

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* Page 140.

in order to obtain command of an American merchant-ship, and that the United States' authorities were, as we have already reported, justified in requiring him to rebut the presumption arising therefrom that he was a citizen, we do not think it incumbent upon Her Majesty's Government to demand any indemnity for his imprisonment.

Exception might perhaps have been taken to his exchange as a Confederate prisoner, while the question of his citizenship was still unsettled; but as, in this way, he has practically recovered his liberty at an earlier period than might otherwise have been the case, it would doubtless be unadvisable to make this alone a ground of complaint.

With respect to the detention of the letters from prisoners to Lord Lyons, it may reasonably be expected from the letter of Mr. Seward to Lord Lyons that there will be no further occasion for complaint upon this subject.

We have, &c.
For the Attorney General and myself,
(Signed) ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 327.

The Queen's Advocate to Earl Russell.—(*Received August* 26.)

My Lord, *Doctors' Commons, August* 24, 1863.

SPAIN.

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 17th August instant, stating that, with reference to the Report of my predecessor of the 2nd October, 1861,* respecting the case of the "Criticado," he was directed to transmit to me two despatches and their inclosures from Her Majesty's Chargé d'Affaires at Madrid (Nos. 114 and 124), reporting that the Superior Court at Seville has confirmed the decision of the Court at Cadiz, as to the illegality of the capture of the "Criticado;" and stating that the ship and cargo have, in consequence, been restored to the owners. That I should perceive that the agent of these parties has now put in a claim for indemnity for losses sustained by the detention of the vessel and her cargo for twenty-three months, amounting to 397,132 reals vellon, or about 4,152*l.* 14*s.* 8¼*d.*; and that, with reference to this claim, Her Majesty's Chargé d'Affaires furnishes information on the points to which my predecessor referred as requiring explanation. And Mr. Layard was to request that I would take these papers, together with the previous correspondence, into consideration, and furnish your Lordship with my opinion whether Her Majesty's Government would be justified in supporting the claim to indemnity now put forward by the owners of the "Criticado;" and if so, whether their account of damages can be adopted as the basis of any representations that I may advise Her Majesty's Government to make to that of Spain in the matter.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That it appears to me clear that the "Criticado" intended to smuggle her cargo into Spain. The deliberate falsehood of the master as to the date of his sailing; the place where the vessel was taken when the easterly wind, which had been blowing for several days subsequently, would, if her destination really had been Bayonne, have brought her nearer to that port than Cadiz; the tobacco which she carried, and which, it would seem, could not have been legally imported into France, and which appears to have been directed to persons at Cadiz (see Señor Collantes' letter, February 26, 1262); the inability of the master to read or write; the absence of charts and of requisite provisions for a voyage from Gibraltar to Bayonne; the report which had reached her captor,—are all circumstances pointing to this conclusion.

The Spanish Courts, however, have decided that she was unlawfully seized. According to the more usual practice of Courts, her acquittal would have been followed by the award of reasonable costs and demurrage damages. And I think that Her Majesty's Representative at Madrid should be instructed to inquire, from the proper authority, why this consequence did not follow from the sentence; and if the answer should be that the Court had no power to

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* See Reports for 1861, page 233.

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decree costs and damages, then I think that he should state that Her Majesty's Government decline to accept this answer as satisfactory, though, in the present case, for special reasons, they forbear to press for the indemnity which it would be competent to them to demand; for I agree in opinion with my predecessor that (all the circumstances to which he refers considered) it does not seem expedient that Her Majesty's Government should demand an indemnity in this case, since it appears morally certain that the vessel was not engaged in a lawful voyage. I ought, however, to add that I do not know what course Her Majesty's Government pursued in the cases of the "Ferry Boat" and the "Julian," to which the Report of my predecessor makes reference. If in these or similar cases Her Majesty's Government have thought it proper, notwithstanding the illegal destination of the vessel to demand compensation on the sole ground of the unlawfulness of the seizure out of Spanish waters, though the vessel, at the time of the capture, was hovering off the Spanish coast, I see no reason why the same course should not be pursued in the present case; but if this question be still open, I adhere to the opinion which I have had the honour to express.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 328.

The Law Officers of the Crown to Earl Russell.—(*Received August* 26.)

My Lord,

Temple, August 25, 1863.

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 13th instant, stating that with reference to our Report of the 22nd of August, 1862* (in which we stated that we were disposed to think that the decision of Judge Betts in the case of the British barque "Empress," proceeded upon a correct view of the principles of public law applicable to the case; but that if any error in judgment had been committed, it would be open to the owners to have the error rectified in the Superior Court), he was directed by your Lordship to transmit to us a despatch from Her Majesty's Consul at New York (No. 119, July 19), inclosing printed copies of the decision of the United States' Circuit Court reversing the Judgment of the inferior Court, on the ground that a vessel may approach a blockaded port to ascertain the state of the blockade, if she does so in good faith.

And to request that we would take this decision into our consideration, and favour your Lordship with such observations as we might have to offer thereupon, both generally and as regards the particular case of the "Empress."

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That the decision of the Superior Court is in our opinion equitable, and in the circumstances just. Whether the doctrine of the Superior Court in the case of the "Hiawatha," as to the proper construction of the President's Proclamation, be correct or not (and in the opinion of the Attorney and Solicitor-General it is so), that doctrine is not impeached by the decision in the case of the "Empress." The Judgment in this case really turned upon the belief of the Court in the good faith of the vessel, and the absence of any intention to break the blockade. In such cases, inquiry at the mouth of the blockading port has been always holden lawful by our Prize Courts.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 329.

The Law Officers of the Crown to Earl Russell.—(*Received August* 26.)

My Lord,

Temple, August 25, 1863.

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 16th ultimo, stating that with reference to our Report of the 9th of February last* respecting the two boys of colour, Stirrup and Edwards, who were carried off from the Bahamas in an American vessel in March 1861, and sold into slavery, he was directed by your Lordship to transmit to us, together with the previous papers, the subsequent correspondence, as marked in the inclosed list, from which we would perceive that one of these boys, Stirrup, has been recovered and restored to his family, while the other, Edwards, is still held in slavery in the State of Georgia.

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* See Reports for 1862, page 204.

That the following are the points upon which it would seem that a decision is now required:—

As regards Stirrup, whether compensation can be claimed for him. (See Colonial Office letter of July 11.)

As regards Edwards, whether an endeavour should be made to purchase his freedom. (See Lord Lyons' No. 487 of May 29.)

And as regards both of these lads, whether some steps should not be taken by Her Majesty's Government to bring to justice the master of the American vessel in which they were carried off from their homes. (See Colonial Office of July 3, 1863.)

Mr. Layard was to request that we would take these several points into consideration, and furnish your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken the several points mentioned into consideration, and have the honour to report—

That with respect to Stirrup, we are of opinion that no compensation can be claimed for him. The acts of kidnapping and detention were the criminal acts of individuals, committed without the sanction of the Government, either of the United States or of the Confederate States, so that neither Government was primarily implicated in the transaction. Nor has anything hitherto occurred to entail a responsibility which did not originally exist.

2. As regards Edwards, there seem to us to be very grave difficulties of principle in the way of the proposal to "purchase his freedom." The least, perhaps, of these objections is, that if the transaction assumed the form of a purchase of the young man himself from a person claiming to have a right of property in him as a slave, it would be contrary to the letter (though not to the spirit) of the Slave Trade Act. 5 Geo. IV, cap. 113, sec. 2. A graver objection seems to be, that if the identity and place of detention of the young man were established (which it must be before any such transaction could take place), Her Majesty's Government would have a clear and unquestionable right to demand his delivery up, without any ransom, from the persons administering the Government of the Confederate States, and to bring the power of this country to bear, if necessary, for the purpose of enforcing that demand. Under any other circumstances, it could hardly be thought consistent with the dignity of this country to permit a British subject, kidnapped *within British territory*, to be forcibly detained in captivity in any other country to which he might have been unlawfully taken, and upon which the power of Great Britain could possibly be brought to bear: and we are by no means prepared to admit that the present anomalous condition of the Confederate States (as a Power recognized by Her Majesty in the character of a belligerent, though not of an independent nation), is a sufficient reason why redress should not be exacted for this or any other such enormous wrong, if perpetrated within their territory upon British subjects.

The Government of the Confederate States have justifiably declined to communicate with Her Majesty's Government through Consuls accredited to the Government of Washington; but we apprehend that it is in the power of Her Majesty's Government, and that it is in fact (as the present case shows) absolutely necessary to establish during the present state of things some other suitable means of communication with the Confederate authorities, for all legitimate purposes; and we should recommend that in preference to the payment of money for the redemption of a British subject from unlawful captivity, a demand should be made upon the Confederate Government (in such a manner as to make it understood that the case is one which Her Majesty's Government regard in a serious light) for their co-operation in the discovery and release of Edwards, and for the punishment of the person by whom he was stolen from the Bahama Islands, if that person be within the Confederate jurisdiction.

It is not, we conceive, at all necessary, in order to support the principle of such a demand, so far as the liberation of Edwards is concerned, that Her Majesty's Government should be able to invoke the authority of any local law.

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* Page 47.

We may, however, observe that by the Act of Congress of the 20th of April, 1818 (3 Hertslet, 475, sec. 5), which we presume is still law in the Confederate States, neither the importer, "nor any person or persons claiming from or under him," is capable of holding "any right, interest, or title whatsoever in or to any negro, mulatto, or person of colour, imported or brought into the United States, or the territories thereof, in violation of the provisions of that Act;" and the case of Edwards is unquestionably within that section.

3. The punishment of the offending captain remains a question apart from and beyond the liberation of the kidnapped and enslaved boys. The act of kidnapping having been committed within British territory, the offender, whatever be the country of his birth or allegiance, is liable to be apprehended, tried, and punished, wherever and whenever he may be found within British jurisdiction. We have already advised that the offence of kidnapping does not come within the Extradition Treaty between the United States and Great Britain; and that if the captain were known to be within the United States territory, his surrender, for the purpose of trial, could not be demanded under such Treaty. We observe it stated, however, in the despatch of his Grace the Duke of Newcastle, that the crime of kidnapping is "piracy;" but although it is made so by the law of England, in certain cases (not indeed by the common law, but by the Slave Trade Act, 5 Geo. IV, cap. 113, sec. 9), and also by the statute law of the United States (see the Act of Congress of the 15th of May, 1820, 3 Hertslet, 482), there is no provision in the Slave Trade Treaties between Great Britain and the United States to the like effect; and under these circumstances we think that the word "piracy," as used in the Extradition Treaty of the 9th of August, 1842, must be construed to mean piracy by the law of nations (which mere kidnapping is not), and not to include crimes to which that designation may have been extended, in either country, by special enactment.

Apart from extradition, which involves a trial in the country of the offence, we think that Her Majesty's Government, in regard of the sufferers being British subjects, is entitled, on the part of the Government of any friendly State, to the use of reasonable efforts within the limits of the local law to bring the offender to punishment. Since therefore the criminal act of Clark, though committed in the Bahamas, is a crime in the United States, according to the law there prevailing, the United States' Government might, in fairness, so bring the offender to trial if he were found within their jurisdiction; and there appears to be no reason to doubt that they would do so.

With reference to the Confederate States, the case is the same if Clark should be found (as is more probable) within their jurisdiction, and if the impediments at present existing in the way of communication on public matters between Her Majesty's Government and the authorities of those States were (so far as necessary for this and similar purposes) overcome or removed.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 330.

The Law Officers of the Crown to Earl Russell.—(*Received August* 31.)

Temple, August 29, 1863.

My Lord,

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 14th instant, stating that he was directed by your Lordship to transmit to us the papers, as marked in the margin,* respecting the case of a

British steamer, the "Victor," which was captured by the United States' cruizer "Juniata," and taken into Key West for adjudication, but which appears to have been since released; and Mr. Layard was to request that we would take this case into consideration, and furnish your Lordship with such observations as we may have to offer thereupon.

We are also honoured with Mr. Layard's letter of the 19th instant, transmitting to us a further despatch from Lord Lyons, relative to this case.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That this case is undoubtedly one of a most serious character. As far as we can judge from the representations contained in the papers before us, it would certainly appear (and a similar inference may be drawn from Commander Stevens' own Report) that the "Juniata" lay in wait for the "Victor" in a neutral harbour, and followed her from thence with the intention of capturing her, which she accomplished. It further appears from the representations of the master and officers of the "Victor," confirmed by the Report of Consul Crawford (and of which we see no reason to doubt the truth, although the contrary is alleged by Commander Stevens), that the "Victor" was captured within neutral jurisdiction.

It seems also to be proved, and scarcely disputed, that her crew were treated not only as prisoners of war (which was unjustifiable), but even as felons, which (if the expression may be allowed) was still less justifiable.

While, on the one hand, there has certainly been on many occasions much exaggeration in the complaints of British crews captured by United States' cruizers; on the other hand we find it difficult not to believe that, whatever may be the intentions entertained and orders issued by Mr. Seward, with respect to the observance of neutral rights, and generally of international law, they have not been practically obeyed by United States' cruizers under the command of Admiral Wilkes; and we cannot, bearing in mind former cases, give implicit credence to the simple denial of that officer, or of those under his immediate command, that the wrongs complained of by the crew of this vessel have not in substance, or in great degree, been inflicted.

It is clear from the letter of Señor Tassara to Mr. Seward, that a similar impression with respect to the conduct of the United States' officers has been made upon the mind of the Spanish Minister, and if Mrs. Beckwith's statement, reported to the Spanish Minister at Washington in Señor Cubell's letter of the 18th of June, was really made by that lady (to whom a motive for deliberate untruth could hardly be imputed), it is difficult to doubt that the representations as to the place of capture, now made by Commander Stevens, are wilfully untrue.

We are not informed on what ground, or under what circumstances, the "Victor" has been released by the Prize Court, and this is a matter of great importance, as to which we should be glad, when the intelligence arrives, to be apprized, especially as notice of appeal appears to have been given on the part of the captors.

At present the promises of Mr. Seward are fair and just both to Señor Tassara and Lord Lyons; it remains to be seen whether they are faithfully performed. Lord Lyons appears to be aware of the general importance of the case, and of the particular points as to which redress should be demanded.

We think that he should be apprized that Her Majesty's Government are determined that the wrongs complained of shall be promptly investigated and redressed. And with respect to the treatment of the crew, that it cannot be too clearly proclaimed to or understood by the United States' Government, that Her Majesty's subjects happening to be the crew of a vessel captured on suspicion of breaking a blockade are not to be treated as prisoners of war, and still less to be subjected to confinement which injures their health, and indignities which degrade their character.

We have, &c.
For the Attorney-General and myself,
(Signed) ROUNDELL PALMER.
ROBERT PHILLIMORE.

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* Consul Archibald, No. 102, June 29; No. 116, July 13; Lord Lyons, No. 650, July 17; Mr. Crawford, No. 29, July 2; Lord Lyons, No. 651, July 17; No. 661, July 20; Consul Archibald, No. 127, July 20; Lord Lyons, No 676, July 28, 1863.

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No. 331.

The Queen's Advocate to Earl Russell.—(Received September 1.)

UNITED STATES.

My Lord, *Doctors' Commons, August* 31, 1863.

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 25th August instant, stating that he was directed to transmit to me two despatches and their inclosures from Her Majesty's Minister at Washington, and a correspondence with the Colonial Office,* on a question raised by the United States' gun-boat "Rhode Island" having anchored in Mathewtown Roadstead, Bahamas, without any previous communication with the local authorities; and to request that I would take this matter into consideration, and report to your Lordship my opinion thereupon.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That the Proclamation was in perfect accordance with the right of Her Majesty as an independent Sovereign, and with her obligations as the Queen of a neutral State.

Indeed, this is a position which does not appear to be controverted by Mr. Seward or the United States' Government, and certainly the conduct of the belligerents during this war, both in the waters of Her Majesty's dominions, and of the Crown of Spain and Denmark, has borne ample testimony to the expediency and necessity of such a Proclamation.

There appear to be three classes of Bahama Islands which require distinct consideration as to the application to them of the law laid down in the Proclamation:—

1. The Island of Nassau, in which the Governor is resident.

2. The "out Islands," which contain certain officers of the rank and character of revenue collectors and police magistrates.

3. Islands or cays in which there are no such officers.

In terms and in theory the Proclamation clearly applies to all the Islands. But I agree with the remarks of Lord Lyons in his despatch (July 14, 1863), that, practically speaking, the enforcement of the prohibition contained in the Proclamation with respect to the third class is impossible, while, nevertheless, any mention of these islands which might be construed to sanction the use of these ports and roadsteads, without the permission of the Governor, would be most inexpedient.

I think, therefore, that nothing should be, at present at least, specifically mentioned or published as to this third class. It is with respect to the first and second class that the question of enforcing the injunctions of the Proclamation really and practically arises.

By the terms of this Proclamation no ship of war or privateer of either belligerent is permitted to enter the ports of the Bahama Islands, "except by special leave of the Governor of the Bahama Islands, or in case of stress of weather;" and there can be no possible doubt that in every case but the excepted one, the obtaining such special leave is a necessary preliminary condition on the part of the belligerent to entering any one of these ports.

I should have thought, but for the letter of the United States' Consul, that it could not have been seriously suggested that the necessity of this condition was dispensed with on account of the non-residence of the Governor in the particular island into the port of which the ship of the belligerent desired to anchor.

The delegation of his authority in this respect by the Governor to a subordinate officer resident in the island is manifestly a grace and favour to the belligerent. If he chooses to think that the application to an inferior officer detracts from his dignity, he is not obliged to make it; but he cannot, on this account, have any right whatever to set at nought both Her Majesty's Proclamation, and his obligations as a belligerent, by anchoring in the port without any permission at all.

I have the honour to agree with the Duke of Newcastle that, apart from some uncontrollable necessity, springing from some sudden emergency, it is

difficult to conceive that a belligerent can anchor in the ports of the "out Islands" with any other object than that of making an unneutral, and therefore an unlawful use, of a neutral port.

I also humbly agree with his Grace as to the general inexpediency of vesting any discretion in subordinate officers upon these important questions of international law, but it seems impossible to avoid doing so a certain extent in the particular circumstances of these Islands.

I venture to doubt the expediency of formally or at all reopening the general question of the Proclamation with either belligerent: the law is well known to and ought to be observed by both. It might perhaps have been fairly understood that cases of such emergency as sudden illness, or dearth of provisions, must of necessity be treated as exceptions to the rule, though stress of weather alone happens to be mentioned.

But as to these points, no harm can, and some advantage probably will, ensue from such a supplementary Proclamation as his Grace suggests; while, with reference to the graver question, I think it would be desirable to publish distinctly the prohibition to anchor in the "out Islands" ports, except with the special leave of an officer to whom the Governor had delegated his authority in this matter, and who would be instructed to exercise his discretionary powers with reference to the presence or absence of those circumstances of unavoidable necessity which have been referred to.

I have, &c.
(Signed) ROBERT PHILLIMORE.

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* Lord Lyons, Nos. 558 and 636; to Colonial Office, July 13 and August 3; Colonial Office, August 17, 1863.

No. 332.

The Queen's Advocate to Earl Russell.—(Received September 1.)

MEXICO.

My Lord, *Doctors' Commons, August* 31, 1863.

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 25th August instant, stating that he was directed to transmit to me the accompanying despatch from Her Majesty's Ambassador at Paris inclosing an extract from the "Moniteur" with reference to a recent order of the French Commander-in-chief in Mexico, that enemy's property should be sequestrated, and announcing that instructions had been given by the French Minister of Marine to the French Naval Commander in Mexico to blockade, from the 25th of this month, certain specified ports of Mexico, with the alleged object of suppressing the hostile guerilla bands which are stated to prey upon, and to support themselves by means of, the dues levied at certain places on the coast of the Gulf of Mexico; and to request that I would take this announcement of the "Moniteur" into consideration, and furnish your Lordship with my opinion whether any, and if so what, steps should be taken by Her Majesty's Government with reference to the measure in question.

In obedience to your Lordship's commands I have taken this notice into consideration, and have the honour to report—

That the sequestration of enemy's property and the blockade of the Mexican ports are belligerent rights which it is competent to the Emperor of the French duly to exercise, and which call for no remonstrance on the part of Her Majesty's Government.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 333.

The Law Officers of the Crown to Earl Russell,—(Received September 2.)

UNITED STATES.

Temple, August , 1863.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 6th August instant, stating that he was directed to transmit to us the accompanying further papers respecting the case of the "Margaret and Jessie," viz., a letter from the Colonial Office dated the 4th August instant, inclosing a copy of a despatch with other documents from the Governor of the

Bahamas, and a letter and its inclosures from Mr. W. Wilson, the commander of the "Margaret and Jessie," in which, on behalf of the owner of that vessel, he prefers a claim against Her Majesty's Government on account of the attack made upon her by a United States' cruizer within the maritime jurisdiction of the British Crown; and Mr. Layard was to request that we would take the inclosed papers into consideration, and report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we have already reported to your Lordship our opinion upon the merits of this case as between the Government of the United States and the Government of Great Britain; and we think that adequate (and, if possible, prompt) reparation ought to be obtained from the Government of the United States, in the shape of such a pecuniary payment as will enable Mr. Trenholm to receive, through the instrumentality of Her Majesty's Government, reasonable compensation for the loss sustained by him. But we do not think that Her Majesty's Government can be advised to adopt, without much more investigation, Mr. Trenholm's own estimate of that loss at the enormous sum of 69,138*l*.

The demand which Mr. Wilson makes upon Her Majesty's Government (and which is less distinctly implied in the extraordinary heading of the claim under Mr. Trenholm's signature) seems to be that Her Majesty's Government should, in the meantime, and before recovering any compensation from the Government of the United States, take upon themselves the liability to make good Mr. Trenholm's loss, as if they had committed, and not been aggrieved by, the act of violence which has been done in this case.

We are of opinion that while Mr. Wilson is informed that Her Majesty's Government are taking, and will not omit still to take, such steps as they deem to be required for the honour and dignity of Great Britain, and which they trust will result in their obtaining for Mr. Trenholm from the Government of the United States adequate compensation, he should also be informed that they peremptorily decline to recognize the principle of the pecuniary responsibility of Her Majesty's Government, for which, in his letter, he appears to contend. Mr. Trenholm is, under the circumstances, entitled to the same protection from Her Majesty's Government which would have been extended to one of Her Majesty's own subjects, or to the subject of any neutral Power. He cannot be entitled to more.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 334.

The Law Officers of the Crown to Earl Russell.—(Received September 4.)

Temple, September 3, 1863.

TUNIS.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 20th of August instant, stating that with reference to the Report of the Law Officers of the 18th of December last,* on the draft of a Convention between Her Majesty's Government and the Bey of Tunis, for enabling British subjects to hold immovable property in that Regency, he was directed to acquaint us that the draft having been presented to the Tunisian Government, they have proposed some amendments in Articles IV and XVII, as settled by us. He was also pleased to transmit to us the draft of Convention which was under our consideration, together with a despatch from Her Majesty's Agent and Consul-General in Tunis (No. 27), inclosing copies of the Articles in question as altered by the Tunisian Government; and to request that we would report to your Lordship our opinion whether there is any objection to the Articles as so amended.

In obedience to your Lordship's commands we have taken these Articles into consideration, and have the honour to report—

That we think there is no objection to the amended Articles IV and XVII of the proposed Convention, unless Her Majesty's Government should be of opinion, as a matter of policy, that it is inexpedient to introduce into a Convention of this kind any stipulations tending to place the maintenance of the present Constitutional Laws of Tunis on the footing of international engagement, which the Tunisian Government voluntarily proposes to do by its amendments in the XVIIth Article.

We have, &c.
For the Attorney-General and myself,
(Signed) ROUNDELL PALMER.
ROBERT PHILLIMORE.

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* See Reports for 1862, page 312.

No. 335.

The Law Officers of the Crown to Earl Russell.—(Received September 9.)

Temple, September 8, 1863.

UNITED STATES.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 21st ultimo, stating that with reference to that part of our Report of the 22nd of April last* which relates to the unneutral use made by United States' cruizers of the ports of neutral Powers, he was directed by your Lordship to transmit to us the correspondence, as marked in the margin,† which has since passed upon the subject between Her Majesty's Government and that of the United States; and Mr. Layard was to request that we would take the same into consideration, and furnish your Lordship with our opinion upon the assurances contained in Mr. Seward's note to Lord Lyons of the 29th ultimo (July), (inclosure in Lord Lyons' No. 690 of the 3rd instant (August), and also as to the bearing which the doctrine laid down in the instructions to which Mr. Seward refers has upon the cases of the "Dolphin" and "Peterhoff."

In obedience to your Lordship's commands we have considered the correspondence submitted to us, and have the honour to report—

That the answer of Mr. Seward (29th July, 1863, inclosure in Lord Lyons' No. 690) appears to us to lay down correctly the principles of international law applicable to the unneutral use of neutral waters and ports.

Nothing can be more distinct than the admission made by Mr. Welles, in the terms of his instructions of the 28th February last, to Commander Craven (as stated in Mr. Seward's letter), that "a capture of a neutral vessel, made after standing off and on a neutral harbour or mouth of a river, or lying in wait within it for the purpose, although actually made beyond the neutral jurisdiction, would not be recognized as valid;" and that even the right of search cannot properly be exercised under such circumstances. This is an admission of great importance, which in future communications between the two Governments must not be lost sight of.

It remains to be seen whether these proper orders of the United States' Government will be really carried into execution by the naval officers, whose conduct will of course be vigilantly watched.

With respect to the application of the principle of these orders to the cases of the "Dolphin" and the "Peterhoff," we have to observe that we have not now before us the Judgment pronounced by the Prize Court in these cases, or the evidence on which it was founded; but if evidence was properly laid before that tribunal that the captors of those vessels had lain in wait for them in a neutral port, and from thence made chase after and captured them, or if such were admitted by the captors to be the fact, we should certainly be of opinion that there was adequate reason, on that ground alone, for an application to the United States' Government for the restoration of those vessels to their owners, in accordance with the doctrine set forth in the letter of Mr. Seward to Lord Lyons.

The question, however, with regard to those two vessels and the particular circumstances of their capture is entirely one of fact: and we infer from the papers before us that the United States' Government and Admiral Wilkes have never admitted the fact to be that in either of those cases the capture was made by means of any unneutral use of Danish waters, in violation of the principle of the instructions given by Mr. Welles to Commander Craven, on the 28th February last. In all the communications which have passed between Mr. Seward and Lord Lyons on this subject, Mr. Seward seems to have confined himself to the general question, and to have avoided entering into any explanations with respect to the particular cases of the "Peterhoff" and the "Dolphin;" but it would seem that a correspondence took place between Admiral Wilkes and the Danish Governor of St. Thomas (of which some account is given in Mr. Welles' letter to Mr. Seward of the 8th June), in the course of which Admiral Wilkes, while disclaiming "the idea of using that harbour to make preparations for captures, or of infringing upon the neutral territory of St. Thomas," offered explanations as to "the circumstances under which certain captures, deemed objectionable were made;" referring evidently to the cases of the "Peterhoff" and the "Dolphin," and to another case specified in the Danish Governor's reply. These explanations (as Lord Lyons observed in his letter to Mr. Seward of the 16th of June) have not as yet been communicated to his Lordship or to Her Majesty's Government, and we cannot therefore do more than conjecture their nature from the answer of the Danish Governor, dated the 16th of May, of which a copy is before us. From this it certainly appears that the explanation offered (although the Governor observes that he had been "in some points under a different impression from the one which would result from that explanation") was, in substance, accepted as satisfactory; and we collect that Admiral Wilkes had, in fact, given the Governor his positive assurance "that in all these cases he had made it a point not to infringe on Danish rights, and the interests of that place (St. Thomas), *which required that no prosecution of outgoing vessels should be immediately commenced from that harbour by any man-of-war.*"

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* Page 126.

† Lord Lyons, No. 370, May 5; to Lord Lyons, No. 299, May 23; Lord Lyons, No. 547, June 16; to Lord Lyons, No. 378, July 3; Lord Lyons, No. 690, August 3, 1863.

Under these circumstances, although a conviction still exists in our own minds (both from the Reports of the British Naval Officers, and from the very manner in which the question of fact has been avoided in Mr. Seward's communications with Lord Lyons) that the "Vanderbilt" and the "Wachsetts" did really commence their proceedings, with a view to the visitation and capture of the "Peterhoff" and the "Dolphin" respectively, within the Danish waters, we are apprehensive that there may be great difficulty in now making good any demand upon the United States' Government for the restoration of those two captured vessels on that ground, unless the facts necessary to raise the point were substantiated by the evidence before the Prize Court, so as distinctly to constitute, in each case, part of the defence in which the Court had to adjudicate; and, in deciding whether such restoration shall be demanded or not, it may perhaps be prudent to bear in mind that the right to insist upon reparation for an unneutral use of neutral waters, with a view to a capture afterwards actually made on the high seas, beyond neutral limits, is, in strictness, that of the neutral State whose waters were violated, rather than that of the State whose vessel has been captured; and if the Danish Government has accepted as satisfactory the explanations offered to them upon the question of fact, it may be very difficult now to maintain that the same question ought to be re-opened as between the United States' Government and Great Britain, unless there be evidence properly raising the point for judicial determination by the Prize Court.

Upon the merits of the case of the "Dolphin" (apart from this particular question, which, as we were led to infer, had not been raised before the Court) we have already expressed our opinion that the sentence of condemnation was well founded.

Upon the merits of the final sentence in the case of the "Peterhoff," not having yet seen the evidence or a copy of the Judgment, we are not at present in a situation to express any definite opinion.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 336.

The Law Officers of the Crown to Earl Russell.—(*Received September* 9.)

Temple, September 8, 1863.

TURKEY.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Murray's letter of the 21st August ultimo, stating that he was directed to transmit to us the accompanying despatches from Mr. Legal Vice-Consul Francis (Nos. 56 and 64), acting as Judge of the Supreme Consular Court at Constantinople during Sir E. Hornby's absence, and from Sir Edmund Hornby relative to the claims of exemption from serving on juries made by British subjects employed in the Imperial Ottoman Bank, and by other persons in the service of the Turkish Government; and to request that we would furnish your Lordship with our opinion as to the course which should be taken in this matter.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That we understand the Imperial Ottoman Bank to be a trading Corporation, employed, not exclusively, but as a branch of its business, in conducting certain financial business of the Ottoman Porte—discharging, in fact, functions analogous, in this respect, to those discharged by the Bank of England in its relation to the English Government, though with this difference, that the Porte employs the Ottoman Bank as its Agent for all the ordinary receipts and payments of the public Exchequer, while the agency of the Bank of England for the British Government is confined to the management of the National Debt.

The persons employed in this Ottoman Bank are, we think, the servants of that Corporation, and are not, strictly speaking, persons "holding appointments in the Civil Service of the Porte." As we understand the facts, the Government of the Porte neither appoints, nor removes, nor pays, these persons. We think, therefore, that they cannot claim exemption from serving as jurors under the terms of the present Order in Council. If their liability to serve as jurors be likely to cause any serious interruption of the financial business of the Porte, the difficulty may be removed by a supplementary Order in Council.

With respect to the mechanics employed by the Ottoman Government, we are of opinion that they are not exempt from the liability to serve as jurors.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 337.

The Queen's Advocate to Earl Russell.—(*Received September* 10.)

Doctors' Commons, September 9, 1863.

UNITED STATES.

My Lord,

I AM honoured with your Lordship's commands, signified in Mr. Layard's letter of the 2nd instant, stating that he was directed by your Lordship to transmit to me a letter (dated the 17th August ultimo) from Messrs. Richardson, Spence, and Co., inclosing a copy of the protest relative to the capture and destruction by the "Florida" of the American vessel "Red Gauntlet," the freight of which and a portion of her cargo belonged to Messrs. Richardson and Co., and that they request to be informed if they can obtain redress through Her Majesty's Government. And Mr. Layard was to request that I would take Messrs. Richardson and Co.'s letter into consideration, and report to your Lordship my opinion as to the propriety of returning an answer to it in the same terms as Messrs. Brown, Ripley, and Co., and others were answered, who made similar applications to Her Majesty's Government with reference to property destroyed by the "Alabama;" and Mr. Layard was pleased to inclose a copy of the answer returned to Messrs. Brown, Ripley, and Co. (dated the 29th November), which was concurred in by the Law Officers in their Report of the 28th of November last.*

In obedience to your Lordship's commands I have taken Messrs. Richardson, Spence, and Co.'s letter into consideration, and have the honour to report—

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* See Reports for 1862, page 297.

That I am of opinion that Messrs. Richardson should be answered in the same terms, *mutatis mutandis*, as Messrs. Brown, Ripley, and Co. were answered with respect to their application to Her Majesty's Government.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 338.

The Queen's Advocate to Earl Russell.—(*Received September* 11.)

My Lord, *Doctors' Commons, September* 9, 1863.

UNITED STATES.

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 5th instant, stating that he was directed by your Lordship to transmit to me a despatch and its inclosures, from Her Majesty's Consul at Galveston (No. 9, April 18), respecting the treatment to which two British subjects, William Henrick and John A. Lee, have been subjected by the military authorities in the State of Texas; and Mr. Layard was to request that I would take these cases into consideration, and report to your Lordship my opinion whether Her Majesty's Government should take any steps on behalf of Henrick and Lee.

In obedience to your Lordship's commands I have taken these cases into consideration, and have the honour to report—

That Mr. Consul Lynn does not state whether Galveston at the time of Henrick's imprisonment was or was not under martial law. But, assuming this not to have been the case, he appears to have been fairly tried and acquitted by the civil tribunal, and his being placed in irons to have been the result of his disobedience to prison discipline. The subsequent arrest of Henrick on the 4th of March by military authority and his compulsory return to Houston remains unexplained, owing, it should seem, to the absence of General Magruder, to whom Mr. Lynn has written from Houston.

I think that, with respect to Henrick's case, Mr. Lynn should be directed to state whether at the time of the former and last arrest Galveston and the adjacent district were or were not under martial law; to obtain an answer to his letter from the General; and having ascertained the offence with which Henrick may be charged, to take whatever steps may be necessary to procure him a fair trial. In the event of the General's refusing to answer the letter, Mr. Lynn should make application, in moderate and prudent language, for the release of Henrick, to the Minister of the Confederate Government who holds the office of Secretary at War.

With respect to the case of Lee, Mr. Consul Lynn appears to have taken the proper step in his application to General Holmes, and should be directed to report the answer of the General to your Lordship.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 339.

The Law Officers of the Crown to Earl Russell.—(*Received September* 11.)

My Lord, *Temple, September* 11, 1863.

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 25th ultimo, stating that with reference to our Reports of the 13th of March, 21st of March, and 27th of April,* respecting the case of the "Springbok," he was directed by your Lordship to transmit to us, together with the previous papers, the correspondence which had since passed upon the subject; and Mr. Layard was to call our more particular attention to the despatches from Lord Lyons and Mr. Consul Archibald reporting the condemnation of the "Springbok" and her cargo, and that they have been ordered to be sold, and to letters received from Mr. Begbie and Messrs. Barter and Co., urging Her Majesty's Government to take up the case of this vessel; and Mr. Layard was to request that we would take this case into consideration, and furnish your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have again taken this case into consideration, and have the honour to report—

That as we have before us only the bare Decree, and neither the evidence nor the Judgment, giving the reasons of the Court *in extenso*, we are enabled to form any opinion as to the propriety and justice of the sentence of condemnation.

It certainly was not the sentence, which the previous statements respecting the case, and the papers connected with the vessel, which we had seen, would have led us to anticipate: but it is possible, that in this, as in some other cases, those statements may have been delusive; and there can be no doubt that if the reasons of condemnation stated in the face of the Decree were supported by the evidence, the sentence was correct.

The papers, according to the Decree, were holden to be simulated, the destination to have been a blockaded port, and the goods contraband, upon what grounds we do not know; nor have we the advantage of being informed of the opinion of the Counsel for the owners, as to the merits of the case.

We observe that Mr. Begbie, in his letter of the 20th of August, 1863, states that the vessel and cargo were actually and *bonâ fide* bound solely for Nassau, "and there the cargo would have been discharged and the *vessel dismissed*, her charter being at an end, and this no evidence disproved. The phrase, "the vessel dismissed," is rather singular; but if it be true (as stated in Messrs. Barter and Co.'s letter of the 21st of August), that after discharging at Nassau, she was to have loaded back to the United Kingdom, or to have proceeded to one of the West India Islands to load a cargo of sugar for England, and to go "nowhere else," there would certainly appear to have been no just ground for her condemnation.

It appears that an appeal has been duly entered, and is in course of prosecution.

The sale of a vessel, after a sentence of condemnation, is in accordance with the practice of our own Prize Courts.

At present, we cannot advise your Lordship that there is any ground for official interference, or for not awaiting the result of the appeal, which is the usual and proper course for obtaining a reversal of a sentence alleged to be erroneous; but with the evidence, the Judgment, and the opinion of the owners' Counsel before us, we should be in a better condition to offer our advice on the subject.

It is hardly necessary to add, that the suggestion of examining witnesses on oath in this country is wholly inadmissible.

The Prize Court alone has jurisdiction over the subject matter; and, like all other Courts of Justice, must be presumed, unless the contrary can be shown from its own proceedings or from the evidence before it, to have discharged its duty properly.

We have, &c.
For the Attorney-General and myself,
(Signed) ROUNDELL PALMER.
ROBERT PHILLIMORE.

P.S.—Since this Report was prepared, we have also received and considered Mr. Layard's letter of the 7th instant, and its inclosure; which, however, require no addition to or alteration in our Report.

R. P.
R. J. P.

No. 340.

The Law Officers of the Crown to Earl Russell.—(*Received September* 12.)

Temple, September 11, 1863.

My Lord,

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 25th ultimo, stating that with reference to our several Reports

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* Pages 69, 80, and 137.

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respecting the case of the "Peterhoff," he was directed by your Lordship to transmit to us, together with a volume containing the previous correspondence, the papers as marked in the margin,* consisting of despatches from Lord Lyons and Mr. Consul Archibald, reporting the condemnation of the "Peterhoff" and her cargo, and that an order had been issued by Judge Betts to sell both vessel and cargo; and also a letter from Mr. Spence, dated August 20th, urging Her Majesty's Government to interfere to prevent the sale of the "Peterhoff," pending an appeal to the Supreme Court; and a letter, dated August 17th, addressed by Mr. Mundella to the Duke of Newcastle, protesting against the condemnation of the "Peterhoff," and of his goods which were on board of her; and to request that we would take these several papers into our consideration, and favour your Lordship with such observations as we might have to offer thereupon.

Mr. Layard was also pleased to state that he was directed by your Lordship to add, for our information, that your Lordship has instructed Mr. Consul Archibald to procure and send home a copy of the evidence on which the Decree of condemnation was based.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That in the absence of the evidence upon which the sentence of condemnation was founded, we cannot advise your Lordship that Her Majesty's Government ought at present to address any official remonstrance upon this subject to the Government of the United States. And we think it right to state than unless the evidence were clearly and unequivocally inadequate to sustain the sentence, we should be disinclined, upon principle, to recommend your Lordship to interfere in the matter until the Appellate Court had pronounced its Judgment upon the case. During the last war between Great Britain and Russia it frequently happened that sentences of the Prize Court in the first instance were reversed or modified by the Appellate Tribunal; and we believe that in no instance in which an appeal was pending did Her Majesty's Government interfere at the instance of a neutral State to stay the proceedings in Court. And during the present war, the Appellate Tribunal of the United States has, certainly in one instance if not in more, reversed the sentence of the Court below.

With respect to the sale of this vessel, *after the sentence of condemnation*, we have already reported to your Lordship that this practice is in accordance with that of the English Prize Courts; and that this power of sale was expressly confirmed by the last English Prize Act.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 341.

The Law Officers of the Crown to Earl Russell.—(Received September 12.)

Temple, September 12, 1863.

My Lord,

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 31st ultimo, stating that with reference to our letter of the 20th of August, he was directed by your Lordship to state to us that it having been reported to your Lordship that M. Bravay had stated that the iron-clads at Birkenhead were being constructed for the Egyptian Government, your Lordship telegraphed to Mr. Colquhoun, Her Majesty's Agent and Consul-General in Egypt, to know whether that statement was correct.

That your Lordship received from Mr. Colquhoun in reply a telegram referring him to a despatch written by Mr. Colquhoun in February last, in which mention was made of M. Bravay having asserted that he had received a verbal commission from the late Pasha to procure two iron-clad vessels for him, and further particulars were promised by post.

These particulars had not yet arrived, but your Lordship had received that afternoon a further telegram from Mr. Colquhoun stating as follows:—

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* Lord Lyons, Nos. 667 and 689; Consul Archibald, Nos. 146, 148, and 155.

"The Viceroy has positively refused to accept the iron ships, and they remain on Bravay's hands."

Under these circumstances, and with reference to the state of forwardness of these vessels, as described in the accompanying papers, just received from the Treasury, he was directed by your Lordship to request that we would again take this subject into our consideration, and advise your Lordship as to the course which Her Majesty's Government should pursue.

We are also honoured with your Lordship's commands signified in Mr. Layard's further letter of the 31st ultimo, stating that he was directed by your Lordship to transmit to us the accompanying further letter, and its inclosures, from the Treasury relative to the vessels being constructed in the Mersey, and to request that we would take the same into our consideration, together with the other papers on this subject, forwarded to us in his previous letter of that day's date.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That the further papers now submitted to us confirm us in the opinion that no legal grounds have yet been shown to exist on which Her Majesty's Government can interfere with either of the two vessels in question.

That these are very formidable war-vessels is unquestionable. But Her Majesty's Government are clearly without any legal power to seize or detain them on that account only. If ordered or purchased by M. Bravay (or by any other person), either for any foreign non-belligerent Government, or on his own private account by way of speculation, and with a view to a subsequent sale to any customer whom he might find willing to take them off his hands, they would not be liable to seizure under the Foreign Enlistment Act, according to any construction which that Statute has ever yet been thought capable of receiving. It now appears that M. Bravay represented himself, so far back as February last, to the Egyptian Government to have been verbally commissioned by the late Pasha of Egypt to procure two such vessels for him; and that those two vessels now "remain in Bravay's hands" (according to the terms of Mr. Colquhoun's last telegram), because the present Viceroy "has positively refused to accept them." The inference seems unavoidable, that they have at least been *bonâ fide* offered to the present Viceroy by M. Bravay: and whatever that gentleman (if he is the true owner) may now contemplate doing with them, it is undeniable that these circumstances have no tendency to support any charge of a violation of the Foreign Enlistment Act.

We observe that Mr. Morgan, in his letter to the Collector of Customs at Liverpool of the 29th August, states that the Messrs. Laird "placed him in a position to state his belief that, if the Government are not in possession of the names of the owners, the Messrs. Laird would readily furnish such information upon an official application in writing being made to them for it." We feel some difficulty in saying that, where the question is, whether the law has been or may not be violated, and whether it may not hereafter become the duty of Her Majesty's Government to put it in force, any "official application," for information of this kind, could properly be made (unless invited by himself) to a person who, if any offence has been committed, or is contemplated, may be implicated therein. If any such inquiry is made in the present case, it should be in a very guarded and quite general form, viz., whether Messrs. Laird are willing to afford any information to Her Majesty's Government upon the subject; and it should be explained (if made) by reference to the tenour of Mr. Morgan's communication. There would, undoubtedly, be some inconvenience in knowing from Messrs. Laird themselves whom they are dealing with as the owners of these ships; and the fact that they have intimated their willingness to answer any such inquiry, if made of them officially and in writing, would undoubtedly be made use of against the Government if (without making such inquiry) they were hereafter to take any proceeding with reference to those vessels.

We cannot conclude this Report without inviting your Lordship's particular attention to the circumstance, that while, under the 150th section of the Customs Law Consolidation Act (16 and 17 Vict., cap. 107), "the following goods may, by Proclamation or Order in Council, be prohibited either to be exported or carried coastwise—arms, ammunition, and gunpowder, military and naval stores, and any articles which Her Majesty shall judge capable of being converted

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into or made useful in increasing the quantity of military or naval stores," no similar power appears to have been conferred by the Legislature upon the Crown to prohibit the exportation of ships of war, or ships which Her Majesty shall judge capable of being converted into ships of war. By the common law Her Majesty would doubtless have sufficient power to prevent ships of war from leaving this country, so that they might fall into the hands of an enemy, when Great Britain was herself belligerent, or in imminent danger of war. But the 150th section of the Customs Consolidation Act is not limited to any such emergency; and if (as would appear to be, on every ground, reasonable) the power given by that section had been extended to ships of war, it might have furnished an easy and convenient method of avoiding many of the difficulties which now arise, both from the uncertainty of the construction of the Foreign Enlistment Act, and from the necessity of obtaining legal proof of the purpose and intent with which a vessel is equipped or fitted out.

We have, &c.

(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

P.S.—Since the above portion of our Report was written, we have received the three letters of Mr. Layard of the 3rd and 7th September respectively, with their inclosures. They appear to us not to vary materially the legal complexion of the case, or to call for any modification of our foregoing remarks. The deposition of Sweeny shows that the "No. 294" is in a state of very considerable forwardness; but the officers of Customs had already reported to the same effect, and the nearness of completion for sea is foreign to the true legal question under the Foreign Enlistment Act. The same observation applies to the representation of the United States' Consul that the same vessel was, on the 3rd instant, taking coal on board.

W. A.
R. P.
R. J. P.

No. 342.

The Law Officers of the Crown to Earl Russell.—(*Received September* 14.)

UNITED STATES.

My Lord, *Temple, September* 12, 1863.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 24th ultimo, stating that with reference to his letter of the 16th July, he was directed by your Lordship to transmit to us a further letter from the Colonial Office dated the 19th August ultimo, respecting the claim of John Stirrup to be compensated on account of his illegal abduction from the Bahamas and subsequent enslavement in the Southern States; and Mr. Layard was to request that we would take the same into consideration, together with the papers on this subject previously sent to us, and furnish your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That the outrage in this case was perpetrated by an individual without the authority, direct or indirect, of his own Government, and was commenced in the territory of a foreign State, though completed and continued in that of of his own.

We have already had the honour to report our opinion that although the relations of the Government of the Southern States with Great Britain are those of an unrecognised *de facto* Government only, the Southern Government is nevertheless bound to take proper measures for the purpose of bringing to justice the offender, if found within the limits over which it exercises *de facto* authority.

The further question of demanding pecuniary compensation from this unrecognised Government for the act of a subject opens other and more difficult considerations.

They range themselves under two heads:—

1. Those that relate to the character of the offence, and of the redress properly due for it.

2. Those that concern the peculiar relations subsisting between this country and the Southern States.

With respect to the first head, it is suggested by the Duke of Newcastle that the law of evidence prevalent in the Southern States, which shuts out the testimony of the victim against his oppressor, ought to be considered as bearing upon the question of pecuniary compensation.

We entirely agree with his Grace in condemning such a law as barbarous and contrary to natural justice, though it is unfortunately not now for the first time prevalent in a country which gives a legal sanction to the existence of slavery. We also agree with his Grace in thinking that the Government of Great Britain is not bound to recognize that law as applicable, in any question between the two Governments, to the case of a coloured British subject who was never resident, by his own free will, within the jurisdiction in which that law prevails, and on whose behalf redress is sought for his violent deportation to and forcible detention in the territory subject to that law. It has not, however, yet been made apparent that, if redress were properly sought, this law of evidence would necessarily be applied to such a case by the Courts of the Confederate States, nor that, if it were so applied, other evidence of the identity and abduction of the youth Stirrup, admissible by the local law of those States, might not be obtained from the Bahamas which would be sufficient for the purposes of justice. If there were no such objectionable law of evidence, all that the Confederate Government could be required to do would be to prosecute criminally the kidnapper Clarke, and if that Government were to cause a criminal prosecution to be instituted against the kidnapper which resulted in his conviction and imprisonment, with or without hard labour, and without fine or condemnation in damages, or even if he were fairly tried and acquitted in due course of law (otherwise than as a mere consequence of the exclusion of Stirrup's own and other coloured evidence), we do not think that Her Majesty's Government could insist upon further steps being taken.

It is true that in a case in which the punishment of an offender would be a sufficient satisfaction as between Government and Government, it may be competent for the Government whose subject has been wronged to require pecuniary satisfaction, if proper means of bringing the offender to punishment are not provided by the law of his own country, or if (being provided) they are not properly put in force, when it would be in the power of the Government of the offender to enforce them. But it would be too much to assume, *per saltum*, and in the first instance, that the Government of the injured party can call upon the other Government to make pecuniary satisfaction, instead of taking criminal proceedings against the offender, merely because it may be possible, or even probable, that a prosecution, if instituted, might fail, by the exclusion of evidence which ought not to be excluded, or by the operation of a particular rule of evidence which the Government of the injured party might justly decline to recognize as an answer to its demands.

It is also true that Stirrup might probably be able (unless defeated by any special laws to the prejudice of persons of colour) to recover damages from Clarke, in an action for false imprisonment; but we do not think it possible (at all events before such a remedy has been tried and the ground of its failure shown), that the Government of the Confederate States should be called upon to make good such damages when it has neither done nor authorized the wrong, nor (as yet) done anything to justify or shield the offender.

With regard to the second consideration arising out of the existing relations between Great Britain and the Southern States, we have to observe that while, on the one hand, the absence of formal recognition does not entitle the Southern States to do, or authorize to be done by their subjects, wrong to the subject of another State, it does entitle them to require that any official intercourse with them should flow through a proper, though not a regular diplomatic channel, that is to say, through some person authorized *pro hac vice* and for this purpose, at least, to treat with them as a *de facto* Government. We do not see why any practical difficulty should prevent an application for pecuniary compensation; but we do not think that, in the present circumstances, such an application ought to be made by Her Majesty's Government.

We have, &c.

(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

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No. 343.

The Law Officers of the Crown to Earl Russell.—(*Received September* 16.)

Temple, September 16, 1863.

UNITED STATES.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 28th August ultimo, stating that with reference to our Report of the 7th July,* respecting the case of the "Blanche," he was directed to transmit to us, together with the previous papers, a despatch from Lord Lyons (No. 719, August 11th), inclosing a copy of the rejoinder of the United States' Government to the observations which his Lordship was instructed to address to Mr. Seward in the sense of our Report; and to request that we would take this rejoinder into consideration, and report to your Lordship our opinion as to the further course to be pursued by Her Majesty's Government in this case, and whether Her Majesty's Government ought to endeavour to procure rebutting evidence from the owners of the "Blanche."

In obedience to your Lordship's commands we have taken this case again into consideration, and have the honour to report—

That we are unable to regard Mr. Seward's reply (August 4, 1863) in any other light than that of a determination to evade, if possible, the just demand of Her Majesty's Government for compensation to the owners of the "Blanche" and her cargo. To these persons it is evidently no substantial redress that the admitted wrongdoer, Captain Hunter, has been censured and dismissed from the service by his Government for a deliberate and gross violation of international law.

Mr. Seward places his refusal to accede to the demands of Her Majesty's Government on two grounds:—

1st. He alleges that this outrageous and indefensible proceeding on the part of an officer of the United States imposes no obligation upon that Government to indemnify those upon whom this officer, acting in the name and under the flag and authority of the Government, has inflicted a very grievous injury.

This appears to us to be a proposition which no neutral State capable of protecting its subjects can be expected to admit. With respect to the actual burning of the vessel, as well as the other facts of the case, we have had the honour to express ourselves very fully in various former Reports, and especially in our Report of the 7th July last.

We retain the opinion which we expressed in that Report.

Mr. Seward must know that Her Majesty's Government could not, with any regard to the dignity of Her Majesty, have taken any part in the proceedings of the Court-martial holden by the United States upon the conduct of its own officer. It was obvious from the first that there would be conflicting statements as to who the persons were who actually did set fire to the vessel; but we adhere to the opinion which we then expressed, that the true cause of the vessel being set on fire, whoever did the act, was manifestly the unlawful aggression of Captain Hunter, and for that act, and the consequences of it, his Government is, in our opinion, responsible. The original protest (see Mr. Consul Crawford's despatch of the 13th October, 1862, No. 38) ought (though it does not state who set fire to the ship), in the peculiar circumstances of this case, to satisfy any Government that the act was either that of the wrongdoer himself or the consequence of his aggression.

We do not advise Her Majesty's Government that, having regard to all the circumstances, and the lapse of time, they are under any obligation to seek for fresh evidence from the owners or crew of the "Blanche" upon this point; although if there were reason to believe that such evidence might be obtained, it might be desirable to see how far its production would tend to fortify the just demands of Her Majesty's Government. The second position on which Mr. Seward rests his refusal to indemnify the victims of this outrage, involves considerations of the most serious and important character. The second position is indeed partly and ostensibly one of fact, but principally, and in truth, one of law. Mr. Seward insists that the Government of the United States is entitled to treat this vessel, either as a United States' ship, or at least as a Confederate vessel never validly transferred to any British owner, saying, that "the 'General Rusk' was notoriously an American vessel; that it is not satisfactorily shown in the case, that the title in her has ever been in good faith and lawfully vested in any subject of Great Britain; and that transfers similar to that in the case of the 'Blanche' were pronounced fraudulent by a Judge of the United States in the case of the 'Emma' and the 'Florida.'" We have not these Judgments to refer to; but it is difficult to suppose that they can affect the demand of Her Majesty's Government in this particular case. In those cases the question of the title to those ships arose, we presume, before the Prize Courts, competent to adjudicate thereon, according to the rules of Prize Law applicable, when ships captured on the high seas are claimed against the captors on the ground of transfers from belligerent to neutral. Such transfers during war are not generally unlawful, but Prize Courts are entitled to require strict evidence of their *bona fides* in all respects. But the present is not a case of lawful capture or destruction, or one in which the United States' Government is entitled to throw upon the registered British owner the burden of establishing, by any evidence ultra the documents which have been produced, the validity of his title. No American Prize Court has any jurisdiction in this case. Even if the "Blanche" were Confederate property, it would be the duty of the Spanish Government, in the due observance of the obligations of neutrality, to protect her Confederate owners from the loss consequent upon the unlawful attack upon her within Spanish waters; and it would be no answer to the demand for redress of the Spanish Government, that if captured beyond those waters she might have been condemned as good prize. In point of fact, however, the attack was made upon her while she was sailing under the British flag, with a lawful British register. The title of her British owners is (and according to law ought to be) recognized as valid by Her Majesty's Government, and no evidence whatever has been produced on the part of the United States' Government to throw the slightest doubt upon it. It is for the United States' Government (if they can) to displace, by sufficient evidence, the title of the registered owner, valid according to British law; and which, till displaced, gives that owner a right to British protection: the attack upon the ship having been confessedly unlawful, to whomsoever she might belong. Mr. Seward is, therefore, entirely mistaken in supposing that the case of Her Majesty's Government requires *them* to trace the earlier history of the title to this ship, or to produce (though probably there might be no difficulty in doing so, if the "General Rusk" was in fact a Federal vessel, captured by the Confederates) the sentence of any Confederate Prize Court by which she was condemned.

It is true that "no such sentence or judgment has been thus far shown to have been passed, and no such Court has shown to exist." But neither has it been shown that this vessel ever belonged to any citizens of the States adhering to the United States' Government, or to any other person than to Mr. W. L. Smith, of Galveston, by whom she was transferred on the 31st of July, 1862, by regular bills of sale, to Mr. Wigg, her British owner. "Notoriety" (whatever Mr. Seward may mean by that word) cannot be accepted by Her Majesty's Government in lieu of proof. So that it is for Mr. Seward, and not for Her Majesty's Government, to lay the ground, by proof of the necessary matters of fact, for the discussion, in this case, of the question of the validity of a sentence of condemnation by a Confederate Prize Court, if it be really intended to raise that question. We cannot, however, but remember that Mr. Seward (while himself observing that no such facts at present appear in this case, and that it is "not necessary to decide the question," which he erroneously says *Her Majesty's Government* have intimated as arising in it) does, nevertheless, plainly enough, intimate that he is prepared, if necessary, to maintain the position that the United States' Government are entitled to deny the competency of all Confederate Prize Courts, and the validity of all their sentences in all questions as to the title to ships, arising between the United States and any neutral Governments.

Stripped of all ambiguous and superfluous language, the position is truly and simply this:—That the United States' Government having demanded and obtained from all neutral States the peculiar rights incident during a state of war only, and to a belligerent only, and having exercised these rights to the great annoyance and distress of neutral commerce, now declare that they will not discharge the corresponding duties of a belligerent, now deny that their enemy has any right to establish a Prize Court, and declare their determination not to respect any title to property condemned by that Court, though it be a title universally recognized by all civilized States, and though neutral States

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* Page 198.

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have a right to insist on the existence of such a Court in the territory *de facto* occupied by the Confederate States. Upon these principles it is manifest that the maintenance of a blockade, the search, visit, and condemnation of neutral ships, put in practice by the United States, instead of being lawful acts, are so many acts of unjustifiable violence, insult, and wrong. We think that upon this point there should be sent, without delay, to the United States' Government as strong and full a remonstrance as can be framed. And we humbly venture to suggest that (in the event of this position being still maintained) it would be very expedient that in a matter of such grave and common importance to all neutral States, some communication on the subject should pass between the Governments of those States, especially of France and Spain, with the view of preparing and promulgating some joint declaration to the effect that neutral States will not accord the status of a belligerent, and the right to visit on the high seas, try, and condemn neutral vessels, to the United States' Government, unless it recognizes the usual obligations which, according to international law, accompany and balance those rights, unless they also concede to their enemy the status of a belligerent for all *international* purposes, and as to all matters that relate to the necessary intercourse of neutral States with that enemy, pre-eminent among which is the recognition of a duly constituted Prize Court, the existence of which the neutral has a right to demand at the hands of *every* belligerent.

We would add that it will be highly desirable in this particular case of the "Blanche," that the demands of Her Majesty's Government should continue to have the concurrence and the energetic support of the Government of Spain.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 344.

The Queen's Advocate to Earl Russell.—(Received September 19.)

Doctors' Commons, September 18, 1863.

UNITED STATES.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 5th instant, stating that with reference to my Report of the 30th of March last,* he was directed by your Lordship to transmit to me, together with the previous papers, four despatches and their inclosures, from the Acting British Consul at Charleston,† reporting the result of his communications with the Confederate authorities on the subject of the schooner "Harkaway;" and Mr. Layard was to request that I would take the same into consideration, and report to your Lordship my opinion thereupon.

In obedience to your Lordship's commands I have taken into consideration these despatches and their inclosures, and have the honour to report—

That it now appears that this vessel was not proceeded against in the Confederate Prize Court at all, and that the title of the owner, arising out of a decree of condemnation and sale by the United States' Prize Court, has not been disputed, but, on the contrary, is expressly acknowledged by the Confederate authorities, both executive and judicial.

Judge Campbell is quite right in saying that, as this was a proceeding in the Instance (or ordinary) Court of Admiralty, in what is technically called "a cause of possession," that the owner ought to have put in an answer setting forth his title, as founded on the Decree of the United States' Prize Court, and the sale under the order of that Court.

These documents, if proved, he observes in his Memorandum, would put the title beyond the reach of controversy; and, both in his Memorandum and letter, he most expressly and satisfactorily recognizes the validity of such a title, according to the principles of international law, and promises indemnity on the part of his Government for the seizure of the property by impressment.

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* Page 91.

† Acting Consul Walker, No. 71, May 20; No. 73, May 22; No. 82, June 26; No. 93, July 8, 1863.

It appears to me quite proper that Mr. Consul Walker should furnish the Counsel for the owner with a copy of this despatch. The documents required by the Confederate Court, and not produced, are official copies of the warrant for the sale of the vessel, and the return of the sale by the Marshal of the United States' Court.

Mr. Consul Walker invokes your Lordship's aid to obtain these documents from the Court at Key West, and I think, in the particular circumstances, this aid should be granted, and that proper instructions should be given to Her Majesty's Consul at Key West to obtain them; and if he cannot obtain their direct transmission to Mr. Consul Walker, to inclose them to your Lordship for the purpose of such transmission.

I cannot conclude this Report without observing that, apart from any consideration of the particular circumstances of this case, there is much value in this distinct recognition by Judge Campbell of the obligation of a belligerent to respect a title founded on the sentence of a belligerent Prize Court—a recognition which at present seems to stand in favourable contrast to the decisions of the United States' Prize Court at Key West, and the recent declaration of Mr. Seward on the same subject.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 345.

The Law Officers of the Crown to Earl Russell.—(Received September 19.)

Temple, September 19, 1863.

UNITED STATES.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 3rd instant, stating that with reference to our Report of the 16th July,* respecting the case of the schooner "Clyde," he was directed by your Lordship to transmit to us, together with the previous papers,† the correspondence, as marked in the margin,‡ which has since passed upon this case, and was to request that we would take the same into consideration, and more particularly the answer of Mr. Seward upon the point of "enemies' goods in neutral bottoms," and report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands we have taken this case again into consideration, and have the honour to report—

That with respect to the protest and complaint of Mr. Wood, passenger on board the "Clyde," he does not appear to have suffered any personal ill-treatment, but, on the contrary, to have been forwarded to his destination. His chronometer and other property ought, and of course will be restored to him. Proper instructions should be given as to this matter, but we do not think that his individual case, taken *per se*, founds any claim for compensation.

The other question arising out of this case deserves the very serious consideration of Her Majesty's Government, namely, the question as to the recognition by the United States' Government and Prize Courts of the doctrine contained in the Declaration of Paris, that the flag covers the cargo except in cases of contraband.

Though the history of this important part of international law has lost much of its practical interest, nevertheless, regard being had to the strange discrepancy between the declaration of the Executive Government of the United States, and the practice of one, at least, of their Prize Courts, it is, perhaps, not unimportant to observe that during the whole course of the wars growing out of the French Revolution, the Government and Prize Courts of the United States acted upon the principle that enemies' property *was* liable to seizure on board a neutral ship, and that their highest authorities, executive and judicial, declared that to be the settled doctrine of general international law.

It appears from the letter of the Solicitor at Key West, employed on

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* Page 205.

† Lord Lyons, No. 482; Consul Archibald, No. 97; Lord Lyons, No. 549; Consul Archibald, No. 104.

‡ To Lord Lyons, No. 419; Lord Lyons, Nos. 704, 714, 715, 728, 729; to Lord Lyons, No. 480; Colonial Office, August 20.

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behalf of the "Clyde" (Inclosure B in Colonial Office despatch of the 20th August):—

First, that the captor seized the "Clyde" solely on the ground that Confederate property was on board of her.

Secondly, that "the Court" (at Key West) "has uniformly ruled" that a neutral flag does *not* protect enemies' property.

Thirdly, that the Judge has adhered to this ruling in the case of the "Clyde," and, releasing the vessel, has detained the cargo until it could be shown what portions of it were not Confederate property.

It is true that he had not then received any official intimation of the views and intentions, on this subject, of the United States' Government, as declared in Mr. Seward's letter to Lord Lyons (13th August, Inclosure in Lord Lyons' No. 729), a copy of which, Mr. Seward says, is to be sent to all prosecuting officers of the Government.

Mr. Seward did not believe the accuracy of the report that the vessel had been seized on the ground of her having enemies' property on board, and he must, therefore, have been ignorant of the decisions of the Prize Court at Key West; not unimportant, however, as we learn, from the letter of the Solicitor above cited, that the harbour was crowded with prizes.

We infer, from the letter of Mr. Seward, that he admits that the Government of the United States publicly pledged themselves at the breaking out of this war, that they would adhere to the new doctrine laid down in the Declaration of Paris; and it seems to follow, that if the United States' Government are satisfied as to either of the two facts, namely, that this vessel was seized, and that her cargo had been adjudicated upon, or detained, in direct contravention of this doctrine, they are bound both to restore the cargo (the ship having been already restored), and to make proper compensation for the wrong which they must admit to have been done.

We think that Lord Lyons should be instructed to communicate these facts, apparently capable of being indisputably established, to Mr. Seward, and to express his confidence that the United States' Government will do what justice and good faith plainly require.

We have, &c.
For the Attorney-General and myself,
(Signed) ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 346.

The Law Officers of the Crown to Earl Russell.—(Received September 21.)

Temple, September 21, 1863.

UNITED STATES.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 5th September instant, stating that he was directed to transmit to us two despatches from the Acting British Consul at Mobile (Nos. 18 and 20), and a despatch from the Acting British Consul at Charleston (No. 91), relative to Judgments pronounced by Judge Jones and Judge Magrath, under which British subjects established in the Confederate States are being forced into the ranks of the Confederate army; and to request that we would take the same into consideration, and furnish your Lordship with such observations as we may have to offer thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we adhere to the principle which we had the honour to submit to your Lordship in our former Reports on this subject, namely, that to aliens who have not by some public act assumed the character, or accepted the political rights and obligations purposely incident to the character of citizens, a reasonable time should be allowed in order that they may exercise the option of leaving the country or remaining in it, subject to the new obligation of obeying new laws enacted during a state of war for the purpose of exacting from all residents compulsory military service, and the existence of which the foreigner cannot be presumed to have anticipated when in time of peace he took up his temporary abode in that country.

This principle has been fairly acknowledged and acted upon by the United States, and it is (as we conceive) generally accepted throughout Europe; and we think the Confederate States ought not to depart from it. It is not only just in itself, but we think a departure from it would involve a gross breach of good faith towards those British subjects who, in reliance upon the protection secured to them by the Treaties between Great Britain and the United States, were induced, before the commencement of the present civil war, to take up their residence in the Southern States. To exact from such persons military service, under any circumstances, would be, in our opinion, quite indefensible; but to do so in a civil war, and on behalf of a *de facto* Government engaged in the attempt to establish its own independence by an armed insurrection, is still more flagrantly opposed to all the known principles of international law and justice.

In the particular case of Farraday, who voluntarily served in the Confederate navy, there is clearly no ground for the official intervention of Her Majesty's Government. With respect to the other cases (if such there be) in which the persons enrolled have long been aware that military service would be a necessary consequence of their prolonged sojourn in the Southern States, and who had opportunities of leaving, have, nevertheless, voluntarily remained in them, we do not think that Her Majesty's Government are called upon to interfere.

In cases where any attempt to leave the country has been *bonâ fide* made, and prevented by circumstances over which the persons had no control, we think that urgent remonstrances should be addressed by Her Majesty's Government to the Confederate authorities, and every practical endeavour made to procure their liberty.

We desire to add that the authorities of the Confederate States, by exacting military service in the present civil war from subjects of Her Majesty, who have not by their own acts disentitled themselves from claiming the benefit of that character, as against the Confederate Government, appear to us not only to be wrong-doers towards the individual British subjects concerned, but also to be guilty of violating Her Majesty's neutrality in a manner inconsistent with the right of Her Majesty to have the obligations of allegiance due to her by this class of her subjects recognized by the *de facto* Government of the Confederate States; and we think that Her Majesty's Government would be fully justified in resenting such a violation of the rights of the British Crown.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 347.

The Queen's Advocate to Earl Russell.—(Received September 26.)

Doctors' Commons, September 22, 1863.

HANS TOWNS.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 15th September instant, stating that he was directed to transmit to me a despatch and its inclosures from Her Majesty's Chargé d'Affaires at Hamburgh (No. 54), reporting the case of the son of a British subject named C. J. Bosdet, who claims exemption from service in the Hamburgh contingent of the Federal army; and to request that I would take these papers into consideration, and furnish your Lordship with my opinion whether Mr. Bosdet is legally entitled to the protection of Her Majesty's Government.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That it appears that Mr. Charles James Bosdet is the eldest son of a Mr. Bosdet, a British subject, who caused himself to be made a citizen of Hamburgh in 1843, who has ever since resided there, and is now residing there with all his family but his eldest son. That Mr. C. J. Bosdet was born in Hamburgh, and resided there till he was 22 years old.

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I am of opinion that in this state of circumstances the Government of Hamburgh did not act *ultra vires* in summoning him to serve as a soldier in the Hamburgh contingent of the German Federal army. He was a citizen by birth, the son of a duly naturalized and domiciled citizen. The whole question appears to have been put upon its proper footing by Viscount Palmerston, in the case of Mr. Terry; and I think the principle of that decision embraces the case of Mr. Bosdet, although he has lately left Hamburgh, and declared his intention of not returning to that city. The Decree of the Senate of Hamburgh is of course inoperative without the jurisdiction of the State, but the enforcement of the Decree within that jurisdiction, should Mr. Bosdet place himself within it, would not constitute any ground for the official intervention of Her Majesty's Government.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 348.

The Queen's Advocate to Earl Russell.—(*Received September* 26.)

My Lord, *Doctors' Commons, September* 22, 1863.

NETHERLANDS.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 15th September instant, stating that he was directed to transmit to me a letter from Mr. D. F. Duff complaining of the conduct of a notary in Holland, who is administering an estate out of which a sum of 200*l.* is due to Mr. Duff, and requesting the assistance of Her Majesty's Government in obtaining payment of this sum; and to request that I would furnish your Lordship with my opinion whether this is a proper case for the interference of Her Majesty's Government.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I do not think that this is a proper case for the interference of Her Majesty's Government. It is true that a notary public is an officer appointed by the Government, but it is not alleged, and I have no reason to believe, that his misconduct (if he has misconducted himself) is not a matter for which he can be made responsible before the proper tribunals of justice in Holland. If indeed this be not the case,—if his character of notary exempts him from the jurisdiction of any legal tribunal, and renders him amenable only to the Government, there might perhaps be a ground for the interference which Mr. Duff requests.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 349.

The Law Officers of the Crown to Earl Russell.—(*Received September* 24.)

My Lord, *Doctors' Commons, September* 24, 1863.

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 22nd September instant, stating that he was directed to transmit to us therewith the draft of a letter which your Lordship proposes to address to Mr. Mason relative to the alleged equipment in this country of vessels of war for the service of the so-styled Confederate States, and to request that we would take the same into consideration and furnish your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken this letter into consideration, and have the honour to report—

That we have considered the draft above referred to, and we are of opinion that, with the addition of a few words which we have ventured to make in the margin, a letter in the terms of that draft may properly be sent by your Lordship to Mr. Mason.

We have, &c.
(Signed) ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 350.

The Law Officers of the Crown to Earl Russell.—(*Received September* 25.)

My Lord, *Temple, September* 25, 1863.

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 7th instant, stating that with reference to our Report of the 27th of November last,* and to our previous Reports on the question of the restrictions imposed by the United States' Government on the trade between New York and the Bahamas, he was directed to transmit to us the correspondence which has since passed upon the subject between the British Government and that of the United States, and which is to be found partly in the printed papers recently presented to Parliament (copy of which was sent to us), and in the manuscript despatches which accompanied Mr. Layard's letter;† and Mr. Layard was to request that we would take this further correspondence into consideration, and furnish your Lordship with such observations as we may have to offer thereupon.

We are also honoured with Mr. Layard's letter of the 10th September, transmitting a despatch from Her Majesty's Chargé d'Affaires at Washington (No. 15), inclosing a copy of the answer returned by the United States' Government to the further remonstrance addressed by Lord Lyons to that Government, respecting the interference exercised by the United States' Government with the trade between New York and the Bahamas.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we agree with Lord Lyons (No. 699) that, so far as the question of cancelling the bonds is concerned, the particular grievance complained of may be considered to be now redressed.

We retain the opinion which we have expressed at great length in our former Reports, with respect to the original unlawfulness of requiring such bonds to be entered into by British merchants, and the inconsistency of such a proceeding with the Treaty obligations subsisting between Great Britain and the United States; and we continue to think that the real object and tendency of this measure is to innovate upon the established principles of international law, and to supply the deficiencies of an inadequate blockade by domestic legislation extended beyond the due limits, to the injury of the rights of neutrals under Commercial Treaties.

We may observe that, in spite of Mr. Seward's disclaimers as to this latter point, it is impossible, after reading the several Reports of Mr. Barney to Mr. Chase (that of the 23rd of June last, as well as the two at pages 32 and 39 of the printed papers, No. 14, 1863), and Mr. Seward's own note to Mr. Stuart of the 18th August, 1862 (ibid., page 31), to doubt the direct connexion between this measure and the blockade. It does not occur to us that we can add any observations to those which, upon this subject, we have already had the honour to address to your Lordship in our former Reports.

That the last replies of Mr. Chase and Mr. Seward to Lord Lyons appear to us to be insufficient and unsatisfactory, so far as they express the determination of their Government still to insist on bonds, by which the carriers of goods on shipboard for *bonâ fide* delivery to consignees at Nassau will be made responsible for any subsequent acts of these consignees with respect to such goods. That we still conceive the exaction of such bonds to be a denial to British subjects concerned in the trade with the Bahamas, of the rights secured to them by Treaty; and that we do not think it is any justification to say that if the subjects of the United States were to engage in the same trade, similar bonds would be exacted from them also. But that to enter into our reasons for this opinion, would be in effect to repeat the arguments set forth in our former Reports, which do not appear to us ever to have received any satisfactory answer from Mr. Seward.

We have, &c.
(Signed) WM. ATHERTON.
ROUNDELL PALMER.
ROBERT PHILLIMORE.

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* See Reports for 1862, page 290. † North America, No. 14; Lord Lyons, Nos. 679 and 686.

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No. 351.

The Queen's Advocate to Earl Russell.—(*Received September* 25.)

My Lord, *Doctors' Commons, September* 25, 1863.

UNITED STATES.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 19th September instant, stating that he was directed by your Lordship to transmit to me a despatch from the Acting British Consul at Charleston (No. 78, June 6th), inclosing, with other papers, a petition addressed to the Queen by a British subject, named Joseph Sweeney, in which he sets forth the circumstances of his arrest and imprisonment for twenty-four days in the common gaol at Marion, in South Carolina, and prays that a compensation of 50,000 dollars may be obtained for him; and Mr. Hammond was to request that I would take this case into consideration, and report to your Lordship my opinion thereupon.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That it appears that the petitioner had been in the Confederate military service; how or why he was so is wholly unexplained; but he appears to have endeavoured to conceal the fact from Her Majesty's Consul. It appears also that in the opinion of the Consul he was by his own petulant and foolish conduct, the real author of his own misfortunes.

I am of opinion that this is not a case in which Her Majesty's Government are called upon to interfere.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 352.

The Queen's Advocate to Earl Russell.—(*Received September* 25.)

My Lord, *Doctors' Commons, September* 25, 1863.

UNITED STATES.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 19th instant, stating that he was directed by your Lordship to transmit to me a despatch and its inclosure from Mr. Walker, the Acting British Consul at Charleston (No. 94, July 9), respecting the case of Mr. Thomas R. Duncan, a British subject, who is stated to have been arrested at Nashville on the 10th of last June, and after a confinement of three days in the State Penitentiary of Tennessee, to have been conducted beyond the pickets of the United States' forces, and ordered not to return on pain of being considered and dealt with as a spy; and Mr. Hammond was to request that I would take this case into consideration, and report to your Lordship my opinion thereupon.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That Mr. Duncan sympathises with the cause of the Confederate States, and that he has been employed by a Confederate quartermaster to assist him in balancing his accounts, are facts which Mr. Duncan admits.

I should have liked to have known more of the circumstances in which Mr. Duncan rendered this aid (apparently so foreign to his professional engagements as an actor) to the Confederate officer.

However, accepting the story of Mr. Duncan as *primâ facie* true, and assuming that he has really conducted himself as he states, his case is one which calls for explanation from the Government of the United States; and a consideration of the question as to his being entitled to any indemnity should, I humbly advise, be postponed until the answer of the United States' Government be received.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 353.

The Law Officers of the Crown to Earl Russell.—(*Received September* 28.)

My Lord, *Temple, September* 28, 1863.

ITALY AND GREAT BRITAIN.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 23rd of September instant, stating that he was directed by your Lordship to transmit to us a letter from Messrs. White, Broughton, and White, requesting that a proper officer from your Lordship's Department might be instructed to attend a Commission to be held by Mr. Kinnear, on the 2nd of October, in a suit between certain parties named Udny, and to produce the documents specified by them.

Mr. Hammond was also pleased to state that a similar application was made in January 1862, by Messrs. Bristow, in the same suit. This was referred to us: and, in conformity with the opinion expressed in our Report Mr. Hertslet, the Librarian of the Foreign Office, attended before the Commission in London appointed to collect evidence.

Mr. Hammond was also pleased to state that he had inclosed the correspondence on which our Report was founded; that, as regards the present application, he was directed by your Lordship to state to us that only three out of the nine papers specifically required were found in the records of the Foreign Office; and that he was directed by your Lordship to inclose those papers, and to request that we would take the matter into our earliest consideration, and favour your Lordship with our opinion as to the course which should be taken with respect to the present application of Messrs. White, Broughton, and White.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we are of opinion that the copies of the three letters which have been found in the Foreign Office may be produced by Mr. Hertslet before the Commission on the 2nd of October, and that Mr. Hertslet may be permitted to say that the other papers are not to be found in the archives of the Foreign Office.

We have, &c.
For the Attorney-General and myself,
(Signed) ROUNDELL PALMER.
R. J. PHILLIMORE.

No. 354.

The Law Officers of the Crown to Earl Russell.—(*Received October* 1.)

My Lord, *Temple, September* 29, 1863.

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 19th September instant, stating that he was directed by your Lordship to transmit to us a despatch and its inclosures from Her Majesty's Chargé d'Affaires at Washington (No. 17, August 28, 1863), relative to a claim for damages against the United States' Government, put forward by Mr. Wheelwright, as agent for the master and owner of the British schooner "Echo," which was captured, and afterwards released, by the United States' authorities; and to request that we would take this claim into our consideration, and report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That it is very difficult, without seeing the Judgment of the Prize Court and the reasons by which it was supported, to advise as to the impropriety or propriety of the sentence.

As far as we can judge (which we can do but imperfectly from the papers before us), this vessel ought to have been released with damages. We do not understand why, upon any principle of international law, the absence of a Consular certificate as to the ownership of a part of the cotton (which is not contraband) should have affected the question, unless the Prize Courts at Key West (as it appears to have done in other cases) proceeded upon the old rule

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of international law as to enemy's property in neutral bottoms. We do not at present think that in the circumstances of this case, the neglect to appeal would be a necessary bar to the official intervention of Her Majesty's Government; but we humbly advise that, before deciding on that point, further information should be obtained, including the sentence and reasons of the Judge, and the opinion of the Counsel who conducted the case for the owners of the "Echo."

We have, &c.
For the Attorney-General and myself,
(Signed) ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 355.

The Law Officers of the Crown to Earl Russell.—(Received October 1.)

UNITED STATES.

My Lord, *Temple, September* 29, 1863.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 19th instant, stating that with reference to our Report of the 5th ultimo,* he was directed by your Lordship to transmit to us the accompanying further papers relative to the liability to the conscription of—(1) British-born children of British parents who have become naturalized citizens of the United States during the minority of such children; and (2) the children born in the United States of British parents who have maintained their nationality; and to request that we would take these papers into our consideration, and favour your Lordship with any further observations which we might have to offer on the subject.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That it does not appear to us that these papers call for any observations on our part additional to those which we have had the honour of embodying in our former Report. We agree in substance with the opinions expressed on this subject by Mr. Attorney-General Bates.

We have, &c.
For the Attorney-General and myself,
(Signed) ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 356.

TURKEY.

Report on Claim of Mr. Tiano on Messrs. Bello & Piso, September 29, 1863.

[See Appendix.]

No. 357.

The Law Officers of the Crown to Earl Russell.—(Received October 3.)

TURKEY.

My Lord, *Temple, September* 30, 1863.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 23rd instant, stating that he was directed by your Lordship to transmit to us a letter from Mr. J. C. Mc Coan, inclosing on behalf of M. Falkeisen, Russian Vice-Consul at Brussa, a copy of the Judgment recently obtained by him in the Supreme Consular Court at Constantinople against Mr. Sandison, Her Majesty's Consul at Brussa, together with a copy of the plaint on which the Judgment in question was given; and with reference to the inability of the Supreme Consular Court to assist Mr. Falkeisen to obtain possession of his house at Brussa which is occupied by Mr. Sandison.

And Mr. Hammond was to request that we would furnish your Lordship with our opinion as to the steps which which may properly be taken in this matter.

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* Page 226.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That in the circumstances of this case, which show a clear wrong inflicted by the misconduct of Her Majesty's Consul upon the Russian Vice-Consul, which the Consular Court is, for technical reasons, unable fully to remedy, we think that the interference of your Lordship is not improperly invoked, and that it will be proper that Her Majesty's Consul should be apprised that he must without delay give up the house in question to the Russian Vice-Consul, whose equitable property it is now, by the result of the late judicial proceedings, proved to be; and that unless he do so your Lordship will be compelled to dismiss him from his office of Consul, as it is not right or expedient that one of Her Majesty's Consular Agents should be maintained in his office while he persists in wrongfully withholding from a foreigner, and the Vice-Consul of one of the States with which Her Majesty is in relations of amity, property which, according to the usage of the European residents in the Turkish dominions, and according to the terms of the express contracts between these parties themselves, undoubtedly belongs to him.

We have, &c.
For the Attorney-General and myself,
(Signed) ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 358.

The Queen's Advocate to Earl Russell.—(Received October 3.)

My Lord, *Doctors' Commons, October* 3, 1863.

UNITED STATES.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 25th September ultimo, stating that he was directed by your Lordship to transmit to me, with reference to my Report of the 24th of April,* together with the previous correspondence, the accompanying further papers respecting the case of Captain Sherwin;† and to request that I would take the same into consideration, and furnish your Lordship with my opinion thereupon.

In obedience to your Lordship's commands I have again taken this case into consideration, and have the honour to report—

That the answer of Mr. Seward does not appear to me satisfactory. He now justifies the arbitrary imprisonment of Captain Sherwin, on the ground that he was not a British subject of good character; and he presumes that he was not a British subject at all; that he commanded United States' merchant-vessels, which none but a United States' citizen may do; and that by taking certain passengers on board he made himself an aider and abettor of rebels.

I think that Lord Lyons should be instructed to make a further application to Mr. Seward to the following effect: that Her Majesty's Government cannot express satisfaction at any part of the reply of Mr. Seward, except that part which represents that his Government are willing to receive further evidence on the subject of the complaint of Captain Sherwin. That Her Majesty's Government have to observe that Captain Sherwin is a born British subject, born at Workington, in Cumberland; that he has never been naturalized, or taken any oath of allegiance to the Government of the United States; that he is therefore entitled to the protection of Her Majesty's Government, unless he has so misconducted himself as to have forfeited that title; that Her Majesty's Government can find no evidence of his having done so. That Mr. Seward asserts that he has commanded two American vessels, and therefore must have declared himself to be a citizen of the United States. That this turns out to be a complete error on the part of Mr. Seward, as the certificates relating to those vessels (which certificates ought to be forwarded to Mr. Seward) distinctly prove. That Mr. Seward appears to be equally in error as to the place of the purchase, and the reason of the sale of the "Dixie." It was bought according to the statement of Captain Sherwin in Philadelphia, with the intention of being sold in Havana; but this is a matter which really in no way affects the

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* Page 129.

† Lord Lyons. No. 675; to Captain Sherwin, August 20; Captain Sherwin, September 19, 1863.

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justice of Captain Sherwin's claim. That Captain Sherwin positively denied that he had any knowledge of the political character of the passengers whom he took upon the "Dixie." That there is no evidence to the contrary, that Her Majesty's Government are aware of. That the facts that he was detained twelve months in prison on a charge which could not be substantiated, and that he was released without trial, are uncontroverted; and that in this state of facts, Her Majesty's Government must strongly press on Mr. Seward, that to reply as he has done, that because there is a civil war in the United States, it is lawful for his Government to arrest and imprison for a whole year the subject of a foreign State upon a suspicion, which that Government is ultimately obliged to abandon, because it cannot be legally established, is a reply which Her Majesty's Government hope that Mr. Seward will, upon further consideration, be aware that no foreign State conscious of its duties towards its subjects, and capable of discharging those duties, can accept as satisfactory.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 359.

The Queen's Advocate to Earl Russell.—(Received October 7.)

Doctors' Commons, October 6, 1863.

My Lord,

TURKEY.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 1st instant, stating that he was directed by your Lordship to transmit to me the acompanying papers, as marked in the margin,* having reference to an application which had been made to Her Majesty's Consul at Trebizond, by his Russian colleague, to cause the detention, in order that she might be searched, of a steamer called the "Chesapeake," sailing under British colours, and supposed to be laden with ammunition for Circassia; and Mr. Hammond was to request that I would take these papers into consideration, and that I would furnish your Lordship with my opinion, both as to the course which the Consul pursued on the occasion, and also upon the instructions which have been sent to him from the Embassy at Constantinople, for his guidance, should any case of a similar nature occur again.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I am of opinion that Her Majesty's Consul at Trebizond took a correct view of his duty; and that the instructions of Sir H. Bulwer to him are, in substance, reasonable and proper.

It is obvious, however, that the Consul should be advised to act with very great caution and discretion, even in these exceptional cases in which his assistance is invoked by the proper territorial authorities.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 360.

The Queen's Advocate to Earl Russell.—(Received October 9.)

Doctors' Commons, October 8, 1863.

My Lord,

UNITED STATES.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 1st October instant, stating that he was directed by your Lordship to transmit to me the accompanying despatch and its inclosures from Her Majesty's Chargé d'Affaires at Washington (No. 52, September 13, 1863) respecting a claim preferred against the Government of the United States, by Mr. George Burrows on account of his imprisonment at Memphis in 1862; and to request that I would take this case into consideration, and furnish your Lordship with my opinion thereupon.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

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* Mr. Stevens, September 6, 7, and 10; Sir H. Bulwer, No. 421, 1863.

That there can be no doubt upon the evidence of the papers before me, that Mr. George Burrows has been grossly ill-treated, and is entitled to compensation from the United States' Government. His goods were seized, his trade destroyed, his health injured, his person imprisoned without trial or hearing upon evidence, now admitted to be utterly untrustworthy, and furnished by a detective officer who is about to be tried for his general misconduct. The United States' authorities are entitled to demand reasonable proof that Mr. Burrows is a British subject. The answer of Mr. Seward that there is no fund at present voted by Congress, wherefrom to defray the costs of a just compensation for injuries inflicted by the public officers of the United States upon innocent subjects of foreign States, is, of course, not an answer that can *per se* be accepted by the Governments of such States, though being coupled with the intimation that such a fund will be obtained from Congress at its next sitting, it furnishes a reason for waiting a reasonable period for the payment of such compensations.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 361.

The Queen's Advocate to Earl Russell.—(Received October 9.)

Doctors' Commons, October 8, 1863.

My Lord,

CHILE.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 2nd October instant, stating that he was directed by your Lordship to transmit to me a letter from Mr. Thomas Henwood, requesting your Lordship's interference to obtain for him redress for the alleged false imprisonment and cruel treatment of himself and his wife by the Chilian authorities of Sota; and to request that I would report to your Lordship my opinion as to whether this is a case which calls for the interference of Her Majesty's Government.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I do not think this is a case which calls for the intervention of Her Majesty's Government. It is clear that the character of the Henwoods is not good. The story of Thomas Henwood is repudiated by his own referee, and the Consuls at Talcahuana and Santiago have both considered the case and declined to interfere in it.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 362.

The Queen's Advocate to Earl Russell.—(Received October 9.)

Doctors' Commons, October 8, 1863.

My Lord,

MEXICO.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 3rd instant, stating that he was directed by your Lordship to transmit to me a correspondence, as marked in the margin,* respecting the seizure of the British vessel "Caroline Goodyear" at Matamoros by a French ship of war, on the ground that the arms which she is stated to have had on board were intended for the Mexicans, and that the "Caroline Goodyear" was therefore lawful prize.

And Mr. Hammond was to request that I would take this case into consideration, and that I would furnish your Lordship with my opinion thereupon, and also whether Her Majesty's Government should take any, and if so what, steps in the matter.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

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* Mr. Goodyear, September 1; to Lord Cowley, No. 1,088; Mr. Grey, No. 40; Admiralty, September 28, 1863.

That this vessel appears to have been seized by the French blockading force off the Boca del Rio, and to have had a cargo of arms on board ostensibly destined for the belligerents whose coasts the French force was blockading.

The vessel was, therefore, lawfully seized, and ought to have been sent for adjudication before a proper French Prize Court.

Such a Court, I presume, the French Consul at Vera Cruz has been duly commissioned to hold.

It is true that the letter of General Bec, and other documents, seem to prove that the arms were really destined for the Confederates, and such evidence may, probably, satisfy the Prize Court that the vessel ought to be released.

It is to be observed that in any case Mr. Goodyear's vessel carried contraband of war to *a* belligerent, and was intended to break *a* blockade.

I do not see any ground for the official interference of Her Majesty's Government in this matter.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 363.

The Queen's Advocate to Earl Russell.—(*Received October* 12.)

UNITED STATES.

My Lord, *Doctors' Commons, October* 9, 1863.

I AM honoured with your Lordship's commands, signified in Mr. Hammond's letter of the 5th October instant, stating that he was directed by your Lordship to transmit to me a despatch from Her Majesty's Chargé d'Affaires at Washington (No. 48, September 11th) relative to the capture by an United States' cruizer, off the bar of the Rio Grande, of the British brigantine "Atlantic," and to her subsequent recapture from her prize crew; and also a letter (dated the 30th September ultimo) from Mr. Hart, the owner of the "Atlantic," requesting to be informed whether he is entitled to redress for losses sustained in consequence of this occurrence, as well as on account of the capture of this vessel on a previous occasion; and Mr. Hammond was pleased to request that I would take these papers into consideration and furnish your Lordship with my opinion thereupon.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That this case does not, in my opinion, require the interposition of Her Majesty's Government. The crew of the "Atlantic" have rescued themselves and their ship, and, being in a neutral port, are of course safe from belligerent operations. Whether the vessel was wrongfully or rightfully seized, much depends upon a fact which, regard being had to the close vicinity of Texas to the place of seizure, is certainly not clear at present, viz., whether she was or was not at the time in Mexican waters. That is a matter which cannot now be judicially ascertained, as the vessel has forcibly released herself from the possession of the captor. Having taken the law into her own hands, she cannot now require Her Majesty's Government to inquire into the question whether the captor acted contrary to the law or not.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 364.

The Queen's Advocate to Earl Russell.—(*Received October* 12.)

UNITED STATES.

My Lord, *Doctors' Commons, October* 9, 1863.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 6th October instant, stating that with reference to the Report of the Law Officers of the 30th May last,* he was directed by your Lordship to transmit to me the inclosed correspondence regarding the case of a British seaman taken out of an American vessel at the Havana, by Captain Barnard, of Her Majesty's ship "Nile," on the ground that he was a deserter from the British Navy; and also the draft of the reply which your Lordship proposes to return to the last communication upon the subject from the Spanish Minister at this Court; and Mr. Hammond was pleased to request that I would take these papers into consideration, and furnish your Lordship with my opinion whether your Lordship's proposed reply is right and proper.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I am of opinion that the letter of your Lordship to the Spanish Minister is perfectly right and proper to be sent.

I have, &c.
(Signed) ROBERT PHILLIMORE.

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* Page 168.

No. 365.

The Queen's Advocate to Earl Russell.—(*Received October* 12.)

FRANCE.

My Lord, *Doctors' Commons, October* 10, 1863.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 7th October instant, stating that he was directed by your Lordship to transmit to me a despatch and its inclosures, received from Her Majesty's Chargé d'Affaires at Paris, on the subject of a complaint addressed to the British Embassy by Mr. Thomas Lavergne against certain judicial proceedings which had been instituted against him at Pau at the instance of his wife; and to request that I would take these papers into consideration, and furnish your Lordship with my opinion whether there is anything in the statement therein contained to call for further interference.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That though it is not easy to understand the reasoning which induced the Court at Pau first to admit that it had no jurisdiction in the case of a French wife married to an English husband, and then that it had authority to make the husband pay the wife 500 francs each month as alimony for neglect of marital duties, still I think there is no ground for the interference of Her Majesty's Government. If Mr. Lavergne chooses to marry a French wife, and take up his domicil in France, he must be subject to the law of that country upon the relations of husband and wife.

I presume also, that Mr. Lavergne may appeal from the sentence of which he complains, of which I observe it is not stated that his advocate disapproved.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 366.

The Law Officers of the Crown to Earl Russell.—(*Received October* 16.)

FRANCE.

My Lord, *Lincoln's Inn, October* 15, 1863.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 28th September ultimo, stating that he was directed by your Lordship to transmit to us a despatch from Her Majesty's Chargé d'Affaires at Paris (No. 79), inclosing a copy of a despatch from Her Majesty's Consul at Nantes, in which he requested to be informed whether he would be justified in solemnizing certain marriages, in which the condition of one month's residence within the Consular district, required by the Act 12 and 13 Vict., cap. 68, can only be fulfilled by one instead of by both the parties to the contract, and whether, if he is justified in performing such marriages, he may make a corresponding alteration in the Declaration marked D, required by the Act referred to; and to request that we would take this matter into our consideration, and favour your Lordship with our opinion as to the instructions which should be given to Mr. Consul Barrow.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That the answer to the question of Her Majesty's Consul at Nantes must be governed by the provisions of 12 and 13 Vict., cap. 68; that by sections 2 and 6 of that statute the residence of *both* parties for one calendar month previous to the celebration of the marriage by the Consul, whether with or without license, is rendered necessary, and that your Lordship has no power to authorize the Consul to dispense with this requisition of a residence of both parties.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 367.

The Law Officers of the Crown to Earl Russell.—(Reeeived October 19.)

United States.

My Lord, *Lincoln's Inn, October* 19, 1863.

WE are honoured with your Lordship's commands, signified in Mr. Hammond's letter of the 10th instant, stating that he was directed by your Lordship to inform us that your Lordship had found it necessary to give orders for the seizure of the steam-rams building at Birkenhead.

That the state of completion of one of those vessels, the arrival of a great part of the crew of the "Florida," the facility for escape, as shown by the letters of Captain Inglefield of the "Majestic," and the recent experience of the departure of the "Alabama" on a pretended trial trip, rendered this step urgently necessary.

And that he was now directed by your Lordship to transmit to us the accompanying papers.

Mr. Hammond was also pleased to state that we should observe that these vessels were (in contradiction to the opinion of Mr. Edwards, to which we naturally gave great weight in a former Report) built for the Confederates and their agent, Captain Bullock; that they were bought nominally for the Pasha of Egypt by M. Bravay, a French merchant; that the Pasha of Egypt at once declined to have anything to do with them; that, in spite of this refusal to purchase the vessels, their equipment and fittings were hurried on with unusual speed; that as the time approached when they would be ready for sea a great number of men forming part of the crew of the "Florida" arrived at Liverpool; that M. Bravay refused to sell the vessels to the British Government, and maintained that he was bound to send them to the Pasha of Egypt, who had positively refused to take them.

Mr. Hammond was also pleased to state that your Lordship desired him to call our particular attention to the following questions, as being of urgent importance at the present moment:—

1st. The vessels being, as stated, under seizure and in possession of the officers of the Customs, what answer should be given to parties who should inquire under what authority the seizures have been made? whether the answer should be "Under the Foreign Enlistment Act," or more generally, "Under the authority of the Commissioners of Customs acting under the orders of Her Majesty's Government," or "Under the orders of the Board of Treasury," or what other answer? And further, what parties are to be considered entitled to make inquiry and to receive an answer?

2ndly. Whether the vessels, being now under seizure and in charge of the Customs supported by a force of Marines, the workmen employed by Messrs. Laird should be allowed, if those gentlemen desire it, to continue on board and proceed with the completion of the vessels.

That Messrs. Laird, as we should see by their letter of Thursday previously to the seizure being actually effected, acquiesced in Custom-house officers being placed on board one of the vessels with authority to seize her under certain circumstances, which circumstances have since occurred, and their subsequent letter of the 9th instant, since the seizure was effected, would appear to imply a similar acquiescence. Under these circumstances, they would seem to a certain extent, to have been assenting parties to the seizure, and may, perhaps, be thereby precluded from maintaining an action against the Government, if the result of the proceedings to be hereafter taken for the condemnation of the vessels to the Crown should not uphold the seizure, although if the workmen were removed and the work of completion interrupted the case might be otherwise.

3rdly. What steps should now be taken for maintaining the seizure and securing condemnation?

Mr. Hammond was further pleased to state that he was directed by your Lordship to request that we would take these matters into our consideration without delay, and report our opinion upon the several points stated by him, and generally on the whole case, at our earliest convenience.

And that we should judge whether it might not be desirable to report separately upon the first and second points, which would seem more especially to call for immediate attention.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we are of opinion, with respect to the first question submitted to us, that the answer to parties who have a right to make the inquiry should be, that the seizure has been made by the orders of Her Majesty's Government, under the authority of the provisions of the Foreign Enlistment Act.

With respect to the second question, we are of opinion that it would be expedient to allow the workmen of Messrs. Laird to continue on board and proceed with the completion of the vessels, taking care to preserve evidence of the exact condition of the vessels at the time of seizure, and also letting it be understood by Messrs. Laird that whatever they may do is upon their own responsibility, and that Her Majesty's Government are not to be regarded as giving any sanction thereto, which may prevent them from offering evidence hereafter of anything which may be so done.

With respect to the third question, we are of opinion that the Solicitor to the Customs should be instructed forthwith to obtain the utmost amount of legal evidence, both as to the general facts, such as were proved in the case of the "Alexandra," and as to the particular circumstances of these vessels, which must of course be appraised before the filing of the information in the usual manner.

Attention should be particularly directed to the proof of those matters of which the Government have received information from their agents abroad, and especially from Consul Colquhoun and Captain Hore, for which purpose it may not improbably be necessary that a Commission should issue for the examination of witnesses in Egypt, France, and elsewhere.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

P.S.—Since preparing this Report we have received Mr. Hammond's letter bearing date the 15th instant, and its inclosures, with reference to which we propose to make a further Report.

R. P.
R. P. C.
R. J. P.

No. 368.

The Law Officers of the Crown to Earl Russell.—(Received October 19.)

United States.

Lincoln's Inn, October 19, 1863.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 30th September ultimo, stating that he was directed by your Lordship to transmit to us the accompanying letters and their inclosures from the Admiralty and Colonial Office, dated respectively the 26th and 29th September ultimo, relative to the proceedings at the Cape of Good Hope of the Confederate vessels-of-war "Georgia," "Alabama," and her reputed tender "Tuscaloosa;" and to request that we would take the various questions raised in these papers, and especially the opinion given by the Acting Attorney-General

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of that Colony with regard to the latter vessel, into our consideration, and favour your Lordship with such observations as we might have to make thereupon.

We are also honoured with your Lordship's commands signified in Mr. Hammond's letter of the 2nd October instant, stating that, with reference to his letter of the 30th ultimo, he was directed by your Lordship to transmit to us the accompanying letter, dated the 29th September ultimo, from Mr. Adams, relative to the proceedings of the "Alabama" off the Cape of Good Hope, and to request that we would take the same into our consideration, together with papers on this subject then before us, and favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report:—

That, so far as relates to the capture of the "Sea Bride" made by the "Alabama," it appears, as we understand the evidence, to have been effected beyond the distance of three miles from the shore; and as we have already had the honour to report to your Lordship, that distance must be accepted as the limit of territorial jurisdiction according to the present rule of international law upon that subject. It appears, however, that this prize, very soon after her capture, was brought within the distance of two miles from the shore; and as this was contrary to Her Majesty's orders, it might have afforded just grounds (if the apology of Captain Semmes for this improper act, which he ascribed to inadvertence, had not been accepted by Sir Philip Wodehouse) for the interference of the authorities of the Cape Colony upon the principles which we are about to explain.

Secondly, with respect to the "Alabama" herself, we are clearly of opinion that neither the Governor nor any other authority at the Cape could exercise any jurisdiction over her, and that, whatever was her previous history, they were bound to treat her as a ship-of-war belonging to a belligerent Power.

Upon the third point raised with regard to the vessel called the "Tuscaloosa," we are not able to agree with the opinion expressed by the Attorney-General of the Cape Colony, that she had ceased to have the character of a prize captured by the "Alabama" merely because she was, at the time of her being brought within British waters, armed with two small guns, in charge of an officer, and manned with a crew of ten men from the "Alabama," and used as a tender to that vessel, under the authority of Captain Semmes.

It would appear that the "Tuscaloosa" is a barque of 500 tons, captured by the "Alabama" off the coast of Brazil on the 21st of June last, and brought into Simon's Bay on or before the 7th of August, with her original cargo of wool (itself, as well as the vessel, prize) still on board, and with nothing to give her a warlike character (so far as appears from the papers before us) except the circumstances already noticed.

We therefore do not feel called upon, in the circumstances of this case, to enter into the question whether, in the case of a vessel duly commissioned as a ship of war, after being made prize by a belligerent Government, without being first brought *infra præsidia* or condemned by a Court of Prize, the character of prize, within the meaning of Her Majesty's Orders, would or would not be merged in that of a national ship of war. It is enough to say that the citation from Mr. Wheaton's Book by the Colonial Attorney-General does not appear to us to have any direct bearing upon this question.

Connected with this subject is the question as to the cargoes of captured vessels, which is noticed at the end of Sir Philip Wodehouse's despatch of the 19th August last. We think that, according to the true interpretation of Her Majesty's Orders, they apply as much to prize cargoes of every kind which may be brought by any armed ships or privateers of either belligerent into British waters as to the captured vessels themselves. They do not, however, apply to any articles which may have formed part of any such cargoes, if brought within British jurisdiction, not by armed ships or privateers of either belligerent, but by other persons who may have acquired or may claim property in them by reason of any dealings with the captors.

We think it right to observe that the third reason alleged by the Colonial Attorney-General for his opinion assumes (though the fact had not been made the subject of any inquiry) that "no means existed for determining whether the ship had or had not been judicially condemned in a Court competent of jurisdiction;" and the proposition that, "*admitting her to have been captured by a ship of war of the Confederate States*, she was entitled to refer Her Majesty's Government, in case of any dispute, to the Court of her States, in order to satisfy it as to her real character," appears to us to be at variance with Her Majesty's undoubted right to determine, within her own territory, whether her own orders, made in vindication of her own neutrality, have been violated or not.

The question remains, what course ought to have been taken by the authorities at the Cape, first, in order to ascertain whether this vessel was, as alleged by the United States' Consul, an uncondemned prize, brought within British waters in violation of Her Majesty's neutrality; and secondly, what ought to have been done if such had appeared to be really the fact? We think that the allegations of the United States' Consul ought to have been brought to the knowledge of Captain Semmes, while the "Tuscaloosa" was still within British waters; and that he should have been requested to state whether he did or did not admit the facts to be as alleged. He should also have been called upon (unless the facts were admitted) to produce the "Tuscaloosa's" papers. If the result of these inquiries had been to prove that the vessel was really an uncondemned prize, brought into British waters in violation of Her Majesty's orders made for the purpose of maintaining her neutrality, it would, we think, deserve very serious consideration whether the mode of proceeding in such circumstances, most consistent with Her Majesty's dignity and most proper for the vindication of her territorial rights, would not have been to prohibit the exercise of any further control over the "Tuscaloosa" by the captors; and to retain that vessel under Her Majesty's control and jurisdiction until properly reclaimed by her original owners.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 369.

The Law Officers of the Crown to Earl Russell.—(*Received October 20.*)

AUSTRIA.

My Lord, *Lincoln's Inn, October 19, 1863.*

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 1st October instant, stating that he was directed by your Lordship to transmit to us a despatch from Her Majesty's Ambassador at Vienna, relative to a question raised by the Registrar of Wills and Deeds at Dublin as to the validity of an affidavit taken before the Secretary of Embassy at Vienna; and to request that we would take this case into our consideration, and favour your Lordship with our opinion on the subject.

In obedience to your Lordship's commands we have taken this case into our consideration, and have the honour to report—

That we are unable to understand upon what grounds the Irish Registrar refused to register this deed.

It was clearly competent to the Secretary of the Embassy at Vienna to administer the oath in question, under the provisions of 18 & 19 Vict., cap. 42; and we think that an inquiry should be made through the proper channel, having for its object to ascertain why the Registrar declined to acknowledge the validity of an oath taken before the Secretary of the Embassy.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 370.

The Law Officers of the Crown to Earl Russell.—(*Received October* 21.)

UNITED STATES.

Lincoln's Inn, October 21, 1863.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 15th October instant, stating that, with reference to his letter of the 10th instant on the subject of the iron-clads under seizure at Liverpool, he was directed by your Lordship to transmit to us therewith further correspondence respecting those vessels to be considered with the other papers then before us.

We are also honoured with Mr. Hammond's second letter of the 15th instant, stating that he was directed by your Lordship to send us, confidentially, a copy of a despatch received from Her Majesty's Consul-General in Egypt respecting M. Bravay's communications with the Viceroy of Egypt on the subject of the iron-clads.

We are also honoured with Mr. Hammond's letter of the 19th instant, transmitting a copy of a letter dated 19th October instant from the Secretary of the Treasury, inclosing copies of two letters from Messrs. Laird, respecting the seizure of these vessels, and requesting to be allowed to take one of them on a trial trip. He was also pleased to inclose, for our complete information, in regard to what has passed with reference to these vessels, some further correspondence with the Board of Treasury.*

We are also honoured with Mr. Hammond's second letter of the 19th instant, transmitting a further paper relative to the iron-clads at Liverpool.†

We are also honoured with Mr. Hammond's letter of the 20th instant stating that, with reference to his letter of the 19th instant, inclosing a letter from the Treasury, with the letters of Messrs. Laird therein referred to, in which they apply for permission to make a trial trip with one of the iron-clads now under seizure, and without the presence on board of a guard to ensure her being brought back into port, he was to transmit to us a draft of a letter which your Lordship proposes to address to the Treasury in reply, and to request that we would take the same into consideration, and report to your Lordship our opinion thereupon.

We are also honoured with Mr. Hammond's second letter of the 20th instant, stating that he was directed by your Lordship to acquaint us, with reference to the latter part of our Report of the 19th instant, that your Lordship will be ready at once, and at any future time, to require the presence in England of Mr. William Grey, Secretary of Her Majesty's Embassy at Paris, and of Captain Hore, if we should wish to have any personal communication with them. That as regards Mr. Colquhoun, Her Majesty's Agent and Consul-General in Egypt, your Lordship would not wish to bring him over to England from Egypt until the trial comes on, and therefore if the evidence to be obtained from Egypt is desired before that time, a Commission might be sent. That there is a Legal Vice-Consul in Egypt, Mr. Albany Fonblanque, who might, if necessary, be employed on such a Commission, if Mr. Colquhoun should be incapacitated as a witness from being so.

We are also honoured with Mr. Hammond's third letter of the 20th instant, transmitting a copy of a letter from Messrs. Townshend and Jackson, of Birkenhead, to the Solicitor of the Treasury, respecting the exertions made by the builders to complete one of those vessels.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That with reference to Mr. Hammond's letter of the 15th instant, and to the papers previously sent to us, we wish to take this opportunity of observing that Her Majesty's Government appear to be in a position to justify the seizure of these vessels by sufficient evidence that they were originally intended for the Confederate States, and, if this fact should be established, we think it will be for the Messrs. Laird or M. Bravay to show, if they can, that there was such a real and *bonâ fide* transfer of the original contract to Mr. Bravay as gave him an independent control over the vessels and their destination; in which case the further question would arise whether M. Bravay, in fitting them out at Liverpool, had a fixed intention that they should be employed in the Confederate service. This question depending, as it in great measure may, upon moral and circumstantial evidence, makes it important to exclude, if possible, the supposition, which Mr. Colquhoun's letter of the 6th October still leaves in some degree open, that M. Bravay may really have contemplated a sale of these vessels to the Turkish, through the Egyptian Government, and it is very desirable that the communications between M. Bravay and the Pasha of Egypt should be brought to some definite conclusion, with respect to which our present information is not satisfactory, having regard more especially to the statement that the Pasha desired the designs of the vessels to be sent out to him for inspection.

With respect to Mr. Hammond's letter of the 20th instant, and the inclosed draft of your Lordship's proposed letter to Messrs. Laird, we are of opinon that the latter is right and proper to be sent. It might have been possible, consistently with the principle upon which Messrs. Laird are permitted to remain on board and complete the vessels, to allow a trial trip under sufficient precautions, without prejudice to the title of the Crown by seizure, and that course might have been recommended, if regard were principally paid to the risk of damages in the event of the seizure not being upheld. But, in all the circumstances of the case, we are not prepared to express any dissent from the conclusion at which your Lordship appears to have arrived.

With regard to Mr. Hammond's second letter of the 20th instant the communication therein contained had better in our opinion be reserved for future consideration, together with the whole subject of the evidence to be produced in support of the recent seizure.

We have, &c.
(Signed) ROUNDELL PALMER.
ROBERT P. COLLIER.
ROBERT PHILLIMORE.

No. 371.

The Law Officers of the Crown to Earl Russell.—(*Received October* 22.)

UNITED STATES.

Lincoln's Inn, October 21, 1863.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 13th instant, stating that he was directed by your Lordship to transmit to us therewith, for our information, a despatch which had been received from Her Majesty's Chargé d'Affaires at Washington (No. 82, September 28, 1863), inclosing a copy of a note which had been addressed to him by Mr. Seward, having special reference to the case of the steamer "Emma," but containing, at the same time, a satisfactory assurance that no captured neutral vessel will hereafter be appropriated by the United States' Government before condemnation.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we are of opinion that the letter of Mr. Seward is quite satisfactory upon this important subject and in harmony with the practice of our own Prize Courts.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 372.

The Queen's Advocate to Earl Russell.—(*Received October* 24.)

TURKEY.

Doctors' Commons, October 24, 1863.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 17th October instant, stating that he was directed by your Lordship to transmit to me the accompanying letter dated the 10th October instant, from the Inland Revenue Office, respecting the circumstances under which the Ottoman Consul-General at Manchester claims to be exempted from the payment of assessed taxes. Mr. Hammond was also pleased to inclose a memorandum which has been drawn up at the Foreign Office bearing upon the subject; and to request that I would take these papers into consideration, and furnish your Lordship with my opinion as to the course which Her Majesty's Government should pursue in the matter.

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* Treasury, October 15; to Treasury, October 16.

† Sir A. Paget, No. 218, October 15.

I am also honoured with Mr. Hammond's letter of the 20th October, transmitting three volumes of MS. correspondence (Turkey 1815, 1819, and 1820: Nos. 89, 93, and 96) containing the King's Advocate's Reports, and other papers relating to the claims of the Ottoman Consul-General at Manchester to exemption from payment of assessed taxes.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That unquestionably the privilege claimed by the Consul of the Porte is not inherent in his office, which is not of a diplomatic character, and does not enjoy the immunities incident to offices of that character. But the claim in this instance is put forward as founded upon the express provisions of a Treaty; and upon the consideration of this claim three questions appear to arise: First, was it within the competence of the Crown, without the sanction of Parliament, to contract such an obligation by Treaty? Secondly, did the original Treaty profess and intend to confer the immunity which is claimed? Thirdly, has this Treaty been abrogated by any subsequent Convention? With respect to the first and second questions, they appear to have already received an affirmative answer from His Majesty's Law Officers. For it appears that on the 14th of February, 1820, His Majesty's Government were satisfied, upon the Report of the Law Officers (who, or at least one of them, His Majesty's Advocate, had previously entertained a different opinion), that the Consul of the Ottoman Porte was entitled to the privilege of exemption from the payment of taxes; and I assume (and if there be any doubt as to this point, it should be clearly ascertained) that as a matter of fact this privilege has been accorded to him up to the present time. With respect to the third question, I am of opinion that the provisions contained in the VIIIth Article of the Treaty of Dardanelles (5th of January, 1809) are not abrogated by any provisions in the subsequent Treaties of Balta Liman (16th August, ~~1858~~) and Kanlidja (29th April, 1861). 1838

Upon the whole question, I do not dissent from the opinion expressed by the former Law Officers. It is certainly not competent to the Crown, without the sanction of Parliament, to make Treaties of Reciprocity, the execution of which would infringe the Common or Statute Law of the land; but this is not, I think, a Treaty of that kind. It is true that Treaties of this kind make the country with which they are made *pro tanto* the lawgiver to this country, and may give rise—though not necessarily I think—to awkward questions relating to the favoured nation clause with other States. Nevertheless, if it be satisfactorily proved that the Consuls of Her Majesty in Turkey are now enjoying the immunity which the Ottoman Consul now claims, I do not see how, consistently with good faith, it can be denied to him.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 373.

The Law Officers of the Crown to Earl Russell.—(*Received October* 27.)

Lincoln's Inn, October 24, 1863.

My Lord,

Peru.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 13th instant, stating that with reference to our Report of the 18th ultimo upon the statement of Her Majesty's Government respecting the claims of Mr. Melville White, he was directed by your Lordship to transmit to us a translation of the counter-statement on behalf of the Peruvian Government, and to request that we would furnish your Lordship, at our early convenience, with our opinion, whether it contains anything which calls for a reply on the part of Her Majesty's Government, and if so, what that reply should be.

A printed copy of the statement of Her Majesty's Government was sent therewith in case we should wish to refer to it.

In obedience to your Lordship's commands we have considered this case, and have the honour to report—

That it does not appear to us that the statement of the Peruvian Government requires any reply on the part of Her Majesty's Government. It seems to us to admit that the Peruvian Government proceeded throughout upon mere hearsay of the loosest and most frivolous character, and to contain no real answer to any of the material facts on which Captain M. White has founded his claim for compensation.

It manifestly misrepresents the tenor and effect of the final sentence in Captain White's case; but on this point that document (which is printed in the Appendix to the case of Her Majesty's Government) will speak for itself.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 374.

The Law Officers of the Crown to Earl Russell.—(*Received October* 26.)

Lincoln's Inn, October 26, 1863.

My Lord,

United States.

WE are honoured by your Lordship's commands signified in Mr. Hammond's letter of the 24th instant, stating that he was directed by your Lordship to transmit to us the accompanying letters from the Admiralty inclosing copies of Reports (dated the 24th October instant) received from Captain Inglefield on the question as to allowing the workmen to continue on board the iron-clads which have been seized at Birkenhead, and to request that we would take the same into consideration and favour your Lordship with our opinion, at our early convenience, with reference to the course which should be adopted in respect to the ill-feeling displayed by the workmen in Messrs. Laird's yard, as stated in these Reports.

Mr. Hammond was also pleased to state that he inclosed a draft of a letter which had that day been addressed to the Admiralty, from which we should see that your Lordship has expressed your willingness to be guided by Captain Inglefield's opinion as to the continuance of the work on these vessels.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That the answer returned to the Admiralty by your Lordship appears to us to be quite proper, and in accordance with our former advice.

With respect to the ill-feeling displayed by the workmen in Messrs. Laird's yard, it does not appear to us that any measure is necessary to be taken, beyond those precautions against any outbreak, which (as we presume), the authorities upon the spot must be prepared and able to take.

So far as relates to any attempt to retake possession of the vessel, we collect, that Captain Inglefield is confident of his means of preventing such an attempt, if made; and if any other breach of the peace should be attempted (which we hardly anticipate), we think it must be dealt with by the civil authorities in the usual way.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 375.

The Law Officers of the Crown to Earl Russell.—(*Received October* 26.)

Lincoln's Inn, October 26, 1863.

My Lord,

United States.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of this day's date, stating that he was directed by your Lordship to transmit to us therewith, with reference to his letter of the 24th instant, a copy of a further letter from the Admiralty, together with a copy of the letter from Captain Inglefield of Her Majesty's ship "Majestic" therein referred to, by which we should see that serious apprehensions are entertained lest an attempt should be made to run away with one or both of the iron-clads now under seizure at Birkenhead, and to request that we would take this matter into our immediate consideration, and report to your Lordship our opinion at our earliest convenience as to the course which under the circumstances set forth in the inclosed papers should be adopted.

Mr. Hammond was also pleased to state that he, at the same time, inclosed a letter from the Treasury, covering a further application from Messrs. Laird to be allowed to make a trial trip with the iron-clad No. 1; and that your Lordship would be glad to have our opinion on this point also.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That it is of course for Her Majesty's Government to exercise their discretion as to the existence of sufficient practical reasons for displacing the workmen and removing these vessels from their present position at Birkenhead, a course which we should not have recommended except in circumstances of an extraordinary character.

Assuming, however, that Her Majesty's Government are satisfied of the existence of such reasons, we are of opinion that it is competent to them to direct those vessels to be detained in any place which the Commissioners of Her Majesty's Customs may think fit to order under sec. 223 of 16 and 17 Vict. cap. 107 (the Customs Law Consolidation Act), which is incorporated by reference into the Foreign Enlistment Act, 59 Geo. III, cap. 69, sec. 7.* Before doing so, however, or at least as nearly at the same time as possible, we think that such a notice, in writing, of the seizure and of the grounds thereof as is contemplated by section 226 of the same statute should be given (if this has not already been done), by the seizing officer, to Messrs. Laird, and also by letter, to be sent in due course by post, to M. Bravay. With respect to Messrs. Laird's renewed application for a trial trip, we presume that your Lordship sees no reason, especially considering the circumstances disclosed by Captain Inglefield's letter, to alter your former determination; and, therefore, that the answer to that application will be in the negative.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 376.

The Law Officers of the Crown to Earl Russell.—(*Received October* 26.)

My Lord, *Lincoln's Inn, October* 26, 1863.

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 24th instant, stating that he was directed by your Lordship to transmit to us the accompanying correspondence† respecting a screw-steamer vessel called the "Canton" which is in course of construction in the yard of Messrs. Thomson at Glasgow, and which is alleged to be intended for the service of the so-styled Confederate States.

Mr. Hammond was also pleased to state that we should see from the Report of the Collector of Customs at Glasgow, that the vessel in question is stated to be building for Mr. Pembroke of Austin Friars, and that he was directed by your Lordship to request that we would favour your Lordship with our opinion whether it would be proper to ask Mr. Pembroke whether he will state for what purpose the vessel is being constructed.

We are also honoured with your Lordship's commands signified in Mr. Hammond's further letter of the 24th instant, stating that with reference to his letter of that day's date he was directed by your Lordship to transmit to us the accompanying further letter and its inclosures respecting the case of the "Canton."*

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* The ground stated should be, "a violation of the seventh section of the Foreign Enlistment Act."—R. P. (for self and colleagues).

† Mr. Adams, October 17; to Treasury and Home Office, October 19; to Mr. Adams, October 19; to Admiralty, October 19; Treasury, October 22; Admiralty, October 23.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That the description of this vessel given in Mr. Underwood's letter of the 15th instant is such as to make it clearly proper that Her Majesty's Government should use all legitimate means to ascertain her true character and destination; and as it is stated by Mr. Hart in his letter of the 23rd instant to Sir Archibald Alison, that Mr. Thomson "appears quite ready to show the building contract, and give any information of which he is possessed," it appears to us to be, perhaps, desirable that all the informotion which Mr. Thomson is able and willing to give, should be obtained before any application is made to Mr. Pembroke. Subject however to this remark, we see no objection to the the course proposed by your Lordship of inquiring from Mr. Pembroke whether he is willing to state for what purpose this vessel is being constructed.

We take notice that Mr. Underwood refers to the Scotch law as affording greater facilities than the English for conducting a preliminary investigation into cases of this kind, and as authorizing "an inquiry and interrogation under oath of the party immediately implicated." Your Lordship will doubtless be advised upon this and all other points arising in cases of the same kind in Scotland by the proper Law Officers of the Crown for that part of the United Kingdom.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 377.

The Law Officers of the Crown to Earl Russell.—(*Received October* 27.)

Foreign Office, October 26, 1863.

My Lord,

UNITED STATES

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 16th instant, stating that with reference to our Report of the 11th ultimo, he was directed by your Lordship to transmit to us, together with the previous papers, the accompanying despatch from Her Majesty's Consul at New York (No. 180, September 26, 1863), inclosing copies of the proceedings in the United States' Prize Court in the case of the "Peterhoff," and was to request that we would take the same into our consideration, and furnish your Lordship with any observations we may have to offer thereupon.

In obedience to your Lordship's commands we have considered the proceedings in this case, and have the honour to report—

That a perusal of the evidence does not induce us to change the opinion which we have had the honour to express, as to the inexpediency of any official intervention on the part of Her Majesty's Government in the present stage of this case.

The evidence is certainly not "clearly and unequivocally inadequate to sustain the sentence," but on the contrary, in various particulars tends to sustain it; such as the false swearing of the master, or at least the palpable equivocation and disingenuousness of his evidence, the throwing overboard of papers, the contents of which are said to be unknown, at the moment of capture; the incredible and conflicting suggestions (in the absence of a true explanation which the claimants might have obtained) as to their contents, and the character of certain portions of the cargo, to say nothing of the letter of Messrs. Bennett and Wake (pages 139, 151, of printed evidence) which we presume was made evidence in the cause.

We have not, however, before us any Judgment *in extenso*, but little more than a formal Decree of the Judge of the Prize Court.

We cannot, therefore, tell with certainty upon what particular portions of the evidence, or what specific facts, he founded that Decree.

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* Home Office, October 24, 1863.

We presume, however, that a case of so much importance and so elaborately argued, has been, or will be, accompanied at some time or other by a further and more reasoned Judgment. Therefore, without expressing any positive opinion that the sentence was unquestionably right, we are clearly of opinion that it is not one which Her Majesty's Government ought to make the subject of an exceptional official intervention with the Executive of the United States, but for which the claimants, who consider themselves aggrieved, should resort to the usual and proper remedy of an appeal to the Supreme Court.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 378.

The Queen's Advocate to Earl Russell.—(Received October 27.)

My Lord, *Doctors' Commons, October* 26, 1863.

MEXICO.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 23rd of October instant, stating that he was directed to transmit to me a despatch from the British Vice-Consul at Vera Cruz (No. 26, September 7th), inclosing a notification by the Commander-in-chief of the French naval forces, announcing the blockade on the 6th ultimo of the coast of the Gulf of Mexico by the forces under his command, and to request that if I should consider this notification to be sufficient, I would draw up and transmit to your Lordship a form of notice for insertion in the "London Gazette."

In obedience to your Lordship's commands I have taken the papers into consideration, and have the honour to report—

That the notification of the Commander-in-chief of the French naval forces appears to me to be sufficient, and I have the honour to transmit to your Lordship a form of notification for insertion in the "London Gazette."

I have, &c.
(Signed) ROBERT PHILLIMORE.

Inclosure in No. 378.

Notification of Blockade.

Foreign Office, October 27, 1863.

IT is hereby notified that Earl Russell, Her Majesty's Principal Secretary of State for Foreign Affairs, has received from Her Majesty's Vice-Consul at Vera Cruz a notification addressed to him by the Commander-in-chief of the French naval forces in the Gulf of Mexico, and dated the 5th of September, 1863, of the blockade by the French naval forces on and from the 6th of September, 1863, of the coast of the Gulf of Mexico, with the exception of Tampico, Vera Cruz, Alvarado, Goatzacoalcos, Tabasco, and Carmen. The following is the official communication received by Earl Russell:—

[Here insert a verbatim copy of the original notification; then a correct translation of the same.]

R. J. P.

No. 379.

The Law Officers of the Crown to Earl Russell.—(Received October 28.)

My Lord, *Lincoln's Inn, October* 27, 1863.

UNITED STATES AND BRAZIL.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 12th instant, stating that he was directed by your Lordship to transmit to us therewith a letter from the Admiralty, together with two despatches from Her Majesty's Consul at Rio de Janeiro,* respecting the threatened seizure by Federal cruizers of three vessels, the "Abigail," "Fanny Crenshaw," and "Ann E. Grant," which were originally the property of persons residing in the so-called Confederate States, but which have since been sold by public auction in pursuance of a sentence passed by the Brazilian Law Courts, and purchased by Messrs. Phipps, Brothers, and Co., British merchants at Rio de Janeiro, on account of Mr. Barten Fletcher Allen, of Liverpool; and Mr. Hammond was to request that we would take these papers into consideration, and furnish your Lordship with our opinion thereupon.

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* Admiralty, October 5; Consul Westwood, No. 29, August 22; and No. 30, September 7, 1863.

We are also honoured with Mr. Hammond's letter of the 21st instant, transmitting to us a further despatch and its inclosures from Her Majesty's Consul at Rio de Janeiro (No. 34, September 23 1863) relative to this case.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we assume from the papers before us, and especially the letter of the 14th September, 1863, to the Marquis d'Abrantes (Inclosure 3 in No. 34), that these vessels were, in pursuance of a sentence of the Brazilian Court of Admiralty, rightly exercising its jurisdiction over the subject matter, duly sold and conveyed to the British owners, and, as far as we are able upon the evidence before us to form an opinion, the title of these persons to the vessels in question appears to be perfectly valid and good, according to the recognized principles of public and private law.

With respect to the threatened seizure of these vessels by the Federal cruizers, and the attempt to seize the "Gracie" by the Federal steamer "Mohican," and the course which should be pursued in such circumstances by Her Majesty's ships and by Her Majesty's Government, we have to observe as follows:—

First, apart from any consideration relating to the unneutral use of the neutral port by the United States' ships, it is the undoubted right of the belligerent to seize upon the high seas, and bring in for adjudication, ships which, having belonged to his enemy at the breaking out of the war, have been transferred to a neutral. It is within the legitimate province of the Prize Court to inquire into the validity of the title to the vessels so transferred.

In the last war our Prize Court condemned many Russian vessels transferred to Danish subjects after the breaking out of the war, in circumstances which led to the judicial conclusion that there had been no *bonâ fide* transfer of the vessels.

The evidence in the present case ought (as we assume, and as there is every reason to believe) to induce a Prize Court to arrive at an opposite conclusion; but, nevertheless, the right of the belligerent to seize, and of the Prize Court to inquire and adjudicate, remains.

We therefore think that Her Majesty's ships ought not to convoy these vessels, or to interfere upon the high seas with the exercise of this belligerent right by the United States' ships.

But though the general principles of international law necessarily lead us to this opinion, we are equally clear in our opinion that the particular circumstances of this case require Her Majesty's Government to make them the subject of a special and immediate communication to the Government at Washington, and more especially upon the two following grounds:—

1. The tenor and nature of the claim put forth by General Webb (letter to Her Majesty's Consul Westwood, 27th August, 1863, Inclosure No. 2 in Consul Westwood's despatch), namely, that all the property of the Confederates became, at the breaking out of the war, *ipso facto*, forfeited to the United States; a doctrine wholly inconsistent with general principles of law, and also with the recognition of the status of belligerent universally accorded both to the Confederates and the United States, and leading to consequences, of which the present case is an example, not to be tolerated by neutral States.

2. The unneutral use of the neutral Brazilian waters.

We have in various former Reports had the honour to express our opinion upon this subject.

The unlawfulness of lying in wait in a neutral port for a belligerent vessel about to sail from that port is unquestionable, and has not indeed, we believe, been denied by the United States' Government.

In the present case it calls for a double remonstrance; first, to the Brazilian, and secondly, to the United States' Government.

It appears to us that the letter of Her Majesty's Consul, Mr. Westwood, to the Marquis d'Abrantes upon this part of the case was extremely proper.

We are not in a condition to offer any opinion upon the subject of the last civil embargo imposed by the Brazilian authorities upon these vessels.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 380.

The Queen's Advocate to Earl Russell.—(*Received October* 28.)

Doctors' Commons, October 27, 1863.

My Lord,

ITALY.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 23rd instant, stating that he was directed by your Lordship to transmit to me a despatch from Her Majesty's Consul at Leghorn, in answer to one addressed to him* (the draft of which was therewith inclosed), instructing him to inform your Lordship whether it would not be for the convenience of British subjects at Florence that the British Vice-Consul in that city should be furnished with a warrant under the hand of Her Majesty's Secretary of State, in order to enable him to celebrate marriages in accordance with the provisions of the Act 6 Geo. IV, cap. 87 (?)

Mr. Hammond was pleased to inclose a memorial from the British residents at Florence, praying that the arrangement in question may be carried into effect, and stated that we should see that Mr. Consul Macbean, while admitting that this arrangement might be convenient, raises a doubt as to whether the present facilities in regard to the residence of the contracting parties which he states are afforded by the marriage being performed at the British Consulate might not be affected if the marriage were performed by the British Vice-Consul at Florence, who has no Consular jusisdiction; whereas the whole of Tuscany is assumed to come within Mr. Macbean's Consular district.

Mr. Hammond was to request that I would take this point into consideration, and furnish your Lordship with my opinion thereupon.

In obedience to your Lordship's commands I have taken this point into consideration, and have the honour to report—

That if Mr. Proby were to receive the warrant in question, he would be a Vice-Consul authorized by one of Her Majesty's Principal Secretaries of State to solemnize marriages in a place where there was no Consul resident, and the Vice-Consul's marriage district would be limited to the place of his residence.

But inasmuch as there is a Consul at Leghorn whose marriage district now extends, it is said, to the whole of the ancient province of Tuscany, in the limits of which Florence, the particular place of the Vice-Consul's residence, is included, a question of some nicety as to the construction of the 2nd and 19th sections of the statute (12th and 13th Vict. cap. 68) taken together would arise, namely, whether the place allotted by warrant to the Vice-Consul was or was not thereby exempted from the district of the Consul within which it had been, not by virtue of, but in the absence of, any specific direction (under the terms of section 19 of the statute), previously included.

I incline to the opinion that such would be the consequence of granting the warrant to the Vice-Consul, and that the Consul's marriage district would in this case be curtailed of Florence. If so, and the warrant were granted to the Vice-Consul, parties, both or one of whom had been resident at Florence a month before the marriage could not any longer, as now, be married at Leghorn, because by the 2nd section of the statute, *both parties* must have dwelt for one calendar month in the district of the Consul who marries them.

Whether any practical inconvenience would follow from such a consequence, I can of course form no opinion.

I presume that since the incorporation of Tuscany into the Kingdom of Italy no alteration has been made in the appointment of the Consul.

I have, &c.
(Signed) ROBERT PHILLIMORE.

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[*] To Consul Macbean, No. 9, September 12, 1863; Consul Macbean, No. 19, October 14, 1863.

No. 381.

The Law Officers of the Crown to Earl Russell.—(*Received October* 28.)

Lincoln's Inn, October 28, 1863.

My Lord,

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 22nd October instant, stating that he was directed by your Lordship to transmit to us therewith the draft of a letter which your Lordship proposes to address to Mr. Adams, and which is founded on the opinion contained in our Report of the 19th instant,* on matters connected with the proceedings of the Confederate steamer "Alabama" at the Cape of Good Hope; and to request that we would take the same into our consideration, and favour your Lordship with any observations we might have to make thereupon.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we are of opinion that the letter is right and proper to be sent. It does not occur to us to make any observations upon the case to which it refers beyond those which we have had the honour of submitting to your Lordship in our former Report.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 382.

The Law Officers of the Crown to Earl Russell.—(*Received October* 28.)

Lincoln's Inn, October 28, 1863.

My Lord,

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 23rd instant, stating that with reference to his letter of the previous day's date (upon which we have made a separate Report), he was directed by your Lordship to transmit to us the accompanying further papers† relative to the case of the "Alabama," for our consideration.

In obedience to your Lordship's commands we have considered these further papers, and have the honour to report—

That it does not appear from the letter of Admiral Walker (17th September, 1863, No. 214), which we think ourselves bound to accept as containing the true history, that Captain Semmes has committed any breach of Her Majesty's Proclamation of Neutrality since the occasion referred to in our last Report.

The "Sea Bride" put into Saldanha Bay from stress of weather, and therefore under a necessity acknowledged by international law to constitute an exceptional case. The sale of the "Sea Bride" at Angra Pequena, which is not, we believe, in Her Majesty's dominions, though to a subject of Her Majesty, was not a breach of neutrality.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 383.

The Law Officers of the Crown to Earl Russell.—(*Received October* 31.)

Lincoln's Inn, October 31, 1863.

My Lord,

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 15th instant, stating that with reference to onr Report of the 12th of May last,‡ respecting the case of the "Labuan," he was directed by your Lordship to transmit to us, for our information, the accompanying despatch,

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[*] Page 271.

[†] Admiralty, October 21, 1863.

[‡] Page 152.

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and its inclosures, from Her Majesty's Chargé d'Affaires at Washington (No. 81, September 28, 1863), reporting the steps which he has taken in consequence of a delay in prosecuting to a decision before the Prize Court the question of damages and costs in the case of this vessel.

We are also honoured with Mr. Hammond's letter of the 19th instant, transmitting to us a further despatch from Mr. Stuart respecting the "Labuan" (No. 85, October 2, 1863).

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That the steps taken by Mr. Stuart to obtain a decision in the matter of the costs and damages of the "Labuan" appear to us to be perfectly proper and right.

We agree with him in thinking that the proceeding on the part of the United States' Attorney-General is at variance with the promise of Mr. Seward; and we also think that it is not in accordance with the usual practice of Prize Courts. According to that practice, as we have already observed in former Reports, evidence might properly be admitted before Commissioners appointed by the Court, limited to the purpose of ascertaining the amount of damages really sustained; but, after sentence upon the merits in the principal cause, to allow fresh evidence to be admitted as to the principle and law of the case (to which alone, it would appear to us, the evidence suggested by the United States' Attorney-General would apply) is, we believe, without precedent in the practice of Prize Courts in England or America, and fraught, in the present case, with manifest injustice.

It must be remembered that Her Majesty's Government have throughout maintained the position that the peculiar circumstances of this case rendered it an affair between the two Governments, and that it was pointed out to the United States' Government that to refer the case to the Prize Court would be attended with no other consequences than an increase of costs and expenses, and the infliction of further injury of delay in redress to the claimant.

We certainly cannot advise your Lordship that the Government ought to take any steps as to obtaining evidence to rebut that which it is now proposed to adduce. We think that Lord Lyons should apprise Mr. Seward that, though the question of the *amount* of damages may be open to further evidence, Her Majesty's Government consider that the principle is not open to controversy; that, therefore, the evidence which it is proposed to adduce appears to them wholly irrelevant; and that they much regret, after all that has passed, the additional injury of further delay now inflicted upon the claimants.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 384.

The Law Officers of the Crown to Earl Russell.—(Received October 31.)

My Lord, *Lincoln's Inn, October* 31, 1863.

ARGENTINE CONFEDERATION.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 24th instant, stating that he was directed by your Lordship to transmit to us two despatches and their inclosures from Her Majesty's Chargé d'Affaires at Buenos Ayres (Nos. 78 and 84), upon the subject of a project of law which has been recently submitted to the Argentine Congress, by which all persons born within the Confederation are declared to be Argentine citizens, whatever may be the nationality of their parents; and Mr. Hammond stated that we should perceive from the former papers therewith transmitted to us that the question of the nationality of the children of foreigners has been previously raised in Buenos Ayres, in the Argentine Confederation, and in the Republics of Central America, and that it has been generally settled by an amicable arrangement, by which the children of British parents have, at all events, been exempted from military service. That, as regards the Argentine Republic, a law was passed in 1857, before the incorporation of Buenos Ayres into the Confederation, which granted to the children of foreigners the privilege of choosing their nationality at a certain age. That by the provisions of the project of law, this privilege would be abolished, and the son of an Englishman born within the Argentine Republic would be liable to be drawn for military service.

Mr. Hammond was therefore to request that we would take these papers into our consideration, and furnish your Lordship with our opinion upon this measure of the Argentine Government, and as to the course which Her Majesty's Government should pursue with the view of relieving, as far as possible, the children of British subjects from the operation of such a law.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we abstain from entering upon any discussion of the general principles applicable to these cases of double allegiance, as they appear to have been fully discussed in the former Reports of the Law Officers of the Crown.

That with respect to the particular case before us, we are of opinion that Mr. Doria has protested, on proper grounds, against the retrospective application of such a law as that in question to children of British fathers.

We observe that Mr. Thornton, in his letter of the 8th of October, suggests that there are not, in fact, any adult persons of this class in the Argentine dominions who have availed themselves of the option given to them by the Law of 1857, to elect to be deemed British and not Argentine subjects. But still (assuming this to be so) there may be, and probably are, others still in their minority whose time for making their election under that law has not yet arrived.

We are not prepared, however, to advise your Lordship that even this part of the law is *ultra vires* of the Argentine Confederation: it cannot be put higher than a breach of comity towards Great Britain. With regard to the future operation of the law, we have no doubt that it was competent to the Argentine Republic to pass the law in question, though the previous state of the law, giving the option to the children of British fathers, was certainly preferable; and we think it would be desirable to endeavour to obtain, by renewed negotiation, the restoration of that state of the law.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 385.

The Queen's Advocate to Earl Russell.—(Received November 6.)

My Lord, *Doctors' Commons, November* 4, 1863.

ECUADOR.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 30th October ultimo, stating that, with reference to my Report of the 13th April last,* respecting Mrs. Abitbol's claim upon the Government of Ecuador, he was directed by your Lordship to transmit to me a despatch and its inclosures from the Acting British Chargé d'Affaires in Ecuador, (No. 28), stating that the Government of the Republic refuse to entertain Mrs. Abitbol's claim on the ground that the limit of time for the conversion of Columbian bonds fixed by the Law of the 5th of February, 1846, and subsequently extended by a Decree of the 18th of December, 1848, constitutes a bar to the recognition of any such bonds not converted within the prescribed period; and Mr. Hammond was to request that I would take this despatch, together with the previous papers, into consideration, and furnish your Lordship with my opinion on the course which Her Majesty's Government should now pursue in this matter, and whether they would be justified in continuing to claim the payment of the bonds held by Mrs. Abitbol, as advised in my previous Report.

In obedience to your Lordship's commands I have taken this despatch into consideration, and have the honour to report—

That the answer of the Government of Ecuador to the claim of Mrs. Abitbol is not satisfactory. Apart from the consideration of the particular law referred to, the obligation of this State to pay its quota of the debt

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* Page 111.

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contracted by the original Republic of Columbia, in which it was incorporated at the time when the debt was contracted, appears not to be directly controverted.

It is manifest, however, that this proposition of public law has an important bearing upon the case of Mrs. Abitbol. It is founded upon reason and justice, and supported by the highest authorities upon international law. "Contra autem evenit," says Grotius, "ut quæ una civitas dividatur aut consensu mutuo aut vi bellicâ . . . . . Quod cum sit plura pro uno existient summa imperia, cum suo jure in partes singulas. Si quid autem commune fuerit, id aut communiter est administrandum, aut pro ratis portionibus dividendum."

Not less applicable are the modern but high authorities of Mr. Chancellor Kent and Mr. Justice Story. "If a State should be divided," says the former, "in respect of territory, its rights and obligations are not impaired: and if they have not been apportioned by special agreement, those rights are to be enjoyed, and those obligations fulfilled by all the parts in common." So Mr. Justice Story:—"It has been asserted as a principle of the common law that the division of an Empire creates no forfeiture of previously vested rights of property; and this principle is equally consonant with the common sense of mankind and the maxims of eternal justice."

The main proposition being so certain, it remains to consider whether one of these component States can put a bar to the satisfaction of a just debt by fixing a period of time within which it must be demanded. I offer no positive opinion with respect to the justice of such a law in its operation upon the subjects of that State. It may be admitted, so far as this case is concerned, that it is absolutely, whether morally or not, competent to the State so to extinguish vested rights of property in its own citizens. But in the case of a debt due to a foreign State or subject, I am not aware of any principle of reason or justice, or any dictum of authority which enables the debtor State to cancel its obligation to a foreign creditor by importing an *ex post facto* condition, without the consent of the foreign creditor, into the original obligation. I am of opinion that this cannot lawfully be done. In the present case the injustice is aggravated by the shortness of the period of limitation; the notoriously disturbed and confused political state of the new community; the difficulties incident to foreigners resident in a distant country, of tracing out both the claim which they perhaps inherited, and the place of deposit of the instruments which authenticated their lien on the Government. Upon the whole I think that a further attempt should be made on the part of Her Majesty's Government to obtain payment from the Government of Ecuador of that part of the claim of Mrs. Abitbol which, apart from the consideration of the municipal act, is binding, according to the general principles of public international law, upon that community.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 386.

The Queen's Advocate to Earl Russell.—(*Received November* 5.)

My Lord, *Doctors' Commons, November* 5, 1863.

JAPAN.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 2nd instant, stating he was directed by your Lordship to transmit to me the accompanying despatch from Her Majesty's Chargé d'Affaires in Japan (No. 125, August 26, 1863), inclosing copies of correspondence which has taken place between Her Majesty's Consul at Yokohama and the agent of Messrs. Jardine, Matheson, and Co., upon the subject of a claim put forward by them for compensation for losses sustained in consequence of the state of affairs arising out of the demands preferred by Her Majesty's Government on that of the Tycoon; and Mr. Hammond was to reqnest that I would take the same into consideration, and report to your Lordship my opinion thereupon.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I am clearly of opinion that the claim of Messrs. Jardine and Co. is inadmissible, and that I agree entirely with the opinion expressed by Her Majesty's Chargé d'Affaires and Mr. Consul Winchester upon this point.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 387.

The Queen's Advocate to Earl Russell.—(*Received November* 6.)

My Lord, *Doctors' Commons, November* 5, 1863.

SPAIN.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 28th ultimo, stating that he was directed by your Lordship to transmit to me two despatches, and their inclosures, from Her Majesty's Consul at St. Domingo (Nos. 26 and 28), reporting a case of alleged ill-usage of a man of colour, a British subject, named Alexander Merriman, by the Spanish authorities at Santiago, in St. Domingo; and Mr. Hammond was to request that I would take these papers into consideration, and furnish your Lordship with my opinion upon the merits of the case, and whether Her Majesty's Government would be justified in supporting it, and if so, to what extent.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That the evidence laid before me in this case does not warrant me in advising Her Majesty's Government that they ought to demand any pecuniary compensation for the imprisonment and ill-treatment of Alexander Merriman. Both appear to me to have been caused in very great measure, if not entirely, by the gross misconduct and violence of the man himself. It is, of course, always difficult to form a correct opinion upon depositions, apart from any knowledge of the character of the deponents themselves, of the manner in which they gave their evidence. But I am unable to agree with the conclusions which Mr. Consul Hood draws from the perusal of the papers.

I do not see any proof of the desire of the Spanish authorities to stifle an inquiry into the facts of the case, or to put a false gloss upon them; nor do the questions addressed by the Spanish authorities to Merriman, which appear to Mr. Consul Hood "extraordinary," convey that impression to my mind. They appear to me plainly directed to the legitimate object of ascertaining the previous character and conduct of Merriman. My conclusion from the evidence is, that Merriman did greatly misconduct himself before the Alcalde Ordinario; and I entirely disbelieve that that Magistrate used, in his Court of justice, the filthy language ascribed to him, which appears to be wholly at variance with his general character.

I have do doubt that Merriman was guilty of a gross and continued contempt of Court; that he was rightly ordered to prison for that contempt; that he did resist (which is not denied), and by violence, the officers who were conveying him to prison. There is a curious proof of this in the statement of Van Holten that Merriman struck one of the officers with his fist, in return, it is said, for a blow dealt to him; and in the declaration of Richard White, who relates, on the authority of Merriman, that he endeavoured to pick up a stone, to throw, as he says, in self-defence, at the officers. He certainly was struck by them with the flat of their swords, and the wound which he received was probably from the point or end of the sword, though this is denied. The wound appears to have been extremely slight, healed by the most ordinary applications, and a piece of sticking-plaster. His conduct to the sailor appears to have been of a very irritating and provoking character. He certainly appears to have received two blows—and two only according to his own statement—from a whip, but the blows appear to have left no mark, and inflicted no bodily injury. He was sent to the hospital, but it is alleged that he wilfully kept the flesh wound open, and refused all offers of assistance, and certainly the wound appears to have been very soon healed after he was placed in the hospital, and the length of his stay there seems to be accounted for by other causes, for it is asserted, and not denied, that he was suffering from the disease of hernia (a disease of old standing), to which the medical attendants applied remedies.

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I do not think myself at liberty—notwithstanding the Consul's opinion—to disbelieve the sworn evidence of the medical gentlemen, nor to believe implicitly the secret communications of persons who refuse to appear openly as witnesses; nor to disregard the fact that Merriman has varied his statements of some facts, and suppressed others.

Upon the whole case, I am of opinion that the best course which, in the circumstances, Her Majesty's Government can pursue will be to direct Her Majesty's Consul to use his best endeavours to obtain the immediate release of Merriman from prison, and to urge that whatever his offence or conduct may have been, for them he has been already more than sufficiently punished, and that they can afford no justification for the wounding with the sword and the striking with the whip; acts which are admitted, and which call for severe censure by the proper authorities upon those who were guilty of them.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 388.

The Queen's Advocate to Earl Russell.—(*Received November* 6.)

My Lord,
Doctors' Commons, November 5, 1863.

New Granada.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 3rd instant, stating that he was directed by your Lordship to transmit to me a letter dated 21st October ultimo, from the Chairman of the Mariquita and New Granada Mining Company, respecting the murder in 1861 of Mr. John Hunter, the chief mechanic of their establishment in New Granada, by a man named Thomas Morris, and calling attention to the manner in which their efforts to bring the murderer to justice have been defeated in consequence of an amnesty granted to criminals as well as to political offenders by General Mosquera. That the accompanying despatches from Her Majesty's Chargé d'Affaires at Bogotá (Nos. 15 and 16) will explain why this amnesty was extended to criminals, and will also show the steps that he took with respect to the murder, and their result; and Mr. Hammond was to request that I would take these papers into consideration, and furnish your Lordship with my opinion as to the course which Her Majesty's Government should now take in the matter, and as to the answer which should be returned to Mr. Roulte's letter.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That Her Majesty's Government cannot require that the Government of New Granada should prevent the amnesty which has been formally and officially, however improperly, promulgated, from so far operating in favour of Thomas Morris as to shield him from criminal prosecution, though he be guilty of this atrocious murder.

I think, however, that Her Majesty's Government should direct Mr. Griffith to express to the Government of New Granada, in the strongest manner, the surprise and regret of Her Majesty's Government at the personal protection which has been given to this vile assassin, and that in their opinion the least that can now be done is immediaeely to expel him from the country, and to give every facility to the widow of his victim to recover the largest damages that can be obtained by law against the real and personal property of the murderer.

I think that an answer should be sent to Mr. Roulte to the effect that Her Majesty's Government are advised that the course recommended in this Report is the only one which it is competent to them in the circumstances to pursue.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 389.

The Law Officers of the Crown to Earl Russell.—(*Received November* 10.)

My Lord,
Lincoln's Inn, November 10, 1863.

United States.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 22nd ultimo, stating that, with reference to his letter of the 16th ultimo, inclosing the correspondence respecting the capture of the "Peterhoff," he was directed by your Lordship to transmit to us, for our consideration and opinion, a volume containing the papers relating to the case of the passengers in that vessel, Mr. Redgate, Mr. Elsworth, and Mr. Bowden, who were taken to New York, and there imprisoned; that the case formed the subject of our Reports of the 23rd of April, 1st of May, and 22nd of July last;* and Mr. Hammond was to state to us that, acting upon the suggestion contained in the latter of those Reports, your Lordship had requested Mr. Kirkman Hodgson, M.P., Governor of the Bank of England, to give us the benefit of his experience in mercantile affairs, to assist us in dealing with these cases, and Mr. Hodgson having expressed his willingness to do so, and to meet us at any hour after 3 o'clock in the afternoon during the then week or the week following, for that purpose, Mr. Hammond was to request that we would name some day on which it would be convenient to us to confer with him, in order that an interview between Mr. Hodgson and ourselves might be arranged accordingly.

That at the end of the inclosed volume we should find a letter from Messrs. Wilson, preferring a claim for 2,034*l.* 16*s.* on account of certain samples of boots seized on board the "Peterhoff," and that your Lordship would consult Mr. Hodgson with respect to it, and generally, should we think it necessary, with regard to the whole case, both as to the claims arising from the capture of the vessel, as well as those concerning Mr. Redgate, Mr. Elsworth, and Mr. Bowden, on which your Lordship had more particularly solicited his advice.

In obedience to your Lordship's commands we have considered the whole of this case, particularly with reference to the claims of Messrs. Wilson and of the passengers on board the "Peterhoff," Mr. Redgate, Mr. Elsworth, and Mr. Bowden, and we have the honour to report—

That in all the former Reports but one, referred to in the letter of Mr. Hammond, the Law Officers had been obliged to assume that they had been correctly informed as to the innocence of the ship "Peterhoff," and her cargo.

Those Reports were necessarily made upon that hypothesis, and it was with respect to the state of facts then asserted to be true that they desired to have the assistance of an experienced mercantile gentleman in unravelling and estimating particular claims.

Since those Reports, however, a formal and protracted trial in the Prize Court has taken place, and after very careful and elaborate arguments, both ship and the cargo have been condemned on various grounds, which were, as nakedly, as alleged in the Decree (we have not yet seen the Judgment *in extenso*), sufficient, according to the principles of international law, to warrant this sentence.

The claimants contend that the evidence, of which we have a printed copy, did not sustain the conclusions of the Judge, and they have properly, therefore, appealed from it. The case is, under these circumstances, *ad huc sub judice*.

We have in our last Report apprized your Lordship that a perusal of the evidence does not satisfy us that the sentence was wrong at all, and certainly not so clearly wrong as to induce us to advise Her Majesty's Government to intervene officially in the matter, or to interfere with the usual and regular course of procedure before the Court of Appeal.

These observations bring us to a consideration of the present position of the claims of the Messrs. Wilson, and of Mr. Redgate, Mr. Elsworth, and Mr. Bowden.

Their claims are founded on various grounds:—

1. Undue imprisonment.
2. Loss of property on board the "Peterhoff."

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* Pages 128, 142, and 209.

3. Loss of contingent profits which would have accrued from commissions on sale of the cargo.

With regard to the first ground, we have to observe that if any of these persons were put into a common prison, or treated as prisoners of war, or confined for an undue length of time, such treatment was improper and illegal, and might have constituted a just ground for claiming some reasonable compensation, and accordingly, upon the supposition that they had been so improperly detained, without any *bonâ fide* intention of examining them as witnesses (a course which, though competent, is not usual with respect to mere passengers), it was stated in one of the former Reports that their claims to compensation appeared to be well founded, whatever the result of the case as to the ship might be.

Two of the three complainants, Mr. Redgate and Mr. Bowden, were, however, examined as witnesses. They were not mere passengers, being interested in, or having a disposing power over, the cargo; and if they were merely detained, though forcibly, in a proper place, and in a proper manner, and (as we infer from the papers before us actually was the case), for a reasonable time, in order that they might be examined as witnesses, there is no such treatment as furnishes any reason for asking for compensation.

2. With regard to the second ground. The cargo has been condemned, as well as the ship, upon evidence that satisfied the Court that the cargo was implicated in the guilt of the ship.* If this were so, the cargo was rightly condemned; and upon this point, as well as that of the guilt of the ship, we do not think that the state of the evidence is such as to warrant Her Majesty's Government in making any special application respecting it to the Executive of the United States, or interfering with the usual judicial remedy of appeal.

3. With respect to the third ground (which, if neither the ship nor the cargo had been condemned, would have involved the question whether, in a case of unjustifiable capture, a neutral Government can properly demand compensation for the loss of contingent and intangible profit of this description), the claim for the loss of commissions is, at all events, disposed of for the present by our observations as to the cargo.

For these reasons, we have the honour to express our opinion that we ought not at present (nor, indeed, at any time, unless the case should assume a different aspect in the Court of Appeal), to give Mr. Kirkman Hodgson the trouble of conferring with us upon this subject.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 390.

The Law Officers of the Crown to Earl Russell.—(*Received November* 11.)

Lincoln's Inn, November 10, 1863.

UNITED STATES AND BRAZIL.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 2nd instant, stating that with reference to our Report of the 27th ultimo, respecting the threatened seizure by Federal cruizers of three vessels, the "Abigail," "Fanny Crenshaw," and "Ann E. Grant," he was directed by your Lordship to transmit to us, together with the previous correspondence, a letter dated the 28th of October ultimo, from Mr. Barten F. Allen, of Liverpool, the owner of the ships, inclosing various documents bearing on the case, and to request that we would take the same into our consideration, and favour your Lordship with any observations we might have to offer thereupon.

We are also honoured with your Lordship's commands signified in Mr. Hammond's letter of the 5th instant, stating that with reference to his letter of the 2nd instant he was directed by your Lordship to transmit to us for our consideration a further despatch from Mr. Consul Westwood (No. 44, October 7, 1863), relative to the case of the Confederate vessels at Rio de Janeiro which have been sold to Mr. B. F. Allen.

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* This applies to the Messrs. Wilson's claim, as well as to the claims of Mr. Bowden, Mr. Elsworth, and Mr. Redgate.—R. P. R. P. C. R. J. P.

We are also honoured with your Lordship's commands signified in Mr. Hammond's letter of the 7th instant, stating that with reference to his letter of the 5th instant he was directed by your Lordship to transmit to us for our consideration with the papers then before us, the accompanying letter, dated the 6th of November instant, from the Admiralty, inclosing further papers respecting the detention of the three vessels at Rio.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That the letter of Mr. Barten F. Allen does not appear to us to call for any observations with respect to the law applicable to these vessels, in addition to those contained in our former Report. Probably there would be no objection to communicating to Mr. Allen the substance of that Report.

With respect to the further communication of Mr. Westwood, we think that his letter to the Marquis d'Abrantes was proper, and that his suspicions as to the cause of the fresh delays interposed by the Custom-house authorities at Rio de Janeiro may very probably be well-founded; but it does not occur to us that any other steps can be taken at present in the matter beyond those which have already been taken by Mr. Westwood.

The correspondence transmitted by the Board of Admiralty on the 6th instant only confirms us in the views which we have already expressed.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 391.

The Law Officers of the Crown to Earl Russell.—(*Received November* 11.)

Lincoln's Inn, November 10, 1863.

TURKEY.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 5th instant, stating that he was directed by your Lordship to refer to us the 62nd clause of the Order in Council respecting Consular jurisdiction in the Levant, of the 9th of January, 1863, of which a copy was inclosed; and that it had been considered that under that clause every member of a family, irrespective of relationship or sex, who shall have arrived at the age of 21 years must take out a certificate of registration, and consequently the wives and daughters of British subjects living under the same roof with their husbands or parents are held liable to separate and personal registration. That your Lordship is disposed to think that it is not necessary to insist upon this practice, but that it would suffice for all purposes if the head of the family, whether male or female, should alone take out a certificate of registration, on which might be endorsed the names and description of the females living under the same roof, whatever degree of relationship they might bear to the head of the family. That your Lordship thinks, however, that male children, or relatives of full age, although living under the same roof with the head of the family, should continue to take out separate certificates of registration.

That if we should concur with your Lordship in this view of the matter, your Lordship would be glad to be informed whether the modification in the terms of the clause in question, which would be requisite to provide for the alteration, should be made by Order in Council, or whether a mere instruction of the Secretary of State to the Consular Officers would be sufficient authority for them to desist from requiring the parties referred to to take out certificates of registration.

In obedience to your Lordship's commands we have considered this case, and have the honour to report—

That we agree with your Lordship as to the expediency of the proposed modification of the 62nd clause of the Order in Council referred to, but we are of opinion that the modification must be affected by an additional Order in Council.

We have, &c.
(Signed) ROUNDELL PALMER.
R. J. COLLIER.
ROBERT PHILLIMORE.

No. 392.

The Law Officers of the Crown to Earl Russell.—(*Received November* 11.)

CHILE.

My Lord, *Lincoln's Inn, November* 10, 1863.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 2nd instant, stating that he was directed by your Lordship to transmit to us two despatches from Her Majesty's Chargé d'Affaires and Consul-General at Santiago,* requesting instructions as to the steps to be taken in regard to a marriage performed by the Acting British Consul at Coquimbo previously to that gentleman's appointment being sanctioned by the Secretary of State.

In forwarding to us the accompanying papers, Mr. Hammond was to state that the formal sanction by your Lordship of Mr. Tait's appointment as Acting British Consul at Coquimbo, was contained in a despatch (the draft of which was therewith inclosed), dated the 30th of September, 1863, while the marriage referred to appears to have been performed, at all events, not later than the 5th of September.

Mr. Hammond was to request that we would take the inclosed papers into consideration, and furnish your Lordship with our opinion as to the legality or otherwise of the marriage in question, and the instructions which it may be proper to send to Mr. Thomson in regard to it.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we are clearly of opinion that under Sections 1 and 19 of 12th and 13th Victoria, chapter 68, the marriage in question having been *de facto* solemnized by Mr. Acting Consul Tait previously to the 30th September, 1863, is invalid, Mr. Tait not having been before that date "duly authorized" to act in the absence of Mr. Ross, whom we presume to have been a Consul directed or authorized, by writing under the hand of one of Her Majesty's Principal Secretaries of State, to solemnize and register marriages.

We can only suggest that instructions should be sent to Mr. Thomson, directing information of the invalidity of the marriage to be made to the parties interested with the least possible delay.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 393.

The Law Officers of the Crown to Earl Russell.—(*Received November* 13.)

UNITED STATES.

My Lord, *Lincoln's Inn, November* 11, 1863.

WE are honoured by your Lordship's commands signified in Mr. Hammond's letter of the 2nd instant, stating that he was directed by your Lordship to transmit to us the accompanying despatch and its inclosures, from Her Majesty's Acting Consul-General at the Havana (No. 42, September 28, 1863), on the subject of the claim of the owner, passengers, and crew of the British schooner "Don José," against the Government of the United States, on account of the seizure of that vessel by the Federal gun-boat "Juniata," whilst on a voyage from Nassau to Havana; and Mr. Hammond was to request that we would take the same into our consideration, and furnish your Lordship with our opinion thereupon.

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* Mr. Thomson, No. 24, August 17, 1863; No. 65, September 12, 1863.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That this appears to have been a seizure of a very unjustifiable character, wholly unwarranted, according to the opinion of the United States' Law Officer, either by the papers or the cargo, or by any other circumstance connected with the vessel; and if this vessel had been proceeded against in the Prize Court, she would have unquestionably been dismissed with costs and damages against the captor. We are of opinion (and the question is one of importance), that the captor cannot escape from this obligation, incident to his unlawful act, because the vessel was released without being taken into Court; for if this were the case, the neutral would be wholly deprived of that protection to which he is entitled by international law, and without which the belligerent right of search would be intolerable.

It is much to be lamented that the admitted extravagance of the claims in this, as in other cases, must greatly embarrass Her Majesty's Government in their endeavours to obtain justice for Her Majesty's subjects, and we think it would be expedient that the claimants should be apprised of the prejudice occasioned by their extravagant demands to their just claim.

We are of opinion, however, that Lord Lyons should be instructed immediately to press this matter upon the United States' Government; and probably the protests and the opinion of the United States' Law Officer would sufficiently instruct him for this purpose,—that is to say, for obtaining an admission that proper compensation should be made. The amount of the claim must, of course, be the subject of further discussion.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 394.

The Law Officers of the Crown to Earl Russell.—(*Received November* 13.)

UNITED STATES.

My Lord, *Lincoln's Inn, November* 12, 1863.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 27th ultimo, stating that he was directed by your Lordship to transmit to us, therewith, for our information, a letter dated the 23rd October, 1863, and its inclosures, from Mr. Adams, maintaining the position assumed by his Government with regard to the losses sustained by United States' citizens through the depredations of the "Alabama," and Mr. Hammond was pleased to inclose the draft of answer which your Lordship *had returned* to Mr. Adams.

We have considered these despatches and papers, and have the honour to report to your Lordship—

That we beg leave to refer to our former Report upon this important matter.

That we entertain a strong opinion of the necessity of maintaining a firm and decided tone in all communications with the Government of the United States with reference to the pretension of that Government to hold this country responsible for captures made by the "Alabama," and of making it understood that this question is not one which Her Majesty's Government can ever be expected to treat as open or disputable.

It is to be observed that the letter of Mr. Adams contains some admissions important in their bearing upon the law applicable to this case:—

1. That the armament and equipment of the "Alabama" was in fraud of the laws of Great Britain;

2. That it was not completed so as to give her the character of a ship of war, capable of commencing hostile operations, until she was beyond the jurisdiction of Great Britain.

3. That it took place without any authority or sanction from the Government of Great Britain.

We are clearly of opinion that in the face of these admissions, the attempt to hold Great Britain responsible for the subsequent proceedings of the

"Alabama" is alike contrary to the principle and the practice of international law.

No authority can be found either in the reason of the thing or in the writings of any accredited jurist, for the position that a neutral Government is liable, internationally, for the consequences of the unneutral acts of some of its subjects (whether done within its own territory or elsewhere), to which it has not given its own authority or consent; least of all for remote consequences of those acts occurring beyond the territorial jurisdiction of that Government.

The records of the Courts of the United States furnish various instances of Decrees enforcing the restitution, by regular judicial proceedings, of prizes brought within its jurisdiction, made by privateers unlawfully fitted out in the United States' waters. In no instance that we are aware of did that Government ever conceive itself bound to make compensation to persons whose property had been seized by such privateers without, and which had not been brought within, the territorial limits of the United States. The Courts of Justice confined themselves to the restitution of the specific property when brought within their jurisdiction.

In our former Report we referred to the occasion on which, and to the circumstances under which, the United States' Government made compensation for certain injuries inflicted upon British commerce by privateers equipped in United States' harbours. In this instance French privateers had been completely and openly armed, equipped, and fitted out, with at least the tacit consent of the United States' Government, in the harbours of the United States; and had, moreover, brought their prizes back into those harbours, and there condemned and disposed of them. All this was done upon the assumption that it was authorized by the Treaties between the United States and France; and the Government of the United States of that day expressly admitted that, in consequence of the interpretation so placed by France upon those Treaties, they had, for a time, purposely abstained from using the means of prevention which were in their power. The principle on which that compensation was given, sufficiently appears from the letter of Mr. Jefferson, Mr. Hamilton, Mr. Knox, and Mr. Randolph, to the Minister of the French Republic, under date the 5th August, 1793 (10 Sparks' Washington, 547). We stated in our former Report that this demand of the British Government, and this conduct of the United States' Government, could not furnish any precedent for the case of the "Alabama," in which all the material facts, justifying the demand and inducing the compliance, were wanting.

It seems to us also important to notice the position of Mr. Adams with respect to the present character of the "Alabama." "From the earliest to the latest day of her career," he says, "she does not appear to have ever gained any other national character on the ocean than that which belonged to her in her origin."

There is, we believe, no doubt whatever that the "Alabama" was delivered up in the ordinary way, either in this country or at sea, by her English builders to the agents of the Confederate States, under whose orders, and for whom, she was built; and we are unable to follow the reasoning which supposes that after this she continued to be, in any sense, a British ship or British property. There is as little doubt that she was, and is still, regularly commissioned as a public ship of war by the *de facto* Government of the Confederate States, whom Great Britain recognizes as belligerents.

If this be so, she is unquestionably entitled to be treated generally by neutral States as a belligerent ship of war; and it seems to us plain, from the Judgment of the Supreme Court of the United States in the case of the "Santissima Trinidad" (7 Wheaton's Reports), that she would have been so treated by the Courts of the United States, if the relative positions of the United States and of Great Britain had been reversed.

There is another point on which, in connection with this subject, it seems to us useful for a moment to dwell. It appears to be assumed by the Government of the United States, that although the sale and delivery, in any port of the Confederate States, to the Confederate Government, of a ship of war built in this country might be merely an instance of contraband trade, liable to be intercepted by capture upon the high seas, a similar sale and delivery of the same article to the agents of the Confederate Government within British territory, and without first entering any Confederate port, would, in the absence of any British law sufficient to prevent it, be an international injury, for which the United States would be entitled to require reparation from the Government of this country. This assumption is, in our opinion, absolutely groundless; and the following extract from Mr. Wheaton's "History of International Law," page 310, is sufficient to show the view of the principle involved in it which was taken by that eminent jurist:—

"Lampredi," he says, "proceeds to consider an idle question, raised by Galiani, whether the conventional law of nations, interdicting the trade with the enemy in articles contraband of war, extends to the sale of the same articles within the neutral territory. Galiani pretends that it does, and that a ship, for example, built and armed for war in a neutral port, cannot be there lawfully sold to a belligerent. Lampredi takes a great deal of superfluous pains to fortify, both by reason and by an appeal to the authority of Treaties, and of preceding public jurists, his own opinion, that the transportation to the enemy of contraband articles alone is prohibited, but that the sale of such articles within the territory of the neutral country is perfectly lawful. He admits that there may be instances where neutral nations, from a prudent desire of avoiding any collision with powerful belligerents, may have prohibited the trade in contraband of war within the territory; but he asserts that Venice was the only example, during the war of the American revolution, of a neutral State absolutely prohibiting such a traffic; Naples only prohibiting the building, for sale, of vessels of war, and the exportation of other contraband articles; whilst Tuscany permitted her subjects to continue their accustomed trade in such articles, both within the territory and for exportation, subject, in the latter case, to the belligerent right of seizing contraband goods going for the enemy's use."

With respect to the reply which your Lordship has already (as we understand) sent to Mr. Adams' letter, it is perhaps superfluous for us, under the circumstances, to make any remark. Had the draft, however, been submitted to us before it was sent, we might have been disposed to suggest that the latter portion of it was open to some misconstruction, especially that part in which the condition of the "Alabama," before she left the port of Liverpool, appears to be described by the words "a seeming merchant-ship." According to our recollection of the evidence applicable to the "Alabama" at that time, it was never at all doubtful that she was intended for a ship of war; but the Law Officers then considered it necessary (as they have done in all subsequent cases) that there should also be some evidence of her being intended to be employed in the service of the Confederate States, to cruize and commit hostilities against the United States; and no evidence going to that point was obtained until very shortly before the time when she left the port of Liverpool.

We have, &c.

(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 395.

The Law Officers of the Crown to Earl Russell.—(Received November 13.)

UNITED STATES

Lincoln's Inn, November 12, 1863.

My Lord,

WE are honoured with your Lordship's commands signified in Mr Hammond's letter of the 5th instant, stating that he was directed by your Lordship to transmit to us a letter dated the 3rd November instant, from the United States' Minister at this Court, inclosing a copy of a letter addressed to Mr. Seward by the United States' Secretary of the Navy, together with a copy of a contract entered into between certain parties and an Agent of the so-styled Confederate States, having for its object the establishment, in the port of St. George's, Bermuda, of a depôt of naval stores for their use in the prosecution of the war, and to request that we would take these papers into our consideration, and favour your Lordship with our opinion thereupon

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That it is to be remarked in the first place, that the parties to this alleged contract are all American, all persons whom the United States claim as subjects of their Government, and over whom Her Majesty's Government have no authority or control. Secondly, that the schedules referred to in the contract are not attached to it, and therefore the character of the naval stores contracted for does not appear. They may or may not be of a contraband description. If they are, the terms of the contract seem to contemplate only the use of ordinary mercantile agency. Thirdly, the terms of the contract do not necessarily import the establishment of any depôt at Bermuda, but rather point to transhipment in the port of Bermuda of naval stores from vessels arriving there from foreign ports. Moreover, even this transhipment at Bermuda is not rendered necessary or obligatory by the contract, but is left optional and contingent. The words are:—"If at any time the said party of the second part shall so direct, &c., shall be made at the port of Bermuda," &c. Lastly, it does not appear to us that upon this vague and conjectural representation of Mr. Adams Her Majesty's Government can or ought to take any action whatever.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 396.

The Queen's Advocate to Earl Russell.—(Received November 13.)

FRANCE.

My Lord, *Doctors' Commons, November* 12, 1863.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 10th instant, stating that he was directed by your Lordship to transmit to me a despatch from Her Majesty's Ambassador at Paris, requesting to be informed whether a declaration in the form embodied in his Excellency's despatch to be signed by the British and French Governments, will be sufficient to obviate the difficulty which now attaches to the duties of officers in command of vessels engaged in the suppression of the Slave Trade, owing to the absence of any instructions as to the course to be pursued in the event of masters of merchant-ships refusing to produce their papers when desired to do so.

Mr. Hammond was also to transmit to me a letter containing the opinion and suggestion of the Lords of the Admiralty in regard to this declaration, and was to request that I would take these papers into consideration, and furnish your Lordship with my opinion as to the instructions which it would be advisable to give to Lord Cowley in this matter; and the papers relating to the case of the "Léopard," which has given rise to this question, were inclosed for reference if required.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I am of opinion that the alteration suggested by the Lords of the Admiralty should be engrafted in the declaration embodied in the despatch of Her Majesty's Ambassador at Paris, and I think that the declaration so framed will prevent the recurrence of such difficulties as were presented by the case of the "Léopard."

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 397.

The Law Officers of the Crown to Earl Russell.—(Received January 13.)

TURKEY.

My Lord, *Lincoln's Inn, November* 12, 1863.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 11th instant, stating that with reference to our Report of the 10th instant* he was directed by your Lordship to transmit to us therewith the draft of an Order in Council modifying the provisions of the 62nd clause of the Order in Council of 9th of January, 1863, respecting registration, and Mr. Hammond was to request that we would take the same into consideration, and report to your Lordship our opinion as to whether the proposed draft is calculated to meet the object in view, and is proper to be submitted for Her Majesty's sanction; and was to add that, as Her Majesty will probably hold a Council in a few days, your Lordship would be glad if we gave our early attention to this matter.

In obedience to your Lordship's commands we have taken this proposed Order in Council into consideration, and have the honour to report—

That we approve of the proposed draft as proper and sufficient for the object in view, subject to the addition of a few words which we have inserted in the margin of page 3 in the copy marked with our initials, in order to preclude any question as to making new indorsements on the certificate of registration from time to time on the birth of females not in existence when it was granted. We presume that it is not considered necessary (and unless necessary, that it would not be convenient or desirable) to require any such subsequent endorsements to be made.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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* Page 291.

Inclosure in No. 397.

Draft of proposed Order in Council.

[The passage inserted by the Law Officers is placed in brackets.]

At the Court at the day of 186 .

Present:

The Queen's Most Excellent Majesty in Council.

WHEREAS by the Act of the session of Parliament of the sixth and seventh years of Her Majesty's reign (chapter 94), "to remove doubts as to the exercise of power and jurisdiction by Her Majesty within divers countries and places out of Her Majesty's dominions, and to render the same more effectual," hereinafter called the Foreign Jurisdiction Act, it was enacted (among other things) that it was and should be lawful for Her Majesty to hold, exercise, and enjoy any power or jurisdiction which Her Majesty then had or might at any time thereafter have within any country or place out of Her Majesty's dominions, in the same and as ample a manner as if Her Majesty had acquired such power or jurisdiction by the cession or conquest of territory:

And whereas Her Majesty has had and now has power and jurisdiction in the dominions of the Sublime Ottoman Porte:

And whereas Her Majesty was pleased on the 9th day of January, 1863, by and with the advice of Her Privy Council, to make, by Order in Council dated that day, provision for the exercise of her power and jurisdiction as aforesaid:

And whereas by the 62nd clause of the aforesaid Order of Her Majesty in Council it is ordered that "every British subject resident in the Ottoman dominions, being of the age of twenty-one years or upwards, or being married or a widower or widow, though under that age, shall, in the year 1863 in the month of March, and in every subsequent year in the month of January, register himself or herself in a register to be kept at the Consulate of the Consular district within which he or she resides.

"Every such British subject not so resident arriving at any place within the Ottoman dominions where a Consular office is maintained, unless borne on the muster-roll of a British vessel there arriving, shall, within one month after his or her arrival, register himself or herself in a register to be kept at the Consular Office,—but so that no person shall be required to register himself or herself more than once in any year, reckoned from any 1st day of January.

"Every such British subject shall, on every such registration of himself or herself, pay a fee of 5*s*.

"Any such British subject subject failing so to register himself or herself, and not excusing his or her failure to the satisfaction of the Consular officer, shall not be entitled to be recognized or protected as a British subject in the Ottoman dominions, and shall be liable to a fine of not more than 40*s*. for each instance of such failure; in the case of a married woman (not living apart from her husband) such fine to be levied on her husband's property.

"The Consular officer shall issue to every British subject so registered a certificate of registration under his hand and Consular seal."

And whereas it is expedient to modify the provisions of the said clause:

Now, therefore, Her Majesty, by virtue of the powers in this behalf by the Foreign Jurisdiction Act or otherwise in her vested, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered:—

That for the purposes of the registration provided for in the above recited 62nd clause of the Order of Her Majesty in Council of the 9th of January, 1863, it shall be deemed sufficient if the head of the family, whether male or female, alone takes out a certificate of registration, on which certificate shall be endorsed the names and description of the females [who, at the time when such certificate is granted, shall be] living under the same roof with the head of the family, whatever degree of relationship they may bear to the head of the family; but that all male children or male relatives of the head of the family, being of full age, although living under the same roof with the head of the family, shall be bound to take out separate certificates of registration.

And it is further ordered that, except in so far as the above recited clause in the Order of Her Majesty in Council of the 9th of January, 1863, is modified by the present Order, such clause shall continue to have full force and effect.

And the Right Honourable the Earl Russell, one of Her Majesty's Principal Secretaries of State, shall give the necessary directions herein.

No. 398.

The Law Officers of the Crown to Earl Russell.—(*Received November* 13.)

Lincoln's Inn, November 13, 1863.

My Lord,

FRANCE.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 11th instant, stating that he was directed by your Lordship to transmit to us a letter from the Rev. Patrick Hay Maxwell, dated the 2nd of November instant, complaining that Her Majesty's Consul at Havre had declined to administer an oath to a person in his service who had been sent by Mr. Maxwell to the Consul to certify as to his and Mrs. Maxwell's existence; and also a despatch from Mr. Consul Featherstonhaugh (No. 60, November 9, 1863) in explanation of his proceedings in this matter; and to request that we would take the accompanying papers into our consideration, and favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we do not think Mr. Consul Featherstonhaugh has exercised a wise discretion in this matter. The office of the Consul in these matters is generally ministerial only, and this case does not fall within the principle of the exceptions suggested in the Foreign Office paper referred to by the Consul. There was no reason to suspect that the affidavit was made for any improper purpose. The person tendering it was competent to make it—probably, from having a better knowledge of Mr. Maxwell, *more* competent to certify the fact of his existence (especially under a different name from that by which he was usually known) than the Consul. The objection that the Consul did not know that Mr. Hay and Mr. Maxwell were the same person, was not the cause of his refusal. We think that the Consul should be instructed to administer the oath in question to Sarah Spreabury.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 399.

The Law Officers of the Crown to Earl Russell.—(*Received November* 13.)

Lincoln's Inn, November 13, 1863.

My Lord,

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 11th November instant, stating that, with reference to our Report of the 26th ultimo,* he was directed by your Lordship to transmit to us, together with the former papers, the accompanying further correspondence which has passed respecting the case of the "Canton," from which we should see the result of the inquiries that have been instituted in Scotland with regard to that vessel, and especially to call our attention to the specification of the fitting and structure of the ship, and to the Report thereon furnished by the Constructor to the Admiralty; and to request that we would again take this case into consideration, and furnish your Lordship with our opinion as to whether there would now be any objection to asking the alleged owner of the "Canton," Mr. Pembroke, to explain for what she is intended, and generally as to the course which Her Majesty's Government should pursue in the matter.

We are also honoured with Mr. Hammond's further letter of the same day's date, transmitting a letter, dated the 11th November instant, from the Board of Treasury containing further particulars respecting the case of the "Canton."

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That we do not, as yet, find in the papers before us sufficient grounds to justify a seizure of this vessel under the Foreign Enlistment Act; but we think that there are sufficient grounds for keeping a strict watch over her, and *not suffering her to leave the Clyde* without some further inquiry.

The evidence already obtained, although not conclusive as to her character, seems to us to be enough to show that she is intended for some warlike service; but whether this is a fixed or only a contingent and conditional intention, and for what particular service she is designed, are points as to which no light is afforded by the present evidence. It is to be observed that the builder's specification in this case extends expressly to some degree of "fitting-out" and "equipment" as well as to mere construction; and the suspicion excited in Mr. Reed's mind (see his Report to the Admiralty, under date the 10th March, 1863) by those parts of the specification which relate to the construction of the upper deck and the bulwarks (the latter "to be fitted to some plan which is not described, but which the owners are to furnish or approve"), is amply confirmed by the facts now ascertained as to the port-holes, which, after having been carefully constructed, were again closed up, so as (apparently) to admit of their being easily reopened, although, for the present, concealed. On the other hand, it is to be observed that in the specification the ship is called a merchant-vessel; and there is nothing as yet beyond report and surmise to connect her with the Confederate States. If the circumstances to which we have referred are indicative of disguise and concealment, it may, on the other hand, be said that the conduct of Messrs. Henderson and Co., and of Messrs. Thomson and Co., in giving information and producing documents, has been fair and open; and it is not yet ascertained whether Mr. Pembroke, on being applied to, will also be willing to give information or not.

We think that it may be proper, in these circumstances, now to write to that gentleman to the effect that it has become the duty of Her Majesty's Government to institute a very strict inquiry into the character and destination of the ship in question, which appears, by the contract and specification produced at Glasgow by Messrs. Thomson and Co., to have been built for him; and that Her Majesty's Government think it right to offer him the opportunity of giving them such information as to her destination, and the purpose for which she is intended, as (with the knowledge which he must, of course, possess of the object with which it is sought) he may be willing to afford. We should hardly anticipate that, in the result, any really useful or satisfactory information will be obtained from Mr. Pembroke; and it will be desirable (if this has not already been done) to ascertain exactly who and what Mr. Pembroke is, and whether any evidence connecting him in any way with the Agents of the Confederate States in this country is likely to be obtained.

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* Page 278.

It will also be important to obtain, if possible, evidence of the fact (alleged by the United States' Consul at Glasgow, but as yet not at all verified) that Captain Maffit, of the "Florida," is now in Glasgow, passing under a feigned name, and superintending or taking a visible and practical part and concern in the preparations of this vessel for sea. Such a fact, if proved by satisfactory evidence, might probably be enough (together with the other facts already known) to justify the institution of proceedings in the Court of Session of the nature suggested by the Law Officers for Scotland, for an interdict against the departure of the ship; and, whenever there is sufficient evidence in the opinion of the Scottish Law Officers to justify such a step, we think it will be far more desirable to take it than to proceed (as it is necessary to do in England) by a seizure without judicial warrant.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 400.

The Law Officers of the Crown to Earl Russell.—(Received November 14.)

My Lord, *Lincoln's Inn, November* 13, 1863.

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 27th ultimo, stating that with reference to our Report of the 7th August last,* in the case of the "Margaret and Jessie," and to our previous Reports on the same subject, he was directed by your Lordship to transmit to us, with the previous papers, a despatch from Her Majesty's Charge d'Affaires at Washington (No. 76, September 23, 1863), inclosing a copy of a note which has been addressed to him by Mr. Seward, requesting to be furnished with a copy of the evidence laid before Her Majesty's Government relative to the circumstances under which that vessel was driven on shore, on the coast of Eleuthera, by the United States' ship "Rhode Island," in order that an opportunity may be afforded to the accused party to rebut the evidence before a Court of Inquiry; and Mr. Hammond was to request that we would take these papers into consideration, and furnish your Lordship with our opinion as to the answer which should be given to Mr. Seward.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we think the request of Mr. Seward ought to be complied with; but at the same time that it should be distinctly stated by Her Majesty's Government that they cannot consent that the demand for redress, which they have preferred, should be in any way affected by the proceedings of the United States' Government relating to the conduct of any officer, or other person, who may be responsible to that Government for this transaction.

Lord Lyons should be instructed to express a confident hope that upon evidence of the facts, so clear and decisive as that contained in the documents which will be communicated to them, the Government of the United States will no longer delay to give the proper satisfaction for so very serious an outrage upon the territorial rights of Her Majesty.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 401.

The Law Officers of the Crown to Earl Russell.—(Received November 16.)

My Lord, *Lincoln's Inn, November* 14, 1863.

TURKEY.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 5th instant, stating that with reference to our Report of the 30th of September last,† stating our opinion as to the instructions which

should be addressed to Her Majesty's Consul at Brussa, in the matter of the complaint of Mr. Falkeisen, the Russian Vice-Consul at that place, that he was unable to obtain possession of his house which Mr. Consul Sandison was occupying, he (Mr. Hammond) was directed by your Lordship to transmit to us therewith a despatch dated the 15th October ultimo from Mr. Sandison appealing against the decision of the Supreme Consular Court at Constantinople in this case; and the draft of the despatch which, in consequence of our Report, your Lordship addressed to Mr. Consul Sandison was therewith inclosed, together with the letter (September 11, 1863) from Mr. McCowan upon which that Report was founded; and also a correspondence which your Lordship had had with the Russian Ambassador at this Court.* And Mr. Hammond was to request that we would take Consul Sandison's despatch into consideration, and furnish your Lordship with our opinion as to whether the statements therein made affect in any way the opinion contained in our Report of the 30th of September.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That although Sir Henry Bulwer seems to have taken a different view of the facts of this case from Sir Edmund Hornby, and although the question whether the counter-claim of Mr. Sandison upon the Russian Consul for repairs of the house would have been an excuse by the Turkish law for the non-payment of his rent, cannot be said to be entirely free from uncertainty and obscurity, we still do not see any sufficient reason to alter the opinion of this case which was expressed in our former Report.

If Mr. Sandison thought fit to do so, he might appeal (or he might have appealed, if the time has now gone by) to Her Majesty in Council from the decision of the Consular Court at Constantinople. Not having done so, we think it is idle for him to invite Her Majesty's Government (as he seems to do) to take up his case as if it were a matter of public and and not private concern, or to attempt to review, upon the merits, a legal decision which, until reversed upon appeal, is binding, and must be assumed to be in accordance with justice. Nor are we at all satisfied by Mr. Sandison's own statements and arguments, that he has, in fact, received less than substantial justice from Sir Edmund Hornby, whatever technical difficulties there may have been to overcome in the case.

The point on which we feel some embarrassment is, the want of positive and conclusive proof that, consistently with Sir E. Hornby's Decree, Mr. Sandison may not possibly be entitled still to retain the possession of the house if he pays what has been found due from him. It is to be remembered, however, that he was not himself willing to leave this question to the decision of the Consular Court; and it does not appear to be disputed that if the rent since 1850 was improperly left in arrear, the landlord was entitled to put an end to the lease, and retake possession. This being so, and having regard to the sum which has been established, under Sir E. Hornby's Decree, as due for arrears of rent from Mr. Sandison, it seems to us that a sufficient case is proved to make it right to require him to give up the house, if he desires still to retain his position as one of Her Majesty's Consuls in the Ottoman dominions.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 402.

The Queen's Advocate to Earl Russell.—(Received November 16.)

My Lord, *Doctors' Commons, November* 16, 1863.

UNITED STATES.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 11th of November instant, stating that with reference to my Report of the 20th of August,† he was directed by your Lordship to transmit to me, together with the previous papers, the accompanying despatch from Lord Lyons (No. 757), containing the further information which, in accordance with my suggestions, he was instructed to furnish respecting the case of Mr. R. Atkin; and to request that I would take these papers into consideration, and report to your Lordship my opinion thereupon.

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* Page 227.

† Page 264.

* Baron Brunnow, October 19, 1863; to Baron Brunnow, October 23, 1863.

† Page 233.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I do not advise Her Majesty's Government to interfere in this matter. According to the explanation of the facts and circumstances now given, it would be difficult to deny the right of Judge Ware to exercise this Admiralty jurisdiction. With respect to the wages, he considers the contract as one which originated, and was concluded, in the United States, and I think he is justified in so considering it. And as to the personal tort or injury, he says both the parties were domiciled in the United States, and that the plaintiff, besides being so domiciled, never had been, and was not at the time, a British subject. I am of opinion that the English Court of Admiralty would take the same view of its jurisdiction if such cases came before it. At the same time I must observe that the case was not one of ordinary occurrence, and not unreasonably appeared to Mr. Murray to involve an undue interference with the jurisdiction of Her Majesty's Consul.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 403.

The Law Officers of the Crown to Earl Russell.—(Received November 17.)

My Lord, *Lincoln's Inn, November 17, 1863.*

SIAM.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 10th instant, stating that he was directed by your Lordship to transmit to us a despatch from Her Majesty's Consul at Bangkok (No. 33, September 10, 1863), inclosing copies of the rules and regulations for the Government of British subjects in Siam which have been amended in accordance with the opinion contained in our Report of the 27th of March, and to request that we would take the same into our consideration, and favour your Lordship with any observations we might have to make thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That these rules and regulations appear to us to be proper. The seventh rule is awkwardly worded, and the word "to" is omitted. It would run better, "Every British subject whether, &c., is strictly forbidden to enter, &c., for the purpose of shooting, &c." This, however, being merely a verbal defect is not material.

We have, &c.
(Signed) ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 404.

The Queen's Advocate to Earl Russell.—(Received November 17.)

My Lord, *Doctors' Commons, November 17, 1863.*

SPAIN.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 14th instant, stating that he was directed by your Lordship to transmit to me two despatches from Her Majesty's Consul at St. Domingo; the first (No. 34, October 7), inclosing a copy of a Proclamation, dated the 5th of October, issued by the Captain-General of the Spanish portion of the Island of St. Domingo, declaring "all the coasts of the island" and its "littoral waters" to be under blockade; the second, dated the 16th of October (No. 37), stating that up to that date no effective blockade had been established at any one place; and that it appears from another despatch that the case was the same up to the 23rd of October: and Mr. Hammond was to request that I would take these papers into consideration; and that, if under the circumstances the notice of blockade given is sufficient, I would prepare and transmit to your Lordship a form of notification to be inserted in the "Gazette." That, in connection with the same subject, Mr. Hammond was also to transmit to me a letter from Mr. Nicholson, requesting information regarding the operation of the proposed blockade, and to request that I would report to your Lordship my opinion as to the answer which should be returned to this letter.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I am bound to assume the correctness of the statements made by Mr. Martin Hood; and from them it appears that there is no lawful blockade of all the ports of the Island of St. Domingo. That there are, in fact, only three Spanish vessels of war at three places, immediately off the port of St. Domingo; and that, with the exception of these three places, the whole coast and every port is under the command of the insurgents.

In these circumstances I do not think Her Majesty's Government ought, at present at least, to notify the alleged blockade in the "Gazette."

It is true that such notification would not make the blockade legal; but it would, or might appear to, give some colour to it; and might, perhaps, hereafter be taken to have done so by a Spanish Prize Court. At the same time I would suggest that it might be expedient that a remonstrance, founded on Mr. Hood's statement, should be addressed to the Spanish Government, or the Spanish Ambassador here, accompanied by a request that the Spanish authorities at St. Domingo should be ordered to confine the declaration of blockade to the ports actually blockaded by Spanish vessels. For a paper blockade, such as Mr. Martin Hood represents this to be, is contrary to general international law, apart from the special provision to that effect in the Declaration of the Congress of Paris, to which Spain was not a party.

The answer to Mr. Nicholson should be, I think, to this effect:—

That Her Majesty's Government have received intelligence from the Consul at St. Domingo that the Spanish Captain-General has declared a blockade to the effect contained in the printed extract: that the Consul had also apprised Her Majesty's Government that the declaration, at the time when he wrote, was not supported by a *de facto* effective force. It was not clear, therefore, that the blockade was as yet lawfully established; that the terms of the declaration of blockade appeared to be principally directed against ships laden with men, arms, ammunitions or military stores of any kind: but if the blockade should prove hereafter to be effectively and legally established, it might be construed by the Spanish authorities to prohibit all trading whatsoever with all the coasts and littoral waters of the island, and to subject all vessels so trading to condemnation.

Probably a ship innocent of all contraband would receive a warning on the spot before capture.

In these circumstances Mr. Nicholson must exercise his own discretion as to the course which he may think proper to pursue with respect to trading with the Haytian ports.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 405.

The Law Officers of the Crown to Earl Russell.—(Received November 18.)

My Lord, *Lincoln's Inn, November 18, 1863.*

PRUSSIA AND GREAT BRITAIN

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 17th instant, stating that he was directed by your Lordship to forward to us a document which has been served upon your Lordship at the instance of Dr. Weiss, a German lawyer, who has been for some time in communication with the Foreign Office on the following subject:—

In the year 1860 (it was stated), Lord Augustus Loftus, who was then Her Majesty's Minister at Berlin, was instructed to take the lease of a house in that capital for the use of Her Majesty's Mission, and that he endeavoured for this purpose to get a lease of a house belonging to Baron Arnim, which was considered eligible in every way. That it seems that Lord Augustus thought that Count Arnim would be inclined to ask a higher rent for his house if he knew that it was for Her Majesty's Government than he would have taken from a private individual, and that your Lordship, with a view to get it at the most reasonable rate, undertook, on your own responsibility, to employ Dr. Weiss as an agent to negotiate with Baron Arnim for the lease as if it was for some private purchaser, but that your Lordship states that Dr. Weiss was well paid for his services, and also that the final arrangements for the lease were made without his assistance. That the accompanying papers are all that are to be found on the question in the Foreign Office, for those mentioned in the document served on your Lordship have never been received, and are probably still in the possession of Lord Augustus Loftus, who is now Her Majesty's Minister at Munich.

Mr. Hammond was accordingly directed by your Lordship to request that we would take this question into our immediate consideration, and that we would inform your Lordship what course your Lordship should pursue with reference to the document served upon your Lordship in a matter from which your Lordship has all along, on behalf of Her Majesty's Government, kept yourself entirely aloof.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That of the documents described in the *Subpœna duces tecum* which has been served upon your Lordship, none appear to be in your Lordship's possession or power, except Lord Augustus Loftus' letter of the 29th of November, 1862, and the Report of Dr. Stronsberg, inclosed therein. The drafts or copies of your Lordship's own letters to Mr. Weiss, and to Lord Augustus Loftus are not (strictly speaking) within the description of "letters written on that subject by John Earl Russell." As the whole affair has been regarded and dealt with by your Lordship as a private matter between Dr. Weiss and Lord A. Loftus, we think that these documents are liable to be produced in the usual manner; and we think that it will be necessary for your Lordship to attend with them at the trial under the subpœna, for that purpose; and (the whole being utterly unimportant) we should recommend that the drafts of your Lordship's letters should be in readiness also, if called for, though the subpœna (as we have said) does not strictly extend to them.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 406.

The Law Officers of the Crown to Earl Russell.—(*Received November* 19.)

Lincoln's Inn, November 19, 1863.

My Lord,

UNITED STATES.

WE are honoured with your Lordship's commands, signified in Mr. Hammond's letter of the 10th November instant, stating that he was directed by your Lordship to transmit to us the accompanying despatch and its inclosures from Lord Lyons (No. 756, October 23, 1863), respecting the case of the British schooner "Carmita," which was stated to have been captured off the coast of Texas in August last by the United States' ship "Bermuda," and to have been brought to Philadelphia as a prize; and to request that we would take these papers into our consideration and favour your Lordship with our opinion therenpon.

In obedience to your Lordship's commands we have taken the papers into consideration, and have the honour to report—

That we are clearly of opinion that at present there is no adequate cause shown in this case for the interference of Her Majesty's Government.

Whether there was or was not a blockade of the port of Velasco, and whether the "Carmita" did or did not intend to evade such blockade, are questions of mixed fact and law, properly cognizable in the first instance by the Prize Court. It must be presumed that this Court will give the claimant due

opportunity of establishing his defence, and will do justice. We may, however, observe that the facts as at present stated appear to be greatly in favour of the claimant.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 407.

The Queen's Advocate to Earl Russell.—(*Received November* 23.)

Doctors' Commons, November 20, 1863.

My Lord,

HONDURAS

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 16th instant, stating that he was directed by your Lordship to transmit to me the correspondence noted in the margin,* setting forth the circumstances under which the Government of Honduras have revoked the exequatur of Mr. Acting Consul Kirkpatrick, and to request that I would take these papers into consideration, and report to your Lordship my opinion whether the circumstances under which Mr. Kirkpatrick's exequatur has been withdrawn are such as to afford reasonable grounds of displeasure to Her Majesty's Government, and as to the redress which Her Majesty's Government would be entitled to ask if I should consider the circumstances of the case to justify a demand.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That it is impossible to justify upon principle the conduct of Mr. Kirkpatrick in interfering at all in the strictly political affairs of Honduras, regard being had either to general international law or to the instructions issued for the direction of Consuls by the Foreign Office in 1846. Such interference is not within the legitimate sphere of Consular functions, except in those rare cases in which the protection of the immediate interests of his own countrymen forces, as it were, such interference upon the Consul. The present case cannot fairly be considered as one of this description. Moreover, both the language and tone of severe censure (however merited) of Mr. Kirkpatrick's letters are such as no Government can be expected to submit to from a foreign Consul.

On the other hand, the circumstances were of an exceptional character.

The general atrocities of the administration which have sprung up out of the last revolution appear to have been great.

Mr. Kirkpatrick had been in the habit of offering advice to the former Government, which appears to have been sought for and well received; and in the first instance, it appears to have been also well received by the present *de facto* Government of Honduras, and it is very probable that his exequatur has not been really withdrawn on account of this irregularity: nevertheless, it furnished a ground, to a certain extent plausible, for the withdrawal of the exequatur, which withdrawal it is certainly within the abstract competence of every State to direct.

I cannot, therefore, advise Her Majesty's Government that this act can be considered in the light of an injury to Her Majesty, for which redress can be demanded.

It may, nevertheless, and I think in the circumstances, does require that Her Majesty's Minister at Guatemala should be directed to express to the existing Government of Honduras the great displeasure of Her Majesty's Government, both at the fact of Mr. Kirkpatrick's dismissal, and at the discourtesy of the mode in which it was effected.

Mr. Mathews might also be instructed to recapitulate the exceptional circumstances which almost necessarily placed Mr. Kirkpatrick in unusual relations, so far as his Consular office was concerned, with the Government; and perhaps, also, the resolution of Her Majesty's Government not to countenance

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* Mr. Kirkpatrick, No. 17, Consular; to Mr. Kirkpatrick, No. 48; Mr. Mathew, No. 52; Colonial Office, October 31, 1863.

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such a proceeding by appointing, while the present Government are in office, any successor to Mr. Kirkpatrick.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 408.

The Law Officers of the Crown to Earl Russell.—(*Received November* 25.)

My Lord, *Lincoln's Inn, November* 24, 1863.

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 16th instant, stating that he was directed by your Lordship to transmit to us the accompanying despatch from Her Majesty's Consul at New York (No. 195, October 31, 1863), inclosing a certified copy of the proceedings in the case of the British vessel "Tampico," recently condemned in the Prize Court at that place for an alleged attempt to violate the blockade, and to request that we would take the same into our consideration, and favour your Lordship with any observations we might have to offer thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That as far as we can judge from the papers submitted to us, the "Tampico" appears to have been lawfully condemned for breach of blockade.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 409.

The Law Officers of the Crown to Earl Russell.—(*Received November* 25.)

My Lord, *Lincoln's Inn, November* 24, 1863.

RUSSIA.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 18th instant, stating that he was directed by your Lordship to transmit to us a despatch from Colonel Stanton, Her Majesty's Consul-General at Warsaw (No. 35), requesting to be furnished with instructions in regard to certain applications which had been made to him by Englishwomen who had married Russian subjects, and had subsequently become widows, to be furnished with British passports, and consequently to be treated as British subjects; and Mr. Hammond was to request that we would take Colonel Stanton's despatch into consideration, and furnish your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken Colonel Stanton's despatch into consideration, and have the honour to report—

That we think Englishwomen who are the widows of Russian subjects (assuming them not to have become naturalized in the Russian dominions, independently of the effect of their marriage) are entitled to receive British passports, and to be treated as British subjects.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 410.

The Law Officers of the Crown to Earl Russell.—(*Received November* 26.)

My Lord, *Lincoln's Inn, November* 26, 1863.

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 14th instant, stating that with reference to our Report of the 29th of August[*] he was directed by your Lordship to transmit to us, together

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[*] Page 240.

with the former papers,[*] the accompanying further despatches from Lord Lyons[†] respecting the case of the "Victor," the British vessel which was captured in the neighbourhood of Havana by the United States' man-of-war "Juniata," but subsequently acquitted by the Court at Key West.

Mr. Hammond was also pleased to state that we should see from these papers that, although the "Victor" was acquitted by the Court, she had been detained pending the appeal made against this decision by the captor, and that the parties interested in the vessel have applied to Lord Lyons to procure her release; that Lord Lyons, however, had reported that, from what passed in a conversation which he had held with Mr. Seward on the subject, there appears little prospect of such an application being attended with success.

Mr. Hammond was further pleased to state that he was directed by your Lordship to request that we would again take this case into our consideration, and favour your Lordship with our opinion both as to the propriety of making this application for release to the United States' Government and as to the proceedings at Key West, as shown in the papers now forwarded by Lord Lyons, together with any other observations we might have to offer thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we have in this case, as in some others, to lament the absence of any statement of the reasons given by the Judge for his sentence, and the consequent difficulty of forming a perfectly satisfactory opinion upon it. However, the papers now before us tend to confirm our former opinion of the unwarrantable character of this seizure. It appears to us (judging from the evidence) to be the very last case in which the United States' Government ought to have permitted an appeal on behalf of the captors from the sentence in favour of the captured vessel. And we are of opinion that the case is one which from its peculiar character will fully justify a remonstrance against that course from Lord Lyons to the United States' Government.

The making use of a neutral port as a place from whence to sally forth and pursue the captured vessel appears to us to be an uncontroverted fact in this case. Within one hour (whatever was the distance) from the time of leaving the harbour of Havana the "Victor" was seized by the "Juniata" coming out of the same port, and such a fact alone ought, in our opinion, to induce the Government of the United States to abide by the decision of its own Prize Court and not to seek its reversal by an appeal; for we apprehend that, in a case in which a fact like this manifestly appears from the evidence, a neutral Government would be fully justified in disregarding as contrary to settled principles the Judgment even of a Court of Appeal if pronounced adversely to the vessel. We think that Lord Lyons should be instructed to recapitulate the facts of this unjust seizure, and, on the ground above-mentioned (notwithstanding what Mr. Seward has stated as to the reluctance of the Secretary of the United States' Navy to interfere in such cases), to press for the immediate release of the vessel. Such an application, even if refused, may serve to strengthen a later application for costs and damages if these (which we hope will not be the case) should not be awarded by the Appellate Court. We observe that by the Decree in this case, although the vessel is released, an option is given to the Government of the United States to take her for their own service at an appraised value; failing which, the claimant may be put into possession pending the appeal if he is willing to deposit in Court the same appraised value, but not otherwise. That the Government of the United States will not attempt to avail themselves of the option of purchase, given to them in so extraordinary a manner by the Decree which pronounces the capture unlawful, may (we conceive) be concluded with certainty, from the assurances lately given by that Government under the advice of their Attorney-General, upon the general question of taking uncondemned neutral vessels for their own service under a late Act of Congress. But we think there is considerable harshness in making the deposit of the full appraised value (as distinguished from security) the only condition on which the successful claimant, in a case like this, can obtain possession of his property and obviate the risk of a compulsory sale pending an appeal.

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[*] Consul Archibald, No. 102, June 29, 1863; No. 116, July 13, 1863; Lord Lyons, No. 650, July 17, 1863; Consul-General Crawford, No. 29, July 2, 1863; Lord Lyons, No. 651, July 17, and No. 661, July 20, 1863; Consul Archibald, No. 127, July 20, 1863; Lord Lyons, No. 676, July 28, 1863; Admiralty, August 17, 1863.

[†] Lord Lyons, No. 687, August 3, 1863; to Mr. Stuart, No. 501, September 11, 1863; Lord Lyons, No. 772, November 3, 1863; No. 773, November 3, 1863.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 411.

The Law Officers of the Crown to Earl Russell.—(*Received November* 26.)

Lincoln's Inn, November 26, 1863.

My Lord,

PRUSSIA.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 25th instant, stating that he was directed by your Lordship to inclose a letter which had been addressed to him by a Mr. Chaffers, proposing to call upon him and to confer with him relative to the matter in dispute between Dr. Weiss and Lord Augustus Loftus, which formed the subject of his letter to us of the 17th instant.

Mr. Hammond was also pleased to state that he inclosed the draft of a letter which your Lordship proposes that he should write to Mr. Chaffers, and that he was directed by your Lordship to request that we would take this matter into our immediate consideration, and report to your Lordship whether this reply is such as ought to be returned to him.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That we think the proposed reply is proper, and such as ought to be returned to Mr. Chaffers.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 412.

The Law Officers of the Crown to Earl Russell —(*Received November* 26.)

Lincoln's Inn, November 26, 1863.

My Lord,

UNITED STATES.

WE are honoured with Mr. Hammond's letter of the 16th instant, stating that he was directed by your Lordship to transmit to us, for our information, with reference to the case of the iron-clad vessels which have been seized by order of the Crown at Birkenhead, the accompanying letter dated the 14th of November instant, from Mr. Adams, inclosing a printed paper purporting to be the journal of an officer on board the "Alabama."

We have perused and considered this journal, and have the honour to report—

That with reference to our last Report on the subject of the claims of the United States' Government on Her Majesty's Government with respect to the captures made by the "Alabama," we have further to remark that, inasmuch as Mr. Adams has sent this pamphlet to your Lordship in aid of his demand for reparation of the injuries inflicted upon United States' merchant-vessels, we think it might be worth while to draw the attention of Mr. Adams to the following passages:—

(Page 5.) "Our unceremonious departure was owing to the fact of news being received to the effect that the Customs authorities had orders to board and detain us that morning."

(Page 6.) "Our object in going there (that is, to Terceira) was to obtain the necessary arms, ammunition, &c., requisite for a vessel of war. England's proclamation of neutrality prevented the guns, &c., being placed on board at Liverpool."

It would therefore appear from the narrative transmitted by Mr. Adams, that the escape of the "Alabama" from Liverpool took place under circumstances which (as we humbly conceive) furnish a complete answer to any claim by the United States' Government to hold Her Majesty's Government responsible for the subsequent proceedings of that vessel on the high seas.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 413.

The Law Officers of the Crown to Earl Russell.—(*Received November* 26.)

Lincoln's Inn, November 26, 1863.

My Lord,

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 16th instant, stating that he was directed by your Lordship to transmit to us the accompanying despatch from Lord Lyons (No. 781, November 3, 1863), inclosing copies of various documents respecting the capture of the British vessel "Sir William Peel" by the United States' ship of war "Seminole," off Matamoros.

Mr. Hammond was also pleased to state that we should see from these papers that the "Sir William Peel" is stated to have been seized when in Mexican waters, and without previous search, and that the case is now before the Prize Court at New Orleans. And that he was directed by your Lordship to request that we would take the matter into our consideration, and favour your Lordship with our opinion whether Lord Lyons should be instructed to make any further representation to the United States' Government, pending the result of the inquiry in the Prize Court, beyond the note which he addressed to Mr. Seward on the 2nd instant, forwarding to him copies of the papers relative to the seizure of this vessel.

Mr. Hammond was further pleased to inclose a letter, dated the 22nd October ultimo, from the Association for the Protection of Commercial Interests, stating that an agent would be sent to the United States to see to the owners being properly represented in the Prize Court, together with the answer returned to it on the 23rd ultimo.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we are of opinion that, pending the result of the inquiry before the Prize Court, Lord Lyons should not be instructed to make any representation additional to that which has already been made by him to the Government of the United States.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 414.

The Law Officers of the Crown to Earl Russell.—(*Received November* 27.)

Lincoln's Inn, November 27, 1863.

My Lord,

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 16th instant, stating that he was directed by your Lordship to transmit to us the accompanying despatch and its inclosures from Her Majesty's Minister at Washington (No. 779) respecting the case of a vessel called the "Etta," which had previously sailed as a Confederate privateer, but having been condemned at Nassau as unseaworthy, had been sold for certain merchants there, and finally sent on a voyage to New York, where she was seized by the Government of the United States; and to request that we would take the same into our consideration, and favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That the peculiar circumstances of this case may possibly raise some important questions of international law, and especially the question how far a belligerent is bound to recognize the validity of a transfer of a ship of war by the other belligerent, *durante bello*, to a neutral, and the change of her character in the hands of the neutral purchaser from a warlike to a commercial purpose. It may be in your Lordship's recollection that, in the case of the "Sumter," (afterwards called the "Gibraltar,") the United States' Government appeared disposed, not only to maintain the absolute invalidity of such a sale as against their own belligerent rights, but even to expect that it would be treated as invalid by our own municipal law. It became the duty of the Law Officers on that occasion to advise your Lordship that there was no municipal law of this country against such a transaction (assuming its *bonâ fide* character); and that the question whether such a ship so transferred would still be liable to capture was one which, if it should arise, might properly be left to the determination (in the first instance at all events) of a Prize Court. The peculiarity of the present case is that the ship "Etta" has not been captured upon the high seas, but has been seized (as we understand) by the Government of the United States, within their own territory. The means must, we presume, exist of raising the question of the legality of this seizure in the Courts of Law of the United States by proper proceedings at the suit of the owners of the vessel; and we are disposed to think that this course, if open, is that which may most properly be taken. There cannot, however, be any objection to an inquiry by Lord Lyons, under your Lordship's instructions, of the United States' Government as to the grounds of the seizure, and as to the steps which it is proposed to take to establish its legality, against the British owners who claim the vessel. The answer to this inquiry may better enable us to judge of the validity of those grounds, and as to the course which it may be expedient for Her Majesty's Government to take on the subject.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 415.

The Law Officers of the Crown to Earl Russell.—(Received November 30.)

My Lord, *Lincoln's Inn, November* 30, 1863.

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 23rd November instant, stating that he was directed by your Lordship to transmit to us the accompanying letter and its inclosures from Mr. Evans, claiming compensation for injuries sustained by him in consequence of the Confederate steamer "Florida" having burnt the vessel "Anglo-Saxon," on board of which he was at the time engaged to serve as pilot; and to request that we would take the same into our consideration, and favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we do not think the claim for compensation by Mr. Evans is well-founded. He received no ill-treatment: being found on board a vessel belonging to a belligerent, which was captured by the enemy on the high seas, he was set free as soon as the necessities of the captor would allow him. The fact that the captor did not hail a British ship and put him on board constitutes, in our opinion, no ground for claiming compensation from the Government of the Confederate States.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 416.

The Law Officers of the Crown to Earl Russell.—(Received November 30.)

My Lord, *Lincoln's Inn, November* 30, 1863.

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 10th instant, stating that he was directed by your Lordship to transmit to us the accompanying despatches as marked in the margin,* from Her Majesty's Minister at Washington and Her Majesty's Consul at New York, respecting the capture of the British ship "Isabella Thompson" by the United States' steamer "United States," and the proceedings which have taken place with regard to this vessel before the Prize Court at New York; and to request that we would take these papers into consideration, and favour your Lordship with our opinion thereupon.

We are also honoured with your Lordship's commands signified in Mr. Hammond's letter of the 12th instant, stating that with reference to his letter of the 10th instant, he was directed by your Lordship to transmit to us, for our consideration, the accompanying further despatch from Lord Lyons respecting the case of the "Isabella Thompson" (No. 766, October 26, 1863).

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we think Lord Lyons should be instructed to make a communication to Mr. Seward upon this subject.

It is true that the remedy of an appeal is open to the owners, and is a legal mode of obtaining redress, yet unexhausted by them. But the miscarriage of the Judge in not awarding costs and damages in this case appears to us clear; and we think that an attempt at least should be made to obtain justice for the owners, without incurring the delay and expense incident to further legal proceedings, and by which the ultimate demand of Her Majesty's Government for compensation might be only augmented.

We presume that the notes of the Judge's sentence are correct. And, if so, the premises respecting the entire innocence of the vessel, and the absence of any legal ground for detention, are so plainly at variance with the conclusion of relieving the captors from the legal and proper consequence of a wholly unjustifiable seizure, that we still hope the United States' Government will admit, at once, the justice of giving the costs and damages in this case.

The vessel was engaged in a lawful trade between two neutral ports, neither of them even in the neighbourhood of any blockaded port. Her cargo was taken on board in the ordinary course of trade in neutral waters; and there is not any trace in the evidence of anything having occurred, when she was visited and captured, which could afford the slightest pretext for her capture. For the single ground of justification suggested, viz., the suspicion of a complicity between this vessel and the blockade runner from which she received a great part of her cargo in British waters, no ground was shown except in the evidence of one witness, the cook, which the Judge himself did not venture to rely upon; and which by itself, even if fully credited, had no tendency to identify the voyage and adventure of the one ship with that of the other; and it is apparent, from the omission of the captors to avail themselves of the opportunity of going into further proof which was offered them by the Decree, that there was no ground in fact for any such charge. And we notice as deserving reprehension, the course adopted in obtaining, previous to the regular examination, and while the witness was on board in the power of this captors, a deposition (however voluntary it may purport to be) from the cook, evidently intended to offer some sort of pretext for a seizure, which it had been discovered could not be defended upon the facts and the law. Such a deposition is very objectionable in principle, and is contrary to the practice of the American and British Prize Courts.

The case is simply this: a neutral vessel sailing from one neutral port to another with a cargo free from all suspicion, and perfectly regular papers, seized upon the high seas, and compelled to incur very heavy expenses and damages, without a colorable pretext on the part of the captor, as to whom the most favourable suggestion is, that he was entirely ignorant of the law.

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* Lord Lyons, Nos. 619, 628, 754, and 755; Consul Archibald, Nos. 101 and 152.

It is difficult to say in what case the award of costs and damages, the only protection of the neutral, ought to be made by the Prize Court, if not in this. Even if the captor's conduct in such a case is excusable in the eyes of the Judges of his own country, this can be no reason why all indemnity should be refused to the injured party, who did not by any improper or objectionable conduct whatever contribute to the captor's error.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 417.

The Law Officers of the Crown to Earl Russell.—(Received December 2.)

UNITED STATES.

My Lord, *Lincoln's Inn, November* 30, 1863.

WE are honoured with your Lordship's command's signified in Mr. Hammond's letter of the 12th November instant, stating that he was directed by your Lordship to transmit to us the accompanying correspondence* respecting the cases of two British subjects at Galveston, who have claimed exemption from the conscription for the Confederate army.

Mr. Hammond was also pleased to state that we should see from these papers that both of these persons have exercised certain privileges appertaining to citizens in the State of Texas, and that Lord Lyons had already decided in one case, that of Leach, that nothing further could be done.

Mr. Hammond was further pleased to state that your Lordship, however, would be glad if we would take the matter into our consideration, and favour you with our opinion whether Her Majesty's Government could properly interfere on behalf of one or both of these individuals.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we do not advise Her Majesty's Government to take any steps in either of the cases of Leach and Richards. They appear to fall within the category of those cases as to which Her Majesty's Government has decided not to interfere.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 418.

The Law Officers of the Crown to Earl Russell.—(Received December 2.)

UNITED STATES.

My Lord, *Lincoln's Inn, November* 30, 1863.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 12th instant, stating that he was directed by your Lordship to transmit to us the accompanying papers† respecting the imprisonment and alleged ill-treatment of Mr. W. J. Matchett, at Wilmington, Delaware, in the United States; and to request that we would take the same into our consideration and favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we presume that Wilmington, Delaware, was under martial law, and that every United States' subject was liable to the same military arrest and treatment as Mr. Matchett underwent. It appears that Mr. Matchett has been for many years resident in the United States, during which time it is asserted by the United States' authorities, and by no means explicitly denied by him, that he has in one sense at least represented himself as a United States' citizen, by discharging some of the most important functions of citizenship, *e. g.*, voting and taking an active part in the elections relating to the county, the State, and the Government. He appears also to have used violent language, exciting the suspicion of the authorities. As soon as evidence was produced of his being, notwithstanding his exercise of civil rights, a British subject, he was set at liberty.

Taking all the circumstances into consideration, we do not think that Her Majesty's Government are called upon to take any further steps in this matter.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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* Lord Lyons, No. 451; to Lord Lyons, No. 342; Lord Lyons, No. 764.

† Mr. Matchett, September 15, 1863; to Mr. Stuart, No. 345, October 8, 1863; Lord Lyons, No. 763, October 26, 1863.

No. 419.

The Law Officers of the Crown to Earl Russell.—(Received December 2.)

JAPAN

My Lord, *Lincoln's Inn, November* 30, 1863.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 17th November instant, stating that he was directed by your Lordship to transmit to us the accompanying despatch from Colonel Neale (No. 134, September 10), stating the circumstances under which a regulation respecting vagrants (a copy of which was inclosed in his despatch) had been provisionally approved by him; and to request that we would take these papers into our consideration, and report to your Lordship our opinion thereupon.

Mr. Hammond was also pleased to inclose a copy of the Order in Council of the 23rd of January, 1860, under authority of the 4th and 5th sections of which the Regulations in question would be issued.

In obedience to your Lordship's commands we have the honour to report—

That we have considered these papers, and we are of opinion that the regulations as to vagrancy bearing date the 5th of September last are in excess of the powers given to Her Majesty's Consular Agents in Japan by the 4th and 5th sections of the Order in Council of the 23rd January, 1860, and are therefore invalid in law.

The authority given to the Consular Agents is to make and enforce, by fine or imprisonment, rules and regulations for the observance of the stipulations of Treaties, and for the peace, order, and good government of Her Majesty's subjects, being within the dominions of the Tycoon of Japan. These regulations must (we conceive) be in the nature of positive laws, capable of being obeyed or violated; and so far as these sections of the Order in Council alone are concerned, no penalty can be imposed for their violation, except fine or imprisonment. And the 6th and 7th sections which follow, show that no penalty is to be inflicted upon any person for the violation of any such regulations, without a trial properly conducted, and a legal conviction and sentence thereon.

So far as relates to the constitution of an offence, we are disposed to think (though not altogether without hesitation) that the Regulations of the 5th of September last might be sufficient in law, the offence being failure to give security for good behaviour when required so to do, under the circumstances thereby defined as constituting a condition of "vagrancy."

But we doubt whether it was competent to Her Majesty's Consular Agents in Japan to constitute the fact itself of "vagrancy," as so defined, an offence, or to give to what is here called an "adjudication" of vagrancy the effect of a conviction for an offence; depending, as this definition of vagrancy does, upon a combination of circumstances, none of which are unlawful by the general law of England (see section 30 of the Order in Council), or by the terms of the Order in Council itself (see section 38 of that Order), nor even prohibited antecedently to "adjudication," by these or any other Regulations.

But whether the vagrancy, or the omission to give security is intended to constitute the offence, the Regulations purport to authorize the Consul, in the event of security not being forthcoming, "*to provide for the safe keeping* of such person or persons adjudged vagrants, *by imprisoning him* or them for any period not exceeding one calendar month; and to order and cause the removal of such person or persons from the Consular district, by sending him or them to Her Majesty's Colony of Hong Kong in any British ship of war or merchant-vessel, under warrant for his or their conveyance," &c.

Upon this it is to be observed, that although imprisonment may certainly be awarded, as a punishment, for an offence against any Regulations duly made, after a proper trial and conviction, these provisions seem to contemplate a different kind of imprisonment, "for the safe keeping" of the vagrant, without any trial or conviction for any offence, unless the previous adjudication of vagrancy, upon an "inquiry" by the Consul, was meant to be regarded in that light.

And, secondly, they purport to authorize, besides a month's imprisonment, the deportation of the vagrant to Hong Kong. But deportation is not a punishment which the Consular Agents in Japan are empowered to inflict for any breach of Regulations, by virtue merely of the 4th section of the Order in Council. And it appears to us to be impossible to bring the offence (if any) constituted by these Regulations, within any of the cases defined by sections 21, 22, 23, and 24, of the Order in Council, in which the deportation of British subjects from Japan is authorized by law.

This objection alone is, in our opinion, enough to be fatal to the Regulations; for it is evident, from the sections of the Order in Council to which we have referred, that Her Majesty did not intend to place it in the power of the Consuls to deport any of her subjects from Japan, unless under the particular circumstances there contemplated.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 420.

The Law Officers of the Crown to Earl Russell.—(Received December 2.)

UNITED STATES.

My Lord,
Lincoln's Inn, December 1, 1863.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 27th November ultimo, stating that he was directed by your Lordship to transmit to us the accompanying letter dated the 26th November ultimo, from Mr. J. D. Hamilton, inquiring whether the protection of Her Majesty's Government could be extended to an Irish gentleman who has been naturalized as an American citizen, and is anxious to resume his nationality as a British subject previous to his returning to the United States; and to request that we would take the same into our consideration, and favour your Lordship, at our earliest convenience, with our opinion as to the answer which should be returned to this application.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we are of opinion that inasmuch as this gentleman is a naturalized subject of the United States, your Lordship cannot promise to interfere on his behalf as against the authorities of the United States, in respect of any obligation which the law of that country may impose upon naturalized subjects resident within the limits of its territory.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 421.

The Law Officers of the Crown to Earl Russell.—(Received December 2.)

UNITED STATES AND BRAZIL.

My Lord,
Lincoln's Inn, December 2, 1863.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 21st ultimo, stating that with reference to our Reports of the 27th October and the 10th November last,* he was directed by your Lordship to transmit to us, together with the previous papers,† a further despatch which has been received from Consul Westwood‡ respecting the three vessels stated to have been purchased by Mr. Allen, and which have been detained at Rio de Janeiro, and to request that we would again take this case into our consideration, with reference to the documents of which copies are now furnished by Mr. Westwood, and favour your Lordship with any observations which we might have to add to our former Reports.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That there can be little doubt that the opinion expressed in Captain Craufurd's letter to Admiral Warren (September 28, 1863) contains the true history of this case: namely, that the Brazilian authorities, alarmed by the threats of the United States' General Webb, and the prospect of a collision between British and American ships in waters adjacent to the Brazilian territory, have practically invoked the aid of the Civil Judges to give them an excuse for detaining the vessels in question. But the fact of legal proceedings relating to these vessels (however little creditable to the Brazilian Government and Courts of Justice) being *de novo* actually pending, renders it prudent, if not necessary, to await the result of those proceedings, under that protest, which in substance the Consul has made. The fact that the United States' ship of war the "Mohican" did pursue the "Gracie" from the Brazilian waters, and on her return also returned thither, is patent, and is not dealt with by the Marquis d'Abrantes. With respect to the claim advanced by General Webb to all the property of the enemy of the United States, by reason of its *ipso facto* confiscation, we have fully expressed our opinion in our Report of the 27th October last, to which we beg now to refer. We have, in that Report, submitted to your Lordship that it would be expedient that the whole matter should be referred to Lord Lyons, in order that he may present the views of Her Majesty's Government to that of the United States. But we incline to the opinion that it would be prudent, should this step not already have been taken, to wait for the decision of the Brazilian tribunals upon the question of municipal law affecting these vessels, which, according to the statement of the Marquis d'Abrantes, is now before them.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 422.

The Law Officers of the Crown to Earl Russell.—(Received December 2.)

UNITED STATES

My Lord,
Lincoln's Inn, December 2, 1863.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 10th ultimo, stating that he was directed by your Lordship to transmit to us the accompanying despatch and its inclosures from Her Majesty's Consul at Galveston (No. 13, August 12), respecting the compulsory enlistment of British subjects in the service of the so-styled Confederate States, and to request that we would take these papers into consideration and furnish your Lordship with our opinion thereupon. And Mr. Hammond was pleased to add that the previous despatch referred to by Mr. Lynn did not appear to have been received at the Foreign Office.

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* Pages 280 and 290.

† Consul Westwood, No. 29; Admiralty, October 5, 1863; Consul Westwood, No. 32; Consul Westwood, No. 34; Mr. B. F. Allen, October 28; Consul Westwood, No. 44; Admiralty, November 26, 1863.

‡ Consul Westwood, No. 45, October 23, 1863.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That on the general subject to which these papers relate, we adhere to the opinions expressed in our former Reports.

That with respect to the present communications from Her Majesty's Consul at Galveston, we can only suggest that he should be instructed to persevere in remonstrating in every particular instance in which conscription takes place of a British subject who has not had the option of leaving the Confederate States tendered to him, and who is desirous of leaving them, unless such British subject be a person who can be proved to have been naturalized in the Confederate States, or to have voted at elections, or enjoyed other political rights or privileges to which aliens generally are not entitled, upon the faith of an assumed citizenship, or of a declared intention to become naturalized in those States, or to be a person who has voluntarily engaged in the naval or military service of the Confederate States during the present war.

It is to be observed that the letters, at least of Captains Carrington, Yancey, and Walsh, to Her Majesty's Consul, are written in a fair and conciliatory spirit.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 423.

The Law Officers of the Crown to Earl Russell.—(Received December 4.)

Lincoln's Inn, December 3, 1863.

My Lord,

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 28th ultimo, stating that he was directed by your Lordship to transmit to us therewith a collection of despatches received from Mr. Walker,* who has been acting as British Consul at Charleston since the withdrawal by the Federal Government of Mr. Bunch's exequatur, relating to the circumstances under which the Government of the Confederate States have prohibited the exercise of Consular functions in those States by British Agents.

Mr. Hammond was also pleased to inclose a collection of printed papers on the same subject, as well as three despatches from the Acting British Consul at Havana (Nos. 15, 19, and 20); and was to state to us that Her Majesty's Government have it in contemplation to send to the Confederate States an Agent to communicate with the Government of those States respecting the manner in which British subjects are dealt with therein, and also respecting other matters; and Mr. Hammond was to request that we would report to your Lordship, at our earliest convenience, our opinion as to the instructions which may properly be given to that Agent on the matters adverted to in the papers sent to us.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That we think the Agent who may be sent to the Confederate States should be instructed to assent to the principle insisted on by Mr. Benjamin, that the question of the exemption of British subjects resident in the Confederate States from compulsory military service against the United States is one for discussion between Her Majesty's Government and the *de facto* Government of the Confederate States, and not one as to which individuals ought to be advised, by Her Majesty's accredited Agents in the Confederate territory, to take the law into their own hands, and to define for themselves the limits of the obedience due from them to the Government of the country in which they reside. In cases of conflict between the permanent allegiance due by a subject to his own Sovereign, and the temporary allegiance due by every sojourner to the laws of the country in which he may happen to be, it is impossible for the authorities of the latter country to recognize the right of individuals to assign any limits whatever to their own obligations to obey its laws, and if by the operation of those laws the rights of a foreign Sovereign are violated, it is for that Sovereign to remonstrate, and to seek the proper redress, as is usual between nations.

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* Acting Consul Walker, Nos. 112, 113, 122, 123, 125, 126, 128, 129, 136, 137, 138, 139, 140, and 142.

We think, therefore, that Mr. Fullarton misconceived his duty when he gave the advice to Her Majesty's subjects within the Confederate States which has been made use of by the authorities of those States as a pretext for dismissing Her Majesty's Consular Agents, although we do not apprehend that he intended by that advice to recommend any persons actually enrolled as soldiers in the Confederate service "to throw down their arms in the face of the enemy" (as is represented by Mr. Benjamin). Even the language of Mr. Walker, though much more guarded, and not fairly susceptible of any similar interpretation, may, perhaps, also be admitted (especially when viewed in connection with that of Mr. Fullarton) to be open to some reasonable exception.

Upon the main question itself, as to the liability of British subjects within the Confederate territory to conscription, or to forced military service, we understand the claim of the Confederate authorities to be, in the first place, limited to those who are *domiciled* in the Confederate States, in the sense of that term adopted by writers on private international law; and, secondly, to be asserted as to such domiciled persons (as distinguished from persons naturalized, or admitted *de facto* to the exercise of the peculiar privileges of citizenship, concerning whom no question arises) upon the ground that, by the laws which have been passed in the Confederacy since the commencement of the war, and particularly by the Act of the 16th March, 1861 (see Governor Brown's letter, at page 6 of the printed papers), sufficient notice and opportunity had been given to enable them to leave the country, if they had been disposed to do so, and that having, nevertheless, remained in the country till the present time, they must now be deemed to have elected to remain, on the footing of those enactments, subject to military service, and to all other burdens of citizenship.

This mode of stating the argument reduces the question from one of principle to one depending upon the just appreciation of facts. The same rule ought, undoubtedly, to be applied within the Confederate as within the United States. The real question is, whether the situation of the Confederate States in the present war, blockaded by sea, and with constant military operations covering their land frontier, has not been such as to make the option to leave their territory, said to have been offered by the Confederate Legislative to British subjects previously domiciled within it, merely illusory? If so (and we conceive that, generally, it must be so), no real and *bonâ fide* opportunity of removal has been afforded, and British subjects cannot in those circumstances, without a violation of the comity hitherto observed among nations, and of the spirit of the Treaties under which they began their residence in the Southern States, be required to render compulsory military service.

We observe that in a letter of General Beauregard some endeavour is made to distinguish the cases of British subjects who have been employed as workmen by the Confederate Government in their arsenals at Charleston and elsewhere, upon the ground that, by accepting such employment, they violated the neutrality enjoined by their own Sovereign, and so disentitled themselves to Her Majesty's protection. Such an argument might, we think, be valid, if applied to persons who had voluntarily enlisted in the naval or military service of the Confederate States. But we do not understand that the workmen spoken of by General Beauregard were employed in any naval or military service, and, if not, it does not appear to us that Her Majesty's protection ought to be withheld from them, only because the works upon which they have been employed were connected with the war service of the Confederate Government.

We think that the distinction taken, under your Lordship's instructions, by Her Majesty's late Consular Agents between service to suppress insurrection, and to defend the homes and families of the citizens against outrage, and general service in the Confederate army, is well founded; and we cannot but observe that the Confederate authorities in enlisting British subjects ostensibly in a local force for the former purposes, and then transferring them to General Bragg's army, have taken a course not only contrary to good faith, but indicative of a consciousness on their part that the object which they really had in view could not be openly avowed and justified.

The above remarks are sufficient to show in what sense we think the Agent about to be sent to the Confederate States ought to be instructed, with reference to the matters adverted to in the papers before us.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 424.

The Law Officers of the Crown to Earl Russell.—(Received December 4.)

My Lord, *Lincoln's Inn, December* 3, 1863.

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 24th ultimo, stating that with reference to the Report of the Law Officers of the 10th of September, 1861,* he was directed by your Lordship to transmit to us, together with the previous papers bearing on the matter,† a letter from Mr. Hayman, dated the 11th November ultimo, inclosing a prospectus of a Company to be formed for the purpose of running the blockade of the ports of the so-styled Confederate States, in shot-proof vessels, and inquiring whether Her Majesty's Government take exception to such a project; and Mr. Hammond was to request that we would take these papers into consideration, and furnish your Lordship with our opinion as to the answer which should be returned to Mr. Hayman's application.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That it does not appear to us to be incumbent on your Lordship to give any further counsel or advice to Mr. Hayman; and that the proper answer to that person would be to refer him to the former letter upon a similar subject which he received from your Lordship, and to the admonition therein contained.

He may at the same time be informed that Her Majesty's Government are not to be understood as affording the slightest countenance to the projected Company, as to the legality of the objects of which (whether fully or only partially disclosed by the prospectus which he has sent) the projectors will, of course, have the ordinary means of obtaining competent advice.

We think it proper, on our own part, to add, that a scheme like this is by no means unlikely to be resorted to as a cloak for future attempts to violate the Foreign Enlistment Act, by the equipment of vessels really intended for the belligerent service of the Confederate States.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 425.

The Law Officers of the Crown to Earl Russell.—(Received December 5.)

My Lord, *Lincoln's Inn, December* 3, 1863.

TURKEY.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 9th ultimo, stating that he was directed by your Lordship to transmit to us the accompanying despatches from Her Majesty's Agent and Consul-General in Egypt (Nos. 141, 142, and 151)), respecting an appeal made by a person of the name of Ninet to the French Judicial Court at Alexandria,

in the matter of proceedings taken against him for contempt of Court, by direction of Mr. Legal Vice-Consul Fonblanque.

Mr. Hammond was also pleased to inclose a despatch from Her Majesty's Ambassador at the Porte and from the Judge of the Supreme Consular Court at Constantinople upon the same subject; and was to request that we would furnish your Lordship with our opinion as to the steps, if any, which Her Majesty's Government would be borne out in taking in this matter.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we are of opinion that the evidence before us establishes that a contempt of the Consular Court was committed by Mr. Ninet.

We much regret that this question should have been raised before the French Consular Court. Such a proceeding appears to us extremely injudicious, and to be attended with very embarrassing consequences.

Before we express any opinion as to the powers of the English Consular Court in cases of this description, we should be glad to be further informed by Mr. Fonblanque what his own practice is, and what that of the French or other Christian Consular Courts in the dominions of the Sultan is in such cases.

We should also desire to know, more accurately than we do at present, what are the local limits within which these Courts are admitted both by the Ottoman authorities and by the Representatives of other Christian Powers, to exercise an undisturbed jurisdiction, whatever it be, in cases of contempt; *e.g.*, Does this jurisdiction extend beyond that of the room in which the Court is holden? If beyond, to what extent? Is there any place of confinement attached to each Consular Court? If there be, is the order for the imprisonment of a person therein respected, both by the Ottoman and Christian authorities, without reference to his nationality? Has such a case ever before occurred in which a Consular Judge of one nation has, directly or indirectly, prosecuted before the Consular Judge of another nation a person for contempt of Court? Or (on the other hand) in which he has punished, by his own authority, an offender of another nation not a suitor before him?

We think that, with further and fuller information on these points, we should be in a better condition to tender advice to your Lordship as to this case.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 426.

The Law Officers of the Crown to Earl Russell.—(Received December 4.)

My Lord, *Lincoln's Inn, December* 4, 1863.

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 30th ultimo, stating that he was directed by your Lordship to transmit to us, together with the previous papers,* further despatches and their inclosures from Lord Lyons, respecting the case of the "Victor";† and to request that we would be good enough to take the same into consideration, and inform your Lordship whether we saw anything therein to cause us to alter the opinion expressed in our Report of the 26th ultimo.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That the additional papers now submitted to us do not induce us to change the opinion which we have already had the honour to submit to your Lordship in our former Report on this case. Indeed, we do not perceive any reference in the letter of the District Attorney of the United States, to the ground on which our opinion rests, viz., that the "Juniata" lay in wait in a

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* See Reports for 1861, page 214.

† Mr. Hayman, August 29, 1861, and September 4, 1861; Law Officers, September 10, 1861; to Mr. Hayman, September 19, 1861; Mr. Hayman, September 21, 1861; to Mr. Hayman, September 30, 1861.

* Consul Archibald, Nos. 102 and 116; Lord Lyons, No. 650; Consul-General Crawford, No. 29; Lord Lyons, Nos. 651 and 661; Consul Archibald, No. 127; Lord Lyons, No. 676; Admiralty, August 17; Lord Lyons, No. 687; to Mr. Stuart, No. 501; Lord Lyons, Nos. 772 and 772, November 3, 1863.

† Lord Lyons, Nos. 794 and 805

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neutral harbour for the "Victor," and followed her out of port for the purpose of visitation and capture.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 427.

The Law Officers of the Crown to Earl Russell.—(*Received December* 5.)

Lincoln's Inn, December 4, 1863.

ITALY.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 1st instant, stating that he was directed by your Lordship to transmit to us therewith a despatch from Her Majesty's Consul-General at Naples (No. 73) inclosing an application from Mr. Charles Monticelli to be recognized as a British subject, and to be furnished with an English passport; and to request that we would favour your Lordship with our opinion upon this matter.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That Mr. Charles Monticelli was, perhaps, not *sui juris* till the age of 25, and could not have acted independently of parents or guardians in this matter till 1859-60. No very long interval may, therefore, have elapsed between his coming of age and his seeking a British passport. He does not appear to have ever been employed in Italian military or civil service. He is legally, as far as Great Britain is concerned, a British subject. He asks for a passport, as a British subject, for British dominions; and under these circumstances we are of opinion that it should be granted to him.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 428.

The Law Officers of the Crown to Earl Russell.—(*Received December* 5.)

Lincoln's Inn, December 5, 1863.

AUSTRIA.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of yesterday's date, stating that he was directed by your Lordship to transmit to us therewith a letter, dated the 3rd December instant, from the Austrian Ambassador at this Court, respecting the wish of his Government to be allowed to inspect the iron-clads now under seizure at Liverpool, with a view to their ultimate purchase if they should be offered for sale.

And as, independently of any other consideration connected with the legal proceedings taken against these vessels, it is not desirable to afford the Austrian Government, at the present time, any facilities for acquiring these vessels, your Lordship proposed to return to Count Apponyi the answer, of which a draft was inclosed, if such answer should meet with our concurrence.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That, in our opinion, the answer which your Lordship proposes to return to Count Apponyi is perfectly proper.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 429.

The Law Officers of the Crown to Earl Russell.—(*Received December* 8.)

Lincoln's Inn, December 7, 1863.

UNITED STATES.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 30th ultimo, stating that he was directed by your Lordship to transmit to us the accompanying despatch and its inclosure, from the Acting British Consul at Charleston (No. 118, August 31, 1863), respecting the loss incurred at the hands of United States' troops by the Rev. F. Lightbourn, a British subject residing at Jackson, North Carolina; and Mr. Hammond was to request that we would take this case into our consideration, and furnish your Lordship with our opinion whether Her Majesty's Government can properly apply to the Government of the United States for compensation for the damage sustained by the Rev. Mr. Lightbourn.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That the outrage appears to have been unprovoked, not connected in any way with the proper discharge of military duties, and not growing out of the inevitable necessities of war in the country of an enemy. But it would seem that Mr. Lightbourn, though an English subject, is or was officiating as clergyman of an American congregation or parish; if so, we think that he has so incorporated himself into the institutions and territory of the Federal or Confederate States, as the case may be, as to render it unavoidable that he should suffer, like all other persons resident in that territory, from the evils incident to a state of war, without redress; unless, indeed, redress can be obtained, upon his own application, from any American authorities.

It is not possible, nor indeed advisable, that Her Majesty's Government should undertake to protect subjects, domiciled within the territory of either belligerent, from plunder and violence, however unjustifiable, when committed (as in this case it appears to have been) by troops engaged in hostile operations within their enemy's country.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 430.

The Law Officers of the Crown to Earl Russell.—(*Received December* 9.)

Lincoln's Inn, December 9, 1863.

UNITED STATES.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 30th ultimo, stating that he was directed by your Lordship to transmit to us the accompanying memorial from John Smith, complaining of his having been arrested and imprisoned without proper trial at New York, and of the hardships to which he was subjected when in prison, and Mr. Hammond was to request that we would take this case into consideration, and furnish your Lordship with our opinion whether Her Majesty's Government can interfere to procure redress for this person.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That having regard to the nature of the complaint and all the circumstances of the case, and especially to the admitted fact that John Smith remained four months at New York after his release from prison without preferring any complaint, or making any application on the subject of his present Memorial to Lord Lyons or Her Majesty's Consul at New York, we are of opinion that no adequate ground is laid for the interference of Her Majesty's Government in this matter.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 431.

The Queen's Advocate to Earl Russell.—(*Received December* 10.)

Doctors' Commons, December 9, 1863.

My Lord,

CHILE.

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 1st of December instant, stating that with reference to my Report of the 21st of January last,* he was directed by your Lordship to transmit to me a despatch from Her Majesty's Chargé d'Affaires in Chile (No. 74), respecting the administration of the property of a British subject named Clark or Clarkson, supposed to have been a convict; and to request that I would take this despatch, together with the previous papers, into consideration, and report to your Lordship my opinion as to the course Mr. Thomson should now pursue in the matter.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That it was an act within the abstract competence of the Court at Santiago to refuse to allow the intervention, on behalf of Her Majesty, in the suit relating to this convict's will. That Court, in substance, rests its refusal upon two grounds: 1, that all the property disposed of by Clark is within the territory of Chile; 2, that the sentence of foreign criminal law does not follow the criminal into a foreign territory where there is no Treaty of Extradition. The Court at Santiago ought, according to the usages of comity, to have allowed evidence to be given that the deceased being a criminal, under sentence for his crime, was incapable of acquiring a new domicile, or of making a will under the law of the country of a new domicile.

But I am of opinion that it is not necessary that Mr. Thomson should be instructed to take any further steps in this matter: those which he has taken appear to me very proper.

We have, &c.
(Signed) ROBERT PHILLIMORE.

No. 432.

The Queen's Advocate to Earl Russell.—(*Received December* 10.)

Doctors' Commons, December 9, 1863.

My Lord,

FRANCE.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 3rd of December instant, stating that he was directed to transmit to me the accompanying letter, dated the 27th of November ultimo, from Mr. Chamberlin, relative to a claim for tonnage dues which has been made by the French Customs authorities upon the master of the British schooner "Foxhound," on the ground that Zante, from which island the "Foxhound" had arrived at Dunkirk with a cargo of currants, was not a British Colony; and to request that I would take the same into consideration, and furnish your Lordship with my opinion thereupon.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I am unable to discover upon what ground Zante is to be considered as a British Colony. In the Treaty of Commerce, signed at Paris 1860, no mention is made of the Ionian Islands. By the Treaty of 1826, Article VI, it is provided that its provisions "shall be reciprocally extended and in force in all the possessions, subject to the respective dominions of the Contracting Parties, in Europe." I am of opinion that these words do not include the Ionian Islands; they are not, properly speaking, British dominions, and so it was formally decided by the Judge of the Admiralty during the Russian war.

Special stipulations have been made with foreign Powers when it has been intended to include the Ionian Islands within the benefit of our Treaties; *e. g.*, with Sardinia (Hertslet, vol. ix, p. 709), with Russia (ibid., vol. x, p. 1063).

I am not aware that France has entered into any similar arrangement to apply the Treaty of 1826, in the last Commercial Treaty, to the Ionian Islands, and I am not informed that France has ever acted as if such a stipulation

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* Page 26.

existed. I am therefore of opinion that the imposition of these tonnage dues furnishes no ground for remonstrance on the part of Her Majesty's Government.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 433.

The Law Officers of the Crown to Earl Russell.—(*Received December* 10.)

Lincoln's Inn, December 10, 1863.

My Lord,

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 5th instant, stating that he was directed by your Lordship to transmit to us the accompanying papers, as marked in the inclosed list, respecting the case of the ship "Rappahannock," formerly under the name of the "Victor," one of the vessels of Her Majesty's navy, which has recently been sold out of the Government service, and has been conveyed out of the port of Sheerness under the circumstances stated in the inclosed correspondence, to be employed as a vessel of war in the service of the so-styled Confederate States; and Mr. Hammond was to request that we would take these papers into consideration, and furnish your Lordship with our opinion on the following points:—

1. In what terms Mr. Adams' letter of the 28th ultimo should be answered.
2. Whether, under the circumstances, Her Majesty's Government would be justified in watching for the "Rappahannock" as she leaves Calais, and seizing her in the Channel.
3. Whether they would be justified in seizing her if she entered a port in the United Kingdom, or in one of the British Colonies.
4. Whether they would be justified in prohibiting her entrance into a British port, home or colonial, and refusing to allow her to obtain supplies.

Mr. Hammond was to add that your Lordship would be happy to be furnished with any other observations which we may see occasion to offer with regard to this vessel; and that your Lordship would be glad to receive our report on these matters as soon as possible, in order that if we should be of opinion that any steps can be taken by Her Majesty's Government, no time may be lost in proceeding with them.

In obedience to your Lordship's commands we have fully considered this case, and have the honour to report—

That it appears to us to be a case of the very gravest importance, and to call for prompt and vigorous measures on the part of Her Majesty's Government.

An affront, accompanied by fraud, has been inflicted upon the honour and dignity of Her Majesty by the conduct of persons professing to be the agents of the Confederate Government. To the accomplishment of this fraud, one of Her Majesty's dockyards and some of the artisans employed in it have been subservient; and an attempt has been made, if not to kidnap some of these artisans, and others of Her Majesty's subjects, to seduce them from their allegiance and to engage them in a foreign service, contrary to the law of the land and the express prohibition of their Sovereign.

We are of opinion that in reply to Mr. Adams your Lordship should state:—

(1.) That the attention of Her Majesty's Government has been and still is directed to the general circumstances of this case, and to the particular facts alleged in the depositions which Mr. Adams has forwarded to your Lordship, and that there is a firm determination on the part of Her Majesty's Government both to vindicate, with respect to the Confederate belligerent, the neutrality of Her Majesty, and also to put in force the laws of this country against any persons who may appear to have offended against them in this matter.

(2.) We have further to say that, without expressing a positive opinion that the gross and fraudulent violation of Her Majesty's neutrality which has been committed might not warrant, even without previous communication with the Confederate States, so extreme a measure as the watching for the "Rappahannock," and the seizing her after she has left French waters, in the Channel, we do not, after a most anxious consideration of all the circumstances, advise Her Majesty's Government to take this step. But we think that Her Majesty's

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Government ought, without delay, to send an agent to the Government of the Confederate States, with instructions to express the very serious light in which Her Majesty's Government view this transaction, and their confident expectation that the Confederate Government will hasten to disavow and censure this act of the persons professing to be or acting as their agents in this country; and that Her Majesty's Government must require as a just reparation for the affront offered to the dignity of the Crown, for the flagrant abuse of the hospitality and deliberate infringement of the neutrality of British territory, that the "Rappahannock" be given up to Her Majesty, upon receipt of the money which was paid for her to Her Majesty's Government.

That having made this demand Her Majesty's Representative should be instructed to wait for the answer of the Confederate Government, and in the event of the answer conveying the refusal of that Government to comply with this demand, to signify that he has received Her Majesty's directions to the following effect, namely (3 and 4), to inform the Confederate Government that Her Majesty's Government will give orders that neither the "Rappahannock," nor the "Alabama," nor any other vessel which, after being fitted out with any kind of equipment in this country, has proceeded, when at sea, to hoist the Confederate flag, shall be allowed to enter any port or harbour of Her Majesty's dominions in any part of the world, and that if they do enter they shall be seized by Her Majesty's naval and military forces, and held in custody until Her Majesty's pleasure be taken with respect to them; and to apprize distinctly the Confederate Government that if, hereafter, any vessel shall repeat the offence of the "Rappahannock," Her Majesty will deem herself compelled to vindicate the dignity of her Crown, and the neutrality of her realm, by issuing orders to Her Majesty's ships to pursue and capture such vessel upon the high seas.

It will be understood that we think Her Majesty's Government will be warranted in doing that which is suggested by the fourth query in Mr. Hammond's letter, in the event of satisfaction being refused by the Confederate States.

We are much inclined to think that Messrs. Gordon and Coleman ought to be indicted, but we cannot express a positive opinion upon this point until we have received and considered further evidence with respect to it.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 434.

The Law Officers of the Crown to Earl Russell.—(*Received December* 11.)

UNITED STATES.

My Lord, *Lincoln's Inn, December* 11, 1863.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 1st instant, stating that, with reference to our Report of the 17th of March last,* he was directed by your Lordship to transmit to us, together with the previous papers,† relating to the case, the accompanying despatch from Her Majesty's Consul at New York,‡ inclosing a copy of a Judgment of the District Circuit Court confirming the condemnation of the "Albert;" and to request that we would take the same into our consideration, and favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration and have the honour to report—

That it does not appear to us that the sentence of the Circuit Court was improper, or (so far as we can judge) unwarranted by the evidence laid before the Court from which the appeal was prosecuted. We see no reason for the official interference of Her Majesty's Government in this matter.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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* Page 77.

† Acting Consul Edwards, Nos. 57 and 61; to Mr. Stuart, No. 24; Mr. Stuart, No. 198; to Mr. Stuart, No. 145; Lord Lyons, Nos. 96 and 133; to Lord Lyons, No. 143.

‡ Consul Archibald, No. 202, November 16, 1863.

No. 435.

The Law Officers of the Crown to Earl Russell.—(*Received December* 11.)

UNITED STATES.

My Lord, *Lincoln's Inn, December* 11, 1863.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 4th instant, stating that he was directed by your Lordship to transmit to us the accompanying letters, dated the 28th October and 5th November ultimo, from the Rev. A. C. Walshe, complaining of certain proceedings in Canada on the part of the Government of the United States, which he states to be in breach of the neutrality laws of the realm.

Mr. Hammond was also pleased to state that he inclosed a letter, dated the 3rd December instant, from the Colonial Office, stating that the Duke of Newcastle, before giving instructions on the subject to the Governor-General of Canada, would wish to be informed which of the acts complained of would constitute breaches of neutrality. And to request that we would take these papers into consideration, and favour your Lordship with our opinion as to the answer which should be returned to the Colonial Office.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That, of the five facts specified by Mr. Walshe as breaches of neutrality, there are only two which, if capable of being substantiated, would fall under that category, namely, the enlistment of Federal soldiers in Canada, and the delivery of deserters from the Federal army by the Canadian to Federal authorities. At least, we are not aware of any Treaty which can warrant such extradition. The purchase of horses and river-steamers, and the transit of passengers by railways, are no violations of neutrality, unless there be something more in each case to give an illegal character to the transaction than we are able to infer from Mr. Walshe's letters. The statements as to the recruiting, and the apprehension of deserters, though at present too vague to found any immediate action of the Canadian Government, deserve the attention of that Government; and ought, if they prove upon inquiry to be true, to be censured as to the past, and prohibited as to the future, besides being made the subject of remonstrance with the United States' Government.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 436.

The Law Officers of the Crown to Earl Russell.—(*Received December* 11.)

UNITED STATES.

My Lord, *Lincoln's Inn, December* 11, 1863.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 7th instant, stating that, with reference to our Report of the 3rd instant,* he was directed by your Lordship to transmit to us a draft of the instructions which it is proposed to address to Mr. Crawford, Her Majesty's Consul-General in Cuba, whom your Lordship has selected as an Agent to proceed from this country, where he has been on leave of absence, to Richmond, Virginia, for the purpose of entering into communications with the so-called Confederate Government on the subject of the compulsory enlistment of British subjects in the Confederate army, and also with regard to the attempts of the Confederate Government to use the ports of the United Kingdom for the purpose of constructing ships of war to be equipped and armed as cruizers against the United States of America.

And to request that we would take these proposed instructions into our consideration, and report to your Lordship our opinion whether they are right and proper.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

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* Page 316.

That we are of opinion that the letter, with the slight additions suggested in the margin, is proper to be sent.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 437.

The Law Officers of the Crown to Earl Russell.—(*Received December* 12.)

UNITED STATES.

My Lord, *Lincoln's Inn, December* 12, 1863.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 10th instant, stating that he was directed by your Lordship to acquaint us that towards the end of last month information was received by Her Majesty's Government, as set forth in the letters inclosed from the Treasury and from the Earl of Donoughmore (dated respectively the 21st and 25th of November ultimo), that the United States' steamer of war "Kearsarge" had, during her stay at Queenstown, enlisted various British subjects to serve on board her.

Mr. Hammond was also pleased to state that your Lordship lost no time in communicating with Mr. Adams on the subject, and that he inclosed a copy of your Lordship's letter and of Mr. Adams' reply,* together with a draft of a rejoinder which your Lordship is about to address to Mr. Adams, in consequence of the further information contained in the accompanying letters from the Treasury and Board of Admiralty.†

The point, however, to which Mr. Hammond was more particularly and more immediately to draw our attention, is the position of the seamen who were embarked on board the "Kearsarge" at Queenstown, and who after an interval of a month have been relanded there from the "Kearsarge," and who are now in confinement at Cork awaiting the directions of Her Majesty's Government.

And Mr. Hammond was pleased to state that he was directed by your Lordship to request that we would report to your Lordship with as little delay as possible our opinion as to the course which should be taken in regard to those seamen, whether they are liable to prosecution for enlisting in the naval service of the United States, and if so whether it would be advisable to proceed against them and in what manner.

We are also honoured with your Lordship's commands, signified in Mr. Hammond's further letter of the 10th instant, stating, that with reference to his former letter of that day's date respecting the men relanded from the "Kearsarge," he was directed by your Lordship to inclose for our consideration a further letter (December 10) from the Admiralty on the subject.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we think these men ought to be prosecuted. Their own statements, as reported in Admiral Jones' letter of the 7th instant, seem enough to convict them (*i. e.* such of them as made those statements) of an offence against the 2nd section of the Foreign Enlistment Act; and (although it does not yet appear, whether the individuals in custody can be identified by John Dunn, or by the deponents whose declarations were forwarded by Mr. Mason, through Lord Donoughmore, as parties to the particular transactions of which those deponents spoke) the truth of the general case seems to be fully corroborated by those earlier depositions.

With reference to the statement of the Captain of the "Kearsarge," and to the further papers, we have to observe, that whatever credence may be given to the somewhat improbable story of the seamen having secreted themselves on board the ship without the knowledge or connivance of its officers, and to the attempted explanation of Lieutenant Thornton, still, the intention to enlist British subjects having been denied and disavowed by those officers, and the

seamen having been put on shore, we do not see any necessity for further remonstrance with the United States' Government. But we adhere to the opinion that the men should be prosecuted. It results, even from Lieutenant Thornton's own statement, that they came and remained on board the ship for the purpose of enlistment; and that, when she sailed from Brest (if not sooner) their names were borne upon the ship's books as part of her crew.

With respect to the mode of proceeding, we conceive, that the offenders ought to be taken before a Justice of the Peace, residing at or near Queenstown, and committed for trial at the Assizes (if the evidence produced against them satisfies the Justice) in the ordinary course of law, under section 4 of the Foreign Enlistment Act.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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* To Mr. Adams, November 30; Mr. Adams, December 7, 1863.

† Admiralty, December 7; Treasury, December 7, 1863.

No. 438.

The Law Officers of the Crown to Earl Russell.—(*Received December* 12.)

UNITED STATES.

My Lord, *Lincoln's Inn, December* 12, 1863.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 11th of December instant, stating that with reference to his letter of the 10th instant respecting the proceedings of the United States' steamer of war "Kearsarge" at Queenstown, he was directed to transmit to us a letter, dated the 10th of December instant, from the Board of Admiralty, by which it appears that the "Kearsarge" has arrived at Devonport, and asked permission to communicate with the United States' Consul at that port, which permission has been granted; that the general question as to the proceedings of the "Kearsarge" at Queenstown was before us; and it is therefore more particularly with reference to the declaration of the Commander that the "Kearsarge" was employed in watching the Confederate steamer "Florida," now at Brest, and irrespective of the course which it may be proper for Her Majesty's Government to pursue in regard to the alleged enlistment of men at Queenstown, that he was directed by your Lordship to ask us whether Her Majesty's Government would be justified in refusing to the "Kearsarge" admission into the ports of the United Kingdom, which she is evidently using with a view to belligerent operations at no great distance from those ports.

In obedience to your Lordship's commands we have taken this question into consideration, and have the honour to report—

That if Her Majesty's Government are satisfied that the "Kearsarge" ought, under the circumstances, to be regarded as making use of Plymouth or any other of Her Majesty's ports, as "a station or place of resort for any warlike purpose" (see Article 2 of the Rules published by Her Majesty's Order, in the "London Gazette" of the 31st of January, 1862), they will clearly be justified in refusing to that ship, under such circumstances, admission into any such ports of the United Kingdom.

Whether the present visit of the "Kearsarge" to Plymouth ought to be regarded in this light may be, to a certain extent, a consideration to be governed by the opinion of naval authorities. But having regard to the previous circumstances respecting the enlistment, and the admitted fact that the "Kearsarge" is employed in watching the "Florida;" the rapidity with which a transit by steam is made across the Channel, the great importance of preventing, as far as possible, the Channel from being the scene of American hostilities, and of avoiding the evils of making the opposite ports of England and France places from which hostilities are to originate, we think that it would be within the spirit of Her Majesty's orders, and consistent with the general obligations of a neutral Power, to refuse at present the admission of the "Kearsarge" into the ports of the United Kingdom.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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No. 439.

The Queen's Advocate to Earl Russell.—(Received December 12.)

Doctors' Commons, December 12, 1863.

My Lord,

UNITED STATES.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 9th instant, stating that with reference to my Report of the 31st of August last,* on the question raised by the United States' gun-boat "Rhode Island" having anchored in the Mathewtown Roadstead, Bahamas, without any previous communication with the local authorities, he was directed by your Lordship to transmit to me, together with the previous papers,† the correspondence which has since passed with the Colonial Office,‡ with regard to the expediency of re-publishing in the Gazette the Regulations of the 31st of January, 1862, with an explanatory letter annexed; and that your Lordship had proposed that the letter, which by your Lordship's direction Mr. Hammond had addressed to the Colonial Office on the 11th of September, should serve as such explanatory letter; but I should perceive from the Colonial Office letter of the 28th of September last, that the instruction to the Governor of the Bahamas which accompanied it, was suggested by the Duke of Newcastle as a fitting letter to be appended to a re-publication of the regulations. And Mr. Hammond was to request that I would take this matter again into consideration, and report to your Lordship my opinion as to the expediency of re-publishing the regulations of the 31st of January, 1862, in the "Gazette," with the instructions to the Governor of the Bahamas, of which a copy is inclosed in the Colonial Office letter of the 28th of September, appended thereto.

Mr. Hammond was also pleased to annex a further correspondence with the Colonial Office bearing upon the same question.§

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I am of opinion that it would be expedient to re-publish the Regulations of the 31st of January, 1862, with the instructions to the Governor of the Bahamas proposed in the Colonial Office letter of the 28th of September, appended thereto.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 440.

The Law Officers of the Crown to Earl Russell.—(Received December 12.)

Lincoln's Inn, December 12, 1863.

My Lord,

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 9th instant, stating that he was directed by your Lordship to transmit to us a letter from Mr. Adams inclosing a copy of a letter dated the 7th December instant, from the United States' Consul at Liverpool covering a number of depositions, all going, as Mr. Adams states, to establish in the clearest manner the existence of a regular Office at Liverpool for the enlistment and payment of British subjects for the purpose of carrying on war against the Government and people of the United States.

And to request that we would take these papers into consideration, and report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That the depositions transmitted by Mr. Adams disclose a systematic violation of the Foreign Enlistment Act, which in our opinion calls for decisive measures on the part of Her Majesty's Government.

We think that a strong case is established (if unanswered) against two at least of the partners of Jones and Co., viz., W. Jones and M. Hyatt, and against one of their clerks named Wilding.

We do not collect clearly from the depositions whether Mr. Bold, the other partner, is identified as taking part in any of the transactions spoken to, nor whether a case can be made against *another clerk*, who is referred to, but not by name.

We advise that charges be preferred before a Justice, in the manner prescribed by the fourth section of the Foreign Enlistment Act against Jones, Hyatt, and Wilding, for engaging or endeavouring to engage to enlist, &c., or to go or agree to go or embark, &c., for the purpose or with intent to be enlisted &c., *Stanley, Conolly, and Glassbrook*, in violation of the second section of the Act. We think it advisable that a charge should also be preferred against them of a conspiracy to violate that section of the Act. Under this charge, anything said or done by any of them in pursuance of a common criminal design will be admissible in evidence, and the mode of proof may be facilitated. These observations apply also to Bold, and the other clerk, if proof can be obtained against them.

We understand that *Barrett*, who is described as the ship's yeoman, is still on board her.

We have to observe, that the facts disclosed in the depositions furnish additional grounds to those already existing, for strong remonstrance to the Confederate Government, on account of the systematic violation of our neutrality by their agents in this country.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 441.

The Law Officers of the Crown to Earl Russell.—(Received December 14.)

Lincoln's Inn, December 12, 1863.

My Lord,

TURKEY.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 11th November instant, stating that, with reference to our Report of the 22nd of September last, respecting certain points in the construction of Her Majesty's Order in Council of the 9th of January, 1863, relative to Consular jurisdiction in the dominions of the Porte, he was directed by your Lordship to transmit to us the draft of the instruction which, after consultation with the Secretary of State for India, your Lordship addressed to Her Majesty's Ambassador at Constantinople upon the subject.

Mr. Hammond was also pleased to inclose a letter which had been subsequently received from the India Office detailing the circumstances of a failure of justice which had occurred in respect of the murder of a British Indian at Kerbela, in Turkish Arabia, and containing certain suggestions of Her Majesty's Secretary of State for India in regard to the Order in Council above alluded to.

Mr. Hammond was further pleased to inclose a copy of the Order in Council, together with former papers, and to request that we would take them into our consideration, and report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

1. As to Sir C. Wood's suggestion with reference to native Indian British subjects in Turkey (the expediency of which may be assumed) that, inasmuch as the provisions of the existing Order in Council are positive law, it would seem to be more consistent to carry that suggestion into effect by a supplemental Order in Council, than to instruct Her Majesty's Consul at Bagdad to assume and exercise, with regard to a numerous class of persons, a power of dispensation which does not legally belong to him.

2. That, as to the murder of the British Indian at Kerbela, there can be no doubt that the murderer ought to have been sent to Malta for trial (Rule 45);

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* Page 242.

† To Admiralty, January 31, 1862; Lord Lyons, Nos. 558 and 636; to Colonial Office, July 10 and August 3; Colonial Office, August 17, 1863.

‡ To Colonial Office, September 11; Colonial Office, September 28; to Colonial Office, October 1, 1863.

§ Colonial Office, November 19; to Colonial Office, November 25; Colonial Office, December 7, 1863.

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and we do not see why he was sent to Bombay; but if, as seems probable, it would be expedient that Bombay should be made a place for trial of British Indians, this must be done by a Supplemental Order in Council.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 442.

The Law Officers of the Crown to Earl Russell.—(*Received December* 14.)

Lincoln's Inn, December 12, 1863.

My Lord,

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 12th ultimo, stating that with reference to our Report of the 11th of September,* he was directed by your Lordship to transmit to us, together with the previous papers, a despatch from Lord Lyons (No. 767, October 26, 1863), inclosing copies of the evidence and other documents relating to the case of the "Springbok;" and Mr. Hammond was to request that we would take the same into consideration, and furnish your Lordship with any observations we may have to offer thereupon.

In obedience to your Lordship's commands we have considered this case, and the further papers submitted to us, and have the honour to report—

That we have still to regret the absence of any Judgment, with reasons from the Judge who condemned this ship.

The long delay in the delivery of such a judgment, in a case of so much importance (the Decree being executed, and the ship and cargo sold under it, while the reasons for the conclusion of the Court are still unknown), is a grievance to the owners of the ship and cargo, deserving, we think, that some remonstrance on the subject should be addressed by Lord Lyons to the United States' Government, regard being had to the practical injury thereby inflicted upon the owners.

In the meanwhile, forming our opinion on the evidence now before us, we are at a loss to find sufficient legal justification for the sentence of condemnation in this case, especially as it does not appear that any opportunity of further proof was offered to the claimants, on any points as to which the Judge may have thought the papers and the evidence equivocal or unsatisfactory, or the information afforded by them imperfect.

These facts appear to be uncontroverted, namely, that the "Springbok" was seized on the high seas, 200 miles from Nassau, in the direct and proper course for that place, and taken 900 miles to be adjudicated upon at New York; and that all her papers on board were regular (the absence of the invoice is immaterial): they were all consistent with what was sworn to by all the witnesses *in preparatorio*, namely, that it was intended to discharge and deliver the cargo at Nassau; and the charter-party (as we collect) was for the delivery of the cargo to the consignees at Nassau, on payment of freight there. It does, indeed, appear by the Shipping Articles, that the crew were engaged for a voyage, out and home, of about twelve months, which was to extend, after her arrival at Nassau, "if required," to any other port (*inter alia*) of the "American States;" and the control over that contingent destination seems to have been given to the same persons at Nassau, who were the consignees of the cargo.

The most that can be said of this is, that the Shipping Articles and other papers might be *consistent with* an intention, on the part of the charterers, that, after arriving at Nassau, the ship might be ordered by the consignees to proceed, with her cargo, to a blockaded port; but they do not *prove* any such intention: and, according to all principle and precedent, if the case had been decided upon the papers and the depositions alone, the vessel and cargo must have been released, probably with costs and damages.

It was found necessary to examine the cargo in order to find a sort of *ex post facto* justification of the seizure.

This cannot, of course, be said to be absolutely unlawful, but it is a mode of proceeding open to much abuse, most vexatious to the neutral, and which ought not to be resorted to except in cases where the state of the papers or the evidence of the witnesses generates a suspicion in the first instance.

It is said that certain portions of the cargo were contraband; and we are disposed to think that there were sufficient grounds for holding them to be so, apart from the consideration of their destination to a neutral port. But the nature of the cargo afforded no evidence that the destination of this or of any other part of the cargo was not to the neutral port of Nassau.

There was no evidence of an intention either to tranship any part of the cargo at Nassau for a blockaded port, or to make a continuous voyage from London to a Confederate port, touching at Nassau on the way; and we are at present wholly unable to conceive upon what ground the papers were pronounced to be false and simulated. To assume that goods, even of a nature exclusively serviceable for the army and navy of Confederate States, and avowedly designed for the supply of that market, might not have a real and *bonâ fide* destination to Nassau, would be to contradict the notorious fact that a large and profitable trade is actively carried on there with the Confederate States.

On the whole, we are disposed to agree with the opinion of Mr. Edwards that the sentence was wrong, and ought to be reversed.

Still we hesitate to advise Her Majesty's Government officially to interfere in this matter before we have seen the reasons upon which the Judge founded his sentence; and we must add that, even if we had the advantage of seeing them, we should, looking to our own practice, be disinclined to advise such interference, at all events before the case had been heard before the Court of Appeal.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 443.

The Law Officers of the Crown to Earl Russell.—(*Received December* 14.)

Lincoln's Inn, December 12, 1863.

My Lord,

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 24th November ultimo, stating that he was directed by your Lordship to transmit to us the accompanying despatches from Her Majesty's Consul at New York (Nos. 193 and 198), inclosing copies of the judicial proceedings in the cases of the vessels "Louisa Agnes," "J. H. Foone," "Prince Leopold," "Sarah Starr," and "Aigburth," and to request that we would take the same into our consideration, and favour your Lordship with our opinion thereon.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That an appeal is or may be in course of prosecution from all these Judgments; and that, with respect to all, we are of opinion, that the result of the appeal should be known before any final decision be taken by Her Majesty's Government as to the necessity or expediency of any official interference on behalf of the claimants with the United States' Government.

Subject to this general observation we think that the "Louisa Agnes" was properly condemned on the evidence, for having sailed with intent to break the blockade, and for being seized at last, though twice released in the attempt to do so. The question of ill-treatment by the captors of the prize crew is, no doubt, one of a serious character, and the averment of such ill-treatment must always require the careful consideration of Her Majesty's Government. Nevertheless, we have had frequent occasion to observe, that it is a charge which, in many cases, has been rashly and untruly made by claimants during the present war.

The placing the crew of a captured vessel in irons is justifiable only by the extreme necessity of the case. The misconduct of the captors may be such, as to destroy their otherwise just title to the prize, and also to render them liable to damages. This is a protection due to neutrals, which belligerents are bound to afford.

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* Page 248.

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In the present case, however, we do not understand the Prize Court to deny these positions, or to refuse to entertain, or at all to make light of, a charge of misconduct on the part of the captors; but to take a distinction, not without reason, between the mode of procedure which ought to be adopted in the case where such a charge is brought against a public ship, and that which may be proper in a case where it is brought against a privateer, over whom the Court has a more direct and special authority. Accordingly, the Prize Court is willing take cognizance of the charge in this case, provided it be preferred through the more formal mode of procedure known to the Admiralty Court as by plea and proof. We cannot say that such a determination was inconsistent with justice. We do not mean to say that there may not be cases in which Her Majesty's Government would be warranted in demanding immediate redress from the Government of the United States for proved or admitted injuries inflicted by captors upon the captured crews, but we do not think that the present case falls within that category.

In the case of the "J. H. Foone" the cargo alone was condemned, as the proceedings against the ship had not been "regularly perfected." The grounds of condemnation were, the intent to enter a blockaded port, and the being taken off the alleged course of destination with some contraband on board, in a course towards the blockaded port. The circumstances were very suspicious: there is no reason why the claimants should not be left to the usual remedy of an appeal.

The "Prince Leopold" appears to have been properly decided, both upon the formal and substantial grounds, and an opportunity has been offered to the claimants of still proving their ignorance (if they were ignorant) of the blockade.

The "Sarah Starr" and the "Aigburth" appear to have been condemned upon the application of two principles of mixed international and public law to the facts and circumstances of those cases, namely:—

1. The principle that persons domiciled or carrying on trade in the enemy's country are to be treated by the Prize Courts as enemies.

2. The principle that a subject of one belligerent cannot sell or purchase roperty in the territory of the other belligerent, for the purpose of covering such property from the operations of war.

These principles (we do not pledge ourselves to the applicability of all the decided cases referred to) are quite sound and well-established; and, as far as we can judge at present, appear to have been rightly applied to the cases of these vessels, and to have justly enured to their condemnation.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 444.

The Law Officers of the Crown to Earl Russell.—(Received December 15.)

My Lord, *Lincoln's Inn, December* 15, 1863.

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 5th instant, stating that with reference to our Reports of the 19th and 21st of October,[*] he was directed by your Lordship to transmit to us the accompanying despatches from Her Majesty's Agent and Consul-General in Egypt (Nos. 163 and 164), respecting the position in which M. Bravay stands towards the Viceroy with regard to the iron-clads now under seizure at Birkenhead; and Mr. Hammond was to request that we would inform your Lordship whether we would wish any further instructions to be sent to Mr. Colquhoun on this subject.

In obedience to your Lordship's commands we have considered these papers, and have the honour to report—

That we are of opinion that Mr. Colquhoun should be further instructed to the effect that it will be necessary (in order to enable proof to be given, according to the law of England, of the material facts relative to the pretence that these ships were intended for the Pasha), to obtain the loan of the original letter of M. Bravay to the Viceroy, and also to induce his Highness to condescend to repeat in evidence before a Commission his statement as to the repudiation by him of M. Bravay's demand upon the Government of Egypt.

We should hope that a proper representation to his Highness as to the necessity of these formal proceedings in order to obtain the ends of justice according to English law may be found effectual to procure the compliance of his Highness with the request made to him. Without such assistance Her Majesty's Government will not have the means of offering any legal evidence in support of this branch of their case.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

[*] Pages 270 and 274.

No. 445.

The Law Officers of the Crown to Earl Russell.—(Received December 24.)

My Lord, *Lincoln's Inn, December* 22, 1863.

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 1st instant, stating that he was directed by your Lordship to transmit to us the accompanying despatch from Her Majesty's Consul at New York (No. 200,) inclosing copies of the judicial proceedings in the cases of the "Mersey," "Delta," "Empress," "Cheshire," and "Hiawatha;" and Mr. Hammond was to request that we would take the same into consideration and furnish your Lordship with any observations we may have to offer thereupon.

In obedience to your Lordship's commands we have considered the proceedings in these cases, and have the honour to report—

That we are of opinion that all these ships were lawfully condemned.

We do not think the Judge's position as to the transfer of ships from a belligerent to a neutral, in all respects, sufficiently guarded or entirely correct, but we think that there are other grounds quite sufficient to sustain the sentence.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 446.

The Law Officers of the Crown to Earl Russell.—(Received December 24.)

My Lord, *Lincoln's Inn, December* 22, 1863.

MEXICO.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 3rd instant, stating that he was directed by your Lordship to transmit to us therewith a letter dated the 24th November ultimo, from Messrs. Kerford and Co., of Liverpool, inclosing two protests from Messrs. Preciat and Gual, their consignees at Campeachy, relative to the loss to which they have been subjected in consequence of the British schooner "Blue Jacket" having been prohibited by the French steamer "Milan" from discharging at that port her entire cargo, which is British property, and on which the proper duties had been levied; and Mr. Hammond was to request that we would take the same into our consideration, and furnish your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration and have the honour to report—

That we are clearly of opinion that the Custom-house authorities at Campeachy had no right to compel the payment of duties upon that part of the goods which had not been landed; neither according to the principles of the law of blockade administered in English and American Courts, and recognized

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by the Declaration of Paris, had the French steamer a right in the circumstances to prevent the completion of the unloading, for there was certainly no blockade *de facto* (which the French, as well as the English and Americans, admit to be the only lawful blockade) on the 13th of September off Campeachy. But, if there had been such a blockade, it would have been competent to the French steamer to have warned off the "Blue Jacket," although she had sailed from England long before the blockade had begun or been proclaimed. On the other hand, no attempt has been made by the French to condemn the ship or cargo, or to do more than prevent her continuing to unload after a *de facto* blockade had begun.

Practically, we think it may be assumed that no injury would be done to the "Blue Jacket" if the duties on the unloaded half of the cargo were remitted either at Campeachy or at Laguna de Terminos.

We think that a communication should be made to the French Government on the subject; and we think it may reasonably be expected that on a statement of the law of blockade, and its application to the facts of this case, they will see the justice of remitting the duty levied at Campeachy.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 447.

The Law Officers of the Crown to Earl Russell.—(Received December 24.)

Lincoln's Inn, December 22, 1863.

My Lord,

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 17th instant, stating that with reference to our Report of the 12th instant,* he was directed by your Lordship to transmit to us, for such observations as we may have to offer thereupon, the accompanying letter, dated the 15th December instant, from the Admiralty respecting the use which the United States' steamer "Kearsarge" is making of the harbours of the United Kingdom.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That it does not occur to us that the letter of my Lords requires any observation in addition to those contained in our former Report on this subject. It is obvious that the question as to whether the "Kearsarge" be or be not using the ports of this kingdom for belligerent purposes is one of fact, which must depend in great measure upon the frequency and the length of any visits which that vessel may pay to any particular port. We presume that your Lordship will be practically guided by this view, as expressed in the letter of the Board.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 448.

The Law Officers of the Crown to Earl Russell.—(Received December 24.)

Lincoln's Inn, December 23, 1863.

My Lord,

UNITED STATES.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 11th instant, stating that he was directed by your Lordship to transmit to us the accompanying correspondence as marked in the margin,† from which we should perceive the circumstances under which the British ship

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* Page 326.

† Consul Vines, No. 23; to Lord Lyons, No. 473; to Sir A. Magenis, No. 63; Consul Vines, No. 24; to Mr. Stuart, No. 521; Sir A. Magenis, No. 108; Mr. Stuart, No. 55; to Mr. Stuart, No. 532; Lord Lyons, Nos. 783, 806, and 837.

"Juno" was captured off Terceira by the United States' steamer "Kearsarge," but subsequently released, the steps taken by Her Majesty's Government with reference to the proceedings of the "Kearsarge" on that occasion, and the view taken of the matter by the Government of the United States; and to request that we would take these papers into consideration, and favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That although the apology of the United States' Government is in most respects ample and satisfactory, we regret that the fact, apparently uncontroverted, of using the Portuguese harbour and waters as a place from whence to originate the exercise of belligerent rights is passed over in silence. We hope, however, that the remonstrance of the Portuguese Government on this point will follow upon the representation made to that Government by Her Majesty's Minister, and will sufficiently vindicate the invasion of neutral rights in this respect.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 449.

The Attorney-General to Mr. Hammond.—(Received December 31.)

My dear Sir, *Aske, December 29, 1863.*

UNITED STATES.

I RETURN Count de Bille's letter. It is curious that I should learn from the letter of a Foreign Minister on what day the "Alexandra" Judgment is to be given. The Court of Exchequer do not condescend to give any notice to solicitors or counsel, even in Government cases.

You are quite right in supposing that, even if the "Alexandra" case were to be decided against us, it would not govern the case of the iron-clads; and I think also that if the "Alexandra" case were decided against us upon the law, we should carry it by appeal to the Exchequer Chamber, and (if necessary) to the House of Lords.

I presume, from the answer which Lord Russell gave to the Austrian Government (though the same motives of policy might not apply to that Government and to Denmark), that his Lordship would not feel at liberty, even if he were disposed, to facilitate the purchase of these vessels by Denmark. If it were the policy of Her Majesty's Government to do so, and if Messrs. Laird and M. Bravay were also willing to concur in such an arrangement, a sale of the vessels might of course be made by mutual arrangement, leaving the price to abide the result of the legal proceedings, and to be invested in the meantime.

Believe me, &c.
(Signed) ROUNDELL PALMER.

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APPENDIX.

APPENDIX.

No. 270.

The Law Officers of the Crown to Earl Russell.—(*Received July* 4.)

My Lord, *Temple, July* 4, 1863.

FRANCE.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 16th ultimo, stating that with reference to our Report of the 21st of May, 1862,[*] respecting the case of Mr. Serjeant Glover and his suit against the Count de Persigny and others, he was directed by your Lordship to transmit to us a correspondence, as marked in the margin,[†] on the subject of a complaint made by Mr. Glover against the violent treatment which, as he alleges, he has experienced at the hands of the French police, and on account of which, as would be seen by his letter of the 15th instant, he claims redress or satisfaction.

And to request that we would take the correspondence inclosed into our consideration, and favour your Lordship with our opinion as to the course which Her Majesty's Government should pursue in this matter.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we do not advise your Lordship to apply to the French Government for any redress on behalf of Serjeant Glover. As far as we are able to form any opinion from the paper before us, we think that he must ascribe to his own violence of conduct the treatment which he received. The instructions upon the subject of Serjeant Glover which your Lordship has sent to Lord Cowley appear to us sufficient to answer any reasonable claims of that individual to British protection.

We have, &c.
(For the Attorney-General and myself),
(Signed) ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 356.

The Law Officers of the Crown to Earl Russell.—(*Received October* 1.)

My Lord, *Temple, September* 29, 1863.

TURKEY.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 19th September instant, stating that with reference to our Report of the 7th of July last, respecting the case of Messrs. Bello and Piso's bankruptcy, he was directed by your Lordship to transmit to us the inclosed letter from Mr. Tiano explaining the position which he occupies with regard to that firm, and remonstrating against the interference of Her Majesty's Government in this matter.

Mr. Hammond was also pleased to inclose a Memorandum by the Judge of the Supreme Consular Court at Constantinople on this subject, and to request

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[*] See Reports for 1862, page 123.

[†] Lord Cowley, No. 468; Mr. Glover, April 25; Memorandum, May 2; Mr. Glover, May 2; to Mr. Glover, May 2; to Lord Cowley, No. 599; Mr. Glover, June 15, 1863.

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that we would take these documents, together with the former papers connected with this case, into our consideration, and to report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That an answer should be sent to Mr. Tiano to the effect that your Lordship has not interfered with the regular course of justice, but, on the contrary, acted in aid of it by apprizing the Ottoman Court of Justice that the Courts of all civilized States respect, as a general rule, sentences duly pronounced by the Bankruptcy Courts of another State. That it is open to Mr. Tiano to show that he was not cited before that Court; that his debt was not included in the Schedule of debts adjudicated upon, and, therefore, that he was not concluded by the sentence, which (on those suppositions) is not *res judicata* as against him; and that the Ottoman Court would be informed that the opinion expressed by your Lordship did not apply, in these circumstances, to this case. If Mr. Tiano cannot truthfully make this statement, then your Lordship's opinion requires no modification, and contains a correct exposition of the law applicable to his case.

We have, &c.
(For the Attorney-General and myself),
(Signed) ROUNDELL PALMER.
ROBERT PHILLIMORE.

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FROM

THE LAW OFFICERS

OF

THE CROWN.

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CONFIDENTIAL.

LAW OFFICERS' REPORTS: 1864.

Africa.

No. 1.

The Queen's Advocate to Earl Russell.—(Received May 30.)

Doctors' Commons, May 30, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 26th instant, stating that he was directed by your Lordship to transmit to me therewith a Memorial from the Archbishop of Canterbury to the Queen, praying that Her Majesty would be pleased to grant her licence under her Royal Signet and Sign-Manual authorizing and empowering His Grace to consecrate the Rev. Samuel Adjai Crowther, Clerk, Master of Arts, a British subject, whose sufficiency in good learning, soundness of faith, and purity of manners he has fully ascertained, to be Bishop of the United Church of England and Ireland in the countries in Western Africa beyond the limits of Her Majesty's dominions. Mr. Hammond was also pleased to inclose the draft of a licence to the effect prayed for by the Archbishop; and to request that I would take the Memorial of the Archbishop, as well as the draft of the licence, into consideration, with reference to the Act 5 Vict., cap. 6, and also with reference to my Reports of the 13th and 29th of January, 1863, relative to the consecration of Bishops Tozer and Twells, and furnish your Lordship with my opinion whether Her Majesty can properly issue the Royal licence as prayed for by the Archbishop in the terms of the inclosed draft.

In obedience to your Lordship's commands I have the honour to report—

That I have perused the Memorial of His Grace the Archbishop of Canterbury to Her Majesty, and that I am of opinion that it would be proper to grant the prayer of the Memorial. That I have perused the draft licence with reference to the aforesaid Statute and Reports, and that I am of opinion that the draft is correctly drawn, and in testimony thereof I have affixed my initials to it.

I have, &c.
(Signed) ROBERT PHILLIMORE.

Austria.

No. 2.

The Queen's Advocate to Earl Russell.—(Received March 2.)

Doctors' Commons, March 2, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Murray's letter of the 1st instant, stating that he was directed to transmit to me a letter from the Admiralty,

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asking, with reference to a despatch from Her Majesty's Ambassador at Vienna (No. 111) also inclosed, whether any instructions should be given to Her Majesty's officers in the Mediterranean and home ports for their conduct towards the belligerent cruizers and their prizes; and to request that I would take these papers into consideration, and furnish your Lordship with my opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That I assume that Her Majesty is at present neutral in the war between Denmark and Austria, and that both these States adhere to the principles of maritime law laid down in the Declaration of Paris, which they have subscribed. Questions will most probably arise as to the release of neutral property found on board the vessels of the belligerent, and of neutral vessels captured as belligerent. Austria must of course establish, as Denmark has already done, a proper Prize Court, capable of administering justice upon the recognized principles of international law to the subjects of neutral States, whose interests may be affected by the seizures of belligerent cruizers. It remains to be seen whether the King of Italy will forbid prizes to be brought into any port of his kingdom, and what course the Porte and the King of Greece will pursue upon this subject: questions of considerable practical importance, and concerning which I would humbly suggest it would be expedient to obtain the earliest information. But at present the proper instructions to be given to Her Majesty's officers in the Mediterranean ports would be, as a general rule, not to interfere in cases of capture of British vessels made upon the high seas by the ships of war of either belligerent; and with respect to captures of British vessels unquestionably made within the territorial waters of a neutral State, remonstrance should be made to the captor by the proper officer of Her Majesty's ship (who probably would act simultaneously with the authority of the neutral territory), and restitution of the vessel be promptly required. But in the event of the place of capture being denied, and it being asserted by the captor that the seizure was made without the territorial waters of the neutral State, the matter must, if the captor insist upon his belligerent right (so far as any action on the part of officers of Her Majesty's ships is concerned), be allowed to be referred to the Prize Court.

With respect to home ports, I presume that Her Majesty will issue instructions relative to prizes in this war similar to those issued in the American war, by which prizes in this, as in that war, will be forbidden to be brought into any of Her Majesty's ports or harbours, and in this case the officers of Her Majesty's ships will of course be directed to aid in the execution of these instructions. If the Ionian Islands have not yet finally lost their former relation to the Crown of Great Britain, I think the Lord High Commissioner should be instructed to take the proper measures to proclaim that the bringing in of prizes into the ports of these territories will not be permitted.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 3.

The Queen's Advocate to Earl Russell.—(Received March 16.)

My Lord, *Doctors' Commons, March* 16, 1864.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 14th instant, stating that he was directed by your Lordship to transmit to me a despatch from Her Majesty's Ambassador at Vienna (No. 168), forwarding regulations issued by the Austrian Government with regard to the capture of enemy's ships at sea: and Mr. Hammond was to request that I would take this despatch into consideration, and inform your Lordship whether, in my opinion, there is any objection to the publication of the regulations in the "London Gazette."

In obedience to your Lordship's commands I have the honour to report—

That I think these regulations should be published in the "London Gazette."

I assume that the original German text will be published with an English translation. I venture to point out that the latter should be carefully made from the original German, and not from the French translation.

Paragraphs 12 and 15 are very important, and ought to be most correctly rendered. The French translation of 15 might mislead; and that of 12 is, I venture to think, in the latter part so incorrect as to reverse the sense of the original, though it is possible that the negative inserted in the French translation may have been accidentally omitted in the German text, but if so the provision itself contained in this paragraph would require serious consideration.

I must also observe that in paragraph 10 there is a provision that the prize is to be brought, if possible, "into an Austrian port;" otherwise "into the nearest place in which the captured ship can be placed under military protection or guard." Unless it be intended that "the nearest (*Austrian*) place" is meant, and also unless, in the further provision for ships entering ports with prizes in case of distress, Austrian ports are meant, these provisions would clearly interfere with the rights of neutral States to make what orders they pleased as to the admission of prizes into their ports.

I observe that the doctrine of the neutral vessel under convoy being exempt from visitation, which doctrine England has always resisted, is promulgated in these, as in the Danish regulations; but no approbation of this doctrine will be implied by the publication, without comment, in the Gazette.

I make the observation, as it would be inexpedient that any form of approbation of it should be conveyed.

I also observe that the cruizer is instructed to summon on board the master of the arrested vessel, with his papers, in the first instance, instead of, according to the more general usage, sending an officer on board to examine, but I do not think that this is likely to be injurious to the neutral.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 4.

The Law Officers of the Crown to Earl Russell.—(Received April 6.)

Lincoln's Inn, April 6, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Murray's letter of the 5th instant, stating that he was directed by your Lordship to transmit to us a letter dated the 5th instant from the War Office, forwarding a report from the Governor of Gibraltar of the arrival in that port of a Danish vessel with an Austrian prize crew on board, and to request that we would take these papers into our consideration and favour your Lordship with our opinion as to the instructions which should be given to the Governor of Gibraltar in this matter. And to inquire whether we have been able as yet to prepare the rules which, as we were aware, Her Majesty's Government desire to lay down in accordance with the views with which we were acquainted.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That we think the Governor of Gibraltar should be instructed to give notice to the prize vessel brought into that port by the Austrian prize crew, that she cannot be permitted to remain there, and to require her immediate departure.

We have prepared the draft instructions which accompany this Report, as suitable to be given to the Governor of Gibraltar, and to Her Majesty's civil and naval authorities abroad for their guidance during the present contest. We think also that copies of these instructions should be communicated to the Ministers in this country of all the belligerent Powers.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

Inclosure in No. 4.

Draft Instructions, &c.

1. DURING the continuance of the present hostilities between His Majesty the King of Denmark on the one side, and His Majesty the Emperor of Austria, His Majesty the King of Prussia, and the Germanic Confederation, or any of these Powers, on the other side, no prize captured or taken by any armed ship or privateer of any of the belligerent Powers, or by any officers or persons in the service of any of the said Powers, shall be permitted to be brought into any of the ports, harbours, roadsteads, or waters belonging to Her Majesty, either in the United Kingdom or elsewhere.

2. All ships of war and privateers of any of the said belligerents are strictly prohibited

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from making use of any port or roadstead in the United Kingdom of Great Britain and Ireland, or in the Channel Islands, or in any of Her Majesty's colonies or possessions abroad, as a station or place of resort for any warlike purpose, or for any purpose of warlike equipment; and no ship of war or privateer of any of the said belligerents shall hereafter be permitted to sail out of or to leave any port, roadstead, or waters subject to British jurisdiction, from which any vessel of the Power or Powers with whom such belligerent is at war (whether the same shall be a ship of war, or privateer, or a merchant ship), shall have previously departed, until after the expiration of at least twenty-four hours from the departure of such last mentioned vessel beyond the territorial jurisdiction of Her Majesty.

3. These orders are to be in force, and to be strictly observed in every case, until Her Majesty shall be pleased to make any further or other order to the contrary.

(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 5.

The Law Officers of the Crown to Earl Russell.—(*Received April* 30.)

Lincoln's Inn, April 30, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 28th instant, stating that he was directed to transmit to us a letter of the same date from the Admiralty, reporting that the Austrian ships of war which have arrived in the Downs have sent to Ramsgate for a collier; and Mr. Layard was to request that we would take this letter into consideration, and inform your Lordship whether the term of "warlike equipment," employed in the draft instructions inclosed in our letter of the 6th instant, includes coal.

In obedience to your Lordship's commands we have taken these papers into consideration and have the honour to report—

That however desirable it may be that orders should be given having for their object to prevent belligerents in the Danish war from coaling in our ports, we are unable to come to the clear conclusion that by the terms of the present orders such coaling is prohibited.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 6.

The Queen's Advocate to Earl Russell.—(*Received October* 15.)

Doctors' Commons, October 14, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 11th instant, stating that he was directed by your Lordship to transmit to me a letter, dated the 10th instant, from a Mr. McDonnell, asking for the interference of Her Majesty's Government to establish the validity of a certificate which he forwards of the marriage of his parents; and to request that I would furnish your Lordship with my opinion as to the answer which should be returned to Mr. McDonnell's application.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I see no objection to so far conceding the request of Mr. McDonnell as to send an answer to him to this effect: That in every State Courts of Justice are at liberty to follow their own rules of evidence, without regard to the admissibility or non-admissibility of such evidence in the place of domicil of the litigant. That the certificate in question was considered by the official authorities in England sufficient evidence that Mr. McDonnell's mother was the legitimate widow of his father, and that upon such evidence her pension as an officer's widow was granted to her, which I understand to have been the case; and that Mr. McDonnell is at liberty to make use of this letter, if it can be of service to him, in an Austrian Court of Justice.

I have, &c.
(Signed) ROBERT PHILLIMORE.

Bavaria.

No. 7.

The Queen's Advocate to Earl Russell.—(*Received January* 16.)

Doctors' Commons, January 13, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 8th January instant, stating that he was directed to transmit to me a despatch from Her Majesty's Minister at Munich (No. 122), requesting instructions as to the course he should take respecting a will left by the late Major-General Arnaud, now stated to be informal and invalid; and Mr. Layard was to request that I would report to your Lordship what instructions should be given upon the subject.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That as it appeared to me that Lord A. Loftus could not have expressed himself with perfect legal accuracy as to all the facts of this case, I thought it expedient to send for Mr. Lawrie (whose letter was amongst the papers submitted to me), in order to ascertain with precision what had actually happened with respect to this will. I find the circumstances to be as follows:—

That Major-General Arnaud died at Munich, a domiciled British subject; his will, therefore, in order to be valid, must have been executed according to English law. That law requires that there should be two witnesses, who attest in each other's presence, as well as that of the testator, the signature of the testator. In this case two witnesses had attested the signature separately, and not in each other's presence, and they made a statement to that effect in the presence of Lord A. Loftus at the first interview, which his Lordship mentions. After this interview, the widow again appeared before Lord A. Loftus to take an oath that her husband had died intestate; this oath his Lordship refused to administer, and gave her a written statement to forward to her legal adviser in London: this she did, and obtained legal advice to the effect that the will was invalid, and that on an affidavit being made by the witnesses as to the fact of their having signed separately, administration would be granted in London, as in cases of intestacy. This affidavit was sworn before Lord A. Loftus at the third interview, and is the instrument which his Lordship erroneously describes "as a fresh document to which they were prepared to take oath with the intention of giving validity to the will." On this affidavit being sent to London, a Registrar of the Court of Probate made the usual minute that the will was invalid, and directions were forwarded to the widow to take the usual oath necessary to obtain administration as in the case of an intestacy. This was the oath which, at the last interview, the widow presented herself before A. Loftus to take, and which oath his Lordship conceived that he ought not to administer; but I am clearly of opinion that he was wrong in refusing to do so, and that he ought to administer the oath to her in the usual form as she requested him to do: and I therefore advise your Lordship that Lord A. Loftus should be instructed to this effect.

I have, &c.
(Signed) ROBERT PHILLIMORE.

China.

No. 8.

The Law Officers of the Crown to Earl Russell.—(*Received January* 25.)

Lincoln's Inn, January 25, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 14th instant, stating that he was directed by your Lordship to inform us that

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it has been decided to send to Peking early in the present year a force consisting of one serjeant and six men chosen from the Metropolitan Police, to act as the escort and guard for Her Majesty's Legation at Peking, in lieu of the detachment of military which has hitherto performed this service.

That, among other arrangements connected with the despatch of these men, it is considered desirable that each of them should sign a formal agreement, binding himself, under certain penalties, to fulfil the conditions of the service upon which he is about to enter, and the accompanying draft Agreement has accordingly been prepared by Captain Harris, the Assistant Commissioner of Police, and submitted to your Lordship as a fit and proper instrument for the purpose. That before, however, your Lordship approves the draft Agreement, he is desirous of ascertaining whether it meets with our concurrence, viewed more particularly with reference to the possible bearing upon it of the Order in Council (China) of the 13th of June, 1853; and Mr. Hammond was therefore to request that we would take the draft Agreement into consideration, and furnish your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That we do not see any objection to the proposed Agreement, either as considered *per se* or with reference to the Order in Council of the 13th of June, 1853.

We concur, however, in the suggestion made in the margin, that the 4th Article in Captain Harris' part of the Agreement had probably better be omitted.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 9.

The Law Officers of the Crown to Earl Russell.—(*Received February* 8.)

Lincoln's Inn, February 8, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 23rd ultimo, stating that, with reference to the Law Officers' Reports of the 8th of October, 11th of November, and 9th of December, 1863, and 20th of May, 3rd and 24th of July, 1862, relative to the restriction imposed at Hong Kong and Singapore on the sale of arms, with the view of preventing supplies of arms and warlike stores from reaching the Taepings, he was directed by your Lordship to transmit to us, together with the previous papers and with the correspondence which has passed on the subject since the date of the last-mentioned Report, the accompanying letters and their inclosures from the Colonial and India Offices, and a letter addressed to your Lordship by Mr. Laird, complaining of his having been prevented by those restrictions from disposing of some guns of the value of 2,000*l*., which he purchased at Woolwich in June last for exportation to those markets; and Mr. Hammond was to request that we would take Mr. Laird's representations into consideration, and report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands we have considered this case, and have the honour to report—

That we are of opinion that Mr. Laird has not established any claim against Her Majesty's Government.

That the trade of Mr. Laird, like that of any other merchant, must be subject to the political and public exigencies which render necessary the exercise of Her Majesty's prerogative for the safety and welfare of her dominions at home and abroad; and his claim has not even that amount of reason which might have been suggested if he had made his purchase before the date of the Order in Council. The case does not seem to us to be at all altered by his statement that, in his tender, he mentioned his intention of exporting the guns, &c., purchased by him to Hong Kong or Singapore. Importation into those places is not prohibited by the Order in Council; and, practically, even exportation from them is still permitted, under licence, when the Colonial Government is satisfied that the true destination is not to the Chinese insurgents.

In this particular instance, it is by no means certain that any loss need be sustained by Mr. Laird.

The guns transported to Hong Kong may probably be exported, under special licence, if satisfactory proof can be given that they are not destined for the use or aid of

the rebels in China. This, however, is a matter about which Mr. Laird must exercise his own discretion.

I have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 10.

The Law Officers of the Crown to Earl Russell.—(*Received February* 18.)

Lincoln's Inn, February 16, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 3rd instant, stating that he was directed by your Lordship to transmit to us a despatch and its inclosures from Sir Frederick Bruce (No. 177, November 16), relative to a proposal made by him to the Chinese Government for establishing a means of openly investigating cases in which the penalty of confiscation is imposed on goods seized by the Chinese Custom-house; and to request that we would take this proposal into our consideration, and favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That the scheme proposed by Sir Frederick Bruce does not appear to us open to any objection.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
BOBERT PHILLIMORE.

No. 11.

The Law Officers of the Crown to Earl Russell.—(*Received February* 18.)

Lincoln's Inn, February 18, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 9th February instant, stating that he was directed by your Lordship to transmit to us the draft of answer which, in conformity with our Report of the 8th instant, your Lordship proposes to return to the letter from Mr. Laird, complaining of the restrictions imposed on the exportation of arms and warlike stores from Hong Kong and Singapore; and to request that we would take the proposed answer into consideration, and report to your Lordship our opinion whether it is right and proper to be sent.

Mr. Hammond was also pleased to return the previous papers for reference, if required.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That the letter which your Lordship proposes to send to Mr. Laird appears to us right and proper to be sent.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 12.

The Law Officers of the Crown to Earl Russell.—(*Received February* 20.)

Lincoln's Inn, February 20, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 4th instant, stating that he was directed by your Lordship to transmit to us the correspondence as marked in the margin* respecting a fine of 500 taels imposed upon

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* Messrs. Rodham, March 13; to Sir F. Bruce, No. 69, May 4; Sir F. Bruce, No. 93, July 7; Consul Harvey, December 16, 1863; Treaty.

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Her Majesty's Consul at Ningpo on the master of the British ship "Orissa;" and also a copy of the Treaty of Tien-tsin referred to by Mr. Harvey, and to request that we would take these papers into our consideration, and favour your Lordship with our opinion with regard to Mr. Consul Harvey's proceedings.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we are clearly of opinion that Messrs. Rodham and Co. are bound by the act of the master of the "Orissa," so far as penal consequences might attach to that vessel from his conduct. The substantial question in this case appears to us to be, whether the master of the ship "discovered a mistake" which he ought to have been allowed to correct within twenty-four hours; or whether he "presented" a "false manifest," knowing it to be such. The Consul was the proper judge of the fact; and he appears to have concluded, upon grounds from which we see no reason to dissent, that the misrepresentation was wilful: and, in such circumstances, we think that what he did was right.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 13.

The Law Officers of the Crown to Earl Russell.—(Received March 1.)

Lincoln's Inn, February 29, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 3rd instant, stating that he was directed by your Lordship to transmit to us a despatch from Sir Frederick Bruce (No. 182, November 24), inclosing a copy of an instruction which he had addressed to the Acting British Consul at Shanghae, relative to British subjects at that port who have been in rebel employ. And to request that we would take the same into our consideration, and report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we think that part of the instructions of Sir F. Bruce which forbids the remaining at Shanghae of British subjects and their employment on the Yang-tze River goes beyond the authority given to him by the Order in Council, and is therefore illegal: and that with respect to that part of the instructions requiring the Consul to call upon suspected persons to find security for keeping the peace, that power can only be exercised (see Sect. 22 of Order) after information laid before the Consul, by one or more credible witnesses, that there is reasonable ground to apprehend that such persons will commit a breach of the peace. In other respects, the instructions appear to be warranted by the Order in Council referred to.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 14.

The Law Officers of the Crown to Earl Russell.—(Received March 5.)

Lincoln's Inn, March 4, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 3rd ultimo, stating that he was directed by your Lordship to transmit to us a despatch and its inclosures from Sir Frederick Bruce (No. 176, November 14, 1863), relative to a notification with regard to piracy which has been issued by the Consuls of foreign Powers at Hankow; and Mr. Hammond was to request that we would take the same into our consideration, and furnish your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That although the measure taken by the Consuls may be, and probably is, as Sir F. Bruce thinks very expedient, we are constrained to be of opinion that without direct authority from the Emperor of China, it is not, strictly speaking, competent to the Commanders of foreign ships of war to visit, search, and arrest vessels suspected of piracy within the Chinese waters, except in the case where the vessel belongs to the country of the visiting ship.

By Article LIII of the Treaty of Tien-tsin it was provided that China and Great Britain should "agree to concert measures for the suppression of piracy in the seas of China," but we are not aware that any practical steps have been taken in consequence of this provision; and we think that the latter part of the notice, rendering persons subject to arrest and imprisonment who do not report their vessels at the Consular Office within twenty-four hours after their arrival at Hankow cannot be legally enforced, under the authority of this instrument, upon British subjects. No arrest, compulsory examination, fine, or imprisonment, can be imposed upon a British subject in the dominions of the Emperor of China except under the authority of the provisions of the Order in Council of the 13th of June, 1853; they extend from Article 18 to Article 25 inclusive, and relate to the trial of all crimes committed by British subjects; while Articles 22 and 23 deal with the case of suspected persons, whom Her Majesty's Consuls may require to give security to keep the peace, or cause to be deported from the country. Article 3 provides that rules and regulations for the "peace, order, and good government of Her Majesty's subjects within the dominions of the Emperor of China, and within one hundred miles of the coast, may be made from time to time by the Chief Superintendent or Consul of the place," and Article 4 provides the mode in which such rules and regulations are to be promulgated, so as to have binding effect.

Article 40, which provides for a registry of British subjects, does not make summary arrest and imprisonment the penalty of non-registration; but says only that British protection shall be withheld from those who do not register themselves within a reasonable time to be appointed for that purpose.

The notification in question, not being in accordance with these provisions of the Order in Council, is, we think, illegal; and we must further observe, that even if it had not, in substance, exceeded the limits of the powers of the British Consul under the Treaty and the Order in Council, it must still have been disallowed, as purporting to be made, not, by the sole authority of the British Consul but by the joint authority of the British and three other Consuls, and as purporting to bind Europeans in general and not British subjects in particular.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 15.

The Attorney and Solicitor-General to Earl Russell.—(Received April 6.)

Lincoln's Inn, April 5, 1854.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 29th ultimo, stating that with reference to our Report of the 22nd March, he was directed by your Lordship to transmit to us, together with the previous papers,* a letter from Captain Sherard Osborn,† inclosing a correct copy of the agreement under which the officers and men of the Anglo-Chinese fleet sailed from this country.

Mr. Layard was also pleased to state that a letter from Captain Osborn, dated the 21st March, was also inclosed. And that your Lordship feels disposed to inform the Admiralty that you are ready to sanction the course proposed by Captain Osborn in his letter of the 26th of March, but not so far as to save any of the parties from actions at law; but that he was, however, to request that we would take this matter into our consideration, and advise your Lordship as to the course which Her Majesty's Government should pursue therein.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That assuming the statements in Mr. Lay's letter to your Lordship of November 10, 1863, to be correct, so far as relates to his authority on behalf of the Chinese Government

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* Captain Osborn, March 26; Parliamentary Paper; Captain Osborn, February 29; to Captain Osborn, March 24, 1864.

† Captain Osborn, March 21, 1864.

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to enter into the agreement of the 16th January, 1863, of which the copy has been sent to us, we think that the best mode of settling the question will be, to sanction the course proposed by Captain Sherard Osborn in his letter of the 26th March. Should any of the officers or men decline to settle on those terms, of course any remedy by action or otherwise, which they may think fit to adopt, will be open to them.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.

No. 16.

The Law Officers of the Crown to Earl Russell.—(Received April 6.)

Lincoln's Inn, April 6, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 22nd ultimo, stating that with reference to our Report of the 29th February last, on the subject of the instructions addressed by Her Majesty's Minister at Peking to the Acting British Consul at Shanghae, with regard to British subjects who had served with the Chinese insurgents, he was directed by your Lordship to transmit to us, together with the despatch above referred to and the answer thereto,* a further despatch from Sir F. Bruce,† adverting to the insufficiency of the powers possessed by Her Majesty's Consuls in China to punish such persons. Mr. Hammond was also pleased to inclose a copy of the Order in Council of the 12th of September last, which would not appear to have been received by Sir F. Bruce when his despatch was written, and which disposes of one of the questions therein raised, namely, the course to be pursued with regard to individuals who shall return to China after having been deported; and Mr. Hammond was to request that we would take these papers into consideration, and furnish your Lordship with such observations as we may have to offer thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That the proposition of Sir F. Bruce that a provision should be made by Order in Council authorizing the British authorities in China to imprison for a short time British subjects who may have aided the rebels in China, and afterwards to deport them from the country, appears to us reasonable and proper to be carried into effect.

We think, however, that any such Order in Council should be applicable to those persons only who, after the date and promulgation thereof, shall have given aid to the Chinese rebels. Any past offences of the like kind must be dealt with according to the law in force when they were committed, and not subjected to additional punishment by retrospective legislation.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 17.

The Queen's Advocate to Earl Russell.—(Received April 25.)

My Lord, *Doctors' Commons, April* 23, 1864.

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 19th April instant, stating that he was directed to transmit to me the accompanying papers* respecting a fine of 500 taels imposed by the Custom-house authorities at Ningpo upon a vessel belonging to Mr. W. Hart, for an infraction of the XXXVIIIth Article of the Treaty of Tien-tsin; and to request that I would take this case into consideration, and report to your Lordship my opinion thereupon.

A copy of the Treaty was also sent.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

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* Sir F. Bruce, No. 182, November 24, 1863; to Sir F. Bruce, No. 47, March 8, 1864.

† Sir F. Bruce, No. 187, December 7, 1863.

‡ Colonel Sykes, October 28; Mr. Hart, October 27; to Sir F. Bruce, No. 189; Sir F. Bruce, No. 13, 1863.

That I see no reason for the interference of Her Majesty's Government in this matter. The fact of the violation of the XXXVIIth Article of the Treaty of Tien-tsin is clear, and, indeed, not denied. The fine imposed is certainly authorized by that Article, and the penalty of a confiscation of the landed goods, which might also have been enforced, has been remitted. There seems to be no ground whatever for blaming the conduct of Lieutenant Huxham. It is stated that though the rule existed, it had not been previously enforced. But looking to the facts of the case, and the statements of Mr. Consul Harvey in his letter to Sir F. Bruce (Inclosure 3 in No. 13), I am of opinion that the rule, the validity of which is undoubted, has not been harshly enforced against Mr. Hart.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 18.

The Law Officers of the Crown to Earl Russell.—(Received May 21.)

Lincoln's Inn, May 21, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 25th ultimo, stating that he was directed to transmit to us a letter dated the 14th of April, from Mr. Frederick Hogg, stating certain circumstances connected with the forced departure of his friend Mr. James Andrews from Peking, and requesting to be favoured with your Lordship's view of the intent and meaning of the Treaty of Tien-tsin, so far as it applies to the term "trading" at Peking. Mr. Layard was also pleased to inclose a despatch, and its inclosures, from Sir Frederick Bruce on the subject (No. 11, January 18), and to request that we would take this matter into consideration, and furnish your Lordship with our observations thereupon, and also with our opinion as to the answer which should be returned to Mr. Hogg.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That if Mr. James Andrews was in the habit of purchasing articles of art for the purpose of sending them to England, or elsewhere, for sale, we think he did come within the category of those who "enter the capital city of Peking for purposes of trade," and an answer to this effect may, in our opinion, properly be sent to Mr. Hogg. If any further question as to the real object of Mr. Andrews' purchases should afterwards arise, the matter may then be referred to Sir F. Bruce for his report thereupon.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 19.

The Law Officers of the Crown to Earl Russell.—(Received May 21.)

Lincoln's Inn, May 21, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 28th ultimo, stating that he was directed by your Lordship to transmit to us a letter dated the 25th April, from Captain Sherard Osborn, proposing that, with your Lordship's permission, he should rid himself of all further responsibility in regard to the vessels of the late Anglo-Chinese fleet at Bombay "by substituting a mercantile firm at Bombay as the agents to carry out Sir F. Bruce's instructions."

That the Attorney and Solicitor-General have already been consulted with regard to the terms to be offered by Captain Osborn to the officers and crews of that fleet, and that their Report of the 5th instant formed the groundwork of the answer returned on the 19th instant to Captain Osborn's letter on this subject of the 26th ultimo.

That as, however, Captain Osborn now proposes to rid himself of all further responsibility in regard to these vessels, *i.e.*, to cast the whole of it upon Sir Frederick Bruce and Her Majesty's Government, it appears to your Lordship that it deserves very serious consideration what further answer should be made to him.

Mr. Layard was accordingly to send us the annexed papers, and to request that we would consider, and advise your Lordship, how far Her Majesty's Government are called upon to accept the responsibility of which Captain Osborn wishes to rid himself, in

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consequence either of the measures taken by Sir F. Bruce, as shown in the papers laid before Parliament, or of the instructions transmitted to the Indian Government with regard to the disposal of the vessels; and if we should be of opinion that Her Majesty's Government are not bound to accept that responsibility, that we would furnish your Lordship with our opinion as to the answer which should be returned to Captain Osborn.

In obedience to your Lordship's commands we have considered this case, and have the honour to report—

That it seems necessary to enter upon the consideration of this question with a clear view of the position in which Her Majesty's Government has been already placed by the course hitherto taken, as well as of the practical consequences of any decision which may now be adopted.

No original responsibility was undertaken by Her Majesty's Government for any of the arrangements made between the Chinese Government and Captain Sherard Osborn. But Her Majesty's Government after having approved, by the despatch of the 15th of February last (No. 26 of Parliamentary Papers), the arrangements made by Sir F. Bruce with Prince Kung, in consequence of the differences between the Chinese Government and Captain Osborn, is not now equally free from obligation with respect to the fulfilment of these last arrangements.

On the 20th of October, 1863, Sir F. Bruce wrote to Prince Kung that "as Her Majesty's Government took an active part in promoting the equipment of the vessels," he should request instructions from them "as to the disposal of the ships and stores," and would cause them in the meantime to be detained. On the 6th of November Sir F. Bruce again wrote, "The British Government had placed ships, officers, and men at your disposal, but it certainly did not intend to force them on your acceptance, in the event of your deciding that the conditions on which alone this force could act were such as you could not agree to;" and he at the same time announced that he had instructed Captain Osborn "to dispose of the vessels on the most advantageous terms, and remit the balance, after payment of expenses, to the Chinese Government;" adding, "I feel assured that Her Majesty's Government will appreciate the considerate spirit in which your Imperial Highness has acted, and will willingly assist Captain Osborn in carrying out his instructions."

On the same day Sir F. Bruce also wrote to Captain Osborn, "As you are aware, the scheme of keeping the ships of the flotilla in deposit awaiting instructions from Her Majesty's Government has been abandoned; and the Chinese Government has requested me to send the vessels to England to be disposed of. . . . I have therefore to request that you will take charge of the vessels and men with a view to the disposal of the former in England or in India, as you think best."

The result of the whole transaction is, that it was deemed inexpedient by Her Majesty's Representative in China that these vessels (which had been paid for by the Chinese Government, and which were and still are their property, subject to any lien for the pay of the officers and men) should either remain in China, or be sold upon the spot; and it was therefore settled that they should be taken by Captain Osborn to England or India for sale, on account of the Chinese Government; and that Her Majesty's Government would do whatever might be in their power to facilitate such sale.

When, however, Captain Osborn arrived at Bombay, the sale of any of these ships at that place was prohibited by the local Government, under the apprehension that, if sold there, they might be purchased by agents for the Confederate States of America. Instructions directing such a sale to be prevented by all legal means were also sent on the 11th of January last by the Board of Admiralty at home to the naval authorities at Bombay, under which instructions the sale of the despatch-boat "Thule," which had been advertised, was actually stopped, and all the vessels have ever since been detained in the custody of the Bombay Government. On the 15th of April further orders were sent from the India Office, permitting the despatch-boat to be sold, but ordering the other vessels still to be retained till further orders.

Under these circumstances (the Board of Admiralty having declined to purchase any of them for Her Majesty's service), Captain Osborn now desires to have your Lordship's sanction for the transfer of the duty of "carrying out Sir F. Bruce's instructions" to a mercantile firm at Bombay, with a view "to rid himself of all further responsibility," conceiving (as appears from his letter), that it would be "illegal for him to attempt to sell these armed ships of war."

Upon this we must first observe that we conceive Captain Osborn to be in error when he supposes that the sale within Her Majesty"s dominions, even to a belligerent Power, of armed ships of war, already lawfully equipped with a view to a different object, under Her Majesty's licence, would be illegal. The Foreign Enlistment Act does not, in our opinion, prohibit such a sale. The error, however, is one into which the Bombay Government, when they prevented the sale of the "Thule," appear also to have fallen; and the Admiralty instructions of the 11th of January were evidently written under the same impression.

Viewing this as a question not of law but of policy, we presume that it may still be the policy of Her Majesty's Government to prevent, if possible, the sale of these ships to the Confederate States; but we see no means of securing that object (even if the law were other than it is), consistently either with justice to Captain Osborn, or good faith towards the Chinese Government, unless Her Majesty's Government themselves choose to purchase the ships, or can find purchasers for them.

The second observation which we have to offer is, that Captain Osborn, in his letter of the 25th of April, appears disposed to look to Her Majesty's Government and to Sir F. Bruce, as if they, and they only, were the principals, to whom he is accountable. But he is strictly and properly the agent of the Chinese Government; though under arrangements to which Her Majesty's Government, through Sir F. Bruce, were parties, and in respect of which they have since added to the responsibility originally contracted by them, by delaying, and for a time prohibiting, the sale of the ships at Bombay.

In strictness, Captain Osborn cannot be held entitled, even with the concurrence of Her Majesty's Government, to liberate himself from the responsibility to the Chinese Government for the performance of the duty which he has undertaken.

The practical conclusion at which we have arrived is, that unless Her Majesty's Government are prepared to leave Captain Osborn at full liberty to sell these ships in the best market which he can find for them, either in England or in India, at his own time, and under his own arrangements, to any customer who may be willing to purchase, they are morally bound to take upon themselves the responsibility from which he now desires to be freed. But if, on the other hand, they are prepared to allow him henceforth full liberty in this respect, we do not think that they are as yet bound, by anything which which has taken place, to accept the responsibility which he desires to throw upon them. If it should be determined (after weighing the probable consequence, namely, a sale to the Confederate States) to decline that responsibility, we think the proper answer to his letter will be, that Her Majesty's Government look upon him as undertaken an agency on account of the Chinese Government, for the disposal of these vessels, from which it is not in their power to relieve him; that they do not propose any longer to interpose any objection to his selling them to any person, or in any way that he may think fit; such sale (provided no addition is made to their equipments or furniture before delivery to the purchaser, for the purposes of any belligerent Power), being in no way contrary to law; but that they cannot take upon themselves to authorize the transfer of his agency to any mercantile firm, either at Bombay or elsewhere, and that if he employs any such firm he must do so upon his own responsibility.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 20.

The Law Officers of the Crown to Earl Russell.—(Received June 24.)

Lincoln's Inn, June 24, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 27th ultimo, stating that, with reference to our Report of the 6th April, stating that it appeared to us that Sir F. Bruce's proposition to authorize by Order in Council the British authorities in China to imprison for a short time British subjects who might aid the rebels, and afterwards to deport them from the country, was reasonable and proper, he was directed by your Lordship to request that we would prepare the draft of such an Order in Council for effecting this object. That your Lordship agrees with us in thinking that it should be applicable to those persons only who, after the date and promulgation thereof, shall have given aid to the rebels.

Mr. Hammond was also pleased to return copies of the previous papers and of the Orders in Council of the 3rd of March, 1859, and September 12, 1863; and to state that the Orders in Council of the 13th June, 1853, and February 2, 1857, will be found respectively in Hertslet, vol. ix, p. 210, and vol. x, p. 732.

We are also honoured with Mr. Hammond's letter of the 11th instant, stating that,

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with reference to the correspondence which was laid before Parliament in 1862, respecting the employment under the Government of China of officers in the naval or military service of Her Majesty, he was directed by your Lordship to state to us that it has just been discovered that, besides the Colonial Ordinance No. 1, 1855, for enforcing neutrality during the contest in China therein referred to, the first section of which appears from the Colonial Office letter of the 1st of July, 1862, to be no longer in force, a Consular Ordinance, issued under the Act 6 & 7 Vict., cap. 80, bearing the same date as the Colonial Ordinance, and enacting the same penalties for the breach of neutrality, has not been repealed, and is therefore still in force. That, under these circumstances, a question must arise, how far British subjects taking part in the contest, either with or without the sanction of the Crown, may not, either for services heretofore performed or still being performed, have rendered themselves, and be still liable, to the penalties enacted by that Ordinance; and to request that we would take the matter into consideration, and report to your Lordship as to the course which should be pursued.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we have prepared the following draft Order in Council which is appended to this Report. It will be seen that, in this draft Order, provision is made to meet the difficulty arising out of the recently discovered Consular Ordinance of the 17th of January, 1855, to which subject our attention was directed by the letter of Mr. Hammond of the 11th instant.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 21.

The Queen's Advocate to Earl Russell.—(*Received June* 27.)

Doctors' Commons, June 25, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 22nd instant, stating that he was directed by your Lordship to transmit to me a correspondence* which has taken place respecting an assault committed at Tamsuy, Formosa, on Mr. Sullivan, master of the British schooner "Wild Wave." That these papers would put me in possession of the circumstances of the case, and of the proceedings of Her Majesty's officers in China in regard thereto; and Mr. Hammond was to request that I would take the same into consideration, and furnish your Lordship with my opinion as to the merits of the case; and as to the instructions which should be given to Vice-Admiral Kuper with regard to the disposal of the sum of 1,200 dollars paid by the Chinese authorities as compensation for the assault in question.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I entirely agree with the view taken by his Excellency Sir F. Bruce of the merits of this case, and as to the error in judgment which led the naval officers to act in defiance of Mr. Consul Braune's legitimate authority in this matter. It is, in my opinion, to be much regretted that any pecuniary compensation was demanded in this case. It is clear that, though the brutal treatment of Mr. Sullivan was unjustifiable, it was, in the first instance, provoked by the insolence, violence, and obstinacy of the sufferer himself. Moreover, the ground upon which it was paid by the Chinese authorities, namely, a respect for Sir J. Hope's services and character, renders the payment, as a matter of justice, still more unsatisfactory. The only circumstance which raises any doubt in my mind as to the disposition of the 1,200 dollars is, the statement of Mr. Consul Braune, in his letter to Governor Seu (Inclosure 5 in Sir F. Bruce's No. 33, of March 30, 1863), that Mr. Sullivan was entitled to compensation. Nevertheless, my opinion is that this money was wrongfully exacted, and therefore should be paid back to the Chinese authorities, in w[illegible]ver way may be most prudent and expedient. I venture to suggest that it should be accompanied by a statement that Her Majesty's Government were satisfied with the degradation and deposition of the Taoutae, and the punishment of the subalterns, and that as further inquiry left no doubt that Mr. Sullivan, though unwarrantably treated, had not been himself free from blame, Her Majesty's Government, desiring to act on all

occasions with perfect fairness towards the Chinese Government, and according to the spirit as well as the letter of the Treaty obligations subsisting between the two countries, thought it proper to remit the compensation money in this particular case.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 22.

The Law Officers of the Crown to Earl Russell.—(*Received July* 22.)

Lincoln's Inn, July 21, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 29th ultimo, stating that he was directed to transmit to us a letter dated the 14th ultimo from Messrs. E. P. and C. R. Rayner of Sutherland, inquiring as to the power with which Her Majesty's Consuls in China are invested to hear and decide claims between British or foreign merchants and British ship-masters, and also a letter dated the 27th ultimo from the Board of Trade in answer to an inquiry on the subject which your Lordship caused to be addressed to that Department; and Mr. Hammond was to request that we would take this matter into our consideration, and furnish your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That we are of opinion that the Lords of the Privy Council for Trade have arrived at a right conclusion with respect to the substance of your Lordship's letter, viz., that apart from the jurisdiction conferred by the Orders in Council, the Consuls in China would have no power to take cognizance of such claims against ships or ship-masters as are the subject of Messrs. Rayner's inquiry. The Mercantile Marine Act, 17th and 18th Vict., cap. 104, gives in some cases, to Consuls expressly, and in other cases to Justices of the Peace (whose powers are, for this purpose, vested in Her Majesty's Consuls in China by the 41st section of the Order in Council of 13th June, 1863), authority to inquire into complaints by the master, mate, or any seaman of a British merchant-ship, and to decide questions as to wages, fines, or forfeitures, arising on such complaints; and to enforce payment of wages (not exceeding 50*l.*), and of certain other pecuniary liabilities under that Act (See particularly sections 188, 229, 260, 263, 518), and, by sections 521, and 523 of the same Act (read in connection with the 41st section of the same Order in Council), Her Majesty's Consuls in China are empowered to exercise jurisdiction over British ships in Chinese waters, as well as over all persons on board such ships; and in case of non-payment by the master or owner of any wages, penalties, or other sums of money ordered to be paid by such master or owner under that Act, to levy the amount remaining unpaid by distress or sale of the ship itself. But the civil jurisdiction given by this Act, relates exclusively to questions arising between the owners or masters of ships on the one hand, and their officers or seamen on the other; while the inquiry of Messrs. Rayner relates to a totally different subject, viz., "the settlement of disputes *between merchants and the Chinese ports, and the captains of ships trading there.*"

With respect to such last named disputes, we apprehend that Her Majesty's Consuls in China have the jurisdiction given to them by the 10th, 11th, 12th, and 14th sections of the Order in Council of the 13th June, 1853, and no other jurisdiction. Under those sections, they may hear and determine any suit of a civil nature arising in China in which a British subject is defendant, and likewise any such suit in which a British subject is plaintiff and a foreigner defendant, if the latter submits to the jurisdiction; and they may enforce, by distress or imprisonment (and not otherwise), any Judgment which may be awarded in any such suit. Any question, therefore, between a merchant and the captain of a British ship, arising in China which can be the subject of a civil suit, may be adjudicated upon by the Consul; and any Judgment against the captain may be enforced by distress upon the ship or other property belonging to himself, but cannot be enforced by the detention of any ship which is not his property. The ship's certificate of registry (as to which, see section 50 of the 17th and 18th Vic., cap. 104), and other papers, cannot be detained for the purpose of enforcing any such decision, in any case in which the ship itself is not liable to be distrained for the same purpose.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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* Sir F. Bruce, Nos. 33, 42, and 157; Admiralty, June 22 and September 3, 1863; and June 15, 1864.

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No. 23.

The Law Officers of the Crown to Earl Russell.—(*Received July* 26.)

Lincoln's Inn, July 26, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 18th instant, stating that he was directed by your Lordship to transmit to us a letter dated the 15th instant from the Colonial Office, inclosing a copy of a despatch from the Governor of Hong Kong, forwarding for the Queen's confirmation an Ordinance which has been passed by the Legislature of that Colony, to render admissible in certain cases the depositions of witnesses who cannot be produced at the trial, and to make provision for the reception in evidence of the statements of the accused.

And to request that we would take this Ordinance into our consideration, and favour your Lordship with our observations thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration and have the honour to report—

That we think Her Majesty's confirmation should be given to this Ordinance. It appears possible, indeed, that subsequent alterations in the mode of trying criminal cases in Japan and China may render the Ordinance hereafter unnecessary; but it is proper to provide against the possibility, during the intermediate period, of an entire failure of justice in this class of criminal cases.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 24.

The Law Officers of the Crown to Earl Russell.—(*Received September* 24.)

Lincoln's Inn, September 22, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 6th instant, stating that he was directed by your Lordship to transmit to us a despatch from Sir F. Bruce (No. 86), reporting the case of a fishing-boat run down by a steamer belonging to Messrs. Jardine and Co., and to request that we would take these papers into consideration, and furnish your Lordship with our opinion as to the instructions which it would be proper to address to Her Majesty's Chargé d'Affaires at Peking relative to the steps which ought to be taken in this case, which, as we should perceive, has also a bearing upon the question of establishing a Consular Court for China and Japan, submitted to us in Mr. Hammond's letter of the 18th of July.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That, as far as the papers before us enable us to form an opinion, we think that an Admiralty Court would hold that the steamer was, notwithstanding any alteration of the helm of the fishing-boat, exclusively to blame for this collision. A steamer, it has been often decided, is not at liberty to make the experiment how near she can go to a small vessel without coming into collision; she is bound to give a wide berth in the first instance, and cannot escape from the responsibility of not having done so, by alleging that, in the moment of alarm and just before the collision, the small vessel executed some unskilful nautical manœuvre. We think, therefore, that the Chinese fisherman would, in all probability, recover the whole value of his vessel and tackle, with costs, in a suit in the Vice-Admiralty Court. It is much to be regretted that the expense of such a suit should deter the Chinese from seeking this remedy. The proposal to submit the matter to arbitration is very reasonable, but it may be refused by the owners of the "Carthage;" and in this event (as Sir F. Bruce seems to be of opinion that British steamers are in the habit of running down small Chinese craft with practical impunity), we think it might be desirable that the Attorney-General at Hong Kong should receive orders to proceed against the "Carthage" in the Vice-Admiralty Court on behalf of the injured party, if the requisite evidence is likely to be forthcoming, and if there is any public fund out of which the expense of such a proceeding can properly be defrayed. Care should (in that case) be taken to explain that the special circumstances of this case had alone induced Her Majesty's Government to take this step, and that it was not to form a precedent for other cases.

With regard to the suggestion of Sir F. Bruce that such cases as these might be properly dealt with by the Consular Courts, it seems to us highly desirable when the proposed new Consular Court is established at Shanghae that a jurisdiction in maritime cases, similar to that now possessed by the Supreme Consular Court at Constantinople, should be given to that tribunal.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 25.

The Law Officers of the Crown to Earl Russell.—(*Received September* 26.)

Lincoln's Inn, September 23, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 6th instant, stating that he was directed by your Lordship to transmit to us a despatch from Sir F. Bruce (No. 94), respecting certain Port Regulations recently established by the Chinese authorities at Amoy. Mr. Hammond was also pleased to inclose copies of the Treaty of Tien-tsin, and of the Order in Council of June 13, 1853, and to request that we would take the inclosed papers into consideration, and furnish your Lordship with such observations as we may have to offer thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That the perusal of the Articles of the Treaty of Tien-tsin, and of the Articles of the Order in Council of June 13, 1853, satisfy us that the opinion expressed by Sir F. Bruce to Mr. Consul Pedder, upon the subject of the proposed Amoy Port Regulations, is correct, and that it would not be competent to the Consul, or to the Chinese authorities, to enforce the penalty of a fine against British ships entering a Chinese dock without a permit.

It is proper, however, to observe that, by Article XLVI of the Treaty of Tien-tsin, the Chinese authorities at each port are at liberty "to adopt the means they shall judge most proper to prevent the revenue suffering from fraud or smuggling;" and by Article XLVIII all smuggled goods are made "subject to confiscation by the Chinese authorities." If, therefore, a permit is required before a ship goes into dock, with a view to the better prevention of smuggling, it would be right that all proper means should be taken to enable Her Majesty's Consular Agents in China to enforce such a rule against British subjects.

We think it would be competent for Sir F. Bruce, if duly and officially requested so to do, to publish, according to the provisions of the Order in Council, a Regulation having for its object to enforce a penalty for entering a dock without a permit, and we think it should be left to his discretion to determine whether such a Regulation is, under the existing circumstances, proper and expedient, or not.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 26.

The Queen's Advocate to Earl Russell.—(*Received November* 7.)

Doctors' Commons, November 7, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 27th ultimo, stating that he was directed by your Lordship to transmit to me a despatch, and its inclosures, from Her Majesty's Chargé d'Affaires at Peking (No. 15, July 25), respecting the seizure at Ningpo, in 1862, of certain munitions of war on board the barque "Paragon" and the forcible removal of that vessel to Shanghae. Mr. Layard was also pleased to transmit to me a letter dated the 20th October on the subject from Mr. Harvey, late Her Majesty's Consul at Ningpo, but now Her Majesty's Consul at Chin-kiang, who is in this country on leave of absence; and was pleased to request that I would take this case into consideration and report to your Lordship my opinion with regard to the claim which has been advanced for compensation.

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In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I am clearly of opinion that the claim for compensation on behalf of the owners of the barque "Paragon" ought not to be acceded to by Her Majesty's Government. I agree entirely with the opinion expressed by his Excellency Sir F. Bruce on this matter, in his letter dated Peking, No. 4, 1862, and addressed to Messrs. Brown of Singapore.

I have, &c.
(Signed) ROBERT PHILLIMORE.

Denmark.

No. 27.

The Law Officers of the Crown to Earl Russell.—(Received January 30.)

Lincoln's Inn, January 27, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 15th instant, stating that he was directed by your Lordship to transmit to us a letter dated the 11th November ultimo from the Board of Trade relative to a question as to the administration of the effects of a deceased Danish seaman, which has formed the subject of correspondence between that Department and the Danish Consul-General in London.

Mr. Layard was also pleased to state that he was directed by your Lordship to transmit to us at the same time a Memorandum on the subject which has been drawn up in your Lordship's Department, and to request that we would take the matter into our consideration and furnish your Lordship with our opinion thereupon at our earliest convenience.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we are of opinion that in all those cases in which there have been Treaties of Reciprocity between England and foreign countries, and in which the provisions of such Treaties have unfortunately not been enforced by a statute in this country, it is not competent to Her Majesty's Government to execute the provisions of such Treaties, when they are not in accordance with our municipal law. We are of opinion, therefore, that the former Reports of the Queen's Advocate in this matter were well founded in law, and that the XVth Article of the Treaty between England and Denmark of the 11th July, 1670, cannot be put in force at the request of the Danish Minister, in any cases but those of personal property under 50*l.* in value belonging to Danish seamen. To these cases, the provisions of the statutes referred to in the memorandum apply; but as to personal property above this value, application must be made by the Danish Consul or person entitled to represent the deceased Dane, for probate or letters of administration in the usual form in the Court of Probate in this country.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 28.

The Law Officers of the Crown to Earl Russell.—(Received February 11.)

Lincoln's Inn, February 8, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 6th instant, stating that he was directed by your Lordship to transmit to us memorials which have been addressed to your Lordship by certain merchants at Leith, and by the Dundee Chamber of Commerce, requesting that steps may be taken to secure the exportation of produce purchased by British merchants in Prussian ports, in case those ports are blockaded by Denmark; that your Lordship proposes to send copies of these memorials to Her Majesty's Minister at Copenhagen, with instructions to lay them before the Danish Government, and to request that in the event of a blockade being established, cargoes purchased on British account may be allowed a reasonable time to pass outward, through the blockade, even though not actually on shipboard before the commencement of the blockade; and Mr. Layard was to request that we would inform your Lordship at our earliest convenience whether we concur in this instruction being sent.

In obedience to your Lordship's commands we have considered this case and have the honour to report—

That we are clearly of opinion that it would be right and proper to send the instructions in this matter proposed by your Lordship.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 29.

The Law Officers of the Crown to Earl Russell.—(Received February 12.)

Lincoln's Inn, February 11, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 9th of February instant, stating that he was directed by your Lordship to transmit to us a note which had been addressed to you by the Danish Minister at this Court making various suggestions with a view of securing from seizure an iron-clad vessel which his Government has recently purchased at Glasgow; and to request that we would take M. de Bille's proposal into our immediate consideration and report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That we are of opinion that the request of the Danish Minister to allow the iron-clad ship to be finished, so far as to admit of her being launched, is, in the circumstances, reasonable and proper to be granted, and that we think that if the Danish Minister will pledge his word that the ship shall not quit this country until the permission of Her Majesty's Government has been obtained, no other security need be taken.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 30.

The Law Officers of the Crown to Earl Russell.—(Received February 17.)

Lincoln's Inn, February 17, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 11th instant, stating that he was directed by your Lordship to transmit to us therewith a memorandum showing the engagements of Great Britain and other Powers towards Denmark relative to the Duchy of Schleswig, together with volumes containing the Treaties referred to in the marginal notes, namely, the Treaty of Stockholm of the 3rd June, 1720, between Denmark and Sweden, which was followed by the Acts of Guarantee of England and France having reference to the Duchy of Schleswig; the Treaty of Alliance between Denmark, Great Britain, and France of 1727, in the Preamble to which reference is made to the guarantee of Schleswig; and the Treaty of Peace between Great Britain and Denmark of the 14th January, 1814, in which no specific mention is made of the Act of Guarantee of 1720, but of which the VIIth Article provides for the renewal of all ancient Treaties of Peace and Commerce between the two Crowns in their full extent and in all their clauses, so far as they were not contradictory to the provisions of the new Treaty.

Mr. Hammond was also pleased to state that the points on which your Lordship would be glad to have our opinion at our earliest convenience, were :—

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1st. Whether the Act of Guarantee of 1720, which seems neither to have been a Treaty nor to have been annexed to a Treaty, was abrogated, like all other Treaties, by the state of war which at a later period prevailed between Great Britain and Denmark; and if so,

2nd. Whether the stipulations of the Treaty of Peace of 1814 for the renewal of ancient Treaties of Peace and Commerce between Great Britain and Denmark recalled the Act of Guarantee into force.

Mr. Hammond was also pleased to state that he had sent, for convenience of reference, Dr. Twiss' work on the subject.

And that there was a further question on which your Lordship would also be glad of our opinion, namely, whether the change in direct succession to the possessions of the Danish Crown adverted to in the Treaty of May 1852 would have any effect in invalidating the Act of Guarantee at the present time, supposing that without such change that Act would now have held good.

We have also been honoured with several subsequent letters by Mr. Hammond, forwarding further papers upon this subject.

In obedience to your Lordship's commands we have taken these questions into our consideration and have the honour to report—

That with respect to the first question, namely, as to whether the Act or Treaty of Guarantee of 1720 was or was not abrogated, apart from other considerations, by subsequent wars between Great Britain and Denmark, we are unanimously of opinion that this Act or Treaty of Guarantee belonged to the category of Conventions which are abrogated by subsequent war between the contracting parties, or between the guaranteeing and guaranteed States.

That with respect to the third question, namely, the effect of the change in the direct line of succession to the possessions of the Danish Crown adverted to in the Treaty of London of May 1852, upon this Act or Treaty of Guarantee, we are unanimously of opinion that it does not dissolve the obligations which Great Britain incurred by the guarantee of 1720, if otherwise still subsisting.

With respect to the second question, namely, whether the obligations of this guarantee were or were not revived by the Treaty of Kiel (14th January, 1814) between Great Britain and Denmark, the Attorney and Solicitor-General are of opinion that the guarantee was not revived by that Treaty. The words of Article XIII are: "All the ancient Treaties of Peace and Commerce concluded between the predecessors of their Britannic and Danish Majesties are hereby renewed in their full extent and in all their clauses, so far as they are not contradictory to the stipulations contained in the Articles of the present Treaty."

The Attorney and Solicitor-General are of opinion that Treaties *of Peace* (which are the words; not, "of or *relating to* Peace") do not in their natural and plain meaning (a meaning which receives illustration from the occasion and language of the Treaty of Kiel itself) include Treaties or Conventions of Alliance or Guarantee made between Powers who were not at war with each other at the time of the negotiation of such Treaties or Conventions; and that as there had been Treaties concluded between Great Britain and Denmark before 1814 (see vol. i, State Papers, p. 375, &c.), which would fall within the legitimate meaning of "Treaties of Peace," namely, Treaties concluding a war (as well as Treaties of Commerce), it is not necessary, in order to satisfy the terms of reference in the Treaty of 1814, to extend those terms to a Convention formerly entered into by Great Britain as a neutral or mediating Power, upon the termination of a war to which she was no party.

The Attorney and Solicitor-General, while entertaining the view above expressed, of the proper construction and effect of the terms of the XIIIth Article of the Treaty of Kiel, think it proper (at the same time) to observe, that in various diplomatic communications which took place in the year 1848, between the Courts of Great Britain, Prussia, Russia, and France, on the subject of the affairs of Schleswig-Holstein and Denmark, references were frequently made by the Ministers of all these Powers (Great Britain included) to the guarantee in question, in terms apparently implying the recognition of that guarantee as a valid and still subsisting engagement. It does not, however, appear that the questions now proposed for the opinion of the Law Officers were then considered; and whatever may have passed in communications with other Powers, the Attorney and Solicitor-General are not aware that the validity of the guarantee as a subsisting engagement was then, or at any other time since 1814, admitted on the part of Great Britain, in any direct communication between Great Britain and Denmark. If any such admission was in fact made, or if, when the Treaty of Kiel was itself under discussion or negotiation, anything passed between the two Courts on this particular subject, the effect which such circumstances might possibly have upon the present question would deserve further and very serious consideration.

We have, &c.

(Signed) ROUNDELL PALMER.
R. P. COLLIER.

I agree to the answers to the first and third questions (which are in order in this Report first and second), and I refer to my separate Report on the second question.

ROBERT PHILLIMORE.

With respect to the second question submitted to us, namely, whether the Act or Treaty of Guarantee given by the Crown of Great Britain in 1720 was or was not revived by the XIIIth Article of the Treaty of Kiel, between Denmark and Great Britain in 1814, I incline to the opinion that the guarantee was revived by that Treaty and is now in force.

The following reasons have principally led me to this conclusion:—

1. The Article in question contemplates the revival of two classes of Treaties—

(1.) Treaties of Peace.

(2.) Treaties of Commerce.

The guarantee of 1720 clearly does not belong to the latter class.

The sole question is, does it belong to the former class?

The answer must be derived from various considerations—the ordinary meaning of the language employed; the peculiar phraseology of diplomatic instruments, aided by the light which the history of the facts surrounding the guarantee of 1720, and the reviving Treaty of 1814, and any subsequent recognition by the guaranteeing State, may throw upon the subject.

2. It is to be observed *in limine*, that Treaties are, by the consent of all writers, *contractus optima fidei*, and to be construed in the most liberal spirit, and with the utmost latitude that the preservation of good faith seems to demand, provided always that the sense be not wrested from its plain and obvious meaning.

3. The books contain many divisions and subdivisions of Treaties, but the great general division of Treaties is—

(1.) Into transitory Conventions, which are limited to a particular object or period.

(2.) Into Treaties more properly so called, of which the obligations are, except on account of certain well-known causes, perpetually binding on the Contracting Parties or Party; for a Treaty, like a covenant, may be unilateral.

4. I do not find in the writings of any jurist or publicist, or in the practice of States, so far as that is to be collected from public acts and documents, the position that Acts of Guarantee generally are excluded from the category of Treaties of (or relating to) Peace.* And I may here observe that the Treaties of 1660-61, and 1670, between the Crowns of Great Britain and Denmark, which are entitled "Treaties of Peace and Commerce," provided expressly for "defensive alliances" between the two Contracting Parties. (State Papers, vol. i, pp. 375, 381.)

5. I think that title is, generally, large enough to embrace all such Acts, but especially when, as in the present case, the Act of Guarantee is nominally and really an adjunct (*pactum accessorium*) to a Treaty of Peace concluding a war.

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* "Un *Traité* (en Latin *fœdus*) est un pacte fait en vue du bien public par des Puissances supérieures, soit à perpétuité soit pour un terme considérable. Les pactes qui ont pour objet des affaires transitoires s'appellent accords, conventions, pactions. Ils s'accomplissent par un acte unique et non point par des prestations réitérées. Ces pactes se consomment dans leur exécution une fois pour toutes. Les Traités reçoivent une exécution successive, dont la durée égale celle du Traité.—Vattel, secs. 152, 153; Martens, sec. 61; Vattel, chap. xvi; Hoffters, sec. 97; Kluber, sec. 157.

"Jure specialia fœdera porro subdividuntur in æqualia et inæqualia. . . . . Utraque tum æqualia tum inæqualia fiunt vel pacis vel societatis causâ.

"Pacis causâ, quo pertinent *fœdera de pace constituenda*, de reddendis captivis (quæ vocantur 'cartels'), de induciis, de munimentis quibusdam a tertii milite custodiendis."—Barriere Tractaten.

"The Convention of Guaranty is one of the most usual international contracts. It is an engagement by which one State promises to aid another when it is interrupted or threatened to be disturbed in the peaceable enjoyment of its rights by a third Power. It may be applied to every species of right and obligation that can exist between nations; to the possessions and boundaries of territories, the sovereignty of the State, its constitution of government, the right of succession, &c.; but it is most commonly applied to Treaties of Peace. The guaranty may also be contained in a distinct and separate Convention, or included among the stipulations annexed to the principal Treaty intended to be guaranteed. It then becomes an accessory obligation."—Laurence's "Wheaton on International Law," Parts i, ii, and iii, vol. i, p. 476.

6. If there be no proposition of general law, and no usage derived from general practice which controls the construction of the words of the Treaty of Kiel, the surrounding history supports, as it seems to me strongly, the opinion that the guarantee of 1720 is revived.

7. The language of the guarantee of 1720, "Ainsi Sa Majesté Britannique promet et s'oblige, pour soi, ses héritiers et successeurs, à Sa Majesté le Roi de Dannemarck, ses héritiers et successeurs, de lui garantir et conserver dans une possession continuelle et paisible la partie Ducale du Duché de Sleswick, laquelle Sa Majesté Danoise a entre les mains, et de la défendre la mieux possible *contre tous et chacun* qui tacheroit de la troubler soit directement ou indirectement;" (then follow very important words)—"*le tout en vertu du Traité conclu en 1715, avec Sa Majesté Britannique comme Electeur de Brunswick et de Lunebourg, aussi bien que la dite Convention faite le 30 Octobre de l'année passée dans un Acte séparé pour la continuation.*"

8. Two questions immediately arise:—

What was the Treaty of 1715? What was the Convention of 30th October, 1719, "in virtue of which," and, by fair construction, as a complement to which, this guarantee was given?

9. The Treaty of 1715 contained the most express obligation of the King of Great Britain, as Elector of Hanover, to defend the possession of the Duchy of Schleswig by the King of Denmark against the King of Sweden during the then existing war, and afterwards *contra quoscunque*; and in return for this promised succour Denmark gave up Bremen and Verden to Hanover, which that country has ever since possessed.

10. The Convention of 1789 (executed at Copenhagen between Denmark and Great Britain) recited that Sweden and Denmark had consented to an armistice, but that Denmark had made a condition of her consent that the King of Great Britain should guarantee to her, in his capacity as King of Great Britain, that possession of Schleswig which he had already, as Elector of Hanover, guaranteed to her by the Treaty of 1715.

11. The guarantee in question, namely, that of 1720, was the complement of this Convention, and it seems to me impossible to contend that this guarantee, which is expressly declared to be "in virtue" of the Treaty of 1715, and the Convention of 1719, was not *bonâ fide* and substantially a "Treaty of Peace;" and if it was, the Treaty of Kiel, construed in the narrowest sense, revived it.

12. Further history confirms this view:—

France signed an Act of Guarantee contemporaneously with Great Britain in 1720; it was rather more in detail, and referred to the Treaty of Stockholm, but it was substantially the same.

In 1727, Denmark feared an attack upon Schleswig from the Muscovites passing through Prussia; France, England, and Denmark, entered into a Convention which recited their obligation, *consequent on their guarantees*, to defend Denmark in her possession of Schleswig *contra quoscunque*, and bound the Contracting Parties to assist Prussia if attacked for refusing passage to the Muscovite troops.

13. It cannot be denied that if the words of a Treaty, unilateral or bilateral, are equivocal, a State which is a Contracting Party to it may by words or by conduct, directly or by necessary implication, put such a construction upon them as will be binding upon such State. Let me apply this position to the present case.

14. When it is remembered that on the same day when Denmark signed, in 1814, the Treaty of Kiel with Great Britain, in which the Article reviving in the most solemn manner "all the ancient Treaties of Peace and Commerce" occurs, she signed a Treaty with Sweden surrendering Norway, at the urgent instance of Great Britain, to Sweden, another reason presents itself for giving the widest construction to terms which might have the effect of reviving the guarantee of Great Britain for the security of its remaining possessions to the Crown of Denmark.

15. It appears from correspondence contained in the book sent to us from the Foreign Office (1845-48, Schleswig and Holstein), and the accompanying printed papers, that in the year 1848, Denmark, in direct terms, pressed the obligations of the guarantee upon Great Britain. It is true that Great Britain did not in express terms acknowledge the obligation, but it was not denied, and the abrogation of it was never suggested. On the contrary, directions were given to the Representatives of the Crown in foreign parts, and especially to the British Ambassador at Berlin, to call attention to this Treaty; and the reply of Prussia is remarkable,* as it expressly recognizes the guarantee of Great Britain as then subsisting:—"Dans votre office du 18 courant et dans les pièces qui l'accompagnent il est encore question de la garantie d'une partie du Slesvig donnée par la Grande Bretagne. *Le Gouvernement du Roi connaît et reconnaît parfaitement cette garantie*, mais il est d'avis que le différend actuel n'y touche en aucune manière. *La garantie de la Grande Bretagne conserve tout son effet et restera aussi intacte que la souveraineté du Roi de Danemark sur son Duché de Slesvig-Holstein.*"

It appears also that the French Governement at that time recognized the existence and obligation of their corresponding guarantee.*

16. Upon all grounds therefore, namely, the duty of placing the most liberal construction on terms used to express the engagements of a Treaty, the plain meaning of the terms employed in Article XIII of the Treaty of Kiel, the general usage of States with respect to such terms, the exposition of them afforded, in this particular instance, by contemporaneous and by very recent history (and both are lawful exponents of international contracts*), I think that the guarantee of 1720 was revived by the Treaty of Kiel, 1814.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 31.

The Queen's Advocate to Earl Russell.—(Received February 27.)

Doctors' Commons, February 27, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 26th instant, stating that he was directed by your Lordship to transmit to me a note which has been addressed to your Lordship by the Danish Minister at this Court, notifying the establishment of a blockade of the east coast of Schleswig and Holstein; and Mr. Hammond was to request that I would take this note into consideration, and if I should be satisfied with the sufficiency of the notice, that I would prepare the usual notification for insertion in the "London Gazette."

In obedience to your Lordship's commands I have taken the notice of blockade referred to into consideration, and have the honour to report—

That I consider the same sufficient, and have prepared and herewith transmit a notification thereof, proper for insertion in the "London Gazette."

I have, &c.
(Signed) ROBERT PHILLIMORE.

Inclosure in No. 31.

Notification of Blockade.

Foreign Office, February , 1864.

IT is hereby notified that Earl Russell, Her Majesty's Principal Secretary of State for Foreign Affairs, has received from the Envoy Extraordinary and Minister Plenipotentiary of His Majesty the King of Denmark at this Court a notification, dated the 26th of February, 1864, of the blockade by the Danish naval forces of all ports and inlets on the east coast of the Duchies of Schleswig and Holstein from the 25th of this month (February), with the exception of Neustadt, the Islands of Als and Aeroe, and such other places as are actually under the authority of His Majesty the King of Denmark, and further notifying that the blockade will successively be raised for every place that comes again into the power of the Royal Government and public notice thereof be given.

The following is the official communication received by Earl Russell:—

(Here insert verbatim a copy of the Danish Minister's communication to Earl Russell dated 26th February, 1864.)

R. J. P.

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* Baron Arnim to Lord Palmerston, Berlin, April 19, 1848.

* "Quant à nous, qui avons en 1720 donné notre garantie au Traité par lequel la possession du Slesvig est assurée au Danemark, et qui *avons renouvellé cette garantie il y a quelques jours, nous garderons notre parole donnée*, et nous exigerons qu'aucune modification ne soit apportée aux Traités existants sans notre concours et notre consentement."—Foreign Office Book, p. 641; M. Bastide to M. Beaumont.

† Martens. "Erneuerung der Verträge," p. 25.

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No. 32.

The Queen's Advocate to Earl Russell.—(Received March 1.)

Doctors' Commons, March 1, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Murray's letter of the 29th February ultimo, stating that he was directed to transmit to me a despatch from Her Majesty's Minister at Copenhagen (No. 103), forwarding translations of the regulations published by the Danish Government with regard to the blockade of enemies' ports and to the adjudication of matters concerning the capture of hostile or suspected vessels, and to request that I would take these papers into immediate consideration, and furnish your Lordship with my opinion thereupon; and to state that if there is no objection thereto your Lordship proposes to publish them in the "London Gazette."

In obedience to your Lordship's commands I have taken these papers into consideration and have the honour to report—

That there is no reason why these regulations should not be gazetted; both those which relate to the Prize Court and those which relate to the blockade indicate that the belligerent proposes to exercise his rights with lenity towards neutrals.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 33.

The Law Officers of the Crown to Earl Russell.—(Received March 4.)

Lincoln's Inn, March 3, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 2nd instant, stating that he was directed by your Lordship to transmit to us a draft of a letter to the Board of Admiralty on the subject of the instructions to be given to Her Majesty's naval officers in regard to the hostilities between Denmark and Austria and Prussia; and Mr. Layard was to request that we would inform your Lordship whether, in our opinion, this letter is right and proper to be sent.

In obedience to your Lordship's commands we have perused and considered the draft letter referred to, and have the honour to report—

That we are of opinion that this letter is right and proper to be sent.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 34.

The Queen's Advocate to Earl Russell.—(Received March 5.)

Doctors' Commons, March 4, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of this day's date, stating that he was directed by your Lordship to transmit to me a letter from the Home Office on the subject of a form of notice relative to the determination of the Danish Government to seize German vessels which has been forwarded to the Corporation of the port of Dublin by the Oldenburg Consul in that city, with the request that it may be distributed by their pilots to German vessels; and to request that I would take this letter and its inclosures into consideration, and furnish your Lordship with my opinion as to the course which Her Majesty's Government ought to pursue in the matter.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I am not aware whether the Corporation of Dublin stands in any peculiar relation to Her Majesty's Government, or what the regulations may be respecting the government of the pilots.

If I am, however, right in assuming that, directly or indirectly, the sanction of Her Majesty's Government is required for the distribution of these notices, I am clearly of opinion that they ought not to give it, inasmuch as the object of the notice is to render material assistance to one of the belligerents, in a war in which Her Majesty is neutral; and I think that the answer to the Corporation should be to this effect.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 35.

The Queen's Advocate to Earl Russell.—(Received March 8.)

Doctors' Commons, March 8, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 7th instant, stating that with reference to his letter of the 26th ultimo he was directed by your Lordship to transmit to me a note dated the 7th instant which has been addressed to your Lordship by the Danish Minister at this Court, notifying the establishment of a blockade of the port of Neustadt; and Mr. Hammond was to request that I would take this note into consideration, and if I should be satisfied with the sufficiency of the notice that I would prepare the usual notification for insertion in the "London Gazette."

In obedience to your Lordship's commands I have the honour to report—

That I am of opinion that the notice is sufficient, and proper to be inserted in the Gazette.

I have accordingly prepared the notice of which I annex a draft to this Report.

I have, &c.
(Signed) ROBERT PHILLIMORE.

Inclosure in No. 35.

Notification of Blockade.

Foreign Office, March 8, 1864.

IT is hereby notified that on the 7th instant, Earl Russell, Her Majesty's Principal Secretary of State for Foreign Affairs, received from the Danish Envoy Extraordinary and Minister Plenipotentiary at the Court of St. James's the announcement that the port of Neustadt will from the 5th of this month (March) be blockaded (by the Danish naval forces), together with the other ports and inlets on the east coast of the Duchies of Schleswig and Holstein mentioned in his (the said Danish Minister's) note of February 26th last, and notice of which was given in the (Supplemental) "London Gazette" of Monday the 29th February last.

The following is the official communication received by Earl Russell:—

(Here insert copy, verbatim, of Danish Minister's communication of the 7th instant.)

R. P.

No. 36.

The Queen's Advocate to Earl Russell.—(Received March 15.)

Doctors' Commons, March 15, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 14th instant, stating that he was directed by your Lordship to transmit to me a despatch and its inclosures from Her Majesty's Minister at Copenhagen reporting the establishment by Denmark of a blockade of the ports of Cammin, Swinemünde, Wolgast, Greifswalde, Stralsund, and Barth; and Mr. Hammond was to request that I would take this despatch into my immediate consideration, and if satisfied with the sufficiency of the notice, that I would prepare the usual notification for insertion in the "London Gazette."

In obedience to your Lordship's commands I have the honour to report—

That I have considered the notification referred to, and am of opinion that the same is sufficient, and proper to be inserted in the Gazette.

I have accordingly prepared, and herewith transmit, a form of notice for insertion in that paper.

I have, &c.
(Signed) ROBERT PHILLIMORE.

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Inclosure in No. 36.

Notification of Blockade.

Foreign Office, March , 1864.

IT is hereby notified that Earl Russell, Her Majesty's Principal Secretary of State for Foreign Affairs, has received from Her Majesty's Minister at Copenhagen a notification, dated the 8th March, 1864, addressed to him by the Danish Minister, M. Quaade, of the blockade from the 15th instant (March), by the Danish naval forces, of the ports of Cammin, Swinemünde, Wolgast, Greifswalde, Stralsund, and Barth.

The following is the official notification referred to:—

(Here insert verbatim, a copy of the official notification (in English) signed "O. Lutken," Danish Minister of Marine.)

R. J. P.

No. 37.

The Queen's Advocate to Earl Russell.—(Received March 23.)

Doctors' Commons, March 23, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 22nd March instant, stating that he was directed to transmit to me a letter dated the 21st instant from certain merchants of Belfast requesting that a safe-conduct may be obtained from the Danish Government to allow a Prussian vessel laden with flax-seed belonging to them, now in the port of Marstrand in Sweden, to deliver her cargo at Belfast; and to request that I would take this letter into consideration, and inform your Lordship whether I am of opinion that any steps should be taken in the matter.

In obedience to your Lordship's commands I have the honour to report—

That I think it would be proper that your Lordship should submit the petition of the memorialists to the Danish Government, and request their favourable consideration of it. The circumstances of the case are very peculiar, and with reference to them the prayer of the Memorialists appears to me reasonable.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 38.

The Queen's Advocate to Earl Russell.—(Received March 29.)

Doctors' Commons, March 29, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Murray's letter of the 27th March instant, stating that he was directed to transmit to me a letter dated the 25th instant from Messrs. Berry, Barclay and Co. making inquiry as to the constitution of an effective and legal blockade of the port of Swinemünde; and to request that I would furnish your Lordship with my opinion as to the answer which should be returned to the parties.

In obedience to your Lordship's commands I have taken this case into consideration and have the honour to report—

That an answer should be sent to Messrs. Berry, Barclay and Co. to the following effect:—That a notification to the Consul is not indispensably necessary to the constitution of an effective and legal blockade; that the certificate in question cannot be safely considered as affording certain evidence that there was no effective blockade of Swinemünde on the 19th instant.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 39.

The Queen's Advocate to Earl Russell.—(Received March 29.)

Doctors' Commons, March 29, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 28th March instant, stating that he was directed to transmit to me a despatch from Her Majesty's Minister at Copenhagen (No. 177), stating that a notification of the blockade of the Island of Fehmern has appeared in the official papers; and to request that I would take this despatch into consideration, and if satisfied of the sufficiency of the notice that I would prepare the usual notification for insertion in the "London Gazette."

In obedience to your Lordship's commands I have taken this despatch into consideration, and have the honour to report—

That I am of opinion that this notification is sufficient, and ought to be published in the "London Gazette." I have therefore prepared a notification, the draft of which I annex to this Report.

I have, &c.
(Signed) ROBERT PHILLIMORE.

Inclosure in No. 39.

Notification of Blockade.

Foreign Office, March 29, 1864.

IT is hereby notified that Earl Russell, K.G., Her Majesty's Principal Secretary of State for Foreign Affairs, has received a despatch from Her Majesty's Minister at Copenhagen stating that a notification from the Ministry of Marine dated the 22nd instant appeared in the official paper of the 23rd instant, stating that the Island of Fehmern is declared in a state of blockade.

R. J. P.

No. 40.

The Queen's Advocate to Earl Russell.—(Received April 2.)

Doctors' Commons, April 2, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 23rd ultimo, stating that he was directed by your Lordship to transmit to me a letter dated the 17th ultimo, which has been sent to the Foreign Office by Mr. Dalglish, M.P., inquiring whether a free pass could be obtained from the Danish Government for a Prussian vessel now in the blockaded port of Wolgast on the ground of a cargo belonging to a British merchant having been shipped on it before the outbreak of hostilities; and to request that I would take these papers into consideration and furnish your Lordship with my opinion as to the answer which should be returned to the applicant.

In obedience to your Lordship's commands I have taken these papers into consideration and have the honour to report—

That the proper answer to send to Mr. Dalglish in this case would be to the effect that Her Majesty's Government cannot directly interfere in this matter; but if Mr. Lamb wishes to memorialise the Danish Government as to his case, your Lordship will cause the memorial to be forwarded, but that your Lordship cannot hold out any hope that the request of Mr. Lamb will be granted.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 41.

The Queen's Advocate to Earl Russell.—(Received April 19.)

Doctors' Commons, April 18, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Murray's letter of the 19th instant, stating that he was directed by your Lordship to transmit to me a

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despatch from Her Majesty's Minister at Copenhagen, forwarding a notification of the blockade of Dantzic and Pillau by the Danish fleet; and to request that I would take this paper into consideration, and, if satisfied of the sufficiency of the notice, that I would prepare the usual notification for insertion in the "London Gazette."

In obedience to your Lordship's commands I have the honour to report—

That I have perused the paper sent to me announcing the blockade of Dantzic and Pillau by the Danish naval fleet, and, considering such notice to be sufficient, have prepared, and herewith transmit, a notification thereof proper for insertion in the "London Gazette."

I have, &c.
(Signed) ROBERT PHILLIMORE.

Inclosure in No. 41.

Notification of Blockade.

Foreign Office, April 19, 1864.

IT is hereby notified that Earl Russell, Her Majesty's Principal Secretary of State for Foreign Affairs, has received from Her Majesty's Minister at Copenhagen an official notification, issued by the Ministry of Marine of the King of Denmark, and dated the 13th of April, 1864, announcing that besides the ports and entrances blockaded by the Danish naval forces according to previous publications, the ports of Dantzic and Pillau will be blockaded from the 19th of this month (April).

The following is the official notification received by Earl Russell:—

(Here insert the notification in English of the blockade of Dantzic and Pillau.)

R. P.

No. 42.

The Queen's Advocate to Earl Russell.—(*Received May* 19.)

Doctors' Commons, May 19, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Murray's letter of the 16th instant, stating that he was directed by your Lordship to transmit to me a despatch from Her Majesty's Chargé d'Affaires at Copenhagen, forwarding a notification from the Danish Government of the termination of the blockade of the Prussian ports in the Baltic and of the ports of the Duchies of Schleswig and Holstein; and to request that I would take these papers into consideration, and if I should be satisfied of the sufficiency of the notice that I would prepare a notification for insertion in the "London Gazette."

In obedience to your Lordship's commands I have the honour to report—

That I have considered these papers, and being satisfied of the sufficiency of the notice in question, have prepared, and herewith transmit to your Lordship, a notification proper for insertion in the "London Gazette."

I have, &c.
(Signed) ROBERT PHILLIMORE.

Inclosure in No. 42.

Notification of the Raising of the Blockade of the Prussian Ports in the Baltic, and the Ports of Schleswig and Holstein.

Foreign Office, May 19, 1864.

IT is hereby notified that Earl Russell, Her Majesty's Principal Secretary of State for Foreign Affairs, has received from Her Majesty's Chargé d'Affaires at Copenhagen an official notification issued by the Ministry of Marine of the King of Denmark, and dated the 10th of May, 1864, announcing that the blockade, by the Danish naval forces, of the Prussian ports in the Baltic, and of the ports of Schleswig and Holstein (which ports and places are particularly named in the official notice hereunder set forth), will from the 12th of this present month (May 1864) be raised and cease to be in force.

The following is the official notification received by Earl Russell:—

(Here insert, verbatim, the official notification in English referred to.)

R. P.

No. 43.

The Queen's Advocate to Earl Russell.—(*Received May* 21.)

Doctors' Commons, May 21, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Murray's letter of the 18th May instant, stating that he was directed by your Lordship to transmit to me a petition from a Mr. Gunn, praying that your Lordship would take steps to procure the restoration of his vessel, the "Alma," captured by a Danish vessel of war, under the circumstances stated in the petition, while on a voyage, as is alleged, to the unblockaded port of Colberg; and to request that I would furnish your Lordship with my opinion as to the answer which should be returned to Mr. Gunn.

Mr. Murray was also pleased to state that the notifications of blockaded ports which were officially published in the "London Gazette," and in which the ports so blockaded were enumerated, were prepared in compliance with the suggestions contained in my Reports of the 8th and 14th of March last.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That according to the statement of the memorialist, his vessel was not guilty of a breach of the blockade. But this is a question perfectly proper to be decided by the Danish Prize Court; and I cannot see any special circumstances in this case which should induce your Lordship to make a particular application to the Danish Government. I humbly advise your Lordship to answer the memorialist to the effect that your Lordship is advised that the proper course for him to pursue is, to cause his case to be properly stated before the Danish Prize Court, and to require from that tribunal restitution of this vessel. If it has been improperly seized it will be restored, and with or without costs and damages, accordingly as there may or may not appear to have been probable cause of capture. It would, I think, be well to add that this is the course which Her Majesty's Government would point out to the Danish Government as proper to be pursued if, England being belligerent and Denmark neutral, the Danish Government had made application for the restitution of a Danish vessel captured in circumstances similar to those in which the "Alma" appears to have been captured.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 44.

The Law Officers of the Crown to Earl Russell.—(*Received May* 23.)

Lincoln's Inn, May 23, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 7th instant, stating that he was directed by your Lordship to transmit to us therewith a despatch from Her Majesty's Consul at Königsberg, inclosing a petition from James Duncan, master of the British schooner "Princess Helena," stating that he has inadvertently entered the port of Pillau since the institution of the blockade of that port, and requesting your Lordship to exert your influence with the Danish Government to procure a free pass to enable his vessel to leave the port; and to request that we would favour your Lordship with our opinion as to whether the case is one in which Her Majesty's Government would be justified in interfering in behalf of the blockaded ship.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That the petition of James Duncan seems to us reasonable; and that (unless the question has been practically settled in Mr. Duncan's favour by the terms of the present suspension of hostilities), Her Majesty's Government would be justified in representing to the Danish Government the circumstances alleged by Duncan, and founding on them a request that he might be permitted to leave Pillau in ballast.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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No. 45.

The Queen's Advocate to Earl Russell.—(Received May 30.)

Doctors' Commons, May 30, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 29th instant, stating that he was directed by your Lordship to transmit to me therewith a letter from the Danish Minister announcing that the blockade of the German ports will be re-established on the 12th of June next, unless the questions pending between Denmark and Germany are settled by that time, and a letter from your Lordship acknowledging its receipt; and to acquaint me that if I see no objection, your Lordship proposes to publish this correspondence in the "London Gazette" on Tuesday next.

In obedience to your Lordship's commands I have taken this correspondence into consideration and have the honour to report—

That I see no objection to the publication of the aforesaid correspondence in the "London Gazette" of Tuesday next.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 46.

The Law Officers of the Crown to Earl Russell.—(Received June 15.)

Lincoln's Inn, June 14, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 1st instant, stating that with reference to our Report of the 7th of April last relative to the objections raised by Prussia to the efficiency of the Danish blockade of the Prussian ports in the Baltic, he was directed by your Lordship to transmit to us further correspondence on the subject as marked in the margin,* and to state to us that, having in view the contingency of the blockade being re-established, your Lordship was desirous of being favoured with our opinion as to the course which should be pursued by Her Majesty's Government in regard to this question.

Mr. Layard was also pleased to state that the former correspondence was annexed for our information.

In obedience to your Lordship's commands we have taken these papers into consideration and have the honour to report—

That the proper answer to the complaint of the Prussian Government appears to us to be that Denmark has not claimed, and does not claim, any exemption from the agreement contained in the Declaration of Paris as to the necessity of an effective *de facto* blockade in all cases in which the international maritime rights of a belligerent incident to the institution of a blockade are sought to be exercised. That there is, in truth, no question of law, but only a question of fact, in controversy between Prussia and Denmark. That it is always a question of fact whether there be or be not a sufficiently effective force on the spot which the belligerent declares to be blockaded. The Danish Government assert that the Prussian statements as to the absence of Danish men-of-war and the ineffectiveness of the blockade are unfounded. The letter of M. Bille dated the 17th ultimo to your Lordship contains a detailed and absolute refutation of them, and at the same time a correct exposition of the leading principles of the law of blockade. The reports of Her Majesty's Consuls from the Prussian ports substantially confirm this statement of facts made by M. Bille.

As to the period between the 15th and 27th of March, the absence of due notification to foreign Consuls (which, as M. Bille justly says, does not vitiate a blockade existing *de facto*) is accounted for by M. Bille's assertion that the Prussian authorities actually fired upon the ship sent with a flag of truce to announce to the blockaded ports the institution of the blockade.

Even if, in the first instance, there had been (as there not unfrequently is) some irregularity in the commencement of the blockade, it certainly appears to have been quite effectively constituted after the lapse of a very short interval; and it does not appear that any neutral vessels have been condemned for entering any belligerent port which was not duly blockaded.

Lastly, we would venture to suggest that it would be very desirable that a copy of the above-named despatch of M. Bille of the 17th May to your Lordship should be transmitted to the Prussian Government in any further communications which may take place between Her Majesty's Government and Prussia, and also that whenever an opportunity presents itself general publicity should be given to the document.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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* Consul Blackwell, April 14; Count Bernstorff, April 16; M. Bille, April 17 and 19; Consul Hertslet, April 20 and 23; M. Bille to Count Bernstorff, May 9 and 23, 1864.

No. 47.

The Law Officers of the Crown to Earl Russell.—(Received June 15.)

Lincoln's Inn, June 15, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of this day's date, stating that he was directed by your Lordship to transmit to us the accompanying note from the Danish Minister at this Court, requesting to be informed whether Her Majesty's Government would place any obstacle in the way of the sale by him, under the circumstances detailed in his note, of the iron-clad frigate now nearly completed on account of the Danish Government, by Messrs. Thomson, of Glasgow; and to request that we would favour your Lordship, in the course of this day, with our opinion as to the answer which should be returned to the Danish Minister.

Mr. Layard was also pleased to add, by way of postscript, that he had the honour, for our better information, to inclose some correspondence which passed in the early part of this year respecting the ram in question.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That we see no objection to the proposed sale of the iron-clad frigate by the Danish Government; that Government undertaking to pledge itself that the vessel shall not pass into the possession of any other belligerent Government, and will, under no circumstances, revert into the possession of Denmark herself.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 48.

The Queen's Advocate to Earl Russell.—(Received July 5.)

Doctors' Commons, July 5, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Murray's letter of the 4th instant, stating that he was directed by your Lordship to transmit to me the accompanying despatches from Her Majesty's Minister at Copenhagen and Her Majesty's Consul at Stettin,* forwarding notifications of the blockade of the German ports in the Baltic, and to request that I would take these papers into consideration, and if I should consider the notice sufficient, that I would prepare a notification of the blockade in the usual form for insertion in to-day's "Gazette."

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I consider the notices sufficient, and have prepared the notifications accordingly, which are annexed to this Report.

I have, &c.
(Signed) ROBERT PHILLIMORE.

Inclosure in No. 48.

Notification of Blockade.

Foreign Office, July 5, 1864.

IT is hereby notified that Earl Russell, K.G., Her Majesty's Principal Secretary of State for Foreign Affairs, has received despatches from Her Majesty's Minister at

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* Sir A. Paget, No. 289; Consul Blackwell, No. 16.

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Copenhagen and Her Majesty's Consul at Stettin, inclosing the following official notification of the blockade of the German ports of the Baltic:—

"The Ministry of Marine notifies herewith that the blockade of the Prussian ports of Colberg, Cammin, Swinemünde, Wolgast, Greifswalde, Stralsund, and Barth, is effectuated the 27th instant, and that the blockade of the ports of Holstein and Schleswig, mentioned in the notification of the 25th instant, is likewise effectuated the 26th instant.

"*Ministry of Marine, Copenhagen, June* 28, 1864.

(Signed) "O. LUTKEN."

With respect to neutral vessels in the above-mentioned ports it is officially notified that they may complete the lading of their cargoes and leave these ports without being interrupted up to the 16th of July, but that on the 17th of July and afterwards all neutral vessels leaving these ports will be liable to seizure by the Danish blockading force.

With respect to the harbour of Pillau, Earl Russell has received a despatch from Her Majesty's Consul at Königsberg containing the following notification from the captain of His Danish Majesty's frigate "Jylland," certified by the Danish Consul at Pillau.

(Here insert, verbatim, the letter from the Danish Captain, Holm, and translation of the same.)

R. P.

No. 49.

The Queen's Advocate to Earl Russell.—(Received July 13.)

My Lord, *Doctors' Commons, July* 11, 1864.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 8th instant, stating that he was directed by your Lordship to transmit to me the accompanying correspondence* which has taken place relative to the capture and condemnation by a Danish Prize Court of the British vessel "Estella" for breach of blockade; and to request that I would furnish your Lordship with my opinion whether, pending the result of the appeal against the decision of the Prize Court, it will be advisable to enter into a discussion with Messrs. Stoess and Co. upon the merits of the case, and if so, as to what answer should be returned to the letter from those gentlemen of the 5th instant.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I advise your Lordship not to enter into a discussion with Messrs. Stoess and Co. upon the merits of this case, pending the appeal to the Superior Court.

If the sentence of the Court below be confirmed by the Superior Court, it will be expedient that your Lordship should be furnished with an accurate Report of the Judgment itself, and also with any observations that Her Majesty's Consul may have to offer upon the case, and the proceedings of the Prize Tribunals.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 50.

The Law Officers of the Crown to Earl Russell.—(Received July 20.)

My Lord, *Lincoln's Inn, July* 19, 1864.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 2nd instant, stating that he was directed by your Lordship to transmit to us therewith a despatch from Her Majesty's Consul at St. Croix (No. 11, June 9), regarding the succession to property left by Mr. Hugh Lang, a British subject deceased in that island.

Mr. Hammond was also pleased to forward to us a letter, dated the 29th ultimo, from Messrs. Lawrence, Markby and Co. on the same subject; and also further to state that he was directed by your Lordship to request that we would favour your Lordship with our opinion as to the instructions to be given to the Consul, and as to the answer to be returned to the attorneys.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we do not think it expedient that Mr. Consul Rainals should be instructed to contest the interpretation put by the Governor of St. Croix upon the effect of taking out of a burgher licence by a British subject, especially in the present case, as it seems probable, from the facts stated, that Mr. Hugh Lang was domiciled in St. Croix at the time of his death. But we think that it would be expedient that some arrangement should be entered into with the Danish authorities, whereby the absent heirs and next of kin of a British subject, with a burgher licence, having died in Danish territory, should be apprized, by notice in the "London Gazette," of the intended distribution of such property by Danish Tribunals.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 51.

The Queen's Advocate to Earl Russell.—(Received July 20.)

My Lord, *Doctors' Commons, July* 19, 1864.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 15th instant, stating that he was directed by your Lordship to transmit to me a letter from Messrs. Moser and Son, asking to be furnished with documents to prove that some iron belonging to them, and which has been saved from a cargo wrecked on the north coast of Jutland, is British property; and Mr. Hammond was to request that I would take the same into consideration, and furnish your Lordship with my opinion as to the answer that should be returned to Messrs. Moser's application.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I think the proper reply to the application of Messrs. Moser would be to the effect that your Lordship has no reason to doubt that the documents will be considered sufficient to prove the ownership of the iron in question; that the Foreign Office cannot add to the evidence which they furnish, but will receive any further communication which Messrs. Moser may find it necessary to make in the event of any difficulty arising from the Prussian occupation of Jutland. In the meantime Messrs. Moser's correspondent in Jutland would do well to address himself to the British Consul near the spot, if any difficulty should occur.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 52.

The Queen's Advocate to Earl Russell.—(Received July 21.)

My Lord, *Doctors' Commons, July* 20, 1864.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 15th instant, stating that he was directed by your Lordship to transmit to me a letter from Messrs. Flux and Argles relative to the detention under embargo at Elsinore of the Prussian vessel "Ernst Jacob," insured by the English and Scottish Marine Insurance Company, and to request that I would take this paper into consideration, and furnish your Lordship with my opinion as to the answer that should be returned to it. The accompanying despatches from Her Majesty's Representatives at Berlin, Hanover, and Copenhagen, on the subject of the embargo, were inclosed for my information.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That it appears from a despatch of Sir A. Paget (No. 96, February 20, 1864) that the "Ernst Jacob" was one of three Prussian ships detained at Elsinore as to which his Excellency addressed a letter to the Secretary at Lloyds, which I understand was forwarded through the Foreign Office to its destination. It will be proper, therefore, to send an answer to Messrs. Flux and Argles to the following effect: that it would not be according to the practice of the Foreign Office to furnish them with information for the

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* Messrs. Stoess and Co., June 29 and July 5; to Messrs. Stoess and Co., May 27 and July 1, 1864.

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purpose required. But that on making proper application to Lloyds they will probably learn that the information which they desire can be obtained.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 53.

The Queen's Advocate to Earl Russell.—(Received July 21.)

Doctors' Commons, July 20, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of this day's date, stating that he was directed by your Lordship to transmit to me a copy of a telegram from Her Majesty's Minister at Copenhagen, stating that the blockades of ports in the Baltic are to be raised during the suspension of arms which has been concluded between Denmark and the German Powers; and Mr. Hammond was to request that I would take this paper into consideration, and if I should consider that notice of the suspension of the blockades should be published, that I would prepare a notification to that effect in the usual form for insertion in the "London Gazette."

In obedience to your Lordship's commands I have considered the paper referred to me, and have the honour to report—

That I am of opinion the suspension of the blockades should be notified in the "London Gazette." I have therefore prepared a notification (which I herewith transmit) proper for the purpose.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 54.

The Queen's Advocate to Earl Russell.—(Received July 23.)

Doctors' Commons, July 22, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 20th instant, stating that he was directed by your Lordship to transmit to me a Memorandum which has been communicated to your Lordship by Mr. Grant Duff, M.P., relative to the seizure by a Danish cruizer of the British vessel "Glen Grant" for an alleged attempt to break the blockade of Colberg; and to request that I would take this paper into consideration, and inform your Lordship whether I am of opinion that this is a case in which Her Majesty's Government can properly interfere on behalf of the owners of the vessel.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That at present there is no ground laid for the interference of Her Majesty's Government. The guilt or innocence of the "Glen Grant" with respect to the violation of the blockade is, as I understand, actually undergoing judicial inquiry before the Danish Prize Court, which is the proper Tribunal, and which it must be presumed will do justice in the matter.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 55.

The Queen's Advocate to Earl Russell.—(Received July 29.)

Doctors' Commons, July 28, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 27th instant, stating that he was directed by your Lordship to transmit to me a despatch from Her Majesty's Minister at Copenhagen, inclosing the official notification which has been published by the Danish Ministry of Marine of the raising of the blockade in the Baltic during the existing suspension of hostilities, and to request that I would furnish your Lordship with my opinion as to whether it will be advisable to insert in the "London Gazette" a further notification on the subject, or whether the notice already inserted in the form suggested in my letter of the 20th instant will be sufficient.

In obedience to your Lordship's commands I have again taken these papers into consideration, and have the honour to report—

That upon the whole I think it would be expedient to insert the further notification in the "London Gazette," and I have therefore prepared it, and have the honour to append it to this Report.

I have, &c.
(Signed) ROBERT PHILLIMORE.

Inclosure in No. 55.

Notification of the Raising of the Danish Blockade of the Prussian Ports in the Baltic, and of all Ports and Harbours on the Coasts of Schleswig and Holstein.

Foreign Office, July 29, 1864.

IT is hereby notified that Earl Russell, K.G., Her Majesty's Principal Secretary of State for Foreign Affairs, has received from Her Majesty's Minister at Copenhagen an official notification (published by the Danish Ministry of Marine) of the raising of the blockade of the Prussian ports in the Baltic, and also of all ports on the coast of Schleswig and Holstein, from the 20th July instant.

The following is a copy of the said official notification above referred to:—

(Here insert a copy of the said notification, including signature.)

No. 56.

The Law Officers of the Crown to Earl Russell.—(Received August 25.)

Lincoln's Inn, August 25, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 18th instant, stating that with reference to our previous Reports respecting the iron-clad steamer purchased at Glasgow for the use of the Danish Government, he was directed by your Lordship to transmit to us therewith a recent correspondence with the Danish Minister,* from which it results: 1st, that your Lordship has released the Danish Minister from the engagements which he took in February last respecting this vessel; and 2ndly, that the Danish Minister will have made an engagement with Messrs. J. and G. Thomson, of Glasgow, for taking this vessel off their hands. Mr. Hammond also inclosed a copy of a letter which, by your Lordship's directions, he addressed to the Secretary of the Treasury, requesting that the vessel may be watched, and to state to us that your Lordship would be glad to receive our opinion—1st, as to whether it would be proper at once to warn Messrs. Thomson and Co. against selling the vessel to the Confederates; and 2ndly, as to whether any other steps can legally be taken by Her Majesty's Government to prevent the vessel passing into the possession of the Confederate States.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That we cannot advise your Lordship to warn Messrs. Thomson and Co. against selling this vessel to the Confederates, because we are of opinion that as the law now stands (and the law of the United States is the same) such a sale would not be illegal, unless some addition were made or attempted in this country to the present equipment, fittings, furniture, or armament of the vessel, with a view to her employment in the war-service of the Confederate States; and (unless such additional equipment, &c., were made or attempted) we are not aware of any other step which can legally be taken by Her Majesty's Government to prevent this vessel from passing into the possession of the Confederate States.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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* M. Bille, August 12; to M. Bille, August 15; M. Bille, August 16, 1864.

1864

No. 57.

The Queen's Advocate to Earl Russell.—(Received October 5.)

My Lord, *Doctors' Commons, October* 4, 1864.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 29th ultimo, stating that he was directed by your Lordship to transmit to me two letters from Mr. Marwood of Sunderland relative to the capture of the English brig "Sarah," for alleged breach of blockade, by a Danish cruizer; and to request that I would take these papers into consideration, and furnish your Lordship with my opinion as to whether Her Majesty's Government could properly interfere to obtain from the Danish Government compensation for the loss sustained by the owner of the vessel in question.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I am of opinion that Her Majesty's Government may properly interfere in this case.

It was the right of the neutral owner to be dismissed with costs and damages if she was improperly seized. The belligerent cannot escape from this obligation by releasing the vessel seized, without taking her into the Prize Court.

Upon the present statement of facts it would seem that the wrongful seizure of the "Sarah" is tacitly admitted by the Danish Government. I think that an application should be made to the Danish Government for reasonable costs and damages to the owner of the "Sarah."

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 57A.

The Queen's Advocate to Earl Russell.—(Received October 5.)

My Lord, *Doctors' Commons, October* 4, 1864.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 29th ultimo, stating that he was directed by your Lordship to transmit to me a note which has been addressed by the Danish Minister for Foreign Affairs to the Danish Minister at this Court, instructing him to call the attention of Her Majesty's Government to the demands made by the German Powers on Denmark for compensation for losses sustained by the German shipping during the late war; and to request that I would take this paper into consideration, and furnish your Lordship with my opinion whether the claims put forward by the German Powers are in accordance with precedents and usage.

In obedience to your Lordship's commands I have taken this matter into consideration, and have the honour to report—

That it has been usual, or at least not uncommon, at the end of a war that the belligerents should agree to a Mixed Commission, armed with authority to inquire into alleged cases of violations of maritime international law, committed during the pendency of the war, *e. g.*, ships unlawfully seized, or improperly condemned by the Prize Court, which is an international tribunal, and ought to be governed by well-known principles and generally recognized laws. But the demands contained in the instrument intituled "specification of claims, &c.," and which are now pressed by the German Powers upon Denmark, in my opinion far exceed, both in principle and in detail, the limits of such international adjustments of differences as those to which I have adverted. There is one observation which has an obvious and important bearing upon the whole scheme, so to speak, of the compensation demanded. It was the undoubted right of the Danish Government to declare and maintain a lawful blockade of the coasts and harbours of the belligerents, and also to seize all vessels, private and public, belonging to those States. But the demand now put forward by the German Powers appears to proceed, both generally and in every specific instance, upon the hypothesis that the conduct of Denmark in this exercise of her unquestionable belligerent rights was at variance with the principles of international law; and though this result is more directly apparent from the claims which are included in Articles 3, 5, and 7, it does in truth lie at the root of the whole demand, the manifest effect of which is to throw upon Denmark the larger portion of the expenses of the whole war, because she exercised the belligerent rights of a maritime State.

I am not aware of any recognized usage or accredited precedent among civilized States which can be referred to as a warrant for this proceeding on the part of the German Powers.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 57B.

The Queen's Advocate to Earl Russell.—(Received October 22.)

My Lord, *Doctors' Commons, October* 20, 1864.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 14th instant, stating that he was directed by your Lordship to transmit to me, for my information, and for any observations which may suggest themselves to me, a copy of a report which has been communicated to your Lordship by the French Chargé d'Affaires at this Court, with regard to the demands of the German Powers on Denmark.

In obedience to your Lordship's commands I have taken this matter into consideration, and have the honour to report—

That looking at the subject from the same point of view in which it is considered by the French Memorial, I have the honour to express, with one reservation, my entire concurrence, both with the premises and the conclusions of the writer of that clear and able paper.

The reservation to which I have adverted relates to the position in the fourth paragraph or division, to the effect that the judgment of a Prize Court is not required to pass the property of an enemy after it has been once captured. That position must be limited to the title which the captor and his countrymen may acquire, for the sentence of the Prize Court is certainly necessary to convey to a neutral purchaser the property of a belligerent.

With all the main principles, however, contained in this document I entirely concur, namely—

1. That the distinction between just and unjust wars is wholly inadmissible to affect the question of the construction of the Treaty, which, as to this subject, must be interpreted as considering all parties upon equal footing.

2. That in the absence of any express stipulation to the contrary, all moveable, if not all, property *de facto* acquired by a belligerent during the war whatsoever must be treated as appertaining to the acquirer.

3. That the preliminaries of peace are of the nature of a contract, and subject to the same rules and principles of interpretation as the definitive Treaty itself.

4. That these preliminaries, inasmuch as they contain express provisions as to defraying the expenses of the war, must be taken to have excluded what they have not so specifically provided for; that inasmuch as the Preliminaries specify the restitution of goods seized on land before a certain period, they, by necessary implication, exempt goods seized on the high seas from the operation of their provisions. In other words, that the well-known doctrine "*expressio unius est exclusio alterius*" is applicable to this as to other contracts. All these appear to me incontrovertible propositions of equity, of good faith, and of the usage and practice of civilized States which are the foundations upon which all international law is built.

To these considerations may be added the legitimate consequences which flow from some of the preposterous demands of the German allies, for what are sometimes called by jurists "consequential damages."

For instance, the demand that the increased expenses, incident to all wars of every description, which press upon the merchant, native or commorant, in the belligerent State, whether from the necessity of heavier assurance, or from the dissolution of contracts made before the breaking out of the war, should be added to the "expenses of the war," which the vanquished belligerent is to pay, is about as reasonable and as usual as if he were called upon to pay the private consumer for the rise in the price of the provisions, or the holder of public stock for the fall in the value of the public funds or securities which are the usual effects of war.

I have, &c.
(Signed) ROBERT PHILLIMORE.

1864

No. 58.

The Queen's Advocate to Earl Russell.—(Received December 15.)

My Lord, *Doctors' Commons, December* 13, 1864.

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 9th instant, inclosing to me (with reference to my letter of the 4th of October) the correspondence which has passed with Her Majesty's Minister at Copenhagen,* respecting the claim which has been made on the Danish Government for compensation for the detention of the British vessel "Sarah," for alleged breach of blockade, and stating that the Danish Government have refused, on the grounds stated in the note inclosed in Sir Augustus Paget's despatch No. 419 of the 30th ultimo, to indemnify the owner of the vessel in question; and Mr. Layard was directed by your Lordship to state that your Lordship, before bringing the matter again before the Danish Government, would be glad to be furnished with my opinion as to what sum would represent the "reasonable costs and damages" for which, in my former Report, I suggested that application should be made.

Mr. Layard was also pleased to inclose to me my former Report, the previous papers bearing on the subject, and a further despatch which had been just received from Mr. Marwood.

In obedience to your Lordship's commands I have taken this case again into consideration, and have the honour to report—

That the reasonable costs and damages would be such as would be estimated by the Consul, probably assisted by the merchants, on the usual scale of demurrage for unlawful detention of the vessel and the interruption of her voyage. The sum claimed is absolutely small, and would seem to be fair, but it may be relatively large; the Consul at Copenhagen would, I should think, be able to form an opinion on this point.

It is to be remembered that the vessel, which it would appear from the circumstances ought never to have been seized, was detained fourteen days; that the master and crew were subjected to frequent *official* examinations, but not to the *judicial* investigation to which the neutral owner of the neutral vessel was entitled. It is no answer on the part of the Danish Government to say that now the neutral owner may bring his action before the ordinary tribunal against the Danish Crown; he had a right to justice in the Prize Court at the time, and it must be presumed that the release of the vessel after several official examinations was equivalent to the admission that the captor had no case which he could sustain before the Prize Court.

I have, &c.
(Signed) ROBERT PHILLIMORE.

Equator.

No. 59.

The Law Officers of the Crown to Earl Russell.—(Received July 22.)

My Lord, *Lincoln's Inn, July* 21, 1864.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 28th ultimo, stating that he was directed by your Lordship to transmit to us the correspondence noted in the margin,† respecting the circumstances under which the Equatorian Government have thought fit to revoke the exequatur of Mr. Mocatta, the British Vice-Consul at Guayaquil, but lately acting as the Acting British Consul-General in the Equator during Mr. Fagan's absence; and Mr. Layard was to request that we would take these papers into consideration, and report to your Lordship such observations as we may have to make thereupon.

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* Sir A. Paget, Nos. 385 and 409; to Sir A. Paget, No. 199; Mr. Marwood, September 17, 27, and October 25; Queen's Advocate, October 4, 1864.

† Señor Herrera, April 23; Mr. Mocatta, Nos. 18, 19, and 22.

We are also honoured with Mr. Layard's letter of the 30th ultimo, transmitting to us another despatch (No. 17, May 4) and its inclosures relative to this matter.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That as far as the papers before us enable us to form any judgment, the revocation of the exequatur of Mr. Mocatta appears to us unjustifiable.

The charges against him seem to rest upon the *ex parte* statements of persons of questionable character, none of whom (except the German, Augustin Haensek) profess to have been at any time in personal communication with him, or to speak otherwise than from hearsay; and no credit appears to have been given to their evidence, as against the persons directly inculpated by it, by the Judge who tried the cases in which it was given.

It is not very easy, however, to extract from Mr. Mocatta's own letters (the style of which is not perspicuous) whether he means to deny altogether any interference with political matters in Equator, or only to deny the specific charges made by the particular witnesses, as to his having given an order for the making of certain bombs; and, with respect even to these bombs, the admission of M. Méjer, who was employed by him in the British Consulate and enjoyed his confidence, that he (Méjer) accepted a commission from a M. Schmidt, resident in San Salvador, to procure firearms for that person, seems to us to require some further explanation than has yet been given.

We think that Her Majesty's Government should require specific reasons to be alleged by the Equatorian Government for the very strong and unusual step which they have taken. Previously, however, to so doing, it would be desirable to ascertain from Mr. Fagan, Her Majesty's Chargé d'Affaires at Equator (if he be now in this country), what his opinion may be upon all the circumstances of this case.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

France.

No. 60.

The Queen's Advocate to Earl Russell.—(Received February 3.)

My Lord, *Doctors' Commons, February* 2, 1864.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 26th ultimo, stating that he was directed by your Lordship to transmit to me the inclosed correspondence which has passed between the Foreign Office and the Colonial Department, with reference to the case of the French vessel "Persévérant," which in the course of her passage from Macao to Havana, with a cargo of coolies, was wrecked off Barbuda, and to a claim which the captain of the French ship of war "Marcian" had subsequently made on the Governor of Antigua on account of the passage money of a portion of the coolies who had gone over to that island and had taken service with the planters there; and Mr. Hammond was to request that I would take this case into consideration, and furnish your Lordship with my opinion whether the conduct of the Governor of Antigua in resisting the French claim should be approved.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I am of opinion that the conduct of the Governor of Antigua in resisting the French claim should be approved.

I have, &c.
(Signed) ROBERT PHILLIMORE.

1864

No. 61.

The Queen's Advocate to Earl Russell.—(Received February 6.)

Doctors' Commons, February 4, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 29th ultimo, stating that he was directed by your Lordship to inform me that in the course of negotiations which have lately taken place between the Post Office and an Agent of the Austrian Post Office, with a view to the conclusion of a Postal Convention, the Austrian Agent has declined to admit into the proposed Convention, as applicable to the port of Trieste, Articles similar to Articles V, VI, VII, and VIII of the Postal Convention between Great Britain and France of the 24th of September, 1856.* Those Articles relate, on the one hand, to the privileges to be enjoyed by national vessels the property of the respective Governments, or by vessels chartered or subsidized by either Government for the conveyance of mails, as stipulated in Article I and II of the Convention, and, on the other hand, define the course to be pursued by the respective Post Offices with regard to the forwarding of the mails when the packets conveying them shall be compelled to put into a port other than that of their regular destination.

That the Austrian Agent alleges the provisions of the four Articles V to VIII do not apply to British mail packets entering or leaving the port of Marseilles, but are confined to packets conveying mails between the ports of the two countries in the Channel, and he states that such is the opinion of the French Post Office. That the British mail packets entering or leaving the port of Marseilles do not in point of fact enjoy the privileges in question, and the company which owns them have never claimed the same;† because besides conveying passengers, bullion, and coin, they engage largely in the general carrying trade, so that the question has not arisen between the British and French Governments. But your Lordship would be glad if I would state to your Lordship my opinion whether the Articles in question do, or do not, apply to all packets subsidized by the British Government for the conveyance of correspondence, to whatever port in France they may proceed.

In obedience to your Lordship's commands I have considered this case, and have the honour to report—

That the general scheme of this Treaty appears to me to provide for two objects, namely, postal communications specially between England and France on the Channel line by way of Dover and Calais, and postal communications generally between the ports of England and France. The former object is provided by the first, the latter object is introduced by the Second Article of the Treaty.

The four Articles from V to VIII appear to me to relate to both these objects, because they are (Article V) expressly said to be applicable to "packets employed by the British Post Office or by the French Post Office, *in execution of Articles I and II of the present Convention,*" when those packets possess a particular character, *i.e.*, are either Government vessels or vessels chartered and subsidized by Government.

In aid of this construction, I should observe that the provisions contained in these four Articles can scarcely be supposed to have contemplated the service between Calais and Dover alone; they are too large, so to speak, to be confined to such postal communications.

I am of opinion that the four Articles (V to VIII) do apply to all packets subsidized by the British Government for the conveyance of postal correspondence to any port in France.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 62.

The Law Officers of the Crown to Earl Russell.—(Received February 18.)

Lincoln's Inn, February 17, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 2nd February instant, stating that, with reference to the Report of Her Majesty's Advocate-General of the 8th of October last, he was directed by your Lordship to

transmit to us a correspondence, as marked in the margin,* respecting the seizure of the British vessel "Caroline Goodyear," at Matamoros, on the 4th of July last, by a French ship of war, on the ground that the arms which it appeared she had on board were intended for the Mexicans, and that the vessel was therefore lawful prize.

Mr. Hammond was also pleased to state that we should perceive from the latter part of this correspondence that the vessel, which was taken to Vera Cruz for adjudication, was subsequently released, and that Mr. Goodyear, the owner, now claims from the French Government the sum of 1,810*l.* for alleged losses consequent upon the transaction in question; and to request that we would take these papers into consideration, and favour your Lordship with our opinion whether, and to what extent, Mr. Goodyear's claim can properly be urged upon the French Government.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we find some difficulty in advising your Lordship upon the scanty information conveyed to us in the present papers; that we do not understand whether the vessel was formally brought into a Prize Court at Vera Cruz or not. That we are clearly of opinion that the character of her cargo, and the place where she was seized, would have fully justified her being so brought in for adjudication, and would not found any claim for compensation or damages upon that ground. The delay of six months appears unreasonable; but this was probably not the fault of the captor, and, according to the practice of our Prize Courts in such a case, the captor would probably have been allowed his costs, and certainly would not have been condemned in costs or damages.

We cannot, upon our present information, advise Her Majesty's Government to make any demand upon the French Government for compensation in this case.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 63.

The Law Officers of the Crown to Earl Russell.—(Received March 15.)

Lincoln's Inn, March 14, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 17th ultimo, stating that he was directed by your Lordship to inform us, that subsequently to the receipt of our Report of the 22nd of December last, respecting Messrs. Kerford's claim against the French Government in consequence of the British schooner "Blue Jacket" having been prohibited by the French authorities from discharging her entire cargo at Campeachy, your Lordship considered it advisable to obtain, through the Admiralty, some further information as to the validity of the French blockade of the Coast of Mexico, as bearing upon this question: and to transmit to us a letter from the Admiralty dated the 13th ultimo, together with a despatch from Her Majesty's Chargé d'Affaires in Mexico on this subject (No. 3), and to request that we would take these further papers into our consideration, and that we would inform your Lordship whether they modify or alter the opinion we have already given on this case.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That these further papers do not modify or alter the opinion which we have already given on this case.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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* Hertslet, vol. x, p. 108.

† See Article VI.

* Mr. Goodyear, September 1; to Earl Cowley, No. 1,088, September 11; Mr. Grey, No. 40, September 15; Admiralty, September 28; to Queen's Advocate, October 3; Queen's Advocate, October 8; Mr. Grey, No. 123, October 8; Messrs. Sinclair and Hamilton, October 12; to Messrs. Sinclair and Hamilton, October 14 and 15; to Mr. Goodyear, October 15; Admiralty, October 27; to Admiralty, October 30; to Messrs. Sinclair, Hamilton and Co., December 31, 1863; Mr. Goodyear, January 29, 1864.

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No. 64.

The Queen's Advocate to Earl Russell.—*(Received March 23.)*

My Lord, *Doctors' Commons, March* 22, 1864.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 16th instant, stating that, with reference to my Report of the 2nd ultimo, respecting a claim made by the captain of the French ship of war "Marcian" on the Governor of Antigua, on account of the passage money of certain coolies shipwrecked in the French vessel "Persévérant," on their passage from Macao to Havana, and who had taken service in Antigua, he was directed by your Lordship to transmit to me the accompanying letter, dated the 12th instant, and its inclosures, from the French Ambassador at this Court, in support of the claim of the captain of the "Persévérant" to an indemnity of 48,496 francs 87 centimes, on the grounds already stated: and Mr. Hammond was to request that I would take these further papers into consideration, and furnish your Lordship with my opinion whether they in any way alter the merits of the case as reported in the Colonial Office letter of the 27th ultimo; and whether Her Majesty's Government can be considered justly liable for the amount claimed. The previous papers in the case were likewise inclosed to me.*

In obedience to your Lordship's commands I have taken these further papers into consideration, and have the honour to report—

That the further papers do not affect or alter the opinion which I expressed in my former Report. I see no ground whatever for considering Her Majesty's Government liable for the amount claimed, or liable for any amount whatever in this case. The coolies appear to have remained at Antigua of their own free will; and if so, nobody had any power or authority to compel them to return to the captain of the "Persévérant."

The letter of Governor Hill to Captain Vavin contains a very just and sound exposition of the law applicable to the facts of this case.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 65.

The Queen's Advocate to Earl Russell.—*(Received April 21.)*

My Lord, *Doctors' Commons, April* , 1864.

I AM honoured with your Lordship's commands signified in Mr. Murray's letter of the 19th instant, stating that he was directed by your Lordship to transmit to me a letter from the Admiralty, inclosing a copy of a letter from the Rear-Admiral commanding the French squadron in the Pacific, to Commander Pike, of Her Majesty's ship "Devastation," notifying the blockade of the ports of Acapulco and Manzanilla; and to request that I would prepare and forward to your Lordship the necessary notification upon this subject to be inserted in the "London Gazette."

In obedience to your Lordship's commands I have the honour to report—

That I have perused the notification referred to me, and considering the same sufficient, have prepared and herewith transmit a notification paper for insertion in the "London Gazette."

I have, &c.
(Signed) ROBERT PHILLIMORE.

Inclosure in No. 65.

Notification of Blockade.

Foreign Office, April , 1864.

IT is hereby notified that Earl Russell, Her Majesty's Principal Secretary of State for Foreign Affairs, has received from one of Her Majesty's Secretaries of the Admiralty a copy of a letter (dated the 29th of February, 1864) addressed by the Rear-Admiral commanding the French squadron in the Pacific to Commander Pike, commanding Her Majesty's ship "Devastation," notifying the effective blockade by the French naval forces of the ports of Acapulco and Manzanilla, on the West Coast of Mexico.

The following is a copy of the letter from the French Admiral above referred to, and translation:—

(Here print a copy of the French Admiral's communication, and then a translation thereof.)

R. P.

No. 66.

The Law Officers of the Crown to Earl Russell.—*(Received April 27.)*

My Lord, *Lincoln's Inn, April* 26, 1864.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 18th March ultimo, stating that he was directed by your Lordship to transmit to us therewith a draft of despatch founded upon our Reports of the 22nd December last, and the 14th ultimo, which your Lordship proposes to address to Her Majesty's Ambassador at Paris in regard to the case of the "Blue Jacket," which vessel, it is stated, had been compelled by a French steamer to desist from discharging her entire cargo at Campeachy, and to repair in some other port.

Mr. Hammond was also pleased to inclose a letter from Messrs. Morlet and Co., the charterers of the "Blue Jacket," which has been received since the instruction to Earl Cowley was prepared; in which, after stating the circumstances of the case, they calculate approximately the loss which they have sustained by the interference of the French ship of war at 10,000*l.*, and inclose various documents in support of their case; and to request that we would take these papers into consideration, and inform your Lordship whether we have any alteration or addition to suggest in the draft instructions to Earl Cowley, in consequence of Messrs. Morlet and Co's. claim; and whether, in our opinion, the claim can in its present form be urged upon the French Government.

In obedience to your Lordship's commands we have the honour to report—

That we have considered these papers, and finding in them evidence (which we had not before seen) of special damage to a serious amount having been suffered by Messrs. Morlet, beyond the mere double duties exacted from them, and also finding that the "Milan" did not maintain an effective blockade of Campeachy, even after the "Blue Jacket" had been prevented from completing the discharge of her cargo there; we have come to the conclusion that the representation to the French Government may properly be extended, so as to cover a claim of reasonable compensation for the loss which Messrs. Morlet have sustained; and we have taken the liberty of altering your Lordship's draft despatch, both by making (with this view) certain additions thereto, and by omitting some passages which it seemed to us better to omit.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 67.

The Queen's Advocate to Earl Russell.—*(Received April 30.)*

My Lord, *Doctors' Commons, April* 29, 1864.

I AM honoured with your Lordship's commands signified in Mr. Murray's letter of the 28th instant, stating that he was directed by your Lordship to transmit to me the accompanying despatch from the Acting British Consul at Vera Cruz, inclosing a copy of a Decree issued by the French Admiral on the Mexican station, notifying the blockade of the Rivers Goatzacoalcos and Tabasco; and Mr. Murray was to request that I would prepare and forward to your Lordship the necessary notification upon this subject for insertion in the "London Gazette," if I should be of opinion that the blockade is a valid one.

In obedience to your Lordship's commands I have the honour to report—

That I have perused and considered the notification of blockade referred to me, and deem the same sufficient.

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* Colonial Office, January 13; Queen's Advocate, March 2, 1864.

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I have, therefore, prepared a form of notification (and herewith transmit the same) proper for insertion in the "London Gazette."

I have, &c.
(Signed) ROBERT PHILLIMORE.

Inclosure in No. 67.

Notification of Blockade.

Foreign Office, April , 1864.

IT is hereby notified that Earl Russell, Her Majesty's Principal Secretary of State for Foreign Affairs, has received from Her Majesty's Acting Consul at Vera Cruz a copy of a Decree, dated the 17th March, 1864, issued by the French Admiral commanding the French naval forces in the Gulf of Mexico, notifying the effective blockade of the Rivers Goatzacoalcos and Tabasco (together with their "affluents") by the French naval forces.

The following is a copy of the notification of the blockade referred to:—

(Here insert the notice in French and Spanish, and then a translation thereof.)

R. P.

No. 68.

The Law Officers of the Crown to Earl Russell.—(Received June 18.)

My Lord,
Lincoln's Inn, June 17, 1864.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 15th instant, stating that he was directed by your Lordship to transmit to us, together with the previous papers bearing on the question, the accompanying summons which your Lordship has received to appear in Court before the Lord Chief Justice on the 22nd instant, in order to give evidence and produce documents relating to the case of "Glover *v.* Persigny and another;" and Mr. Hammond was to request that we would take these papers into consideration, and inform your Lordship, at our earliest convenience, what suggestions we have to offer as to the steps to be taken by your Lordship in this matter.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we are of opinion that your Lordship should attend the Court in pursuance of the subpœna, and take with your Lordship such of the documents referred to in it as are in the Foreign Office. Should your Lordship be of opinion that the production of all or any of these documents would be injurious to the public service, it would be proper for your Lordship to state that your Lordship objects to produce them on this ground, and to submit to the Chief Justice that your Lordship is not compellable to produce them. Upon such objection being taken, we think it probable that the Chief Justice will rule in favour of it, in conformity with the view of the Court of Exchequer in the case of "Beatson *v.* Skene," 29 Law Journal (Exch.), 430.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 69.

The Law Officers of the Crown to Earl Russell.—(Received June 18.)

My Lord,
Lincoln's Inn, June 18, 1864.

WE are honoured with your Lordship's commands signified in Mr. Murray's letter of the 19th ultimo, stating that he was directed to transmit to us therewith a correspondence with reference to two cases which have formed the subject, up to a certain point, of distinct representations to the French Government, but which involve a question of principle common to both. That the first of these cases refers to a complaint made

by Messrs. Rossel, Fehr, and Co., in regard to the amount of duty charged by the French Custom-house on an importation of British refined petroleum, a fine having also been imposed on Messrs. Rossel and Co. for alleged false declaration of origin. That the second case is that of the detention by the French Custom-house authorities at Boulogne, and their subsequent reference to French experts, of certain sewing-machines consigned by Messrs. Pitt Brothers to a house in Paris, on the ground that they were not, as declared, of British manufacture; in consequence of which detention, and of losses alleged to have been thereby sustained, Messrs. Pitt claim the sum of 1,152*l.* 5*s.* from the French Government. That we should perceive that, independently of the minor questions involved in these two claims, the principle is raised in both of whether, as the Board of Trade affirm, certificates of origin, duly attested as required by the IInd Article of the first Supplemental Convention between this country and France of 1861, shall be deemed to establish the origin of British manufactures, so as to entitle them to the advantages conferred by Treaty; or whether, as the French Government maintain, the right of reference to experts, where the authenticity of the above certificates is doubted, exists under the existing commercial stipulations with France; and Mr. Murray was pleased to request that we would take the accompanying papers into consideration, and furnish your Lordship with our opinion upon the merits of each case separately, upon the question of the Treaty right to which Mr. Murray referred, and also as to the communication or communications which it may appear desirable to make to the French Government with reference to these matters.

We are also honoured with Mr. Hammond's letter of the 23rd ultimo, transmitting a letter and its inclosures from Messrs. Pitt Brothers, with reference to the detention of their sewing-machines above referred to.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That with respect to the principle which affects both these cases, namely, what is the true construction of the IInd Article of the first Supplemental Convention between this country and France (12th October, 1861), we agree in the opinion expressed by the Board of Trade (December 16, 1863, and May 16, 1864), that, according to the plain words of that Article, the British origin or manufacture of goods imported into France is to be established (1), either by an official declaration made before a British magistrate at the place of despatch; (2), or by a certificate from the chief officer of Customs at the port of embarkation; (3), or by a certificate granted by the Consul or Consular Agents of France at the places of despatch or the ports of embarkation. It is not, indeed, stipulated that such declarations or certificates are to be in all cases accepted as conclusive, so as to exclude any other evidence to the contrary in cases of fraud. But it is, in our opinion, stipulated that they shall be accepted as *primâ facie* sufficient, and to contend that they are liable to be arbitrarily set aside without any evidence to show that they are false or fraudulent, by the mere opinion and judgment of French experts, is to introduce an element of insecurity, which would deprive them of all practical value, and would rob the Treaty of some of the principal advantages which were proposed from its negotiation.

We also agree that the language of the IVth, VIth, VIIth, and VIIIth Articles throws some further light upon the question, by providing an arbitration, in the case of a difference as to the *value* of goods between the importer and the French Custom-house, that value being declared in the invoice attached to the certificate of origin. The absence of any stipulation for what is called "expertise" as to the place of origin or manufacture, coupled with the presence of these express provisions on the subject of value, seems to us to exclude, by almost necessary implication, the test of "expertise" upon the former subject, which, indeed, is in its nature one demanding a different kind of proof, inasmuch as it depends, not upon any scientific judgment, but upon a mere matter of fact. The answer of M. Drouyn de Lhuys seems to us, as it seemed to the Board of Trade, altogether unsatisfactory.

The position that a provision of municipal law cannot be abrogated except by positive words in a Treaty, is really one of municipal, and not of international, law. It is a position which cannot fairly be imported into a contract between two nations, in order to destroy the natural meaning of a particular Article, and the general scope of the Treaty. The argument of M. Drouyn de Lhuys does, in effect, place it in the power of the officers of the French Custom-house, or the experts whom they consult, to render nugatory all the provisions of the Treaty in respect of British goods which are really such, and which are imported with all those proofs of their being such which are required by the terms of the Treaty. Having said this much upon the general question, it remains for us to express our opinion as to the two particular cases of injury alleged to have been inflicted upon British merchants.

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With respect to the petroleum oil, a careful perusal of the papers leads us to adopt the conclusions expressed in the above-mentioned letters from the Board of Trade, as to the injustice done to Rossel, Fehr, and Co., by the French Custom-house authorities in this matter. It does appear to us that these merchants have been required to pay duty on goods *boná fide* manufactured in Great Britain, as if they had been manufactured in America, although their British origin was duly proved, not only by the certificate of the French Consul (which alone ought to have been sufficient), but also by the affidavits made before the Lord Mayor at the request of the French authorities, although subsequently disregarded by them. With respect, however, to these goods, as the article of petroleum oil does not appear to be one of those mentioned in the Treaty, we are not able to say (even with reference to the XIXth Article of the Treaty, and the French Convention with Belgium) that the case of Messrs. Rossel and Co. is within the scope of the IInd Article of the first Supplemental Convention between France and this country. With regard to the sewing-machines of Messrs. Pitt, we think the case of injustice on the part of the French authorities is still stronger. It is not denied that the French Custom-house fell into a great error with respect to all but one of these machines; and it seems plain that there is no more foundation in fact for the arbitrary decision of the experts, that one out of the number was of American manufacture, than there was for the original detention of the whole consignment, upon a suspicion of the same kind now admitted to be groundless. That some indemnity is due to Messrs. Pitt, is admitted; the question is as to the amount. The claim is now confined (Pitt Brothers, February 19, 1864) to the eight machines; and the amount of indemnity ought in great measure to be regulated by the date of the return of the machines to Boulogne to be delivered to Messrs. de Meyer and Buchard, and by the condition in which they actually were when returned. The position of Messrs. Pitt is, that they were not returned to Boulogne till the middle of December, after the intervention of Her Majesty's Ambassador at Paris, and then in a disjointed and injured condition. But these are questions of fact, as to which it unhappily appears but too probable that much controversy may arise.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 70.

The Law Officers of the Crown to Earl Russell.—(*Received August* 4.)

My Lord, *Lincoln's Inn, August* 3, 1864.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 22nd instant, stating that he was directed by your Lordship to transmit to us the accompanying correspondence* on the subject of an application from the French Ambassador at this Court, for the extradition to the French authorities at Réunion, of Edouard Dulac, a fraudulent bankrupt, who has taken refuge in the Mauritius; that the Colonial letter of the 21st instant, and its inclosures, show the difficulty which has prevented the Governor of the Mauritius from complying with the request of the French Ambassador in this matter, and the course which the Secretary of State purposes to pursue in order to meet the present, and any similar cases which may arise; and Mr. Hammond was to request that we would take these papers into consideration, and furnish your Lordship with our opinion as to the propriety of concurring in the measures proposed.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we are of opinion, that the more expedient course would be that suggested by the Procureur-Général, namely, a mutual extension of the Extradition Treaty between France and England, so as to authorize such extradition to be made upon warrants properly issued by competent courts or magistrates in the Colonies and foreign possessions of both countries.

It would not, in our opinion, be expedient to attempt to cure the defects of the General Treaty by local legislation, in any particular British Colonies or Colony. For it is to be observed, that while, by the Treaty and Act of Parliament, it is necessary that there should be a warrant, &c., "issued by a Judge or competent Magistrate *in France*," to enable any British authority to deliver up any offender amenable to French jurisdiction, on the other hand, an offender amenable to British jurisdiction can only be demanded from French authorities, "after the production of a warrant of arrest, &c., issued by a Judge, or other competent authority in *Great Britain*."

There is, therefore, under the Treaty as it stands, complete reciprocity, and we do not think it can be amended by any merely Colonial legislation (see 6 Hertslet, p. 345).

With respect to the particular offence of "fraudulent bankruptcy," the Law Officers have before had occasion to point out that, in order to make the Treaty or the Statute operative in this respect, there must be, in the British territory where it may be sought to be put in force, some law in force, under which the facts alleged, as constituting such fraudulent bankruptcy, would amount to a crime or misdemeanour punishable by that law, if the same acts had been there done.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 71.

The Law Officers of the Crown to Earl Russell.—(*Received August* 6.)

My Lord, *Lincoln's Inn, August* 6, 1864.

WE are honoured with your Lordship's commands signified in Mr. Murray's letter of the 3rd instant, stating that he was directed by your Lordship to transmit to us a despatch and its inclosures received from Her Majesty's Ambassador at Paris (No. 872), with reference to the arrest in that city, at the instance of the Russian Embassy, of a British subject named James Thornley, who is accused of having left St. Petersburgh under a charge of forgery or fraudulent bankruptcy; and to request that we would take the same into consideration, and furnish your Lordship with our opinion as to the legality of the proceedings taken against Mr. Thornley, and as to the instructions which should be addressed to Earl Cowley in this matter; and further, that we would enable your Lordship to return an answer to the general question which Lord Cowley has put as bearing upon cases like the present.

We are also honoured with Mr. Murray's letter of the 4th instant, transmitting a further despatch from Earl Cowley (No. 597), inclosing a copy of a letter from M. Drouyn de Lhuys in explanation of the prolonged detention of Thornley pending an inquiry into the charge against him, and from which it appears that the accused is stated to be a Russian subject.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That we are opinion that if Russia has no Treaty of Extradition with France, and if James Thornley be a British subject, his arrest in France by French authorities at the demand of Russia is not warranted by international law. If his statement be true, he is clearly a British subject by birth; it is possible that he may have been naturalized in Russia, and taken an oath of allegiance to the Government of that country. Such a state of facts might require a modification of our opinion. It would seem to us proper that Earl Cowley should draw M. Drouyn de Lhuys' attention to the fact, that Mr. Thornley states that he was born in the parish of St. James', Westminster, and is an English subject; and should state that Her Majesty's Government are not aware of any principle of international law which can warrant his imprisonment in France at the request of a third Power between whom and France their exists no Treaty of Extradition.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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* Prince de la Tour d'Auvergne, January 19; to Colonial Office, January 20; Colonial Office, January 25; to Prince de la Tour d'Auvergne, January 29; Colonial Office, July 21, 1864.

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No. 72.

The Law Officers of the Crown to Earl Russell.—(*Received September* 6.)

Lincoln's Inn, September 5, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 20th ultimo, stating that he was directed by your Lordship to transmit to us a letter from the Colonial Office, inclosing copies of correspondence received from the Governor of Mauritius, with reference to the course pursued by the Curator of Vacant Estates in that island, in taking possession of the French ship "Jules," whilst lying in the harbour of Port Louis, on the ground that the "Jules" formed part of the property of a M. Reynaud, the owner and master of the ship, who died at that port in December last. That we should observe that the Secretary of State for the Colonies is desirable that the Procureur-Général should have a legal opinion with regard to the question adverted to in the 14th paragraph of his letter; and Mr. Hammond was to request that we would furnish your Lordship with a Report on this subject, for communication to the Procureur-Général, through the Colonial Department.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That, according to the general practice of all civilized States, the Representatives constituted by the State of the domicil of a deceased person are allowed to distribute the personal or moveable effects of such person wherever he may happen to die; subject to such exceptions only as may arise out of litigation on the part of any of the parties claiming to be beneficially interested in the succession, in any country where part of such moveable effects may happen to be.

That we think the Curator of Vacant Estates at the Mauritius should endeavour to exercise his office so as to be ancillary, as far as possible, to this rule of international comity. That, though it may be the duty of his office to collect the goods and to pay local debts and funeral expenses of a deceased person who dies unexpectedly, and without having made provision for the care of his effects in the island, we are clearly of opinion that this duty ought not to be extended, except, perhaps, in some very special case in which interference may be necessary to prevent the loss or deterioration of the property, to the arrest of a foreign merchant-vessel belonging wholly or in part to the deceased person, which did not constitute part of his moveable effects in the island at the time of his decease, but which happens (as in the case of the "Jules,") to touch at the Mauritius after his decease, in the prosecution of a voyage to or from the country of his domicil.

We have, &c.

(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 73.

The Law Officers of the Crown to Earl Russell.—(*Received September* 10.)

Lincoln's Inn, September 8, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 19th ultimo, stating that, with reference to our Report of the 6th ultimo, respecting the arrest of James Thornley at Paris, by order of the French Government, on the application of the Russian Embassy, he was directed by your Lordship to transmit to us two further despatches from Earl Cowley on this subject (No. 914, August 15, and No. 918, August 17), from the latter of which we should perceive that the Imperial Government contend that the right to surrender criminals exists in every State independently of any Treaty of Extradition, and that such a Treaty, in fact, only makes obligatory the act of extradition, which is in the competence of every State; and Mr. Hammond was to request that we would furnish your Lordship with our opinion upon the principle laid down by the French Minister.

In obedience to your Lordship's commands we have taken this case again into consideration, and have the honour to report—

That in our former Report we were careful to state that our opinion would be subject to modification in the event of its turning out to be the case, as we rather anticipated that it might, that James Thornley had taken the oath of allegiance to the Emperor of all the Russias; and if this person had not been set free, we should not, with our present information, have advised your Lordship to make any further application on his behalf. The Government of the country in which a foreigner is found residing cannot (we think) be called upon by either of two foreign nations, having conflicting claims on his allegiance (the one founded on birth, the other on naturalization), to give the preference to the one of those claims over the other.

With respect to the general question, as to the power of a State, in the absence of any Treaty of Extradition, to deliver up to another State with which it is in amity a criminal escaped from that State, we agree with M. Drouyn de Lhuys that, in the case of the criminal demanded, being a subject either by birth or allegiance, of the demanding State, it is a question of constitutional law, to be determined by each country for itself, whether it will or will not, without a specific Treaty, grant such extradition. Even with respect to a foreigner, not a subject of the State from which the demand proceeds, it would also be competent to the Government under which he is actually residing, to comply with such a demand, if there were a general law known to be in force in the country of such actual residence authorizing his extradition upon the request of any foreign Power under such circumstances. By coming to reside in that country he would have become subject to this, as to all other provisions of the local law. We do not, however, understand that any such general law is in force in France. If not, then (with great respect for M. Drouyn de Lhuys) we conceive that, by the comity of nations, an Englishman lawfully resident or sojourning in France must be entitled to the benefit of the same protection which the law of that country affords to its own subjects, so long as he commits no offence against that law.

We presume (indeed, it is involved in the assumption already made) that a natural-born Frenchman would not be liable, by the law of France, to be delivered up to the Russian Government, upon any representation which might be made by that Government to the Executive Government of France, imputing to such Frenchman the commission of a crime against the laws of Russia, at some period when he was resident in that country. We conceive it to be clear that there is not so much even as an imperfect obligation, by international law, for one nation to execute (or assist in executing) any part of the criminal law of another nation, in the absence of any Treaty to that effect; and, on the other hand, there is (as we conceive) a clear obligation upon every nation to protect, within the limits and according to the rule of its own laws, foreigners who are permitted to reside within its territory, in the same way that natural-born subjects are protected.

We have, &c.

(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 74.

The Law Officers of the Crown to Earl Russell.—(*Received November* 17.)

Lincoln's Inn, November 17, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 1st instant, stating that with reference to our Report of the 18th of June last on the subject of the claim of Messrs. Pitt Brothers, upon the French Government, on account of losses sustained by them in consequence of the detention by the Custom-house authorities at Boulogne of certain sewing-machines consigned by Messrs. Pitt to a house in Paris, he was directed by your Lordship to transmit to us the accompanying despatch from Her Majesty's Chargé d'Affaires at Paris (No. 130, October 3), containing the reply of the French Government to the representations which had been made to it by Her Majesty's Ambassador in Paris on behalf of Messrs. Pitt, together with the subsequent correspondence which has taken place with those gentlemen and with the Board of Trade with reference to it.

Mr. Layard was also pleased to state that the former papers relating to this matter were also sent therewith, and that he was directed by your Lordship to request that we would take the case into consideration, and favour your Lordship with our opinion as to the course which, under the circumstances, should now be pursued by Her Majesty's Government.

We are also honoured with your Lordship's commands signified in Mr. Layard's letter of the 11th instant, stating that he was directed by your Lordship to transmit to us the accompanying letter dated the 7th instant from Messrs. Pitt Brothers, inclosing one from their agents at Boulogne, from which Messrs. Pitt appear apprehensive that the French

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authorities are endeavouring to force a settlement of their claim with reference to the detention of their sewing-machines; and to request that we would take these papers into our consideration, together with those which were submitted to us in his letter of the 1st instant.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That with respect to the claim of Messrs. Pitt, we think it is impossible for Her Majesty's Government to approve of or adopt the tone assumed by those gentlemen, or to insist upon the precise measure or amount of compensation claimed by them. The French Government have consented to grant them what may appear to be reasonable compensation, after proper inquiry, and Her Majesty's Government cannot, in our opinion, require anything more. Since, however, Messrs. Pitt desire that the particulars of their claim, as stated by themselves, should be communicated by Her Majesty's Government to the Government of France, we think it may not be improper for Her Majesty's Government to forward these particulars through the British Embassy at Paris, recommending them to the fair consideration of the French Government. It appears from Messrs. Pitt's letters that these gentlemen, or their agents, have already had notice of, and are invited to attend, the inquiry which the French Government propose to make, and it is for them to offer such evidence as they are able in support of their claim.

Upon the general question it is sufficient to say that we retain the views expressed in our former Report. We cannot doubt, after the explanations given by M. Drouyn de Lhuys, that the recourse to "expertise," in cases of this kind, is authorized by the municipal law of France. We think it, however, important to repeat that the decisions of the municipal tribunals of France upon the municipal law of France cannot properly affect the question of the true construction of the terms employed in the Treaty to express the mutual international engagements of France and England in this matter; and we certainly think it is against the good faith of the Treaty to refuse to act upon regular certificates of origin, such as the Treaty provides for, without any other evidence of the falsehood of these certificates than the mere opinion of experts. Upon a question not of science, but of fact, no "expertise" can really supply the place of evidence, and it would be much more consistent with the spirit and intention of the Treaty to hold the certificates of origin conclusive against the French Government in all cases (a proposition for which we have not contended, and do not contend) than to accept, in any case, the mere contrary opinion of the official experts as conclusive *against* those certificates.

If such is the rule upon which the French Government intend, for the future, to act in cases of this kind, we cannot but think it would be well that Her Majesty's subjects who are engaged in the trade with France should be made generally aware of it by some kind of public notification.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 75.

The Law Officers of the Crown to Earl Russell.—(*Received November* 24.)

Lincoln's Inn, November 24, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of this day's date, stating that he was directed by your Lordship to transmit to us a letter from Serjeant Glover, inclosing a subpœna which, under the circumstances stated by him, he is desirous of having served through the Foreign Office on the French Ambassador; and Mr. Hammond was pleased to request that we would take the same into immediate consideration, and report to your Lordship our opinion as to the course to be pursued in the matter.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That, according to the settled principles of international law, an Ambassador is not amenable to the jurisdiction of the Courts of the nation to which he is accredited, either for the purpose of being summoned to give testimony, or for any other purpose; and that the conduct of Mr. Serjeant Glover in suing out, and attempting to serve, a writ of *subpœna ad testificandum* on his Excellency the Prince de la Tour d'Auvergne, has been

highly offensive and censurable, if it is not absolutely criminal, under the 4th section of the Act 7 Anne, cap. 12.

We are clearly of opinion that your Lordship must decline to be instrumental in any way in bringing this illegal subpœna under the notice of his Excellency. It would, of course, be competent to any Government to which an Ambassador was accredited in any case in which there might be reason for believing that the interests of justice would be promoted by his voluntary appearance as a witness before the Tribunals, to make any representation which they might think proper, with a view to induce him to consent to waive his undoubted privilege, and to give evidence, of course without any subpœna. But the case must be of a very exceptional character in which such an application could be discreetly made on the one side, or acceded to without loss of dignity on the other. A modern instance in which such a representation was unsuccessfully made by the United States' Government to the Dutch Minister at Washington, whose evidence was thought important in a case of homicide, will be found in the 1st volume of Mr. Lawrence's edition of "Wheaton's Elements" (pages 313 and 314, note 127).

In the present case we are not aware of any circumstances whatever which would make it at all proper or advisable for your Lordship to communicate in any way with his Excellency the Prince de la Tour d'Auvergne upon the subject of Mr. Glover's note.

We have, &c.
(Signed) ROUNDELL PALMER.
ROBERT PHILLIMORE.
R. P. COLLIER.

No. 76.

The Law Officers of the Crown to Earl Russell.—(*Received December* 5.)

Lincoln's Inn, December 2, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 24th ultimo, stating that with reference to our Report of the 3rd August last respecting the case of Edouard Dulac, a fraudulent bankrupt, whose extradition had been demanded by the French authorities at Réunion from the Governor of Mauritius, in which we recommend that in order to obviate existing difficulties in the extradition of criminals between French and English Colonies, the present Extradition Treaty between the two countries should be so extended as to authorize such extradition to be made on warrant issued by competent Courts or by Magistrates in the Colonies and possessions of both countries, he was directed by your Lordship to transmit to us a letter from the French Ambassador at this Court, in which it is maintained that the Extradition Treaty of 1843, coupled with the Act of Parliament giving effect to it, is valid for cases of extradition in the Colonies, and has so been held and acted upon in former cases.

And Mr. Hammond was therefore to request that we would take this question again into our consideration, and favour your Lordship with our opinion as to the arguments now advanced by the French Government on this question.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we are unable to concur in the opinion expressed by the French Ambassador as to the construction of the Treaty and Statute of Extradition. According to both these instruments it is necessary that the Magistrate or Judge who issues the warrant, upon which the demand for extradition from British territories is to be founded, should be in France; as it is, that "the competent authority" who issues the warrant on which the demand for extradition from French dominions is to be founded should be in Great Britain. Whatever latitude of interpretation may be attributed elsewhere to the terms "France" and "Great Britain," we are of opinion that in the construction of the British Statute giving effect to the Treaty they cannot be extended beyond their ordinary geographical sense. With regard to the precedents alleged to be in favour of the French Ambassador's construction, we are not acquainted with them; but supposing them to exist, though they embarrass the political aspect of the question, they cannot affect the legal opinion upon the true construction of the Treaty and Statute which we have had the honour to report to your Lordship.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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No. 77.

The Law Officers of the Crown to Earl Russell.—(*Received December* 7.)

Lincoln's Inn, December 7, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 28th ultimo, stating that he was directed by your Lordship to transmit to us, with reference to our Report of the 17th November, a correspondence which has since taken place with Messrs. Pitt Brothers, respecting the present state of their claim against the French Government; and to request that we would take their letter into our consideration, and favour your Lordship with our opinion as to the answer which should be returned to it, and as to any steps which should be taken thereupon.

We are also honoured with your Lordship's commands signified in Mr. Hammond's letter of the 29th ultimo, stating that with reference to his letter of the previous day's date he was directed by your Lordship to transmit to us the copy of a despatch from Her Majesty's Chargé d'Affaires at Paris, inclosing a copy of a note which, in accordance with the instructions sent to him on the 23rd November, founded on our opinion of the 17th of that month, he has addressed to the French Minister for Foreign Affairs, on behalf of Messrs. Pitt Brothers, and to request that we would take these further papers into our consideration, together with those which were already before us.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That the perusal of the papers now sent does not suggest to us that anything can usefully be added to the advice given to your Lordship in our former Reports.

We retain the opinion which we have throughout expressed as to the proper construction of the Treaty. But the question of compensation must, we think, be considered with reference to the French law—British subjects having no privilege in France above French subjects; and (so looking at that question) we continue to think that the offer of compensation made by the French Government was reasonable, and that Her Majesty's Government could not require more. It is hardly necessary to add that the endeavour of Mr. Grey to obtain a reconsideration of the whole matter in favour of Messrs. Pitt ought not to be checked by this statement of our opinion; in which we confine ourselves to advising Her Majesty's Government as to the amount of compensation which it can strictly demand.

As to the larger views opened by Messrs. Pitt, with reference to the measure for compensation which ought to prevail in these cases, in order to place the mutual intercourse of nations having Commercial Treaties with each other on a footing of complete reciprocity with respect to remedies as well as rights, it does not seem to be our duty at present to offer any opinion. We fear that the reciprocity in this respect, contended for by Messrs. Pitt, goes beyond the stipulations of the Treaty, and cannot be claimed as of right on any settled principle of international law. The mode, however, of giving effect to the Treaty, with respect to what is to be considered evidence of the national origin of manufactures and preventing the recurrence of such injustice as that which has occurred in the case of Messrs. Pitt, requires serious consideration on the part of Her Majesty's Government.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 78.

The Queen's Advocate to Earl Russell.—(*Received December* 10.)

My Lord, *Doctors' Commons, December* 9, 1864.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 7th instant, stating that he was directed to transmit to me the accompanying correspondence which has passed between the Foreign Office, Mr. Westbrooke, and the British Embassy at Paris, in regard to an alleged assault committed upon Mr. Westbrooke by an official at the Paris station of the Paris and Rouen Railway; that I should perceive that your Lordship has declined to take up Mr. Westbrooke's case; but Mr. Hammond was to request that I would furnish your Lordship with my opinion on the matter, and whether it is one in which Her Majesty's Government can properly be called upon to interfere, and if so, in what manner and to what extent.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I am clearly of opinion that this is not a case in which your Lordship can properly interfere.

Mr. Westbrooke must seek redress in the ordinary way, before the proper Court in France, for the injury which he alleges to have been inflicted upon him.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 79.

The Law Officers of the Crown to Earl Russell.—(*Received December* 21.)

Lincoln's Inn, December 20, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 15th instant, stating that he was directed by your Lordship to acquaint us that, after communicating to the Board of Trade our Reports of the 17th of November and 8th of December respecting Messrs. Pitt's sewing-machines, and the construction placed by the French Government on Article II of the Convention of October 12, 1860, and receiving the opinion of that Department conveyed in the letter inclosed, your Lordship had addressed to Earl Cowley and to Messrs. Pitt the despatches and letter inclosed.*

Before, however, the letter to Messrs. Pitt was sent off, the further letter dated the 12th instant, which Mr. Hammond then inclosed for our consideration, was received from those gentlemen.

And that from this letter, Mr. Hammond was pleased to state, we should perceive that the experts, to whom was referred the question of the deterioration sustained by their machines, have made an award, against which Messrs. Pitt have directed their agent to protest.

And that it is upon the circumstances set forth in this last communication from Messrs. Pitt that your Lordship was desirous of receiving our opinion.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That it appears that the French experts have considered the damage inflicted on these machines, while in the custody of the French authorities, to be of a very trifling character, chiefly, if not entirely, rust, which an ordinary cleaning would remove, the cost of which they estimate at 50 francs.

As the agents of Messrs. Pitt were invited to attend this inquiry, and declined to do so, we are of opinion that it must be considered that both the character of the damage and the cost of repairing it have been fairly stated by the French experts.

We confine, as we are desired, the expression of our opinion to this single point.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

Frankfort.

No. 80.

The Queen's Advocate to Earl Russell.—(*Received May* 7.)

Doctors' Commons, May 6, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 4th instant, stating that he was directed by your Lordship to transmit to me the

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* To Messrs. Pitt, November 22; Messrs. Pitt, November 24, 1864.

* To Earl Cowley, Nos. 790 and 791; to Messrs. Pitt, December 14, 1864.

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accompanying despatch and its inclosure from Her Majesty's Minister at Frankfort (No. 129) as to the right of a Mr. Grimm to claim protection as a British subject, that individual apparently grounding his claim to protection upon his having received a "Denization" Act issued by a Judge of the Supreme Court of Appeal in New South Wales in 1856, though he has been domiciled in Germany since 1859; and Mr. Layard was to request me to report to your Lordship my opinion as to what instruction should be addressed to Her Majesty's Minister upon the subject.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That it does not appear in the papers submitted to me what the original country of Mr. Grimm was.

If that country was the same as the one whose Court has tried and condemned him, Her Majesty's Minister ought not to interfere on his behalf on the ground of the alleged Act of Denization, which does not appear, but which I must assume was legally passed.

If Mr. Grimm has been tried in the Court of a third country, *i.e.*, not the country of his original allegiance, then I think Her Majesty's Minister should be instructed to use his good offices in his behalf, in whatever manner he may think expedient and discreet.

I have, &c.
(Signed) ROBERT PHILLIMORE.

General.

No. 81.

The Attorney and Solicitor-General to Earl Russell.—(Received April 13.)

My Lord, *Lincoln's Inn, April* 13, 1864.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 6th April instant, stating that he was directed by your Lordship to transmit to us a draft of a despatch which, upon the receipt of our Report of the 23rd ultimo, your Lordship addressed to Her Majesty's Ambassador at Paris, directing his Excellency to take legal advice as to the course which Her Majesty's Government could pursue in the French Law Courts in order to regain possession, or to prevent the publication, of the diplomatic correspondence now in the hands of Lady Jackson, and instructing his Excellency, if legally advised to do so, to cause proceedings to be instituted against Lady Jackson.

Mr. Layard was also pleased to inclose a despatch from Earl Cowley, reporting the steps which he has taken in this matter, and transmitting a copy of the legal opinion which he has obtained thereupon, from which we would perceive the various points of view in which the case, as put as an abstract one by Lord Cowley, has been considered by the French Counsel, and the modes of proceeding which, in their opinion, are open to Her Majesty's Government with a view to regaining possession of the papers in question by legal process in France.

Mr. Layard was further pleased to state that before, however, furnishing Lord Cowley with the further instructions which his Excellency requests in this case, your Lordship would be glad to be favoured with our opinion as to the course most advisable to be pursued, and to request particularly that we would inform your Lordship, with reference to the alternative of applying to the French Government for the seizure of the papers which are believed to be in Paris, whether a similar course has been ever pursued in this country, or would be according to English law, that is to say, proceedings of the nature now in question, taken at the instance of a foreign Government, against an individual or individuals also native of another State.

We are also honoured with your Lordship's commands signified in Mr. Hammond's letter of the 11th of April instant, stating that, with reference to Mr. Layard's letter of the 6th instant, requesting our opinion as to the course most advisable to be pursued in

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General.

No. 80*.

The Attorney- and Solicitor-General to Earl Russell.—(Received March 23.)

My Lord, *Lincoln's Inn, March* 23, 1864.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 9th March instant, stating that, with reference to the Report of the Attorney- and Solicitor-General of the 22nd July, 1862, on the right of Lady Jackson to dispose of certain official correspondence between the Secretary of State for Foreign Affairs and Her Majesty's Ministers at Berlin between the years 1772 and 1806, he was directed by your Lordship to transmit to us a letter[*] from the Trustees of the British Museum upon the same subject, from which we would perceive that Lady Jackson now offers to sell to that Library the *private* correspondence of Her Majesty's Ministers at various foreign Courts from 1790 to 1807, for the sum of 3,000*l.* That we would also see that, in the event of her offer being accepted, Lady Jackson proposes to present the *official* correspondence of the same period to the British Museum.

Mr. Hammond was also pleased to state that your Lordship was informed that the papers in question are in Paris, and your Lordship was therefore unable to furnish us with any further information on the subject of their contents than that which is contained in Sir F. Madden's Report, which was inclosed in the letter from the British Museum; but, under the supposition that the whole of the official correspondence in Lady Jackson's possession form actually the archives of Her Majesty's Missions at foreign Courts during the periods above mentioned, he was to request that we would take the question into our early consideration, and favour your Lordship with our opinion whether any, and, if any, what, steps can be taken to prevent Lady Jackson from parting with this correspondence; and further, whether, being in France, she can be compelled to surrender the papers in her possession into the hands of Her Majesty's Government.

Mr. Hammond was also pleased to inclose, for our information, the correspondence which passed on the same subject in 1862, together with a Memorandum,[†] drawn up at the Foreign Office, showing what steps have been taken on previous occasions when questions similar to that now under consideration have arisen with regard to the disposal by private individuals of foreign diplomatic correspondence.

We are also honoured with your Lordship's commands signified in Mr. Hammond's letter of the 15th March instant, stating that, with reference to his letter of the 9th instant, he was directed by your Lordship to transmit to us a further letter from the British Museum,[‡] inclosing a copy of a letter from Lady Jackson, in which that lady refuses to send the papers in her possession to this country for inspection, and hints at disposing of them to a foreign Government in the event of her offer to sell them to the British Museum for 3,000*l.* being declined; and to request that we would favour your Lordship with our early decision as to the steps which we consider should be taken to prevent these official papers from falling into improper hands.

In obedience to your Lordship's commands we have taken this matter into consideration and have the honour to report—

That, as both Lady Jackson herself, and the papers in question, are in Paris, it is not, at present, possible to take any effectual steps, either to prevent the sale or publication of these papers, or to assert such claim (if any) as Her Majesty's Government may have to the possession of them by any proceedings in this country.

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[*] March 1, 1864.

[†] Memorandum (E. H.), March 8, 1864.

[‡] March 14, 1865.

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But we apprehend that the same proof which would be sufficient in this country to entitle Her Majesty's Government to an Order from the Court of Chancery for either of the above purposes would probably also be sufficient for the same purposes in France. And on the supposition (which we are now desired to make) that the papers in question can be shown to have originally constituted, and to have been improperly removed from, the archives of Her Majesty's Missions at certain foreign Courts during the periods of time to which they relate, we are of opinion that Her Majesty is entitled to the property in, and might in this country legally reclaim the possession of, these papers; and, of course, would also be entitled to prevent their sale or publication.

It also seems to us that Lady Jackson's letter to Sir F. Madden of the 2nd instant contains a sufficient intimation of her Ladyship's intention to "dispose of" these papers "out of England" if the Trustees of the British Museum will not accede to her terms, to justify immediate proceedings against her before the proper Tribunal.

Under these circumstances, we think that Her Majesty's Ambassador at Paris had better be instructed to take good legal advice in that capital as to the remedies open to Her Majesty's Government in this case by the French law; and, if he should be advised that the objects desired would be likely to be attained by any mode of proceeding in the French Courts, we think that such proceeding may properly be taken.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.

France by Her Majesty's Government, in order to recover possession of certain diplomatic correspondence detained by Lady Jackson, he was directed by your Lordship to state to us that you had been informed that day, by telegraph from Paris, that Lady Jackson intended leaving that city for England on the following day, and did not intend to return to Paris; that, under these circumstances, he was to request that we would favour your Lordship, at our earliest convenience, with our opinion as to the steps which might be legally open to Her Majesty's Government to take against Lady Jackson on her arrival in this country, and, if more than one mode of proceeding should be open to them, what course we would recommend.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That if Lady Jackson were to remain in France we should recommend that the course advised by M. Rogron should be pursued.

It would be impossible, in this country, to seize papers in the hands of a foreigner, under similar circumstances, by the mere authority of the Executive Government, without judicial process; whether the possession of the papers were demanded by the foreign Sovereign, to whom the person having the papers owed allegiance, or by any other Government or person. We could not, therefore, recommend your Lordship to make an appeal to the arbitrary power of a foreign Government, in a case where there is a competent legal remedy, and which, if it had arisen in this country, could not be dealt with otherwise than in the due course of law.

But as it now appears that Lady Jackson has returned, or is about to return, to England, the remedy to be pursued against her must necessarily be that afforded by English law. And we should, therefore, advise that an information in Chancery should be immediately prepared and filed against her, in the name of the Attorney-General, on behalf of Her Majesty, praying for the delivery up of all such of the papers in her possession as are originals of, or copies of or extracts from, any official documents which belong to, or which ought to have been retained in, the archives of the Prussian or any other foreign Legation of Her Majesty, or which otherwise belong to Her Majesty; and also praying for an injunction to restrain the publication, &c., of any such documents, and of all other documents which came into the possession of Lady Jackson's late husband, or of any other person through or from whom he or she may have derived title thereto, in the course or for the purposes of any official or confidential employment or service by or on behalf of the Crown of Great Britain.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.

No. 82.

The Attorney-General to Earl Russell.—(Received May 5.)

Lincoln's Inn, May 5, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 29th ultimo, stating that he was directed by your Lordship to acquaint me that your Lordship had that day received a letter from Lady Jackson, stating that "she is perfectly willing to surrender to the Government the *official* papers which came into her possession on the death of her husband, Sir G. Jackson;" and to request that I would favour your Lordship with my opinion as to the reply, if any, which it would be advisable to return to her letter, now that the matter has been placed in my hands.

In obedience to your Lordship's commands I have taken this matter into consideration, and have the honour to report—

That I think the proper reply to Lady Jackson's letter will be to the effect that, before consenting to discontinue the pending proceedings in Chancery against her Ladyship upon the terms of her surrendering to the Government the official papers, which came into her possession on the death of her husband, Sir G. Jackson, it will be necessary that Her Majesty's Government should have the opportunity of ascertaining, from an inspection and examination of all the papers mentioned in the information, which of those documents ought properly to be regarded and claimed as official, and which (if any) of those which Lady Jackson may be entitled to retain are of such a nature as to give the Crown a right to prohibit the disposal or publication thereof by her Ladyship, without the permission of Her Majesty.

If Lady Jackson will consent to this, your Lordship will probably think fit to depute

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Mr. Hertslet to make the necessary inspection of all the papers; consulting, as far as possible, Lady Jackson's convenience as to the time and manner of doing so.

I may add that the Crown is legally entitled to the discovery and production of all these papers for the purposes of the suit; and that, if not voluntarily conceded by Lady Jackson, it may be enforced by the ordinary procedure of the Court of Chancery.

I have, &c.
(Signed) ROUNDELL PALMER.

No. 83.

The Attorney-General to Earl Russell.—(Received June 14.)

Lincoln's Inn, June 14, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 31st ultimo, stating that he was directed by your Lordship to transmit to me two further letters which have been received from Lady Jackson (dated the 11th and 19th May), respecting the surrender to Her Majesty's Government of certain official papers in her possession.

Mr. Hammond was also pleased to state that I should perceive that her Ladyship now expresses her readiness to surrender all of the papers enumerated in the list inclosed in her letter of the 19th May, should they be claimed as the property of Her Majesty.

And also that Lady Jackson prays that all legal proceedings against her may accordingly be stayed; and that she may receive a liberal compensation at the hands of Her Majesty's Government for the loss she will sustain at parting with papers which had been so long in her husband's family, and which she had been always led to expect were her own property, and might be disposed of for her own benefit as she might think fit.

Mr. Hammond was also pleased to state that in obedience to your Lordship's orders, Mr. Hertslet had called upon Lady Jackson, and made a cursory examination of all the papers in her Ladyship's possession; and that it would appear from his report that the collection consists of many thousand official despatches and copies of letters, including about 2,000 semi-official letters, extending over a period of nearly a century.

And that it would also appear that Lady Jackson possesses many similar papers of a far more recent date than those mentioned in the injunction, but that her Ladyship has expressed her entire readiness to part with every paper which she may possess, and only waits the orders of Her Majesty's Government as to their disposal.

Mr. Hammond was therefore to request that I would furnish him with a draft of such directions as might be necessary, with a view to placing the papers in question in the hands of Mr. Herlslet, as librarian and keeper of the papers of the Foreign Office; and that I would favour your Lordship with my opinion as to what recompense should be made to Lady Jackson for the trouble and expense she has been put to in preserving these records for so long a period.

In obedience to your Lordship's commands I have taken this matter into consideration, and have the honour to report—

That I have felt some embarrassment in dealing with this question, from my own entire inability to judge of the pecuniary value of the private correspondence included in these papers.

I think the best and most liberal course will be, to have a fair and reasonable value set upon them by some competent officer of the Foreign Office, or State Paper Office, or of the British Museum, and to pay Lady Jackson the value so ascertained.

In this estimate, such of the papers as are originals or copies of official despatches ought not to be included.

On this arrangement being made, and on the papers being delivered over, the information against Lady Jackson should be dismissed without costs: and all further proceedings in the suit should be stayed, in the meantime, until the arrangement is carried into effect.

I have, &c.
(Signed) ROUNDELL PALMER.

No. 84.

The Attorney-General to Earl Russell.—(Received June 20.)

Lincoln's Inn, June 20, 1864.

My Lord,

I WAS honoured with your Lordship's commands signified in Mr. Hammond's letter of the 18th June instant, in which he stated that he was directed by you to transmit for my approval a letter which he proposes to address to Lady Jackson, informing her Ladyship of the conditions on which he will consent to dismiss the information against her in the Court of Chancery.

In obedience to your Lordship's commands I have the honour to report—

That the letter which your Lordship proposes to address to Lady Jackson appears to me to be in all respects proper.

I have, &c.
(Signed) ROUNDELL PALMER.

No. 85.

The Attorney-General to Earl Russell.—(Received June 27.)

Lincoln's Inn, June 27, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 25th instant, stating that he was directed by your Lordship to transmit to me a further letter dated the 23rd instant which your Lordship has received from Lady Jackson, in reply to the one your Lordship addressed to her on the 20th instant, and to request that I would inform your Lordship what reply should be returned to this communication.

In obedience to your Lordship's commands I have taken this matter into consideration, and have the honour to report—

That it is not very easy to understand Lady Jackson's real meaning; but there cannot be any objection to a compliance with her Ladyship's wish that Mr. Hertslet should attend at her residence and select the documents to be handed over.

I see no reason why Her Majesty's Government should pay compensation for these documents on any other principle than that of putting a fair value on such of them as are not already Her Majesty's property.

Lady Jackson may, I think, properly be informed that Mr. Hammond's letter of the 20th instant (by which no departure from the course understood to have been proposed by herself was intended) cannot be withdrawn; but that Mr. Hertslet will, nevertheless, wait upon her Ladyship in accordance with the desire now expressed by her, and will look over and select the documents to be delivered up to Her Majesty's Government. It should, at the same time, be distinctly stated that upon the subject of payment or remuneration your Lordship has nothing to add to the explanation which Mr. Hammond has already given.

I have, &c.
(Signed) ROUNDELL PALMER.

No. 86.

The Law Officers of the Crown to Earl Russell.—(Received August 23.)

Lincoln's Inn, August 22, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Murray's letter of the 3rd of August instant, stating that he was directed by your Lordship to transmit to us the accompanying correspondence* which had passed between the Foreign Office and the Colonial Office on a question raised by the Governor of Bermuda as to the competency of British magistrates to deal with breaches of foreign maritime law committed within British jurisdiction by the crews of foreign vessels; and to request that we would take these papers into our consideration and favour your Lordship with our opinion as to the answer which the Secretary of State for the Colonial Office proposes to return to the Governor of Bermuda upon this question.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

* Colonial Office, June 22; to Colonial Office, June 30; Colonial Office, July 30, 1864.

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That we are of opinion that the answers of the Board of Trade to the two questions propounded by the Governor of Bermuda through the Colonial Office are correct; and that the reply proposed to be made by the Secretary of State to the Governor in accordance therewith is proper, and ought to be sent.

We do not see our way to recommending any measure whereby imprisonment in our gaols could be made the means of punishing breaches of engagements committed by foreign crews towards foreign masters in our waters.

I have, &c.
(For the Attorney-General, the Queen's Advocate, and myself),
(Signed) R. P. COLLIER.

No. 87.

The Law Officers of the Crown to Earl Russell.—(Received October 7.)

Lincoln's Inn, October 6, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 17th ultimo, stating that he was directed by your Lordship to transmit to us, for any observations we might have to offer, the draft of a despatch which your Lordship proposes to address to Her Majesty's Representatives in France, Austria, Prussia, Spain, Portugal, Russia, the United States, and the Netherlands, instructing them to invite the Governments of the countries to which they are accredited to join with Her Majesty's Government in declaring the Slave Trade piracy; and further to propose to their Legislatures that all persons, whatever their nationality, convicted of being engaged in this inhuman Traffic may be punished in accordance with the laws of the several countries.

In obedience to your Lordship's commands we have the honour to report—

That, if we rightly understand the proposal embodied in your Lordship's draft letter, the effect of its adoption by the Powers to whom that proposal is meant to be addressed would be, that Great Britain and the rest of those Powers would deal with the subjects, *e. g.*, of Brazil, of Peru, or of Turkey, if found carrying on the Slave Trade upon the Coasts of Africa, or upon the high seas, in their own national vessels as pirates without any consent on the part of the national Governments of those countries.

We are aware that, so far as Brazil is concerned, something similar has already been done by Great Britain for some years under the Aberdeen Act. We have always, however, been under the impression that the Government which introduced and those which have maintained the Aberdeen Act did so upon the ground that the permanent Article of the Treaty of 1826 between Great Britain and Brazil* declared the Slave Trade to be piracy; and that Great Britain was, therefore, justified in so dealing with it in the case of Brazilian ships and subjects, although after the lapse of the period for which the Mixed Commission Courts were established by that Treaty, the Brazilian Government had declined to make any new arrangements for its suppression. Your Lordship is aware that this view was never acquiesced in by the Government of Brazil, and that it has been and is now strongly dissented from by many persons of influence and authority in this country. With respect to the other South American Governments and Turkey, legislation of this kind would, we conceive, be entirely new; and we are not aware that there are Treaties with any of those countries under which, if such justification be necessary, it could be justified.

We assume that the communication which your Lordship proposes to make is limited to the particular Powers enumerated in Mr. Hammond's letter, either because it is apprehended that it would answer no useful purpose to address it to any other Powers, or, perhaps, because it may be thought better, before inviting the concurrence of other Powers, to arrive, in the first instance, at a mutual agreement between the Great Christian Powers of Europe and the United States.

Without presuming (on this more than any other point) to offer any opinion as to the grave questions of policy which are involved in your Lordship's proposal, it may not be improper for us to suggest that the very absence of the invitation to some of the Powers who may be affected by it to concur in the original adoption of this policy would give additional force to the objections to which it would be exposed.

Upon the general principle,—assuming there to be some Powers against whom this policy, if adopted by others to whom the proposal is made, would be enforced notwithstanding their dissent,—it is our duty to observe that the proposal, correctly, as we think, implies that the Slave Trade is not now piracy by positive international law, and, therefore, that an agreement between certain great Powers to make it so for the future, and to enforce their decision in that respect, against all other Powers, can, as a question of international jurisprudence, be only considered a league, offensive and defensive, for a purpose considered important to the general interests of humanity; and that such a league must depend altogether upon the material strength of those who are parties to it for all the authority which it can possess.*

Assuming, however, these questions of policy to have been considered and determined by Her Majesty's Government, we think that there can be no objection to the form of the despatch proposed to be written by your Lordship.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 88.

The Queen's Advocate to Earl Russell.—(Received November 16.)

Doctors' Commons, November 16, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Murray's letter of the 7th instant, stating that he was directed by your Lordship to transmit to me the accompanying correspondence with the Colonial Office,† upon the subject of an Act passed by the Legislature of New South Wales, to amend and consolidate "the laws relating to merchant seamen;" and with reference to the letter from the Board of Trade inclosed in the letter from the Colonial Office of the 8th ultimo, Mr. Murray was to request that I would report to your Lordship my opinion in regard to the provisions of the 4th paragraph of the Act as adverted to by the Board of Trade.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That after much consideration I must express my opinion that paragraph 4 of section 90 ought to be struck out of the Bill. The provisions of the Bill which that paragraph makes applicable to foreign seamen appear to me to infringe the principles of international comity, and to unnecessarily and injuriously interfere with the rights accorded by usage and custom, at least, to foreign Consuls.

For instance, section 7 (the first made applicable), seems entirely to disregard the fact that foreign seamen are shipped before their own Consul.

Sections 14 to 19 (also made applicable), would import, or attempt to import, the British law as to seamen's agreements (so far as they can), into foreign commercial law.

Section 21 inflicts a penalty on the master of a foreign vessel for not shipping his men according to our Colonial Law.

Sections 31 and 32 can only properly apply to British or Colonial vessels.

Section 79 would inflict a penalty upon a foreign seaman for having made a false statement of the name of his last (foreign) ship. This seems to me most objectionable.

Some of the other sections are either nugatory or inexpedient. None of these provisions have been thought necessary to be inserted in the Imperial Merchant Shipping Act.

I think them objectionable in principle, contrary to international usage and practice, and that they set a bad precedent which foreign States may avail themselves of in a manner injurious to our commercial marine.

I have, &c.
(Signed) ROBERT PHILLIMORE.

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* Hertslet, vol. iii, p. 34.

* N.B.—The principle of such a league would certainly be difficult to reconcile with the celebrated judgment of Lord Stowell, in "Le Louis" (2 Dodson's Admiralty Reports, p. 210).—R. P., R. P. C., R. J. P.

† Colonial Office, October 8; to Colonial Office, October 26; Colonial Office, November 2, 1864.

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Hanover.

No. 89.

The Queen's Advocate to Earl Russell.—(Received February 18.)

Doctors' Commons, February 18, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 17th instant, stating that he was directed by your Lordship to inclose a letter, and its inclosures, which your Lordship has received from a Mr. Claypole, making various inquiries as to what would happen to a cargo belonging to him which is coming from the West Indies on board a Hanoverian ship, in case of her capture by the Danes; and Mr. Layard was to request that I would take Mr. Claypole's letter into consideration, and report to your Lordship my opinion as to the answers to be returned to his queries; and Mr. Hammond was, at the same time, to inform me that Denmark has agreed to the Declaration of Paris on the subject of maritime rights.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That with regard to the first question—

1. If the State of Hanover be at war with Denmark the vessel is liable to capture.

With regard to the second question—

2. If the cargo be exclusively British, and laden in the usual course of trade, and the vessel be not employed in breaking a blockade, as I am apprised that Denmark adheres to the Treaty of Paris, the cargo will not be liable to confiscation.

As to the third question—

3. It is not incumbent on Denmark to give any notice of the kind suggested. She may do so as a matter of grace and favour.

As to the fourth question—

4. No such document as suggested can be obtained from Her Majesty's Government in this country. The Danish Government may, if they please, give instructions to release such vessels when captured, but they are in no way bound to do so.

I have, &c.
(Signed) ROBERT PHILLIMORE.

Hanse Towns.

No. 90.

The Queen's Advocate to Earl Russell.—(Received March 18.)

Doctors' Commons, March 15, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Murray's letter of the 14th of March instant, stating that he was directed by your Lordship to transmit to me a despatch from Her Majesty's Chargé d'Affaires at Hamburgh (No. 37), forwarding a copy and translation of a notification issued by the Prussian authorities, relative to the course to be observed by ships passing the batteries of the Prussian naval station at Jade; and to request that I would take this despatch into consideration, and inform your Lordship whether I am of opinion that there is any objection to the publication of the notification in the Gazette.

In obedience to your Lordship's commands I have the honour to report—

That I am of opinion that it would be proper to publish this notification in the Gazette, but that I presume the notification as to ships passing batteries of the Jade Bay is only meant to apply to vessels passing within a marine league of the shore, and that the King of Prussia has recently acquired a lawful establishment at that part of the Grand Duchy of Oldenburg. I have accordingly prepared, and herewith transmit a form of notice for insertion in the Gazette.

I have, &c.
(Signed) ROBERT PHILLIMORE.

Inclosure in No. 90.

Notification.

Foreign Office, March , 1864.

IT is hereby notified that Earl Russell, Her Majesty's Principal Secretary of State for Foreign Affairs, has received from Her Majesty's Chargé d'Affaires at Hamburgh, a copy and translation of a Notification issued by the Prussian authorities relative to the course to be observed by ships passing the batteries of the Prussian naval station at Jade.

The following is the official Notification referred to:—

(Here insert verbatim a copy and translation of the official Notification issued by the Prussian authorities.)

Italy.

No. 91.

The Law Officers of the Crown to Earl Russell.—(Received June 18.)

Lincoln's Inn, June 17, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 6th instant, stating that he was directed by your Lordship to transmit to us therewith, a despatch from Her Majesty's Consul at Leghorn (No. 8, May 28), requesting instructions with reference to a question of domicile which has arisen in connection with the marriage of Miss J. E. Hall, a British subject, to a native of Tuscany serving as an officer in the Italian army; and to request that we would take the papers inclosed into our consideration, and favour your Lordship with our opinion as to the nature of the instruction which should be addressed to Mr. Consul Mac Bean on the subject.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That, as a general rule, the soldier does not change his domicil by serving his country in foreign parts. The only question in this case is, whether the language of the particular statute under which the Consul exercises his functions prevents the application of this rule to the marriage of these persons.

We cannot safely advise your Lordship that this statute does not affect the general rule to which we have adverted. We think that there should be the actual residence of both parties in Tuscany for a calendar month previous to the celebration of the marriage.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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No. 92.

The Queen's Advocate to Earl Russell.—*(Received October* 5.)

Doctors' Commons, October 4, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 1st instant, stating that he was directed by your Lordship to transmit to me therewith a letter dated the 30th ultimo, from the Colonial Office, together with its inclosures, requesting your Lordship's opinion as to a demand which has been made by the Italian Government on the Governor of Malta for the extradition of two Sicilians charged with murder. Mr. Hammond was also pleased to inclose a copy of the Extradition Ordinance referred to in the accompanying papers, and to request that I would take the same into consideration, and furnish your Lordship with my opinion thereupon.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I agree with the opinion of the Crown Advocate in this case, and I advise your Lordship to return an answer to the Secretary of State for the Colonies to the effect that the Governor of Malta may lawfully render up these alleged criminals to the Italian Government.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 93.

The Queen's Advocate to Earl Russell.—*(Received November* 15.)

Doctors' Commons, November 14, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 7th instant, stating that he was directed to transmit to me a despatch from Her Majesty's Minister at Turin (October 22), relative to the question of the validity of a marriage celebrated at Her Majesty's Legation between a foreigner and a British subject.

A draft of the answer which your Lordship proposes to return to Her Majesty's Minister on this subject was also inclosed, and Mr. Layard was pleased to request that I would take the same into consideration, and furnish your Lordship with my opinion thereupon.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I have ventured to suggest one slight omission, and one addition to the despatch, which appears to me right and proper to be sent.

I have, &c.
(Signed) ROBERT PHILLIMORE.

Japan.

No. 94.

The Law Officers of the Crown to Earl Russell.—*(Received February* 9.)

Lincoln's Inn, February 9, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 27th ultimo, stating that he was directed by your Lordship to transmit to us a despatch from Her Majesty's Chargé d'Affaires in Japan (No. 138), inclosing with further copies of the Regulation respecting Vagrants, which formed the subject of our Report of the 30th of November last, copies of a regulation which he had caused to be issued,

No. 91*.

The Queen's Advocate to Earl Russell.—*(Received July* 6.)

Doctors' Commons, July 6, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 29th ultimo, stating that he was directed to transmit to me a letter from Mr. Colt, inclosing a statement by Mr. Conder relative to his claim on the Italian Government in connection with the Apulian Railway. That this case had already been referred to the late Queen's Advocate, whose Reports, as well as all the previous correspondence relating thereto were, with Mr. Hammond's letter, inclosed; and he was to request that I would take Mr. Colt's letter into consideration, and report to your Lordship whether, in my opinion, Her Majesty's Government will be justified in interfering on behalf of Mr. Conder.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I entirely agree with the general principles laid down as applicable to cases of this description in the Report of my predecessor dated 2nd May, 1859. I am also inclined to adopt Mr. Consul Bonham's interpretation of Article XXII of the Concession. Mr. Conder does not deal satisfactorily in his answer with the difficulty arising out of M. Melisurgo's refusal to assent to any arrangement made by the Italian Government with Mr. Conder.

M. Melisurgo is the original concessionary, and Conder (the engineer, as I understand, of the projected railway) is the subordinate grantee. It does not appear to me unreasonable that the Italian Government should require Mr. Conder to guarantee them against any counter claim which M. Melisurgo may hereafter advance against them upon the same subject. It would be proper to apprise Mr. Conder that such is the opinion of Her Majesty's Government.

With respect to the graver question whether Her Majesty's Government should continue to refuse to interfere officially on behalf of Mr. Conder, I think that by the terms of the concession the original grantee or cessionary placed himself knowingly on the footing of a domiciled Neapolitan subject with respect to all relations between himself and the then Government of the Two Sicilies accruing from this undertaking as to the railway; and that Her Majesty's Government cannot claim for him, as a matter of right, privileges in this affair which an Italian subject would not possess. At the same time I think Her Majesty's Government would be justified in so far officially interfering on behalf of Mr. Conder as to direct Mr. Elliot to urge upon the Italian Government the sense which Her Majesty's Government entertain of the injustice of refusing to Mr. Conder that recourse to arbitration which is provided for by the plain terms of the concession itself, and which has been decided to be his right by the Italian tribunals.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 93*.

The Queen's Advocate to Earl Russell.—*(Received December* 14.)

Doctors' Commons. December 13, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 8th instant, stating that, with reference to my Report of the 6th July last, relative to Mr. Conder's claim on the Italian Government in connection with the Apulian Railway, he was directed by your Lordship to transmit to me therewith a further letter on the subject which has been received from that gentleman, inclosing a copy of an official document which he considers to be the virtual reply of the Italian Government to the representations which have been made on his behalf by Her Majesty's Minister at Turin.

Mr. Hammond was also to forward to me the correspondence in regard to the concession of the Apulian Railway which has taken place since the date of my above-mentioned Report, and to call my attention to Mr. Elliot's despatch No. 308 of the 17th ultimo, as showing the present state of the case in the hands of the Italian Government. The former papers were also inclosed, and Mr. Hammond was pleased to request that I would take this matter into consideration, and report to your Lordship my

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opinion as to any further steps that Her Majesty's Government should take with regard to these claims.

In obedience to your Lordship's commands I have the honour to report—

That after an attentive perusal of the documents referred to in the letter of Mr. Hammond, I can only advise Her Majesty's Government, with respect to the claim of Mr. Pickersgill, that Mr. Elliot be instructed to persevere in his endeavours, which appear to have been already partially successful, to obtain a decision from the Italian Government consonant with the manifest justice of the case, on their being guaranteed against any claim by M. Melisurgo.

With respect to the case of Mr. Conder, I must beg leave to refer to the former Reports of myself and my predecessor in office for the limitations under which the claim of this gentleman may be fairly pressed upon the Italian Government. Subject to those limitations, namely, that the contract must be considered as the contract of an Englishman domiciled in Italy, I think it should be strongly pressed upon that Government that upon every principle of public law and natural justice it has acquired the obligations as well as the dominions of the late Crown of Naples, and that Her Majesty's Government cannot believe that the present Italian Government means to set aside the decision of its own Tribunals, and to substitute for it an absolute unexaminable order of the Executive, which does not profess to be guided by the merits or justice of the case.

I have, &c.
(Signed) ROBERT PHILLIMORE.

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forbidding the firing of blue lights and rockets by British merchant-vessels; and Mr. Hammond was to request that we would take this regulation into consideration, and report to your Lordship our opinion thereupon; and was to add that, in conformity with our above-mentioned Report, Her Majesty's Chargé d'Affaires was informed on the 8th ultimo, that the Regulation respecting Vagrants was disallowed.

In obedience to your Lordship's commands we have the honour to report—

That we think it was competent to the Consul to make the order or regulation in question, respecting the burning of blue lights and rockets in the harbour of Japan.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 95.

The Law Officers of the Crown to Earl Russell.—(Received November 18.)

Lincoln's Inn, November 17, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 1st instant, stating that he was directed by your Lordship to transmit to us a despatch from Sir Rutherford Alcock (No. 49), inclosing copies of a Regulation issued by Her Majesty's Consul at Kanagawa, and approved by Sir R. Alcock, having reference to the killing or slaughtering animals for human food; and also a copy of the Order in Council under which this Regulation has been issued: and to request that we would take the same into our consideration, and favour your Lordship with our opinion whether the Regulations should be approved by Her Majesty's Government.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report.

That we are not prepared to advise that this so-called "Regulation" (which is, in fact, nothing more than a notification of something to be afterwards done), should be disallowed by Her Majesty; because it is possible that Regulations of a more positive and definite character, referring thereto, may have been made, which, when read with it, would come under the category of Regulations "for the peace, order, and good government of Her Majesty's subjects being within the dominions of the Tycoon of Japan." The object aimed at seems to be a proper one, and such as (we think) may be accomplished under the power to make Regulations conferred upon Her Majesty's Consuls in Japan by the Order in Council. But the peculiarity of this document is, that it does not itself make or promulgate any practical Regulations at all, but says that when some such Regulations shall be made, they shall be binding upon British subjects opening or keeping any establishment for killing or slaughtering, &c. If Her Majesty's Order in Council did not, *per se*, enable the Consul to make binding Regulations for that purpose, he could not acquire the power to do so by first issuing a "Regulation" purporting to confer it upon himself. We cannot, therefore, say that such a "Regulation" as this merits the approval of Her Majesty's Government. On the contrary, we think it (in form, at all events) objectionable, because it is wholly dependent, for its operation and effect, upon other Regulations to be hereafter promulgated; which must be seen before any judgment can be formed as to their propriety or expediency. Still, as it is more than probable that, when the intended "Regulations and provisions" are actually made, they may be of an unobjectionable character, we think it will be best that the present Regulation should not be finally approved or disapproved, until it is seen by what working Regulations it is meant to be supplemented.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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Mexico.

No. 96.

The Law Officers of the Crown to Earl Russell.—(*Received July* 20.)

Lincoln's Inn, July 19, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 29th ultimo, stating that he was directed by your Lordship to transmit to us the inclosed despatch from Mr. Walsham (No. 21), in charge of Her Majesty's Legation in Mexico, calling attention to the protests of the masters of certain British vessels, setting forth the loss and damage which has been caused to them by the French blockade in the Gulf of Mexico; and to request that we would report to your Lordship our opinion as to the instructions which should be addressed to Mr. Walsham in this matter.

Mr. Hammond was also pleased (in a postscript to his letter) to state that he was directed by your Lordship to transmit to us a letter, dated the 29th ultimo, from the Admiralty, which has been received since the above was written, together with a despatch from Mr. Walsham (No. 3, January 9), containing a copy of the Decree referred to in his despatch No. 21 of the 27th of May.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we are of opinion that the French Admiral has not exceeded his rights as a belligerent in preventing British vessels from entering Tabasco; and that Mr. Walsham has arrived at a right conclusion upon this point, though we do not attach the same value which he does to the Treaty of 1796 between the United States and Great Britain as bearing upon the present question of the French blockade of the Mexican coast.

We think that Mr. Walsham should be instructed to the effect that he may properly use his good offices to procure, if possible, permission for the ships in question to proceed to Tabasco for the purpose of loading their homeward cargoes; but that his opinion as to the strict right of the belligerent in this matter is correct.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 97.

The Law Officers of the Crown to Earl Russell.—(*Received August* 4.)

Lincoln's Inn, August 4, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 27th of July ultimo, stating that he was directed by your Lordship to transmit to us a letter, dated the 25th ultimo, from the Admiralty, with its inclosures, respecting the arbitrary imprisonment and treatment of two British subjects by the Government of President Juarez, and respecting the proceedings of the United States' troops on the Rio Grande; and to request that we would take these papers into our consideration, and favour your Lordship with any observations we might have to make thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That with respect to the arbitrary imprisonment of British subjects by President Juarez, we think directions should be sent to the proper naval officer of Her Majesty in the Gulf of Mexico to support the remonstrance of Her Majesty's Acting Vice-Consul by a further application for the release or speedy trial of these persons, and for their proper treatment while the investigation is pending.

With respect to the proceedings of the United States' troops at Rio Grande, and especially the letter of General Herron, and the wholly illegal seizure of Captain Paulson, we think directions should be sent to Lord Lyons to lay the whole matter before the United States' Government, and to represent that Her Majesty's Government hope that no further attempt will be made to enforce, by such illegal measures, any blockade which

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MADAGASCAR.

No. 95 A.

The Law Officers of the Crown to Earl Russell.—(*Received May* 28.)

Lincoln's Inn, May 27, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Murray's letter of the 19th instant, stating that he was directed by your Lordship to transmit to us the draft of a Treaty which has been prepared with the view of being proposed to the Envoys from the Queen of Madagascar who are now in this country, and to request that we would take the same into our consideration, more especially with reference to the Article respecting Consular jurisdiction (No. X), and report to your Lordship at our earliest convenience our opinion thereupon.

Mr. Murray was also pleased to state that he inclosed, for our information on this subject, a despatch from Her Majesty's Ambassador at Paris, transmitting a Memorandum of the French Government, and a French draft Treaty, and also the draft of a despatch to Lord Cowley in reply.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That, with respect to the Treaty generally, we see no objection to any of the provisions contained in it. With respect to Clause X, to which our attention is more especially drawn, it appears to us, so far as it extends, to be properly framed. No provision, however, is made for the possible case of a difference of opinion between a British and foreign Consul in causes submitted to their adjudication. Such a provision might form part of a separate Treaty with France, but, if the subject is to be dealt with at all in the Treaty with Madagascar, it would be expedient to provide for this case by giving power to call in an Umpire, or by some other means to which the French Government might not object.

We desire to call attention to our marginal queries and remarks on parts of two Articles (Articles II and V) of the draft Treaty.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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may be in force at Rio Grande; and that Captain Paulson be immediately set at liberty.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 98.

The Law Officers of the Crown to Earl Russell.—(Received August 23.)

My Lord, *Lincoln's Inn, August 22, 1864.*

WE are honoured with your Lordship's commands signified in Mr. Murray's letter of the 1st instant, stating that he was directed by your Lordship to transmit to us a despatch from Her Majesty's Consul at Tampico (No. 24, June 7), with its inclosure, reporting the imprisonment by the Mexican authorities of Mr. Patrick Milmo, as well as the attachment of his property, on an accusation of having defrauded the Mexican Government; and Mr. Murray was to request that we would take these papers into consideration, and furnish your Lordship with our opinion thereon.

We are also honoured with Mr. Layard's letters of the 28th ultimo and 9th instant, with reference to this matter.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That with our present very limited knowledge of the facts of this case, it only occurs to us to advise your Lordship that as the exequatur of the Vice-Consul on the spot appears to have been withdrawn, instructions should be sent to the proper naval officer of Her Majesty in command, to aid Mr. Zürn, by making all such proper representations to the Mexican authorities as may be calculated to obtain for any of Her Majesty's subjects who may have been arrested at the instance of the Government or the Tribunals of President Juarez, proper treatment in every respect while any accusation is pending against them. Under the head of proper treatment would be included (in every case in which it is not found practicable to obtain the release of the person charged from prison upon proper bail or security) a place of temporary confinement not injurious to health, and full access to legal advice and assistance.

If, as we infer from the papers, Messrs. Milmo and Gilgen are not now confined in prison, and are allowed access to their advisers and friends, there does not seem to be, at present, any necessity to take further measures in their behalf.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 99.

The Law Officers of the Crown to Earl Russell.—(Received September 13.)

My Lord, *Lincoln's Inn, September 12, 1864.*

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 30th August ultimo, stating that he was directed by your Lordship to transmit to us the inclosed despatch from Mr. Walsham, in charge of Her Majesty's Legation in Mexico (No. 28), respecting the circumstances under which a caveat has been issued against the solemnization of a certain marriage by Her Majesty's Consul in Mexico, and to request that we would report to your Lordship our opinion as to the instructions which should be sent to Mr. Walsham for his guidance in this matter.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That upon the general question we are clearly of opinion that the "caveat" specified in 12 and 13 Vict., cap. 68, must be founded solely upon legal grounds, such as, if properly substantiated by evidence, ought to prevent the marriage, against which it is entered, from taking place. In the present case it is not alleged that the seduction of Mr. Fuller's ward by F. Rule, coupled with a promise of marriage, would (if the charge be true) by the law of Mexico constitute any bar to his marriage with Mary Hosking; nor that any suit has been instituted having for its object to obtain a sentence declaratory of a marriage between Rule and Mr. Fuller's ward. Assuming this state of law and of fact, the "caveat" was, in truth, bad on the face of it; but at all events the grounds of it ought to have been immediately examined, and pronounced by the Consul (if the law and the fact proved to be as above assumed) to be inadequate to prevent the celebration of the marriage. If, however, it should turn out that the law of Mexico holds that the seduction of, or carnal connection with, a woman, coupled with a promise of marriage (or a promise *subsequente copula*, as it is sometimes termed) constitutes, according to the canon law, a legal marriage (whether the contracting parties may or may not be compellable to celebrate the contract *in facie ecclesiæ*), then the Consul acted rightly in refusing to marry Francis Rule and Mary Hosking, until the question whether Rule was or was not legally married to Mr. Fuller's ward had been finally determined by the Appellate Court, in which it appears that proceedings of some kind (but as we conceive relating only to damages for a breach of promise of marriage) are now being carried on.

We think that instructions to this effect should be sent to Mr. Walsham.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 100.

The Queen's Advocate to Earl Russell.—(*Received September* 16.)

Doctors' Commons, September 15, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 15th instant, stating that he was directed to transmit to me a despatch from Mr. Walsham (No. 29), in charge of Her Majesty's Legation in Mexico, inclosing copy of a Decree by which the blockade established in the Gulf of Mexico and on the Pacific coast of Mexico has been raised; and to request that I would prepare and forward to your Lordship a form of notification of the raising of this blockade for insertion in the "London Gazette."

In obedience to your Lordship's commands I have the honour to report—

That I have drawn the form of notification for raising the blockade in the Gulf of Mexico and on the Pacific coast of Mexico, which I have the honour to append to this Report.

I have, &c.
(Signed) ROBERT PHILLIMORE.

Inclosure in No. 100.

Notification.

Foreign Office, September , 1864.

IT is hereby notified that Earl Russell, K.G., Her Majesty's Principal Secretary of State for Foreign Affairs, has received from Mr. Walsham, in charge of Her Majesty's Legation in Mexico, a despatch inclosing a copy of a Decree by which the blockade established in the Gulf of Mexico and on the Pacific Coast of Mexico has been raised.

The following is a copy of the Decree above referred to:—

(Here insert the original Decree and a translation of the same.)

R. P.

No. 101.

The Queen's Advocate to Earl Russell.—(*Received September* 17.)

Doctors' Commons, September 16, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 14th instant, stating that he was directed by your Lordship to transmit to me a Memorial from Dr. Murray, setting forth the circumstances under which he prays the intervention of Her Majesty's Government with the Government of Mexico to obtain compensation for loss of property and personal injury which he states he has suffered in Mexico. That Dr. Murray states that he is ready to supply the documentary evidence referred to in the Memorial should we require it; but as it is possible that I may not consider it necessary to refer to those documents, which are in the Spanish language, and as Dr. Murray is anxious to return to Mexico by the earliest possible opportunity, Mr. Hammond was to request that I would take this Memorial into consideration, and report to your Lordship my opinion whether Her Majesty's Government can take any, or what, steps in the matter.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I must at present assume all the statements of Dr. Murray to be true. I am not certain whether Dr. Murray means to state that he has been compelled entirely to abandon all possession of his Mexican property: I assume that such is his meaning. That on these assumptions I am of opinion that his case is one in which it is proper for Her Majesty's Government to interfere to the extent of forwarding the Memorial of Dr. Murray to Her Majesty's Representative at Mexico with instructions to make the best inquiry in his power into the alleged facts of the case, and if they should appear to him to be generally in accordance with those put forward by Dr. Murray, then to submit the Memorial of that gentleman to the Imperial Government, and to state that Her Majesty's Government have no doubt that the Imperial Government will cause an inquiry to be into these avernments of severe injuries to person and property which, in consequence of the maladministration of the law, Dr. Murray has sustained; and that if the avernments turn out to be substantially correct, this unfortunate person will be so far aided by the Government as to receive a fair pecuniary compensation for the property of which he has been unlawfully deprived, and that into the amount of this compensation some consideration of the bodily injuries which he has received might, in the opinion of Her Majesty's Government, not unreasonably enter.

If the Imperial Government reply that whatever the administration of the law may have been, it is now just and fair, and that Dr. Murray ought to have recourse to it in the first instance, the answer will require further consideration.

I have, &c.
(Signed) ROBERT PHILLIMORE.

Monte Video.

No. 102.

The Law Officers of the Crown to Earl Russell.—(*Received April* 20.)

Lincoln's Inn, April 19, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 11th instant, stating that he was directed by your Lordship to transmit to us a despatch from Her Majesty's Chargé d'Affaires at Monte Video respecting a legal case in which his intervention has been requested by Mr. Hall, a British subject; and to request that we would take Mr. Lettsom's despatch into our consideration, and report to your Lordship our opinion as to the instructions which should be addressed to him in this matter.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we are of opinion that Mr. Lettsom has taken a correct view of this matter, and that instructions to that effect should be sent to him from your Lordship.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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No. 103.

The Queen's Advocate to Earl Russell.—(Received July 12.)

Doctors' Commons, July 11, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Murray's letter of the 7th instant, stating that he was directed to transmit to me a despatch, and its inclosures, from Her Majesty's Chargé d'Affaires at Monte Video (No. 43) upon the subject of a claim made by Señor José Villanueva, a native of Gibraltar, against the Government of Monte Video for damages alleged to have been done to his house during its occupation by Government troops on the approach of General Flores to the capital; and to request that I would take these papers into consideration, and furnish your Lordship with my opinion whether or not this claim deserves the support of Her Majesty's Government, and, if so, to what extent.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I am of opinion that the papers now before me do not disclose any circumstances which ought to induce Her Majesty's Government officially to interfere on behalf of Señor José Villanueva with the Government of Monte Video. A rent of a single room at 10 or 12 dollars a month appears to me at present to be all that this gentleman can properly claim, and this rent it appears the proper authorities are willing to pay. I see no evidence whatever that the house was deteriorated in any respect during its occupation by the troops on the approach of General Flores to the capital.

I have, &c.

(Signed) ROBERT PHILLIMORE.

No. 104.

The Queen's Advocate to Earl Russell.—(Received December 13.)

Doctors' Commons, December 13, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 10th instant, stating that he was directed by your Lordship to transmit to me a despatch from Her Majesty's Chargé d'Affaires at Monte Video (No. 102, October 29), inclosing a note from the Commander-in-chief of the Brazilian naval forces in the River Plate, notifying the blockade of the ports of Paysandú and Saltó belonging to the Republic of Uruguay, and Mr. Layard was to request that I would take these papers into consideration, and that I would prepare a notification of this blockade for insertion in the "London Gazette."

In obedience to your Lordship's commands I have the honour to report—

That I have considered the circular from the Commander-in-chief of the Brazilian naval forces above referred to me, and have prepared, and herewith transmit a proper notice of the blockade of the ports of Paysandú and Saltó for insertion in the "London Gazette."

I have, &c.

(Signed) ROBERT PHILLIMORE.

Inclosure in No. 104.

Notification of Blockade.

Foreign Office, December , 1864.

IT is hereby notified that the Earl Russell, K.G., Her Majesty's Principal Secretary of State for Foreign Affairs, has received from Her Majesty's Chargé d'Affaires at Monte Video a despatch inclosing a note or circular, dated 26th October, 1864, from the Commander-in-chief of the Brazilian naval forces in the River Plate, notifying the blockade by the said Brazilian naval forces of the ports of Paysandú and Saltó, belonging to the Republic of the Uruguay.

The following is an extract from the said note or circular of the said Commander-in-chief of the Brazilian naval forces above referred to:—

(Here insert extract from said circular as marked in pencil, and translation as also marked.)

R. P.

No. 105.

The Queen's Advocate to Earl Russeil.—(Received December 13.)

Doctors' Commons, December 13, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 10th instant, stating that he was directed by your Lordship to transmit to me the inclosed despatches from Her Majesty's Minister at Buenos Ayres and Chargé d'Affaires at Monte Video,* respecting a circular addressed to the foreign Representatives at Monte Video by the Brazilian Admiral on the station, regarding certain measures proposed to be taken in connection with the hostilities between Brazil and Uruguay; and Mr. Layard was to request that I would take these papers into consideration, and report to your Lordship my opinion as to the course which has been pursued by Mr. Lettsom in this matter.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I am of opinion that it was competent to the Brazilian Government, in order to obtain justice, after other means had failed, for wrongs inflicted upon its subjects (a right the exercise of which it nevertheless recently denied to Great Britain), to have recourse to reprisals against the Oriental Republic of Uruguay. but that it was not competent to the Brazilian Government to stop, visit, or take any cargo whatever out of neutral vessels, as a subsidiary means of accomplishing that end. This right of interfering with the commerce of the neutral is incident, and incident only, to a state of war. Mr. Lettsom was so far right in the position which he assumed in his reply to Baron de Tamandaré. On the other hand, if the Brazilian Government had declared war with the Oriental Republic of Uruguay, and at the same time notified their intention of not declaring a blockade, but of simply preventing neutrals from carrying contraband of war to the enemy, it would have been competent to that Government to have so limited the exercise of its own belligerent right, and this was the course which Mr. Thornton appears to have supposed that they had actually taken. But reprisals, in the usual limited sense, and war, are not the same; the former affects the party only against whom the reprisals are made, the latter affects a third party, the neutral also.

I have, &c.

(Signed) ROBERT PHILLIMORE.

Morocco.

No. 106.

The Queen's Advocate to Earl Russell.—(Received June 18.)

Doctors' Commons, June 17, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Murray's letter of the 16th instant, stating that he was directed by your Lordship to transmit to me a despatch from Her Majesty's Minister at Tangier (No. 16), requesting instructions on certain points relating to the protection of British subjects and British interests in Morocco, together with the draft of a despatch which your Lordship proposes to address to Sir John Drummond Hay in reply; and Mr. Murray was to request that I would furnish your Lordship with my opinion as to whether the proposed draft of answer is right and proper.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I am of opinion that your Lordship's draft letter, with the alterations which I have suggested in the margin, is right and proper to be sent.

I have, &c.

(Signed) ROBERT PHILLIMORE.

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* Mr. Thornton, Nos. 80, 85, and 90; Mr. Lettsom, Nos. 91 and 96.

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New Granada.

No. 107.

The Law Officers of the Crown to Earl Russell.—(*Received September* 24.)

Lincoln's Inn, Ssptember 22, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 3rd instant, stating that with reference to the Report of Her Majesty's Advocate-General of the 5th of November, 1863, he was directed by your Lordship to transmit to us a despatch from the Acting British Consul-General at Bogotá,* respecting his correspondence with the Columbian Government in connection with Mr. Hunter's murder;† and Mr. Hammond was pleased to request that we would take these papers into consideration, and report to your Lordship our opinion whether the facts of the case are such as to call for any, or what, further intervention on the part of Her Majesty's Government.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That in consequence of the death of the criminal Mario, the ground of discussion in this case has been removed, even if under other circumstances any further discussion could have been carried on with advantage. It may, however, not be superfluous to instruct Mr. O'Leary to state to the Government of New Granada that Her Majesty's Government, while appreciating the reasons which may have made it desirable to grant a general amnesty in that country to political offenders, is still quite unable to understand why that amnesty should also have been extended to all other criminals; and that however excellent may be the laws of New Granada or any other country, they cannot be relied upon as affording security to the lives and property of foreigners, if the persons entrusted with their administration are unable or unwilling to put them in force, or if they are liable to be set aside by such indiscriminate acts of amnesty as that in question.

We have, &c.

(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 108.

The Queen's Advocate to Earl Russell.—(*Received September* 28.)

Doctors' Commons, September 27, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 14th instant, stating that he was directed by your Lordship to transmit to me a despatch from Her Majesty's Consul at Grey Town (No. 6), calling attention to certain complaints advanced on the part of Mosquito Indians against the Government of Nicaragua; and also inclosing a copy of a Report, dated the 6th instant, from Mr. Mathew, Her Majesty's Minister in Central America.

Mr. Hammond further stated that the question of the territorial rights of the Mosquito Indians was referred in the year 1862, for the consideration of Sir John Harding; and, for my convenience, he was pleased to inclose his (Sir John Harding's) Report, dated the 3rd January, 1862, together with a volume in which I should find marked the correspondence then laid before him; and Mr. Hammond was to request that I would take these papers into consideration, and report to your Lordship my opinion as to the instructions which should be addressed to Mr. Consul Green in reply to his despatch.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That a careful perusal of the Treaty of Managua (January 28, 1860), and of the Report of my predecessor in office, leads me to the same conclusions as those which Mr. Mathew has expressed to your Lordship in his despatch of the 6th of September, 1864.

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* Mr. O'Leary, No. 33.

† Mr. Griffith, Nos. 15 and 16; to Mr. Griffith, No. 34; Mariquita Mining Company, October 21, 1863.

Upon the general subject, I cannot doubt that the Treaty must be considered as existing in full force between Nicaragua and Great Britain; and that as the principal object of that Treaty was to secure certain rights of the Mosquito Indians, it is incumbent on Her Majesty's Government to protect these persons in the enjoyment of those rights.

The true meaning of the Treaty is, that the Mosquitos are to exercise within the assigned district the entire *de facto* government, but are to be subject to the sovereignty of Nicaragua, and to be incapable of placing themselves or the district under any other *de jure* sovereignty.

I therefore concur with Mr. Mathew in the opinion that, under the IIIrd Article of the Treaty, it is competent to the Mosquito Indians to subject to "their own customs" and "regulations" all residents within the reserved district; and I also agree that they are entitled to establish saw-mills, cotton plantations, &c., by the aid of foreign enterprise, and to enjoy whatever benefit may arise from the employment of such enterprise. I think, also, that the title of the Mosquitos to the Com Islands and Cays resolves itself into a question of distance and measurement. If these places be within the distances mentioned in the IInd Article of the Treaty, they are within the grant to the Mosquitos, and subject to their laws and regulations.

It appears that your Lordship has arrived, on proper grounds, at the conclusion that they are within this distance. I think, therefore, that Governor Saenz was not warranted in his prohibition to erect the saw-mills, or in his demand upon the islands and cays.

With respect to the grant made by the Nicaraguan Government to Commander Pim, I agree with the construction put upon it by Mr. Mathew; but if Commander Pim has, as Mr. Mathew states, obtained a collateral grant from the Mosquitos (a fact of which Mr. Consul Green does not seem to have been aware), there would not appear to be much reason for complaint upon this subject; but I think the official intimation suggested by Mr. Mathew would be expedient and proper.

It would not appear to me desirable to answer categorically the different positions of Mr. Consul Green, but to reply to his despatch generally in the sense of Mr. Mathew's suggestions, and of this Report.

I have, &c.

(Signed) ROBERT PHILLIMORE.

No. 109.

The Queen's Advocate to Earl Russell.—(*Received October* 7.)

Doctors' Commons, October 6, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 4th instant, stating that he was directed by your Lordship to transmit to me the correspondence noted in the margin,* respecting a claim advanced by Messrs. Longton and Co. against the Columbian Government on account of some port charges levied on the British ship "Mercury;" and to request that I would take these papers into consideration, and report to your Lordship my opinion as to the instructions which should be addressed to Mr. O'Leary on the subject.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That as it appears from Mr. O'Leary's despatch that the authorities at Rio Hacha acted illegally in imposing these charges, and as I gather from the same despatch that they are subject in this to the control of the General Government of the United States of Columbia, I am of opinion that application should be made to them to cause a repayment of the illegal fine. It would, of course, be properly, but clearly, intimated that *some* public authority in this country must be responsible to a foreign State for this injustice inflicted upon one of its subjects, and must make due reparation for it.

I have, &c.

(Signed) ROBERT PHILLIMORE.

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* Messrs. Longton, April 29; to Mr. O'Leary, No. 2; Mr. O'Leary, No. 38.

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No. 110.

The Queen's Advocate to Earl Russell.—(Received November 10.)

Doctors' Commons, November 10, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 5th instant, stating that he was directed by your Lordship to transmit to me a despatch and its inclosures from the Acting British Chargé d'Affaires at Bogotá (No. 42), together with one from Her Majesty's Consul at Carthagena (No. 1), upon the subject of Mr. William Yates' claim against the Columbian Government; and Mr. Layard was pleased to request that I would take these papers into consideration, and furnish your Lordship with my opinion whether or not the circumstances of the case are such as to justify your Lordship in supporting it; and if so, to what extent.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That when Mr. William Yates established himself at Carthagena, he became subject to all the municipal laws of that city, and that he cannot invoke his ignorance of those laws, as he appears to be of opinion (see his letter in Mr. O'Leary's No. 42), as a defence for having violated them.

By one of these laws he appears to have been called upon to contribute a certain sum of money for the purpose of public and general utility. He thought the assessment excessive,—perhaps it was so; but there was a proper and legal channel of redress open to him, to which, either intentionally or by error, he did not have recourse, and he did set at defiance the municipal authority.

This conduct provoked arbitrary measures on the part of the Governor, the result of which was that he was imprisoned for forty-one days, bail for his appearance, though tendered by Her Majesty's Consul on the spot, having been refused. The Tribunals of the country, both the First and the Appellate Court, have decided that this imprisonment was illegal, and that Mr. Yates ought not to have been subjected to any criminal charge; in other words, that the course prescribed by the 7th Article of the Decree (under which he had been assessed) had not been followed, that he had not been "proceeded against according to law."

For this illegal imprisonment he brings his action against the Local State Government, which refuses to entertain the claim, and he is left to his remedy before the Supreme Federal Court at Bogotá, which remedy, it is stated, he is too poor to pursue.

I think it cannot be doubted that the imprisonment was an injury done to Mr. Yates, for which he ought to be entitled to some pecuniary damages; but until the damages have been refused by the Court at Bogotá, I do not think that Her Majesty's Government ought to interfere on his behalf. Mr. Yates was clearly in the wrong in the first instance, and his own ignorance of, or his neglect to apply to, the law of the country in which he is domiciled, led to all the inconvenience which he afterwards suffered.

The cases are, I think, very rare in which, while legal redress is open to one of Her Majesty's subjects domiciled in a foreign State, Her Majesty's Government should make a direct application on behalf of such subject to the Executive Government of that foreign State; and I think it would be very dangerous to admit the plea of poverty on behalf of the subject who alleges himself to have been injured, the truth of which plea it would always be very difficult to ascertain, as a reason for departing from what ought to be the general rule.

Upon the whole, therefore, I advise your Lordship that, until the Federal Court at Bogotá has refused to grant any compensation to Mr. Yates for his imprisonment, Her Majesty's Government ought not directly to interfere on his behalf, but the Consul might be instructed to use any good offices which may be in his power in aid of this person.

I have, &c.
(Signed) ROBERT PHILLIMORE.

Pacific Islands.

No. 111.

The Law Officers of the Crown to Earl Russell.—(Received September 8.)

Lincoln's Inn, September 7, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Murray's letter of the 23rd ultimo, stating that he was directed to transmit to us a despatch from Her Majesty's Consul for the Navigators' Islands, reporting the establishment by the foreign residents, with the approval of the native Chiefs, of a Court for the trial by jury, of offences committed by foreigners against life and property, and of which Court Mr. Consul Williams states that he has been appointed President.

That we should see from the accompanying draft of a despatch addressed by your Lordship in September last to Her Majesty's Consul at Fiji, the view taken by Her Majesty's Government of Magisterial Courts in the Pacific Islands, and Mr. Murray was pleased to request that we would furnish your Lordship with our opinion upon Mr. Williams' Report.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That we are of opinion that the despatch addressed by your Lordship to Her Majesty's Consul at Fiji was perfectly right and proper, and we think that an answer in the sense and founded on the reasons of that despatch should be also sent to Her Majesty's Consul for the Navigators' Islands.

We observe that the arrangements made by the foreign residents in Apia is said to have "met with the approval of the Chiefs." If, therefore, it rests on any sanction, it is upon that of the local authority; and perhaps, if it should prove to have been established by the authority of Chiefs who are recognized as exercising the powers of government at Apia, it may not be necessary for Her Majesty's Government to object to it. But it will even in that case be necessary that it should be clearly understood that this arrangement is one with which Her Majesty's Government have no concern, and to which they do not profess to give any sanction or authority; and that all persons who may take part in carrying it into effect will do so upon their own responsibility.

Under these circumstances, it does not seem to us to be advisable that any Consular Agent of Her Majesty, while retaining that character, should act as Judge of a Court which (if it be entitled to that name at all) is in reality established by the native authority, though for the purposes of the foreign residents. It is more important to avoid any appearance of sanction by Her Majesty's Government to the proceedings of such a Court, inasmuch as it seems to be contemplated that it may exercise some species of jurisdiction over foreigners of every nation, and not over British subjects only.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

Persia.

No. 112.

The Queen's Advocate to Earl Russell.—(Received June 27.)

Doctors' Commons, June 25, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 22nd instant, stating that he was directed by your Lordship to transmit to me a despatch

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and its inclosure from Her Majesty's Agent and Consul at Zanzibar, dated the 10th ultimo, requesting instructions as to the course to be pursued in the case of slaves, captured by Her Majesty's cruizers, who may prove to have been kidnapped within the territories of the Sultan of Zanzibar; and to request that I would take these papers into consideration, and furnish your Lordship with my opinion as to the course which Colonel Playfair should be directed to pursue under these circumstances.

The papers, as marked in the margin* relating to this subject, were also inclosed for my consideration.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I humbly advise your Lordship that it would be proper to instruct Colonel Playfair that slaves captured within the Sultan's territories or waters are, for the future, to be restored to the proper authorities of Zanzibar; but that slaves captured on the high seas, or without the jurisdiction of the Sultan, are not to be given up to the authorities.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 113.

The Queen's Advocate to Earl Russell.—(Received November 29.)

Doctors' Commons, November 29, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 21st instant, stating that he was directed to transmit to me the accompanying letter, dated the 16th instant, and its inclosures from Mr. Peter Ralli, claiming indemnity from the Persian Government, on account of losses he has sustained owing to the alleged unjust interference with his legitimate trade at Tabreez by the Persian authorities and native merchants at that place. The previous papers connected with this case were also inclosed, and Mr. Hammond was pleased to request that I would take the same into consideration, and furnish your Lordship with my opinion as to the right of Her Majesty's Government to support Mr. Ralli's claim for iudemnity.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I have read with great care and attention the papers submitted to me in this case, and that it appears to me clear that the Persian merchants, abetted by the Persian authorities, have inflicted, without any just cause, a severe injury upon the commercial interests and property of Mr. Ralli; that in so doing they have violated both the specific Treaties of Commerce subsisting between this country and Persia, as well as the general international rights of British merchants trading in Persia, and I think that Her Majesty's Government have a right, in the circumstances, to support Mr. Peter Ralli's claim for an indemnity, as to the amount of which I can, of course, express no opinon.

I have, &c.
(Signed) ROBERT PHILLIMORE.

Portugal.

No. 114.

The Law Officers of the Crown to Earl Russell.—(Received June 4.)

Lincoln's Inn, June 4, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 2nd instant, stating that he was directed by your Lordship to transmit to us a note from the Portuguese Minister in this country, who is engaged on behalf of his Sovereign

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[*] Colonel Playfair, August 26, 1863; to Colonel Playfair, No. 2, March 16, 1864.

No. 114*.

The Queen's Advocate to Earl Granville.—(Received July 19.)

Doctors' Commons, July 18, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Murray's letter of the 9th instant, stating that, with reference to my Report of the 14th May, 1863, respecting an excessive "industrial tax" which had been levied upon British merchants in Portugal, and a further tax which had been levied upon them as agents for Insurance Companies, he was directed by your Lordship to transmit to me a despatch, and its inclosures, from Her Majesty's Minister at Lisbon,* containing the answer of the Portuguese Government to the representations which he addressed to them upon this subject in accordance with my opinion; and Mr. Murray was to request that I would take these papers into consideration with reference to the Treaty with Portugal of the 3rd July, 1842, and furnish your Lordship with my opinion as to the further instructions which should be sent to Sir Arthur Magenis upon these questions.

The former papers bearing upon the case were returned to me.†

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That it appears that at last the Portuguese Government has redressed the grievance complained of as to the excessive assessment in the cases of Warburg and Dotti.

I have the honour to agree with his Excellency Sir A. Magenis that as to the cases of Hickie, Haworth, and Dagge, the reason assigned for their extra assessment are satisfactory. The imposition of the 20 per cent. for the "viação" seems to be justified by the reasons alleged in the opinion of the Portuguese legal adviser of the British Embassy.

With respect to the remaining question, namely, the right of taxing British subjects as agents of foreign insurance offices, the reasoning of the Portuguese Department of Finance (Inclosure No. 6 in Sir A. C. Magenis' No. 57 of the 1st June, 1864) as to the construction of the Treaty of the 3rd July, 1842, with reference to the 2nd Article of the Law of the 30th July, 1860, is not to me convincing or satisfactory.

The true state of the case is as follows:—

Up to the period of the Treaty of the 3rd July, 1842, British subjects had enjoyed, as that Treaty declares, "a special exemption" from the particular tax called "mancio," or "decima industrial;" by that Treaty (Article I, Hertslet, vi, p. 599) the exemption was removed, and by a statement of the Portuguese Government, explanatory of this Ist Article (and which must be considered as part of the Treaty), it was declared "that the maximum of the 'mancio,' or industrial tax, to be imposed upon all British subjects, shall be 20 per cent. on the rent of their houses, shops, or warehouses, which shall serve as an invariable rule to the Tribunal of the Treasury whenever it shall have to decide on any appeal made by British subjects in the form disposed by the said Ist Article of the aforesaid Treaty."

It is of course clear that no subsequent municipal law of Portugal can effect, as far as British subjects are concerned, the conditions of the international covenant as to this particular tax expressed in this Treaty with England. Now, the law complained of does increase the amount of this particular tax upon these British firms. It is said, however, that the additional tax is imposed upon them in their character as agents of foreign insurance offices, but if Sir A. Magenis be correct in stating (23rd January, 1863, No. 7) that "these agencies form a part of their general business, for which they pay the industrial tax, and are carried on in their ordinary counting-houses," I cannot discover what right the Portuguese Government derive from the Treaty (and if they have it at all, it must be derived from that instrument, and not from any subsequent municipal law) to make any distinction as to the nature of the business so carried on, whereby they are authorized, as a consequence of that distinction, to increase the amount of a tax already fixed at a certain amount by what they have themselves designated as "an invariable rule."

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[*] Sir A. Magenis, No. 57, June 13, 1864.

[†] Sir A. Magenis, No. 7, 1863; to Sir A. Magenis, No. 33, 1863; Queen's Advocate, May 14, 1863.

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The Treaty, it must be remembered, is the sole authority on this subject, and no mention of any such right is to be found in it.

It is very easy to understand that the carrying on of these foreign agencies by British firms was not considered at the time of making the Treaty, or that it was then too unimportant to be noticed, and that subsequently this particular result of the Treaty has become obnoxious to the Portuguese Government as practically favouring foreign Companies to the injury of national Companies, conferring, as the Department of Finance state to the Duke of Loulé (Inclosure No. 6 of Sir A. C. Magenis' No. 57 of the 13th June, 1864), a most unjustifiable act of "favour towards those Insurance Companies whose agents they are," and no doubt similar language might have been applied to the "special exemption" which, nevertheless, British firms previously to the Treaty enjoyed, and in recompense for the abandonment of which exemption the fixed tax of 20 per cent. was imposed by the Treaty. There may be a good reason for seeking, and perhaps for obtaining, a modification of the Treaty, but this state of things does not justify, while the Treaty exists, the disregard by the Portuguese Government of an international obligation.

Having regard, however, to the consideration, that probably if the Treaty were now to be made Her Majesty's Government would consider a clause, the effect of which would be practically to impose a tax upon foreign Companies similar to that imposed on national Companies, to be not inequitable, it is perhaps a question for the discretion of Her Majesty's Government whether Sir A. Magenis should not be instructed to content himself with a protest, for the reasons assigned in this Report, against the imposition of this additional tax.

I have, &c.
(Signed) ROBERT PHILLIMORE.

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in mediating between Her Majesty's Government and the Government of Brazil, inclosing a memorandum setting forth the terms on which the mediating Court would propose that the differences between the two countries should be adjusted.

Mr. Layard was also pleased to transmit the draft of a memorandum which your Lordship proposes to place in Count Lavradio's hands, explaining the course which Her Majesty's Government are prepared to take in the matter. That Count Lavradio, having expressed a wish to receive the reply of Her Majesty's Government before the 9th instant. Mr. Layard was to request that we would take these papers into consideration at our earliest convenience, and report to your Lordship our opinion whether we concur in the terms of the proposed memorandum.

In obedience to your Lordship's commands we have the honour to report—

That we do concur in the terms of the proposed memorandum embodying the views of Her Majesty's Government on this subject, and which, as we understand them, differ materially from those of the memorandum of the Portuguese Government. By the latter memorandum (if assented to), Her Majesty's Government would, in substance, admit that the late reprisals were unjustifiable; that damages for the seizure of the ships detained are now due from Great Britain; and that the money paid by the Brazilian Government under the pressure of those reprisals, ought in justice to be returned.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 115.

The Law Officers of the Crown to Earl Russell.—(Received July 30.)

Lincoln's Inn, July 28, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 20th ultimo, stating that, with reference to the Report of Her Majesty's Advocate-General of the 23rd of May, 1863, regarding Mr. Lindsay's case, he was directed by your Lordship to transmit to us a letter dated the 16th untimo from Mr. Lindsay, setting forth the circumstances under which he requests the official intervention of Her Majesty's Government with the Government of Portugal in his behalf.

Mr. Layard was also pleased to transmit the previous correspondence in this case, and to request that we would report to your Lordship our opinion as to the course which should be taken with reference to Mr. Lindsay's application.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That we think that there are no circumstances in this case which can justify the official interference of Her Majesty's Government. So far as Mr. Lindsay's claim to such interference is founded merely on his position as a shareholder in the Company in question, on the alleged illegalities of the administration of that Company by its directors, and on the alleged sanction of, or acquiescence in, those illegalities, by the Portuguese Government, we think that the answers given to it by the Duke de Loulé (20th January, 1863), and by the Law Officers of the Crown of Portugal (13th and 20th February, and 6th March, 1863), are complete. "Mr. Lindsay," said the Duke, "is a British subject, it is true; but as a shareholder of an anonymous Society, having its seat in Portugal, and organized in conformity with Portuguese laws, he cannot make any claim on account of affairs regarding this Society, except, like any other shareholder, before the Courts of Justice of that country, whose competency he acknowledged in the act of his joining in this undertaking." We agree with the Duke that it is hardly possible, in the nature of things, for such a question to become international, or to be treated as one between Government and Government. Both the claims of the Society itself against the Government, by whose acts and under whose law it was constituted, and the claims of Mr. Lindsay, as one of its members, against the Society or its Directors, are equally subject to the sole and exclusive determination of the law of Portugal. Even if the law be in any respect defective (*e. g.*, in not giving, to a Company like this, adequate remedies for any breach of contract on the part of the Government), or if it is, in any particular case, erroneously administered by the Portuguese Courts, this cannot constitute a ground for the interference of any foreign Government; nor can any justification for such interference arise out of the mere neglect of the Portuguese Government to exercise any powers of superintendence and

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control over the affairs of the Company which it may possess, either by the general law or by the particular constitution of this Company; nor out of any ratification by the Portuguese Crown or Legislature of changes in the Constitution or Statutes of the Company, or of acts of its Directors which, without such ratification, might not have been legal and valid. As well might it be said that a foreign shareholder in an English Company would have a just cause of international complaint against the British Government because the constitution of the Company might be varied, or questionable acts of its Directors might be confirmed, in a manner which he might think prejudicial to his interests, by some subsequent Act of Parliament; nor is it shown, to our satisfaction (even apart from any legal consideration), that any interference with this Company has taken place by the Portuguese Government, of which Mr. Lindsay, or any other shareholder, could reasonably complain. The only changes which have been introduced into its administration by Royal or Legislative authority appear to be those made by the five Royal Decrees or Acts of Cortes of the 23rd March, 1859; 28th September, 1859; 23rd May, 1860; 30th March, 1861, and 10th September, 1861 (see the Assistant Attorney-General's opinion of the 13th February, 1863). The first of these authorized an increase of the capital of the Company, pursuant to a Resolution to which Mr. Lindsay was himself a party. Of the second he took the benefit, when he became the holder of 16,100*l*. in debentures of the Company. The third, which altered the *quorum* clauses of the original statutes, seems to have been justified by necessity, the original *quorum* for certain meetings having been thirty, and for others twenty shareholders, whereas (if we rightly collect the facts), there were never, before 1861, more than sixteen shareholders in the whole Company. Of the fourth and the fifth, so far as they guaranteed the payment, first, of 6 per cent., and afterwards of 7 per cent., on the capital stock of the Company, Mr. Lindsay has repeatedly claimed the benefit, and the delay on the part of the Portuguese Government in the payment of this guaranteed interest (which they have since, in part, at least, paid), has been frequently made by him matter of imputation against them. This part, therefore, of Mr. Lindsay's complaint (unless resting on some other foundation than his mere interest in the Company as an English shareholder) seems to us, both on general principles and on the particular circumstances of the case, to fall entirely to the ground.

It remains to consider whether, independently of his mere rights as an English shareholder in this Company, Mr. Lindsay has any other just ground of claim against the Portuguese Government in respect of which he can invoke the intervention of his own Government. What he alleges, in the first place, is, that he was originally induced to invest his property and money in this Company, by the solicitation, or at least encouragement, of Senhor Bento, the Minister of Public Works and Finance, at Lisbon, in 1858; that the part taken by the Portuguese Government in the establishment of the Company, and the powers of superintendence over its affairs which they reserved to themselves (and for which, he says, he stipulated, with a view to his own security), made it, practically, a Government undertaking; and that he (Mr. Lindsay) was entitled to rely upon the communications which then took place between himself and Senhor Bento, as amounting to a guarantee on the part of the Portuguese Government that he should not lose his capital embarked in that undertaking, either by any direct interference of the Government with its affairs, or by any mal-administration on the part of the Directors, which the Government, or its Commissioners, could, by due vigilance, prevent. Upon this part of the case, we have to observe, first, that it is not made out to our satisfaction, as a matter of fact, that Mr. Lindsay's share in the capital stock of this Company has been lost or endangered either by any direct interference of the Portuguese Government, or by any mal-administration of the Company, which that Government or its Commissioners could, by due vigilance, have prevented. The main cause of the failure of the Company (as far as we can collect), seems to have been that the intended and necessary amount of capital was never subscribed.

But, further, the correspondence between Mr. Lindsay and Senhor Bento appears to us to be by no means such as to warrant the construction which Mr. Lindsay now places upon it. That the Portuguese Government had an interest in promoting the formation of a Company, consisting of responsible capitalists, with whom they might enter into contracts for the maintenance of their own communications with the west coast of Africa and the Azores, and that the particular terms on which this Company was to be constituted were carefully discussed and settled between them and Mr. Lindsay, appears to be clear. But it is no less clear to us (as much from Mr. Lindsay's own letters, set forth in the "further statement," with documents laid by him before Dr. Twiss, as from the letters which he received from Senhor Bento) that the Company was, on both sides, meant and understood to be constituted as an ordinary anonymous Company, under and according to the law of Portugal; and that the Portuguese Government neither came, nor ever intended to come, under any special obligations towards Mr. Lindsay, or any shareholder in the Company, other than such as might result from those express contracts which they contemplated entering into for the services to be rendered by the Company to that Government, and the subsidies to be paid in return for those services. The Company was in fact constituted like any other Portuguese "anonymous" Company.

Mr. Lindsay, as a man of business, must have known that he had entered into no contract, except with his co-proprietors, and must have acted in reliance upon his own judgment as to the probabilities of the success of the undertaking. We agree with the remarks of the Assistant Attorney-General of Portugal upon the letters of Senhor Bento: "This correspondence, altogether officious and private, does not appear from any public acts. There is no authentic public instrument, there is no contract by which the Government engaged to interfere directly in the undertaking, or to guarantee the capital of the English shareholders by means of the money, the revenues, and the property of the State."

In these circumstances, although we think Mr. Lindsay has a fair claim upon the liberality of the Portuguese Government for their favourable consideration of any arrangements which he may be able to propose, and which might tend, by the assistance of that Government given in a legal and constitutional way, to improve his position, we are bound to say that he has not, in our judgment, substantiated any pecuniary claim, either moral or legal, against that Government, and we should be much more disposed to doubt, whether the representations already made in his behalf have not been too strong in their tone, than to advise Her Majesty's Government to give his claim, for the future, a more energetic support.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 116.

The Law Officers of the Crown to Earl Russell.—(Received July 30.)

Lincoln's Inn, July 29, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Murray's letter of the 21st instant, stating that with reference to his letter of the 20th ultimo, respecting Mr. Lindsay's claims against the Portuguese Government, he was directed by your Lordship to transmit to us a letter dated the 23rd instant, from Mr. Lindsay, inclosing an opinion in his favour which had been given by Dr. Travers Twiss.

Mr. Murray was also to inclose a despatch which has been recently received from Her Majesty's Minister at Lisbon, containing a Decree of the Portuguese Government dissolving the "União Mercantile Company," and Mr. Murray was to request that we would take these papers into consideration, and furnish your Lordship at our early convenience with our opinion whether the view taken of the case by Dr. Twiss alters the advice which we had previously given to Her Majesty's Government in the matter of these claims.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we have thought it expedient to make a separate Report on the points raised by these further papers, and by the opinion of Dr. Twiss, with whom we have had the benefit of a conference, without, however, altering the conclusions at which we had previously arrived.

It is necessary to observe, that the advice of Dr. Twiss to Mr. Lindsay, that the Portuguese Government "is responsible for the default of its Commissioners, whose duty it was to enforce the observance of the statutes" of the Company, proceeds upon a statement of facts, as to some of which Mr. Lindsay is directly at issue with the Portuguese Government, and the burden of proving which rests entirely upon him.

The most material of these allegations are, that before he agreed to supply steamships for the undertaking, or to accept payment in shares of the Company, and *as the condition* on which he consented to do so, Mr. Lindsay *required "that the Government of Portugal should take upon itself the responsibility of seeing that the statutes were duly enforced, and in all cases adhered to,"* and that the Commissioners appointed by the

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Government to exercise certain powers of supervision over the affairs of the Company were so appointed for his security, and in consequence of this requirement.

A very different, and we think a more natural and probable, account of the causes and objects of the appointment of these Commissioners is given by the Portuguese Assistant Attorney-General. According to that statement the Commissioners were nominated and authorized to act entirely in the interest and for the sole security of the Portuguese Government, with whom the Company were to become contractors for an important branch of the public service, and from whom they were about to receive a considerable subsidy. We think that if these Commissioners had really been appointed by the Government at the instance of Mr. Lindsay, and to protect his interests, some written evidence of an understanding to that effect between him and the Portuguese Government ought to have been forthcoming. There is, however, no such evidence; not only is there no formal document, but not even a trace of any such requirement on Mr. Lindsay's part, or of any such engagement on the part of the Portuguese Government, can be found in any of the letters which passed at the time between him and Senhor Bento. No such engagement or obligation on the part of the Portuguese Government towards Mr. Lindsay could possibly result from the mere fact that the statutes settled and agreed upon in the course of the treaty between himself and the other promoters of the Company and the Government gave to two Commissioners nominated by the Government powers of supervision over the affairs of the Company, and it is immaterial for this purpose whether those powers were or were not afterwards vigilantly exercised.

Another ground of claim by Mr. Lindsay against the Portuguese Government seems also to have received the sanction of Dr. Twiss' opinion, namely, that in his proceedings against the Company before the Portuguese Courts of Law, Mr. Lindsay experienced "a clear denial of justice." The cases are, we think, extremely rare in which a miscarriage in the ordinary administration of justice by the Courts of a civilized European country, in a private law-suit, over which those Courts had proper jurisdiction, can properly become the subject of international complaint. Admitting, however, that such cases may sometimes arise, we are unable to concur in Dr. Twiss' conclusion that the present is one of them.

The facts appear to be that Mr. Lindsay brought an action against the Company, under the fifth Article of a private agreement between him and them, dated the 28th of December, 1859, claiming the sum of 14,000*l.* (the whole principal amount secured by certain debentures of the Company then held by him), as having become immediately recoverable, in consequence of the non-payment by the Company of certain bills, and of other alleged breaches of that agreement. The cause was tried by a jury: that jury returned a special verdict, finding for Mr. Lindsay on the *factum* of the contract, on the non-payment of the bills, and upon another alleged breach of the Company's covenants; but finding against him on the question whether he had sustained any loss or damage by the acts complained of.

The Court, upon the consideration of this verdict, and of the documentary and other evidence in the cause, gave judgment against the plaintiff, which judgment was afterwards confirmed, upon appeal, by two successive Courts of Appellate jurisdiction.

There is nothing to show that, in the conduct of these proceedings, there was any substantial departure from the proper course of Portuguese law; by which both the forms of procedure, and the construction and effect of the contracts and acts of the parties fell exclusively to be regulated. There seems, as far as we can judge, to have been only two real questions between the parties; the one whether, upon the true and legal construction of the fifth Article of the contract, the effect of any breach of contract by the Company was to make the whole sum of 14,000*l.* secured by the debentures presently payable to Mr. Lindsay, or only to entitle him then to recover, by action, any arrears of interest and instalments of principal which, according to the tenor of those debentures, might have already become due and payable at the time of the action brought: the other, whether the Company were or were not entitled to the benefit of a set-off, which they claimed against Mr. Lindsay.

We do not find that this question of set-off was distinctly raised by the pleadings in the way in which it might have been necessary to raise it in an action at law in this country; but it appears, by Mr. Herries' Report, that the Chairman and one of the Directors of the Company (the only witnesses examined at the trial) gave evidence of some counter-claim of the Company on Mr. Lindsay; to which, in the absence of evidence to the contrary, the jury may have been entitled to give effect.

The other question turned entirely upon the construction of the following words in the contract:—"In case of non-payment, &c., you may at once sue the Company *for the*

amount of the whole of your credit, and make use of *every right such debentures grant to you.*"

The Portuguese Courts (see the extract from proceedings, &c., laid by Mr. Lindsay before Dr. Twiss, pages 14–16) decided that Mr. Lindsay was, after the 28th December, 1859, a *creditor* of the Company *on the debentures only;* and that as the only right which the debentures, upon the face of them, gave, was to payment of the principal by annual instalments of 12 per cent., with interest in the meantime, the "whole amount of the credit," and "the right granted by the debentures," which Mr. Lindsay was entitled to "sue for," and "to make use of," on any default by the Company, was limited to any arrears of interest, and any overdue instalments of principal, which might be then payable, according to the tenor of the debentures; and which (as we presume) if held to be recoverable under the form of action adopted, were also held to be covered by the evidence of set-off given at the trial.

This construction of the contract may have been a doubtful and narrow one, and may have been different from what the parties really intended; but the records of Courts of justice, in all countries, furnish many examples of construction of written instruments, equally narrow and doubtful; and we cannot possibly say that this can be regarded, upon sound principles of international law, as a denial of justice, for which the Portuguese Government ought to be held responsible.

The Company has now had its privileges withdrawn by the Portuguese Government, on a ground which seems to be sufficient to justify that act, namely, its failure, after a duration of several years, to raise the amount of capital which ought to have been subscribed, and to fulfil its engagements with the Government.

We can only repeat our suggestion that Mr. Lindsay has, in this state of circumstances, a fair claim upon the liberality of the Portuguese Government for their favourable consideration of any new arrangements which he may be desirous of proposing, and by which his position can be improved; and any such proposal might properly be supported by the good offices of Her Majesty's Representative at Lisbon, though not by any official interference, founded upon the supposition of his having rights which we think he does not possess.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 117.

The Law Officers of the Crown to Earl Russell.—(Received October 7.)

Lincoln's Inn, October 6, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 3rd instant, stating that, with reference to our Report of the 4th June last, he was directed by your Lordship to transmit to us a note dated the 14th September ultimo, from the Portuguese Minister at this Court, communicating the views of the Government of Brazil regarding the proposals of Her Majesty's Government as to the basis on which the difference between Brazil and Great Britain could be settled.

Mr. Hammond also inclosed the draft of the reply which your Lordship proposes to address to Count Lavradio; and was pleased to request that we would take this subject into consideration, and report to your Lordship whether we concur in the terms of the proposed reply.

In obedience to your Lordship's commands we have taken this subject into consideration, and have the honour to report—

That we think the terms of the reply which your Lordship proposes to send to the Portuguese Minister are altogether proper.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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No. 118.

The Attorney and Solicitor-General to Earl Russell.—(*Received December* 7.)

Lincoln's Inn, December 6, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 29th ultimo, stating that, with reference to our Reports of the 28th and 29th of July last regarding Mr. Lindsay's claims against the Government of Portugal, he was directed by your Lordship to transmit to us a further letter dated the 23rd ultimo from that gentleman, stating that, from information he had received from Lisbon, he feared that the British shareholders in the "Union Mercantile Company" would be deprived of the interest on their stock and of the value of their debentures, unless Her Majesty's Minister at Lisbon be instructed to demand officially the payment of the money due on account of these securities.

Mr. Layard was therefore to request that we would favour your Lordship with our opinion whether or not Her Majesty's Government would be justified in directing Her Majesty's Minister at Lisbon to comply with Mr. Lindsay's request, and as to the course which they should pursue in the matter. And to add that the papers respecting Mr. Lindsay's claim would shortly be laid before Parliament; and that they were returned to us with his letter, in order that we might refer to them if necessary.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That we do not think that Her Majesty's Minister at Lisbon should at present be instructed to demand officially the payment of the interest on the stock, or the debentures, with the interest due upon them, on behalf of the shareholders in the "Union Mercantile Company;" but we think that Her Majesty's Government might properly instruct Her Majesty's Minister at Lisbon to use his good offices in assisting these persons to obtain the moneys in question, and to report to Her Majesty's Government his opinion as whether the apprehensions entertained by Mr. Lindsay are well founded or not.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.

Prussia.

No. 119.

The Queen's Advocate to Earl Russell.—(*Received March* 18.)

Doctors' Commons, March 18, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 17th March instant, stating that he was directed by your Lordship to transmit to me translation of a note dated the 16th instant from the Prussian Ambassador at this Court, stating that the blockade of the harbour of Swinemünde, which was announced by the Danish Government for the 15th instant, did not take place on that day, and requesting that this circumstance may be made public; and Mr. Hammond was to request that I would take this communication into consideration, and furnish your Lordship with my opinion thereupon.

In obedience to your Lordship's commands I have taken this note into consideration, and have the honour to report—

That I am of opinion that it is not incumbent on Her Majesty's Government to take any step on account of the Prussian Ambassador's denial of the Danish blockade of Swinemünde. In the first place it is an *ex parte* statement of one belligerent only, and of course could not be acted upon without giving the other belligerent an opportunity of making a counter-statement. In the second place, the question whether or not a *de facto* blockade of Swinemünde existed at the time of the notification is one which will properly arise before the Prize Court whenever any neutral vessel be brought before it, on the ground of having broken this blockade: the existence or non-existence of the blockade will then be a matter of fact to be determined by proper evidence before the proper Court, which it must be presumed will do justice according to the principles of international law.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 120.

The Queen's Advocate to Earl Russell.—(*Received March* 22.)

Doctors' Commons, March 22, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 21st instant, stating that he was directed by your Lordship to transmit to me a despatch from Her Majesty's Ambassador at Berlin (No. 288) forwarding a copy and translation of the regulations for the capture of enemies' and suspected vessels which have been issued by the Prussian Government in consequence of the hostilities between Denmark and the German Powers; and to request that I would take these papers into consideration, and inform your Lordship whether I am opinion that there is any objection to their being published in the "London Gazette."

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I think it would be proper to publish these instructions of the Prussian Government to the cruizers in the "London Gazette." At the same time I would remark that the 14th and 15th Articles, especially the former, relate to matters over which the neutral State has exclusive jurisdiction.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 121.

The Queen's Advocate to Earl Russell.—(*Received March* 31.)

Doctors' Commons, March 31, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 28th March instant, stating that with reference to my Report of the 18th instant he was directed to transmit to me a note dated the 26th instant from the Prussian Ambassador at this Court, stating that the blockade of the Pomeranian harbours, particularly of Swinemünde, has not yet been carried out; and also to inclose a despatch dated the 23rd instant from Her Majesty's Consul at Stettin which confirms Count de Bernstorff's statement with respect to Swinemünde, and a despatch from Her Majesty's Ambassador at Berlin (No. 309); and Mr. Layard was to request that I would take these papers into consideration, and furnish your Lordship with my opinion thereupon.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That, assuming that at the time when Count Bernstorff and Consul Blackwell wrote to your Lordship, there was no effective blockade of Swinemünde, it does not seem to me proper that any announcement to that effect should be sent to the "Gazette." The blockade may be by this time effectively instituted, and, on the other hand, if a neutral vessel be captured for breach of blockade, and it be proved in the Prize Court that there was no effective blockade, the vessel must be released; for it must be remembered that neither the notification itself nor its insertion in any Gazette can render legal a *de facto* illegal blockade. Nevertheless, the Danish Government ought not to have formally notified to Her Majesty's Government that there was a blockade of Swinemünde before it had actually taken place, or was in the act of taking place; and I think it would be proper that a communication to this effect should be made to the Danish Minister in London, or to the Danish Government, and intimation given that the inaccuracy of the information (if it should prove to be so) with respect to this blockade must induce Her Majesty's Government to make special inquiries before the notification of any other blockade by the Danish forces is allowed to be inserted in the "Gazette;" and at the same time it would be right to inquire what is, according to the Danish account, the actual state of the blockade at Swinemünde, and of the other ports mentioned in Sir A. Buchanan's

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despatch. I think that Sir A. Buchanan ought to forward the letters in question to the Consuls, if they are sent to him.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 122.

The Law Officers of the Crown to Earl Russell.—(*Received April* 8.)

Lincoln's Inn, April 7, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 2nd instant, stating that he was directed by your Lordship to transmit to us the papers noted in the margin,* relating to the non-recognition by Prussia of the blockade of Swinemünde and other ports on the coast of Pomerania by Denmark, which was notified in the "London Gazette" of the 15th ultimo; and Mr. Layard was to request that we would take these papers into consideration, and furnish your Lordship with our opinion as to the course which should be pursued by Her Majesty's Government in this matter.

We are also honoured with Mr. Layard's letter of the 4th instant, transmitting to us by your Lordship's direction, for our further information, a note from the Danish Minister at this Court, stating that he has been informed by telegraph from Copenhagen that the blockade of Swinemünde is effective.

Mr. Layard was also pleased to inclose a despatch from Her Majesty's Ambassador on the same subject.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That with respect to the notification of blockades in the "Gazette," the usual course is to make such notification, in the absence of any special circumstances, when Her Majesty's Government is apprized by the proper authority of the blockading Power that the blockade is instituted.

Such a notification does not prevent the fact of the due institution of the blockade being afterwards challenged by the neutral in the Prize Court, and being determined upon the principles of law applicable to that subject.

In the present case the announcement of the blockade of Swinemünde was duly made to Her Majesty's Government, and properly published in the "Gazette."

The blockade was announced as existing on the 15th March, and it is clear that the Danish Government gave incorrect information as to its existence at that date. It appears to be equally clear, from Mr. Consul Blackwell's statement, that on the 27th of March, at the latest, the blockade of Swinemünde was *de facto* as well as *de jure* established, and that it is at this moment in full force.

It does not appear that any neutral vessel has been captured on account of egress or ingress during this interval.

Her Majesty's Government have already represented to the Danish Government that the erroneous information ought not to have been given. M. Bille has replied, that the blockade is now effective, and the testimony of Her Majesty's Consul at Stettin confirms this statement.

It is not incumbent on Her Majesty's Government to take any further steps in this matter. But it might be desirable that it should be represented to M. Bille that future difficulties might be avoided if the Danish Government were to send to Her Majesty's Government a formal statement that the blockade, erroneously announced as instituted on the 15th, was not effectively instituted before the 27th, but that since that time it has been and now is in full force.

This statement might be inserted in the "Gazette,"—of course without comment.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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* Count Bernstorff, March 16; Queen's Advocate, March 18; Count Bernstorff, March 18 and 26; Sir A. Buchanan, No. 309; Consul Blackwell, No. 7; Queen's Advocate, March 31; Sir A. Buchanan, No. 327; Messrs. Currie, March 31; Consul Blackwell, No. 10; Sir A. Buchanan, No. 335; to M. Bille, April 1, 1864.

No. 123.

The Law Officers of the Crown to Earl Russell —(*Received May* 2.)

Lincoln's Inn, April 30, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Murray's letter of the 19th April instant, stating that he was directed by your Lordship to transmit to us the accompanying letter and its inclosure from Messrs. Delcomyn, requesting the interference of Her Majesty's Government with the Prussian Government to claim compensation on account of the alleged destruction by Prussian troops, at a place called Dangaard, of property belonging to those gentlemen, and to endeavour to prevent the destruction in future of the property of British subjects by Prussian troops; and to request that we would favour your Lordship with our opinion as to the mode in which your Lordship should deal with Messrs. Delcomyn's claim.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we advise your Lordship to cause a reply to be sent to Messrs. Delcomyn, to the effect that Her Majesty's Government cannot interfere to protect, except in very special circumstances, British property destroyed in the country of an enemy by a belligerent. That such property must, as a general rule, share the fate of the property of the native subject, and seek the same redress as that which is accorded to its own subjects from the Government of the State which is invaded.

That Her Majesty's Government do not at present see any valid ground for constituting the grain destroyed by the Prussian troops at Dangaard an exception to the operation of this rule.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 124.

The Queen's Advocate to Earl Russell.—(*Received July* 27.)

Doctors' Commons, July 25, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 22nd instant, stating that he was directed by your Lordship to transmit to me a letter dated the 20th instant from Mr. Lamond, forwarding a memorandum of the circumstances under which the Norwegian steamer "Viken" was fired at by Prussian troops; and Mr. Hammond was to request that I would take this communication into consideration, and inform your Lordship whether, in my opinion, this is a matter in which Her Majesty's Government can properly interfere, with reference to the British subjects on board the "Viken."

In obedience to your Lordship's commands I have taken this matter into consideration, and have the honour to report—

That as the "Viken" belonged to the Norwegian Royal Navy and carried the Norwegian flag, the outrage concerns primarily that Government, which ought, and doubtless will, require and obtain the necessary explanation or apology from the Prussian Government.

I venture to suggest, however, that it would be expedient that Her Majesty's Representative at the Court of Sweden should be instructed to apprize the Government of the King of the confidence which Her Majesty's Government feel that the insult to the Norwegian flag will be properly vindicated, and that therefore Her Majesty's Government abstains for the present from addressing the Prussian Government on behalf of Her Majesty's subjects who happened to be on board the "Viken."

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 125.

The Law Officers of the Crown to Earl Russell.—(*Received August* 25.)

Lincoln's Inn, August 25, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 27th ultimo, stating that he was directed by your Lordship to transmit to us a despatch from Her Majesty's Chargé d'Affaires at Berlin (No. 21), inclosing copy and

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translation of the Prussian Prize Court Regulations, and to request that we would furnish your Lordship with any observations which we may have to make upon these Regulations.

In obedience to your Lordship's commands we have the honour to report—

That there are several points of difference between these Regulations and those which prevail in the Prize Courts of this country and of the United States.

1. (§ 12.) The Prussian, like the Danish, Prize Regulations propose to allow the presence of a convoy to exempt the vessel convoyed from search, contrary to the English doctrine on this important subject. This, however, is a provision which will, of course, operate in favour of neutral Powers.

2. (§ 14.) The Prize Regulations permitting or ordering (in case of need) a prize to be taken into the port of an ally, means, we presume, an ally in this particular war. If so, this provision is not objectionable.

3. (§ 20.) The interpretation placed by Prussia, in these rules, upon the Declaration of Paris (so far as relates to the subject of blockade) agrees with that which has been adopted by Her Majesty's Government in their communications with the Agents of the Confederate States during the present war in America: that is to say, a force "sufficient really to prevent ('interdire') access," in the terms of that Declaration, is understood to be "one or several vessels of war," so blocking up a harbour "that no merchantman can touch at that port, nor clear it, *without evidently running risk* of capture." This, we need not add, was already, before the Treaty of Paris, the recognized test of a lawful blockade.

4. (§§ 22, 25.) It would seem that the Prussian Prize Courts will not treat the clearing or sailing of a vessel for a blockaded port as an attempt to break the blockade, unless the vessel actually "tries to force its way through the blockade." This is different from the English and American law and practice, but it is, of course, a difference which will operate favourably to neutral commerce.

5. (§§ 9, 10, 14, 17.) There are very important differences between the Prussian "Rules for acting in Prize affairs," and the English and American forms of procedure.

The principal points are that the Prussian examination *in preparatorio* (which is to be conducted *ex parte* by a Court of ordinary jurisdiction, at the instance of the captor, before the commencement of proceedings in the Prize Court, and of course before any claimant has had the opportunity to come in) is not to be restricted (as in England) to the ship's documents, and the evidence of the master and some of the crew or passengers of the captured vessel, but may be extended to the depositions of the men who took part in the search and seizure, and also (in case of any contradiction) of the commander of the capturing vessel. When the case is before the Prize Court, after a claim has been put in, further proofs may be offered, both by the Attorney-General and the claimants, if (and, as we collect, not unless) the Prize Court deems it necessary. This, we think, is a mode of procedure less advantageous to vessels captured without just cause than that secured to them by the system in use in this country and the United States, and which, therefore, will require to be narrowly watched in practice by neutral Governments.

6. (§ 19.) The absence of publicity (§ 19) from the prize proceedings, under these Prussian Regulations, will remove a very wholesome and important check against abuse, and will so increase the necessity for vigilance on the part of the neutral Powers against unjust condemnatious.

7. (§ 32.) The power to award costs or damages being denied to the Prize Court, it follows that whenever these are justly due a question will arise to be discussed between Government and Government.

8. Upon the form and mode of procedure generally, we would observe that it appears to be of a more complicated and cumbrous character than that of the English and American and (we believe) the French Prize Courts; nor does it clearly appear what weight is intended to be given to the testimony of the captured crew, to which in our prize proceedings much value has been immemorially ascribed.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 126.

The Law Officers of the Crown to Earl Russell.—(Received August 29.)

Lincoln's Inn, August 29, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Murray's letter of the 29th ultimo, stating that with reference to the debate in the House of Commons on the Bill for giving effect to the Convention concluded with Prussia on the 5th of March last for the mutual surrender of criminals, he was directed by your Lordship to state to us that, in deference to the feeling expressed in the House, it is the intention of Her Majesty's Government to propose to the Prussian Government some modification of that part of the Convention which relates to the surrender of persons convicted of any of the offences specified therein, and that your Lordship would be glad if we would take this subject into consideration, and report to your Lordship our opinion as to the manner in which this object may be best accomplished, whether by requiring in a case of conviction the same amount of proof as in a case of accusation, or by any other conditions which may occur to us as suitable to prevent abuse, or whether by wholly omitting all that relates to the surrender of persons convicted—a point which, after all, is perhaps of little practical importance, and that it has occurred to your Lordship that it would be also advisable to omit that provision of the Convention which allows the surrender to be made on the production of duly authenticated depositions or statements on oath, and to insist in all cases upon depositions of witnesses on oath, *coram judice*, because witnesses can be cross-examined while affidavits cannot; that on this point also your Lordship requests that we will furnish your Lordship with our opinion; and Mr. Murray's letter concluded by saying that, although in the Treaties of Extradition with France and the United States there is no stipulation that sworn depositions may be received, yet the Acts of Parliament for carrying these Treaties into effect* contain a provision to that effect.

In obedience to your Lordship's commands we have taken this subject into consideration, and have the honour to report—

That we recommend the omission of all the provisions relating to the surrender of persons *convicted*.

The word "accused" would, for all practical purposes, be sufficient; and the difficulties incident to the recognition in this country of the administration of the Prussian Criminal Law would be avoided.

Having regard to the facility of communication between this country and Prussia, we have the honour to express our agreement with your Lordship's suggestion that the witnesses should make their depositions orally upon oath before the magistrate in this country, and that the surrender should not be made upon depositions or affidavits made in Prussia.

We think it proper to notice two other objections which have been made to the terms of this Treaty, and which (if well founded) might be equally applicable to the Extradition Treaties now in force between this country and France and the United States of America respectively. The first is, that the offences described under all or some of the specified heads might be committed under circumstances which would make them, on the whole, political rather than ordinary crimes; and that, in such circumstances, the delivery up by this country of political refugees might be demanded. We have considered this objection, but it seems to us to be one which, if pressed to its fullest extent, would be fatal to all such Conventions, as it is scarcely possible to define beforehand the circumstances which might be thought by some persons to give a political character to acts which others might characterize as murder, forgery, or robbery. Perhaps, however, it might be advisable to add an Article at the end of the Treaty in the following words:—"This Convention shall not be deemed, under colour of any of the designations aforesaid, to include any offences of a merely political character." The other objection is that, although the *evidence* must be such as would justify the apprehension and commitment for trial of the offender if the offence had been committed in British territory, the Treaty does not go on to say that the *facts* must be such as, if they had taken place in British territory, would there have constituted a criminal offence of the same nature punishable by the laws of that territory. We think that this objection is groundless, and that it rests upon a false interpretation of the words of the Treaty, and we should hesitate to attempt to remove it by any alteration of those words which might seem to give countenance to that mode of interpreting similar words in the other Treaties above referred to.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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* 6 and 7 Vict., c. 75, s. 2, and c. 76, s. 2.

1864

No. 127.

The Law Officers of the Crown to Earl Russell.—(Received September 16.)

Lincoln's Inn, September 15, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 26th ultimo, stating that he was directed by your Lordship to acknowledge the receipt of our Report of the 25th ultimo, containing our observations upon the provisions of the Prussian Prize Court Regulations, and adverting to various imperfect points in which those regulations differ from the law of the British and American Prize Courts, and to request that we would furnish your Lordship with our opinion as to whether, notwithstanding the fact of the termination of the war between the German Powers and Denmark, it would be advisable to address a communication to the Prussian Government with regard to the points in which the regulations differ, in order to prevent the possibility of our silence being at any future period construed by that Government into acquiescence.

In obedience to your Lordship's commands we have taken this question into consideration, and have the honour to report—

That we are of opinion that a communication should be made by Her Majesty's Government to the Prussian Government, to the effect that as the war is over, Her Majesty's Government do not think it necessary to offer any observations upon the Prize Regulations issued by the Prussian Government, but that Her Majesty's Government desire to state that their silence upon this subject must not be construed as indicating the complete acquiescence of Her Majesty's Government in the propriety and sufficiency (so far as the interests of neutral States are concerned) of every part of these regulations.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

River Plate.

No. 128.

The Queen's Advocate to Earl Russell.—(Received September 10.)

Doctors' Commons, September 8, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Murray's letter of the 31st ultimo, stating that with reference to the Report of Her Majesty's Advocate-General of the 24th July, 1861, upon the subject of the transfers of American vessels to British subjects, he was directed by your Lordship to transmit to me a despatch from Her Majesty's Consul at Buenos Ayres (No. 16), together with the several despatches referred to therein, upon the subject of the abuses resulting from the practice of foreign vessels taking British provisional certificates of registry; and to request that I would furnish your Lordship with any observations I may have to make thereupon. The correspondence with the Board of Trade and with Her Majesty's Consul at New York upon this subject were also inclosed.

In obedience to your Lordship's commands I have taken this matter into consideration, and have the honour to report—

That upon the general subject it appears to me that the view taken by the Lords of the Committee of Privy Council for Trade is perfectly correct. It is the duty of the Consul, before granting a provisional certificate, to make all reasonable inquiry as to the good faith of the application, and not to grant it if the papers themselves disclose, or render it probable, that the application is dishonest. It is not his duty to prosecute the inquiry into latent or equitable claims. He is not armed with power to do so, and I much doubt the expediency of his possessing such authority. In the case last mentioned by Mr. Consul Parish (No. 16), namely, the "Voyager," in which it appeared, on the face

of the papers, that the "Voyager" was from New York to Monte Video and Buenos Ayres, and back again to the United States, and it was estimated and agreed upon by the crew to last ten months, the provisional certificate being granted for six months, so that the vessel must have abandoned her voyage back to the United States in order to complete the British registration within the prescribed term; I think that in such a case as this the provisional certificate ought not to have been granted at all by the Consul, but certainly not without further investigation, and until he had reasonable proof that there was no intention of evading the provisions of the Statute.

I must observe that in the event of a vessel so provisionally registered being seized by a Confederate captor, and brought into a Confederate Prize Court, it would be competent to that Court to inquire into the *bona fides* of the whole transaction, and to condemn the vessel if it believed that the whole interests of the original belligerent owner had not been completely divested. The fact that a United States' master and crew were on board would furnish strong evidence that the vessel still belonged to its original owner.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 129.

The Queen's Advocate to Earl Russell.—(Received December 27.)

Doctors' Commons, December 26, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 22nd instant, stating that with reference to my Report of the 13th instant, he was directed by your Lordship to transmit to me a further despatch from Her Majesty's Chargé d'Affaires at Monte Video (No. 103), inclosing a copy of a despatch which he has addressed to Her Majesty's Minister at Buenos Ayres regarding the course pursued by the Brazilian Government towards Monte Video; and Mr. Layard was pleased to request that I would take these papers into consideration, and report to your Lordship any observations I may have to make on the subject; and to add that Her Majesty's Government wish to maintain neutrality in the contest between Brazil and Monte Video.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That it would appear to me expedient to send general instructions to Her Majesty's Representatives at Monte Video and Buenos Ayres to the effect that Her Majesty's Government expect that, in the circumstances of this blockade, no British vessel will be detained or captured which has not previously received full and due notice of the existence of the blockade, and also that British vessels in the ports about to be blockaded will be allowed a fair and reasonable time to depart with their cargoes.

I do not advise Her Majesty's Government at present to send more specific instructions than these as to time or place.

I have, &c.
(Signed) ROBERT PHILLIMORE.

Salvador.

No. 130.

The Law Officers of the Crown to Earl Russell.—(Received June 27.)

Lincoln's Inn, June 25, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 15th instant, stating that he was directed by your Lordship to transmit to us two despatches from Mr. Fraser,* who is acting, in the absence of Mr. Mathew, in Central

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* Mr. Fraser, No. 4, April 28, and No. 7, May 13, 1864.

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America, on behalf of Her Majesty's Government, calling attention to certain clauses in the Constitution lately decreed by the Congress of the Republic of Salvador, which refer to the naturalization and future position of foreigners in that Republic; and to request that we would take the despatches inclosed into our consideration, and favour your Lordship with our opinion as to what instructions should be addressed to Mr. Fraser thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That Mr. Fraser's letter to Don Gregorio Arbizu appears to us right and proper. The general tenor of those Articles in the new Constitution which are the subject of his remonstrance is very objectionable: but, in so far as they relate to the future, their repeal can hardly be insisted on as a matter of strict right by foreign States, except in those cases where they may clearly conflict with any positive Treaty engagements. Inasmuch, however, as they also relate to the past and have a retrospective operation upon foreigners, they do entitle foreign States to insist upon their palpable injustice, and to claim that they be not enforced in that respect.

It is to be presumed that the Representatives of other foreign States take the same view of these Articles as Mr. Fraser, and it would be very desirable that common action should be taken by all in this matter.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 131.

The Queen's Advocate to Earl Russell.—(*Received August* 13.)

Doctors' Commons, August 13, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Murray's letter of the 8th instant, stating that he was directed by your Lordship to transmit to me therewith a despatch from Her Majesty's Consul at Sonsonate (No. 12) relative to the imprisonment and indignities suffered by Mr. and Mrs. Hocking, British subjects, on the ground that they had been married by the Consul under the Act of Parliament for facilitating the marriage of British subjects abroad; and to request that I would take this paper into consideration, and furnish your Lordship with my opinion thereupon.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That, as I understand the circumstances of this case, Mr. Hocking being a British subject, but a Roman Catholic, was married (under the provisions of the Consular Act) by the British Consul to a lady a subject of the Republic of Salvador, and also a Roman Catholic: that the Law of St. Salvador does not allow the solemnization of marriage within its own territories of two Roman Catholics except according to the forms and ritual of the Roman Church.

It is competent to a State to make such a law, and to enforce it by penalties against all persons resident within its territories not protected against them by the provisions of any Treaty. And if the Bishop or his Court have in Salvador, as but a few years ago they had in England and now have in Ireland, jurisdiction over this matter, the Bishop or his Court had a right to cite Mr. Hocking before them to *answer* to a charge of having violated the law; and unless there has been a marriage recognized by that law they had unquestionably a right to treat *the lady* both as a spinster and as a native subject of the Republic.

There is, however, great force in the observation that this marriage was, so far as the proceedings before the Consul were concerned, simply a civil contract entered into before a layman,—not a marriage solemnized as a religious act by a person being or professing to be a priest, but a civil contract which the Law and Courts of Salvador might or might not refuse to recognize, but for entering into which a British subject was not punishable by that Law or by those Courts.

Mr. Hocking had certainly a right, wholly unaffected by his being a Roman Catholic, as a British subject to call upon the British Consul to do on his behalf what the Act of Parliament empowered the Consul to do. On the whole I humbly advise your Lordship to support the demand made by Mr. Mathew on behalf of Mr. Hocking for the immediate liberation of that gentleman, and for a very moderate compensation for his unjust arrest and imprisonment. It would be very desirable that this opportunity should be taken for obtaining a recognition, if possible, of the power of Her Majesty's Consul to put in force in this Republic the provisions of the Consular Act, both between British subjects and in cases in which one party to the contract is a British subject. A recognition of the validity of such marriages in Salvador, which would be most desirable, cannot, I fear, be obtained; but full liberty to enter into the civil contract, without regard to the validity of the marriage, within the territory of the Republic might perhaps be obtained, and would place this difficult matter upon a much better footing than that on which it rests at present.

I have, &c.
(Signed) ROBERT PHILLIMORE.

San Domingo.

No. 132.

The Queen's Advocate to Earl Russell.—(*Received January* 5.)

Doctors' Commons, January 1, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 28th ultimo, stating that with reference to my Report of the 17th ultimo, he was directed by your Lordship to transmit to me a despatch from Her Majesty's Consul at San Domingo (No. 50), inclosing a copy and translation of a Proclamation by the Captain-General explaining the Decree of the 5th of October last, which notified a blockade of the coasts of San Domingo; and Mr. Hammond was to request that I would take Mr. Hood's despatch, together with the previous papers therewith inclosed, into consideration, and that I would report to your Lordship whether I am now of opinion that a notification of the blockade should be inserted in the London Gazette; and Mr. Hammond was further to request that if my answer should be in the affirmative, I would prepare and transmit to your Lordship a form of notification to be published in the Gazette.

In obedience to your Lordship's commands I have taken this case again into consideration, and have the honour to report—

That according to the despatch of Mr. Consul Hood, there is still no pretence for alleging that there is an effective or real blockade of the coasts of San Domingo. I cannot, therefore, for the reasons assigned in my last Report, advise your Lordship that this paper blockade ought to be notified in the Gazette.

It appears to me that a remonstrance on the subject ought to be addressed to the proper Spanish authorities, and an intimation conveyed to them that Her Majesty's Government cannot recognize the existence of a blockade which is not supported by an adequate force, present, without intermission (except such as may be temporarily caused by wind and weather), off the blockaded port or coast.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 133.

The Queen's Advocate to Earl Russell.—(*Received January* 20.)

Doctors' Commons, January 19, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 16th instant, stating that he was directed by your Lordship to transmit to me a despatch from Her Majesty's Consul at San Domingo,* stating that Mr. Heneken, a British subject, wished to be informed whether his acceptance of the office of Member of the Council of Administration at San Domingo would interfere with his rights as a British subject. That

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* Consul Hood, No. 55, November 20, 1863.

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the despatches to which Mr. Hood refers were also inclosed;* and that Mr. Hammond was to request that I would take these papers into consideration, and report to your Lordship my opinion as to the reply which should be returned to Mr. Heneken in this matter.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I perceive from the Report of my predecessor in office that Mr. Heneken was domiciled in San Domingo so long ago as 1825, though in 1855 he was registered as a British subject.

If he were now, therefore, to become a Member of Council of San Domingo he would be, after thirty-nine years of domicil, taking upon himself an important share in the duties of administering the Government of that Colony.

It would, therefore, be almost as strong a case of an individual identifying himself and his fortunes with the territory, the interests, and the concerns of a foreign country as can, without taking out foreign letters of naturalization, well be supposed.

In this state of circumstances I think Mr. Heneken should be apprised by Her Majesty's Government, that although he would not, by the acceptance of this office, lose any rights in British territory which are now incident to him as one of Her Majesty's subjects, he would place himself in a position in which he could not rely upon obtaining the official interference on his behalf of Her Majesty's Government in any matter unconnected with property or rights in British territory, which might arise either between himself and the Government of Spain, or between himself, acting as a member of the Spanish Government, and any third State.

It appears to me that this would be the proper and safe answer to send to Mr. Heneken's application.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 134.

The Law Officers of the Crown to Earl Russell.—(Received January 27.)

Lincoln's Inn, January 26, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 13th instant, stating that with reference to our Report of the 21st of October, 1861, he was directed by your Lordship to transmit to us the despatches inclosed from Her Majesty's Consul at San Domingo,† calling attention to the claims which have been put forward by various parties who state that they have suffered losses by the proceedings of the Spanish authorities, and the troops acting under their orders, engaged in suppressing the present insurrection against the Spanish Government in San Domingo; and to request that we would take these papers into our consideration, and report to your Lordship our opinion as to the course which should be taken by Her Majesty's Government in this matter.

In obedience to your Lordship's commands we have taken these papers into our consideration,‡ and have the honour to report—

That with respect to all these claims, we understand the circumstances in which the loss of property has happened, to be the same, namely, that the losses were the consequence of the general military operations of the Spanish forces against the insurgents in San Domingo, not the consequence of any special acts of military insubordination or excess, unnecessary for the general purposes of the war, and brought home to particular persons guilty of such acts.

We are of opinion that all foreign subjects domiciled in a place or city, which suffers during the time of war from the necessary operations of war, are to be considered, with respect to any damage which their property may receive, as on the same footing, and no other, with the native subjects in the same city or place, and that they have no other claim for indemnity than those subjects may have. Whether, therefore, they have any claim at all or not, must depend upon the public and constitutional law of the country. Such losses do not confer any title on the Government of the foreign subject to demand compensation or indemnity for his losses so incurred upon principles of international law. Upon this view of the subject Her Majesty's Government has, we believe, been always advised to act in cases similar to the present, and it is, we humbly think, quite consistent with the opinion which the Law Officers expressed in the Report to which we have been referred.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 135.

The Law Officers of the Crown to Earl Russell.—(Received March 17.)

Lincoln's Inn, March 17, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 4th instant, stating that with reference to the Reports of Her Majesty's Advocate-General of the 17th November, 1863, and 1st January, 1864, therewith inclosed, he was directed by your Lordship to transmit to us the following correspondence:—

1. Drafts of two despatches which your Lordship has addressed to Her Majesty's Minister at Madrid,† regarding the proposed blockade at San Domingo;

2. A despatch from Sir John Crampton, reporting the result of his communications with the Spanish Government on the subject.

And, 3rdly, two despatches from Her Majesty's Consul at San Domingo (Nos. 2 and 9), reporting the capture by a Spanish cruizer of the British vessel "Julia," and the subsequent condemnation of that vessel.

And Mr. Hammond was to request that we would take these papers into our consideration, and report to your Lordship our opinion as to the legality of the proceedings in the case of the vessel "Julia," and as to the steps which should be taken in the matter.

In obedience to your Lordship's commands, we have taken these papers into consideration, and have the honour to report—

That as far as we are able to understand the sentence of the Naval Court at San Domingo, the proceedings as yet taken against the "Julia" have been entirely *ex parte*, and of a preliminary character; and we infer that the trial itself was to take place after a lapse of fifteen days, according to the words of the sentence "that the substantiation and termination of the *contradictory trial* ('*del juicio contradictorio*,' that is, we presume, '*in foro contradictorio*,' where both parties will or may be heard) shall be proceeded with during the fifteen days fixed by ordinance, which shall commence from the publication of this sentence."

It was, therefore, the business of the owners of the "Julia" to take the proper steps for being heard against the sentence of condemnation, if they had cause to show against it.

The preliminary sentence appears to have proceeded upon various grounds—breach of blockade, assisting the rebels, and smuggling.

With respect to the breach of blockade, we have to observe that in the despatch of Sir John Crampton, dated Madrid, January 28, 1864, and which is subsequent in date to the Reports of the Queen's Advocate, it appears that the Spanish Minister assured him, in answer to his remonstrance as to the inefficiency, *de facto*, of the blockade "that positive orders had then lately been given to cause the blockade to be of the most effective nature;" that it was at that moment maintained by "twenty-three vessels of war," and "that this number could be increased." These papers were not submitted to the Queen's Advocate. Assuming the correctness of this statement, the previous inefficiency of the blockade complained of by Mr. Consul Hood would have ceased, and a *de facto*, as well as a *de jure*, blockade would apparently have been established. On the other hand, it is to be borne in mind that the capture of the "Julia" took place on the 31st of December or 1st of January last; that Consul Hood in his letter of the 18th January reports that no *de facto* blockade had been established down to that time; and refers, in confirmation of that statement, to information given to him on the 31st December by the chief naval authority at San Domingo, and that the account of the transaction given in the newspaper "La Razon" of the 2nd January seems to be inconsistent with the supposition that the vessel which made the capture was then employed in any blockading service.

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* Consul Schomburgk, No. 49, July 3, 1855; No. 55, November 20, 1855; to Queen's Advocate, August 20, 1855; Queen's Advocate, September 4, 1855; to Consul Hood, No. 9, 1861; Sir J. Crampton, No. 117, October 20, 1861.

† Consul Hood, Nos. 44, 45, 46, and 47; Consular, No. 29.

‡ Also Mr. Hammond's letter of the 16th January, respecting Mr. Heneken's claim.

* To Sir J. Crampton, No. 79, 1863; No. 4, 1864.

1864

According to the terms of the Proclamation of the blockade, the only vessels to be seized or treated as enemies' property were those "bringing cargoes of arms and ammunition or effects which might in any manner contribute to foment the rebellion."

The sentence charges the "Julia" with the conveyance of articles of "war and provisions destined for the insurgents," and asserts that while she was discharging her cargo and taking on board another at Monte Christi, the enemy, with whom she was then in direct communication, and with whom she must be considered as represented to have been acting at the time, opened fire upon the Spanish steamer "Don Antonio de Ulloa," which returned the fire; that the "Julia" then was deserted by her crew, and never hoisted any flag during the whole affair. If these averments are true, the vessel may be liable to be lawfully condemned.

If these averments are capable of contradiction, this defence should be set up in the proper manner in the Prize Court, which would be bound, at the same time, to consider the question of the efficiency or inefficiency of the blockade.

In these circumstances we think that Consul Hood should be instructed to watch the case; but we are clearly of opinion that there is at present no ground for the interference of Her Majesty's Government, nor, indeed, does it appear to have been invoked by the owners of the "Julia" or her cargo.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 136.

The Law Officers of the Crown to Earl Russell.—(*Received March* 23.)

Lincoln's Inn, March 23, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 17th instant, stating that with reference to his letter of the 4th instant respecting the case of the "Julia," he was directed by your Lordship to inclose for our consideration a memorial and protest dated the 2nd ultimo, from Messrs. Remouard and Bode, the owners of that vessel.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That these additional papers do not appear to us to call for any alteration in the Report which we have already had the honour to submit to your Lordship upon this subject. The memorialists should be apprised that they must protect their interests, in the first instance at all events, before the Spanish Prize Court.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 137.

The Law Officers of the Crown to Earl Russell.—(*Received April* 12.)

Lincoln's Inn, April 11, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 21st ultimo, stating that with reference to our Report of the 17th ultimo respecting the case of the "Julia," he was directed by your Lordship to transmit to us a despatch from Her Majesty's Chargé d'Affaires in Hayti (No. 7), reporting the capture by Spanish cruizers of the English schooners "Rapid" and "Darrill;" and to request that we would take Mr. St. John's despatch into consideration, and report to your Lordship our views as to the course which should be taken in these cases.

We are also honoured with Mr. Layard's letter of the 2nd instant, stating that with reference to Mr. Hammond's letter of the 21st ultimo he was directed by your Lordship to transmit to us a despatch from Mr. Consul Hood (No. 15), reporting the capture of the British schooner "Rapid" and sale of her cargo, and to request that we would report to your Lordship our opinion as to the course which should be taken in this case.

In obedience to your Lordship's commands we have considered these cases, and have the honour to report—

That assuming the statement of the crew of the "Rapid" to be correct, they were certainly treated in a very illegal manner. That statement is manifestly at variance with the representation which seems to have reached Consul Hood, that the crew of this vessel "deserted her immediately before capture;" and which, we presume, was founded on reports made by the captors to excuse their own conduct. The sale, also, of the cargo of this ship, in the absence of her crew and before adjudication, requires to be explained.

We think that directions should be sent to Her Majesty's Consul at Port-au-Prince to ascertain, as far as possible, the true facts relative to both these cases, and to make a Report to your Lordship thereupon. He should also be instructed to assist the owners of the "Rapid" and the "Darrill," if they deny the lawfulness of the capture, in obtaining justice from the proper Spanish Prize Court.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 138.

The Law Officers of the Crown to Earl Russell.—(*Received April* 28.)

Lincoln's Inn, April 28, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 16th April instant, stating that he was directed to transmit to us a despatch from Her Majesty's Consul at San Domingo (No. 22), respecting the condemnation of the British schooner "Rapid," and to request that we would take Mr. Hood's despatch into consideration, and report to your Lordship whether we adhere to the opinion in our letter of the 11th instant on this case, which was therewith returned, together with the papers therein referred to.*

In obedience to your Lordship's commands we have the honour to report—

That taking into consideration the despatch of Mr. Spenser St. John from Port-au-Prince, we think that your Lordship is sufficiently in possession of the facts to call for an explanation from the proper Spanish authorities of the treatment of the crew of the "Rapid," which appears to have been grossly illegal and cruel.

With regard to the condemnation of the "Rapid," we think that Mr. Hood's observations upon the apparent vagueness and insufficiency of the grounds of the sentence (as stated on the face of the Decree of the 9th March) are well founded, but we cannot understand why the ship has not been defended in the proper manner in the Prize Court; and we think that Mr. Hood should be apprized, without loss of time, that he ought to inform the owners of all British captured vessels that this is the course they must pursue, and if justice is not done to them, either in the First Court or in the Court of Appeal, to complain to Her Majesty's Government; but that if they do not appear and defend their interests before the proper tribunal, it must be presumed that they did not take this course from a conviction that they had no proper defence to offer, and that in such cases Her Majesty's Government cannot be called upon to interfere. It should be observed that Mr. Spenser St. John appears to be of opinion that an efficient blockade of the coast of San Domingo has been constituted by the Spanish naval forces, and to be at variance with Mr. Hood upon this point.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 139.

The Law Officers of the Crown to Earl Russell.—(*Received April* 28.)

Lincoln's Inn, April 28, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 2nd instant, stating that with reference to our Report of the 23rd ultimo, regarding

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* Mr. Hood, No. 15; Mr. St. John, No. 7.

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the condemnation by the authorities of Spain at San Domingo of the British vessel "Julia," he was directed to transmit to us—

1. The draft of an instruction which your Lordship addressed by the last mail to Mr. Hood on the subject (No. 6).

2. Copy of a notification inserted in the "London Gazette" regarding the Spanish notifications of blockade.

3. A despatch from Mr. Hood (No. 16), reporting that the "Julia" has been finally condemned as a lawful prize.

4. A letter (March 30), from the Admiralty, from which it would appear that even as late as the 8th ultimo the blockade was not effective.

And Mr. Layard was pleased to request that we would take these papers into consideration, and report to your Lordship our opinion on the present state of the case.

The previous correspondence was also inclosed for our information.

We are also honoured with Mr. Layard's letter dated the 16th instant, transmitting two further despatches from Her Majesty's Consul at San Domingo respecting this case.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we think the communication of General Vargas to Mr. Consul Hood of the 7th February, 1864 (No. 2 in Mr. Hood's No. 16), did indicate, with sufficient clearness, that the Prize Court, however constituted (it is to be observed that the word "asesor" is rather loosely translated as "Counsel," instead of Judge"), would entertain any application on behalf of the owners of the "Julia," for the restoration of the vessel and cargo.

We observe that nothing is said by the Consul, or by any one interested on behalf of the "Julia," on the subject to which attention was drawn in your Lordship's despatch, as to the alleged contraband character of the cargo with which the "Julia" was said to be supplying the enemy. It is, therefore, not impossible that the owners of the "Julia" might have been aware that they had no valid defence to offer in the Prize Court. The master, whose duty it was to put in a claim on behalf of his owners, was (we presume) at or within reach of St. Domingo; and it seems extraordinary, if there was a good defence, that the final judgment should be suffered to pass by default.

We can hardly assume that all the proceedings, after the capture, took place entirely without the knowledge, or opportunity of knowledge, of the owners, or of any one capable of protecting their interests. If, however, they allege that they have a valid defence, and that they were honestly ignorant that any opportunity was offered to them (and had therefore, practically, no opportunity) of putting forward that defence in the Prize Court, we think it would be right that Her Majesty's Government should make an application to the proper Spanish authorities, to permit the owners still to be heard, either by a re-opening of the case in the Prize Court which condemned the vessel, or admitting them to be heard before a Court of Appeal.

We desire to add that it would appear by the present papers that down to the 8th of March no blockade, considered by Her Majesty's naval officers to be effective, had been established and maintained by the Spanish Government.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 140.

The Queen's Advocate to Earl Russell.—(Received May 27.)

My Lord, *Doctors' Commons, May* 26, 1864.

I AM honoured with your Lordship's commands signified in Mr. Murray's letter of the 23rd instant, stating that he was directed to transmit to me a letter, dated the 11th instant, from the Colonial Office, inclosing a copy of a petition from Mrs. Good for compensation for the death of her son, who was killed by a shot from the Spanish soldiery whilst in the house of the British Vice-Consul at Puerto Plata; and to request that I would take these papers into consideration, and report to your Lordship my opinion as to the course which should be taken in this case.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I humbly advise your Lordship to require from Mr. Vice-Consul Cheesman a careful report upon all the circumstances of this unfortunate case. In the absence of

such a report, I cannot safely advise your Lordship as to whether the case is or is not one which would justify an application to the Spanish Government for compensation.

In the report Mr. Vice-Consul Cheesman would, I hope, state, among other things, whether the house was known to be the Vice-Consul's; whether any arms or outward insignia represented it to be such; whether anybody else was injured in the house; what steps the Vice-Consul took in the matter; and if he took no steps, why he did not; and whether, in his opinion, the shots were accidentally fired into his house, or with the intention of reaching somebody therein.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 141.

The Law Officers of the Crown to Earl Russell.—(Received June .)

My Lord, *Lincoln's Inn, May* 31, 1864.

WE are honoured with your Lordship's commands signified in Mr. Murray's letter of the 23rd instant, stating that he was directed by your Lordship to transmit to us a letter dated the 20th May, and its inclosures, from the Colonial Office, respecting an outrage committed by the crew of a Spanish ship of a war upon the British schooner "R. W. Darrell" at Puerto Cabello, San Domingo, and submitting a claim for compensation on behalf of the owner of the vessel; and to request that we would take these papers into our consideration, and favour your Lordship with our opinion whether Her Majesty's Government should interfere in this case, and if so, to what extent.

Mr. Murray was also pleased to state that Mr. St. John reported the capture of the "Darrell" in his despatch No. 7 of the 23rd of February, which was transmitted to us for our opinion in Mr. Hammond's letter of the 20th of March last, and again referred to us by Mr. Murray on the 17th instant, together with other papers respecting the case of the "Rapid."

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we are of opinion that Her Majesty's Government ought to interfere in this case.

There appears to us to be sufficient *primâ facie* evidence of gross misconduct on the part of the Spanish man-of-war to warrant Her Majesty's Government in laying before the proper Spanish authorities the complaint of Mr. Barclay, and requiring an explanation of the outrage, accompanied by the intimation that if the material facts stated in that complaint cannot be substantially controverted, Her Majesty's Government have no doubt that the Spanish Government will admit the justice of making speedy and adequate compensation to Mr. Barclay.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 142.

The Law Officers of the Crown to Earl Russell.—(Received June 1.)

My Lord, *Lincoln's Inn, May* 31, 1864.

WE are honoured with your Lordship's commands signified in Mr. Murray's letter of the 17th instant, stating that he was directed by your Lordship to transmit to us copies of the instructions which were addressed to Her Majesty's Minister at Madrid and to the British Vice-Consul at San Domingo,* in conformity with our Report of the 28th ultimo, respecting the condemnation by the Spanish authorities of the British schooner "Rapid."

Mr. Murray was also pleased to state that he was directed by your Lordship also to transmit, together with the previous correspondence in this case,† a letter from the Colonial Office‡ containing a Report from the President of Turk's Island respecting the

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* To Sir J. Crampton, No. 50, May 2; to Mr. Hood, No. 2, April 30, 1864.

† Law Officers, April 11 and 28; Mr. Hood, Nos. 15 and 22; Mr. St. John, No. 7; Admiralty, March 30, 1864.

‡ Colonial Office, May 12, 1864.

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seizure of the vessel, and to request that we would take the papers inclosed into our consideration, and favour your Lordship with any further observations we might have to offer thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That the additional papers in this case now submitted to us do not in our opinion render it unnecessary that a full report should be obtained from Mr. Hood (as we have already had the honour to advise in our former Reports) of all the circumstances of the case, both at the time of and subsequent to the capture. In the absence of this information we can only refer to the views which we have expressed in our Reports of the 11th and 28th of April last, and repeat the opinion which we have formed (so far as from the materials before us we have been able to form any) that the capture of the "Rapid" was illegal and unjustifiable.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 143.

The Law Officers of the Crown to Earl Russell.—(*Received August* 22.)

Lincoln's Inn, August 22, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Murray's letter of the 21st ultimo, stating that with reference to our Report of the 17th of June he was directed by your Lordship to transmit to us the instructions which your Lordship addressed to Her Majesty's Minister at Madrid (Nos. 74 and 75) regarding the cases of vessels seized and of British subjects detained by the Spanish authorities in San Domingo, and also respecting the blockade established by the Spanish naval forces.

And also a letter and its inclosures from the Colonial Office, together with despatches lately received from Her Majesty's Minister at Madrid, from Mr. Vice-Consul Leon, and from Her Majesty's Chargé d'Affaires in Hayti, containing details on these subjects; and to request that we would report to your Lordship any further suggestions which we might have to offer upon this matter.

We are also honoured with your Lordship's commands signified in Mr. Layard's letters of the 30th ultimo and of the 2nd instant transmitting further papers upon this matter.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we now learn, for the first time, from your Lordship's despatch of the 22nd June, 1864, No. 76, to Sir John Crampton, and Mr. Cardwell's letter to Mr. Hammond dated 16th June, 1864, that on receiving information in February last of the then reported intention of the Dominican insurgents to issue letters of marque, your Lordship made a communication to the Lords of the Admiralty to the effect "that the Dominican insurgents could not be admitted to belligerent rights, and that their letters of marque could not be recognized."

This fact (which was unknown to us when we made our Report of the 17th June last) explains the view taken by Admiral Hope and the Attorney-General of Jamaica that the ordinary belligerent rights of visit, search, and capture for the purpose of enforcing the blockade of ports in possession of an enemy, and preventing the introduction of articles contraband of war into those ports, ought not to be conceded to Spain, as against British vessels, beyond the limits of the territorial waters belonging to Spain or to the coasts in the possession of the insurgents.

If we had understood at that time that this view was founded on any positive declaration of your Lordship to the above effect, and not, as we supposed, upon the mere absence of any formal recognition by Her Majesty's Government of a state of war as existing between Spain and the insurgent Dominicans, it would have been due both to your Lordship and to the Admiral and the Attorney-General of Jamaica that we should have then submitted the remarks which we now proceed to offer.

It is not possible that belligerent rights can be lawfully exercised against neutrals by one of two contending parties without entitling the other party also to exercise similar rights. The inference, therefore, drawn by the Attorney-General of Jamaica and Admiral Hope from your Lordship's refusal to recognize the Dominican insurgents as entitled to belligerent rights, viz., that those rights ought not to be conceded to either party in this contest, was logically correct.

But the question whether a state of war does or does not exist between insurgents holding possession of a particular territory and a Government claiming their allegiance and attempting to subdue them is one of fact quite as much as of law; and if the facts are such as really to constitute a state of war between the contending parties, according to the law of nations, it is not, we think, competent by that law to any neutral Power to withdraw its ships and subjects upon the high seas from the operation of the ordinary laws incident to that state of things merely by declining to acknowledge its existence.

Applying these principles to the present contest between Spain and the Dominican insurgents, it appeared and still appears to us that there were adequate grounds for recognizing the existence of a state of war between these parties, and for regarding the disputed territory as under the *de facto* authority of the insurgents, and not of the Spanish Government. When the Spanish Government in the autumn of last year announced to neutral Governments their intention to put the Dominican coast under blockade, they virtually asserted by that very act the existence of such a state of war; and, while claiming its rights, they bound themselves to fulfil its obligations. A blockade, as we observed in our Report of the 17th of June, cannot exist without a war. Her Majesty's Government in the course of the subsequent correspondence never disputed the right of the Spanish Government to establish and maintain such a blockade, but only insisted that it must be a real and effective and not a mere paper blockade. When the Spanish Government had given sufficient assurances (whether they were fulfilled in fact or not is another question) that an adequate force was actually employed in maintaining that blockade, then, and not till then, a public notification to that effect was inserted in the "London Gazette." But all this was nugatory, and merely misleading, if Her Majesty's Government did not intend to recognize the existence of any state of war between the contending parties. If nothing more was meant or understood than that the Government of Spain prohibited and would prevent by force the entrance of any neutral vessels into certain waters belonging to her own territory, and recognized by Her Majesty's Government as being still *de facto* and *de jure* within her municipal jurisdiction, the use of the term "blockade" was improper; the notification in the "Gazette" was improper; the establishment or maintenance of a *de facto* real blockade by any naval force whatever was wholly unnecessary; and it would, of course, follow that any seizures of vessels, if made within the interdicted waters, would be cognizable not by Prize Courts nor according to the rules of prize law, but according to the ordinary rules and principles either of martial law by land or of the municipal law of Spain.

The inconveniences which flow from such an anomalous (not to say absolutely illegal) state of things, as a blockade recognized by a neutral State, which at the same time only recognizes one belligerent, being so very great, we respectfully advise that Her Majesty's Government should not make any distinction as to belligerent rights between the Spanish Government and the Dominician insurgents; but that both should be recognized as equally entitled to exercise those rights as long as circumstances continue from which the continued existence of a state of war between them may be properly inferred.

In connexion with this subject, we must observe that the acts and language of the Spanish authorities at San Domingo, since the views of Admiral Hope were communicated to them, are not entirely reconcileable with any distinct and consistent view of their own position. While (apparently) acquiescing in the proposed limitation of their rights of search, &c., to the territorial waters of the coast occupied by the insurgents, they advanced the preposterous claim to extend those waters to a distance of six miles from the land: a claim which (we need hardly say) Her Majesty's Government cannot, in the absence of any new Convention upon that subject, admit. The old distance of three miles, as we have already more than once had the honour to report, must be adhered to until some new limit is arrived at by international agreement. On the other hand, the proceedings against the captured vessels seem to have been conducted (in form, if not in substance) upon the principles of prize law; and in the majority of the cases of captured British vessels referred to in the papers before us, the justification of the capture seems to rest essentially upon the existence and maintenance of a legal blockade; as to which, the materials are not even yet sufficient to enable us to form a decisive opinion whether it has been, or is, effectually maintained according to the Declaration of Paris, or not.

Your Lordship's instructions addressed to Her Majesty's Minister at Madrid appear to us to have been proper and judicious. With respect to the particular cases of British ships captured, it does not seem to us that any of them require, at the present time, any further immediate action on the part of Her Majesty's Government. One of them, the "President," has been released: two others, the "Pioneer" and the "Forward," appear

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to have been captured beyond the limits of Spanish or Dominican territorial waters; and the justification of the capture of these vessels probably depends upon the existence of a legal blockade, and of sufficient evidence of an intention to violate it. All the other vessels seems to have been taken within Dominican waters: one of them, the "Julia," seems clearly to have been engaged in supplying the insurgents with contraband of war: the rest appear to be charged only with entrance into blockaded or interdicted ports. The explanations of General Villar (No. 2 in Governor Eyre's despatch No. 47), and the information obtained by Captain Lambert, go far to show that these captures generally were justifiable, if there was a legal blockade.

The principal ground, speaking generally, for complaint and remonstrance arises from the imprisonment (which, as we understand, has now ceased) and the ill-treatment of the crews of these vessels. Sir J. Crampton appears to have distinctly announced to the Spanish authorities that Her Majesty's Government will not allow British subjects taken on board vessels seized for breach of blockade to be either imprisoned or ill-treated. It may be added in any further communication, that those of the crew who are and ought to be examined by the captors as necessary witnesses, may be detained for the purpose of this examination; but not put in irons, imprisoned, or treated in any way as prisoners of war.

The particular case of the unfortunate man William Abbot calls for the most stringent investigation; and if it be true that he was shot in the barbarous and illegal way described in these papers, the person or persons who caused his execution ought to be tried without delay for wilful murder.

This matter appears to have been properly pressed upon the Spanish Government by Sir J. Crampton, whose demand does not, at present, appear to have received any satisfactory answer.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 144.

The Law Officers of the Crown to Earl Russell.—(*Received August* 30.)

Lincoln's Inn, August 29, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 15th of August instant, stating that with reference to the letters from the Foreign Office of the 21st and 30th ultimo and the 2nd instant, regarding the questions as to the blockade of San Domingo and the captnres of British vessels by Spanish cruizers, he was directed by your Lordship to transmit to us two letters and their inclosures from the Colonial Office, containing further information upon these questions,* together with a despatch and its inclosures from Her Majesty's Minister at Madrid† containing the reply of the Spanish Government to his representations regarding the capture of the "Rapid;" and to request that we would take these papers into our consideration, together with those then before us on the subject, and favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we have already reported on the subject of the several references of the 21st and 30th ultimo and the 2nd instant.

That we assume that the extracts from the log-book of the "Rapid" are accurately given in Señor Pacheco's inclosure, and if this be so there can be no doubt that the "Rapid" was actively employed in the cause of the insurgents, and had on board, to use the language of the petition preferred by the Captain to the Insurgent Government, "Government property of the most essential and required class for the continuation of this war," and that "this vessel was freighted in the Turk's Islands for the express service of the Government;" nor can there be any reasonable doubt that Señor Pacheco is right in saying that a false representation has been made to Her Majesty's Government as to the conduct of the Spanish captor towards the crew and property of the "Rapid."

That with respect to the "President," she would be entitled to proper damages for her detention (which does not appear to be refused), as she was captured without reasonable cause, not because she was captured out of the territorial waters.

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* Colonial Office, August 10, 1864.

† Sir J. Crampton, No. 198, August 4, 1864.

That with respect to the other vessels (one of which, the "Forward," it appears to be admitted was good prize, if there was a legal blockade) and their crews, we have to observe that it is impossible to arrive at any satisfactory conclusion from the papers before us. That the case of the "Rapid" naturally inclines us to look with grave suspicions upon these statements; and that we cannot help surmising that most, if not all, of them will be found upon inquiry to have been engaged in furnishing provisions or articles contraband of war to the insurgents. At all events their course is, or ought to have been, to defend themselves before the Prize Court, and if they had been improperly treated by a denial of justice in that Court, to have made a specific complaint of such ill-treatment, or such denial, to Her Majesty's Government.

With our present information we can only advise your Lordship that the proper authorities at Jamaica and elsewhere should be directed to apprize British owners that as Her Majesty's Government has recognized the Spanish right of blockade, if their vessels are seized, they must appear in the Prize Courts, and seek for justice in the first instance before these lawful tribunals. It is hardly necessary to add, after our former Reports, that the Government notice issued by the Colonial Secretary of Grand Turk Island on the 14th June last is calculated to have a misleading effect, which requires to be counteracted by some further public notice.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 145.

The Queen's Advocate to Earl Russell.—(*Received September* 9.)

Doctors' Commons, September 7, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 30th ultimo, stating that he was directed by your Lordship to transmit to me a despatch from Her Majesty's Chargé d'Affaires in Hayti (No. 25), regarding the claim of Messrs. Levy and Tweedy in connection with some investments in the Haytian funds; and to request that I would take the same into consideration, and report to your Lordship my opinion as to the answer which should be returned to Mr. St. John.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I think the acceptance by Messrs. Levy and Tweedy of the sums offered to them, without any protest on their part, does interpose a serious obstacle to insisting, as a matter of right, that they should now be paid off at par. Nevertheless their demand is so clearly consistent with equity and with the usual practice of States when they change the interest on their loans, that I think Mr. Spenser St. John should be instructed to press the claim of these gentlemen upon the Haytian Government; and with respect to the language of the Act of November 1846, it appears to me that the two positions of Mr. Spenser St. John, viz., (1) that the Act *imports* that the debt shall be paid off at par; (2) that the gourde at par means the equivalent of the Spanish dollar—are perfectly correct.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 146.

The Law Officers of the Crown to Earl Russell.—(*Received September* 9.)

Lincoln's Inn, September 8, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 30th ultimo, stating that with reference to our Reports of the 22nd and 29th ultimo, he was directed by your Lordship to transmit to us a letter from the Colonial Office, communicating the draft of a Proclamation regarding the San Domingo blockade which the Governor of Jamaica proposed to issue on the 25th of July; and to

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request that we would report to your Lordship whether we concur in the terms of this Proclamation.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That though the Proclamation is not drawn precisely as we should have suggested, nevertheless, as it sufficiently apprises Her Majesty's subjects of the existence of a blockade of certain ports of the coast, we do not advise that any alteration be now made therein.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 147.

The Law Officers of the Crown to Earl Russell.—(*Rsceived November* 14.)

Lincoln's Inn, November 14, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 1st instant, stating that with reference to his letter of the 26th ultimo, and to our previous Reports upon the case of the "President," he was directed by your Lordship to transmit to us a letter dated the 25th ultimo, and its inclosures, from the Colonial Office, reporting that the vessel and crew have been released in consequence of the Spanish Prize Court at San Domingo having declared her an unlawful prize, and stating the claims which have since been made by Mr. Hinson the owner, and by Mr. Ambroise the charterer of the "President," for her illegal seizure, as well as for the imprisonment of Mr. Ambroise and the crew at Porto Plata; and to request that we would take these papers into our consideration, and favour your Lordship with our opinion whether Her Majesty's Government should demand compensation from the Spanish Government in this case, and if so, whether the amount of the claims, as stated by these gentlemen, is fair and just.

In obedience to your Lordship's command we have taken these papers into our consideration, and have the honour to report—

That we are of opinion that the claims for compensation by Mr. Hinson the owner, on account of the illegality of the seizure of his vessel, and by Mr. Ambroise on account of his illegal imprisonment (but not on account of the illegal seizure), are well founded, and ought to receive the support of Her Majesty's Government. With respect to the former claim, it appears to us, as far as we can judge from the papers before us, that there was nothing in the cargo, nor in the ship's papers, which warranted the original seizure of this vessel upon the high seas; and further, that the delay (regard being had to the character and circumstances of this war) of the interval between the 1st of May and 1st of August, before sentence was given in this case, was an additional grievance, to which the neutral vessel ought not to have been subjected.

We are unable to form a correct opinion as to whether the estimate by Mr. Hinson of the damage which he has sustained be accurate or not. It would appear to us to be reasonable; but probably it would be proper that it should be submitted to the arbitration of merchants, aided by the Consul at San Domingo.

With respect to Mr. Ambroise's claim, his imprisonment at all was a violation of neutral rights, and his imprisonment for two months in a gaol, with common felons, was an outrage for which we think he is fully entitled to such redress as pecuniary compensation can afford.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 148.

The Law Officers of the Crown to Earl Russell.—(*Received November* 23.)

Lincoln's Inn, November 22, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 26th October ultimo, stating that he was directed by your Lordship to return to us the papers contained in the accompanying volumes regarding the question of the blockade of San Domingo, and the cases of British vessels seized by Spanish cruizers for breach of that blockade.

Mr. Layard was also pleased to state that we should perceive from the letter from the Admiralty of the 14th October, that Captain Bowyear, who was sent out to inquire on the spot as to the efficiency of the blockade, had reported that it was perfectly efficient; and Her Majesty's Government were therefore anxious to have our advice, generally, as to the course they should now pursue in this matter.

Mr. Layard was further pleased to state that the questions upon which Her Majesty's Government more particularly desired to obtain our opinion, were: whether belligerent rights having been accorded by us to Spain, by our recognition of the blockade, it was consequently necessary that the Dominican insurgents should also be recognized as belligerents; or whether the Sovereign of a country has not the right to stop and seize neutral vessels carrying arms and munitions of war to insurgents who have possession of a part of the sea-coast; and if the Sovereign has such a right, whether he may exercise it beyond three miles from the coast.

Mr. Layard was further pleased to add that Her Majesty's Government were unwilling to recognize the Dominican insurgents as belligerents, if it could be avoided consistently with international law, regard being had to the fact that they had already recognized the Spanish blockade, while they have denied to the insurgents the right of issuing letters of marque; and that the question as to the seizures of British vessels would depend upon our opinion upon the main question as to the blockade; but Her Majesty's Government would be glad to be furnished in the first instance with our opinion as to the necessity of recognizing the Dominican insurgents as belligerents.

Mr. Layard was further pleased to add that Mr. Canning stated in the House of Commons that he considered the recognition of the Greek insurgents as belligerents as a question of fact.

That it would manifestly be inconvenient to recognize any partial insurrection as conferring on the insurgents the rights of belligerents, and thus entitling them to cover the sea with letters of marque.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That we think Her Majesty's Government cannot, consistently with the principles and practice of international law, refuse to recognize the Dominican insurgents as belligerents, inasmuch as Her Majesty's Government has already accorded to the Spanish Government the rights of a belligerent Power, that is, rights incident, and incident only, to a state of war.

It might, perhaps, have been competent to Her Majesty's Government to have refused, in the first instance, to accord these rights to the Spanish Government, and to have intimated to that Government that it must confine itself during this insurrection to the exercise of its ordinary power and authority over its subjects, and over those subjects of foreign States who came within the limits of its territorial jurisdiction. Her Majesty's Government, however, has not taken this course, but, on the contrary, has recognized the right of that Government to institute a blockade, to visit and search neutral ships on the high seas, and to pass sentences of condemnation against them in a Court of Prize.

With respect to the apprehension entertained by Her Majesty's Government that the Dominican insurgents may exercise their belligerent rights by issuing letters of marque and covering the sea with privateers, we would suggest that it is by no means certain that it would be competent to the insurgents to adopt that mode of carrying on the war.

We incline to the opinion that the insurgents, in this war with their own Government, could exercise no belligerent rights against the neutral which their own Government had formally and by Treaty, or by solemn declaration, previous to the breaking out of the civil war, renounced. Spain is one of those maritime Powers which signed or acceded to the Declaration of Paris, and thereby solemnly obliged herself to abstain from the use of privateers in any future war. We think this obligation would be equally binding upon the insurgents, at least during the present war, and that Her Majesty's Government might properly intimate to them that the neutral State would not permit them to exercise against her that particular belligerent right which their own Government, before the breaking out of this war, had formally abandoned.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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Siam.

No. 149.

The Queen's Advocate to Earl Russell.—(Received December 5.)

Doctors' Commons, December 2, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 28th ultimo, stating that he was directed by your Lordship to transmit to me a letter dated the 23rd ultimo from the India Office, covering a complaint received through the Government of India from Mr. C. O. Johnstone, a merchant of Moulmein, against the official proceedings of Sir R. Schomburgk, Her Majesty's Consul at Bangkok, in the case of Moung Shwe Gan v. The Chief of Chang Mai. That Sir R. Schomburgk's proceedings had been already reported to the Foreign Office in a despatch which, on its arrival, was submitted by your Lordship to the India Office, and which, with the observations of the India Office thereupon, was also submitted to me;* and Mr. Hammond was to request that I would take these papers into consideration, and furnish your Lordship with such observations as I may have to offer thereupon.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That it is not easy, even after a most careful perusal of the various papers relating to this intricate and complicated matter, to arrive at a perfectly satisfactory conclusion either as to the actual facts of the case or as to the conduct of the principal persons concerned in it.

The facts of the case now before me are to be collected both from Sir R. Schomburgk's statement (No. 19 of 29th May), upon the perusal of which Sir Charles Wood expressed a favourable opinion of Sir R. Schomburgk, and also from the printed petition of Mr. Johnstone (Inclosure 2 in India Office letter of 13th November), containing a different version of the matter, which petition, I infer from the other papers in the case, Sir Charles Wood has not seen.

I observe at the outset that Sir R. Schomburgk does not state or suggest that Messrs. Snadden did not *bonâ fide* obtain what they conceived to be a good title from Mr. Lenaine, or that they were at all implicated in the misconduct, rightly or wrongly, charged against him, or that they did not, *bonâ fide*, and for a valuable consideration, convey their rights and interests in these forests of Myne Loongyee, so derived from Mr. Lenaine, to Mr. Johnstone, or that Mr. Johnstone himself has in any way acted improperly in the matter.

The following facts, moreover, appear to me either to be uncontroverted or clear:—

1. That the case of Moung Shwe Gan *v.* Chief Chang Mai, was (as well as that of Moung Oopay *v.* Chang Mai) tried before the proper Siamese authorities at Bangkok; the trial not having been, as I understand, conducted under the provisions of the Order in Council for British jurisdiction in Siam, July 28, 1856 (10 Hertslet, 676).

2. That it was decided (Exhibit K, Printed Petition) in favour of the Chief, that is, practically in favour of Mr. Johnstone, whose title was derived through the Snaddens and Lenaine, from the Chief.

3. That decision was confirmed by the first King of Siam.

4. That Sir R. Schomburgk procured, in the manner about to be stated, the practical reversal of this Judgment; causing it in fact to be in favour of the Plaintiff instead of the Defendant.

It appears that after the decision Sir R. Schomburgk wrote three letters (9th March, 4th April, 21st April, 1864; L, M, N, in Printed Petition), to the King, having for their object to annul this decision.

In the first letter† (L in Printed Petition, No. 2 in despatch of Sir R. Schomburgk, May 29, 1864), he does not state that the Judgment had been actually delivered (though I think it must have been) in Moung Shwe Gan's case adversely to Moung Shwe Gan, but states that this person had proved his case, and ought to have had judgment in his favour, if a false charge of murder had not been suddenly brought against him.

That in the other case, M. Oopay *v.* Chang Mai, an unrighteous judgment had been given which could not be tolerated. That Chang Mai would be detained by the Consul at Bangkok. That there were other British claims against him which would be sent in when, to use Sir R. Schomburgk's own words, "the Judges were willing to decide on those already sent in a proper and judicial manner." That the general conduct of Chang Mai in the government of his important territories was deserving of severe reprehension.

Sir R. Schomburgk adds, "After several days' delay I received what purports to be the Judge's decision on the case. I know for certain that several of the signatures were attached by order, the pseudo Judges being entirely unacquainted with the case, the documents never having been given them to read."

The second letter (M, in printed papers, No. 3 in despatch of Sir R. Schomburgk, May 29, 1864), is an answer to this letter of the King. Sir R. Schomburgk returns, as I understand, to His Majesty the opinion of the Siamese officers, adverse, I presume from the context, to Moung Shwe Gan, with comments, and among other things he writes:—"I trust your Majesty after reading them will be able thoroughly to understand the case, and give such a decision as Her Majesty's Consul shall be able to accept;" that is, a decision in favour of Moung Shwe Gan, and therefore, practically, of course adverse to Mr. Johnstone. He proceeds to say that if justice be not done, he must lay the matter before the Viceroy of India.

Sir R. Schomburgk does not appear to me to controvert the statement of Mr. Johnstone, to the effect that a Judgment was given in favour of the party through whom Mr. Johnstone claims (see page 13 of printed papers, K), which Judgment was at one time confirmed by the King, but of which Judgment Sir R. Schomburgk procured the reversal by his official interference; that is to say, after the sentence had been pronounced, he brought about the arrangement (page 18 of printed papers, O), the practical effect of which was to reverse the Judgment, and to deprive Mr. Johnstone of the advantage which he would otherwise have derived from it. Nor does the averment of Mr. Johnstone (page 3) that this effect was produced partly by causing the withdrawal of other cases pending against the Zimmay Chief, partly by setting that Chief at liberty and allowing him to leave Bangkok, appear to me to be denied by Sir R. Schomburgk. (See his third letter, marked M, page 18 of printed papers.)

The conclusion to which these premises lead me is, that Sir R. Schomburgk believing, it may fairly be presumed, that the sentence of the Siamese Court and Siamese King was unjust, exerted all the influence of his position, and successfully, to annul the sentence, and prevent the operation of it.

It cannot, I think, be denied that such a course of proceeding, however excellent its object, is open to very grave objections; and that *primâ facie* at least, the complaint of the person who has been thus deprived of the verdict which had been given in his favour, is worthy of consideration. It may be that the anomalous, irregular, and corrupt administration of justice by the Siamese authorities justifies this unusual, and otherwise improper, intervention of the British Consul. It may be that such intervention has taken place upon other occasions, and has received the sanction of Her Majesty's Government; but I certainly think, as at present advised, that the representations of the Petitioner to Sir R. Schomburgk (page 4 of printed papers) ought to have received some answer, and that it would be proper that a copy of the petition of Mr. Johnstone should be sent to Sir R. Schomburgk, and that he should be asked to make an answer both to the general averments contained in it, and especially to notice that averment at page 3, which is to the effect, that after the decision had been given by the Siamese authorities in favour of the Defendant, and had been confirmed by the King, Sir R. Schomburgk, by the exertion of his official influence, caused that judgment to be set aside.

There is, of course, a technical answer which might be given to Mr. Johnstone, namely, that he must seek his legal remedy against Moung Shwe Gan, or against Messrs. Snadden; but looking to the peculiar circumstances of the case, I think it would not be proper so to deal with the petition of Mr. Johnstone. That gentleman says (page 3 of printed petition), "Your Petitioner, on hearing while in Bangkok of the above agreement having been made while he had the right to said property, and after successfully defending the foregoing claims (of nearly four lacs of rupees), at once had an interview with the Chief, who stated that he had done so, and could not allow your Petitioner to work further in the Myne Loongyee forests; upon which he (Petitioner) addressed a letter to His Majesty, pointing out the hardship of his case, and the certain claims and embarrassments that must arise in consequence of the extraordinary and unexpected

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* Sir R. Schomburgk, No. 19; to India Office, July 16; India Office, August 2; to Mr. Knox, No. 40.

† Sir R. Schomburgk says, in his despatch of May 29, 1864:—"Mr. Knox being of opinion that his Excellency was determined that justice should not be done in the matter, left, and reported his opinion to me. Letter No. 2 was then written.

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position in which he was thus placed. The only satisfaction that your Petitioner could obtain was to the effect that a verdict had been given in each case in favour of his client, the Chief of Zimmay; that these had been again approved and confirmed by the King, and that any subsequent or private compromise between Shwe Gan and the Chief for the Myne Loongyee forests was without the sanction of the Siamese Government, but resulting from the pressure placed upon him by the British Consul, and under which he was obliged to succumb to obtain his liberty from the arrest under which he had been placed." These allegations appear to me to require an answer from Sir R. Schomburgk.

It appears to me also that the Exhibits P and Q (page 19 of printed petition), whereby it would seem that Captain Burn had authorized certain sums of money to be given to Prince Wongsa (in whose palace the proceedings were carried on, and who appears to have acted as the chief Judge of the Court), on condition of his expediting the proceedings against the Chief of Chang Mai, should be brought to the attention of Captain Burn, in order that an explanation may be afforded respecting them.

I have, &c.
(Signed) ROBERT PHILLIMORE.

Spain.

No. 150.

The Queen's Advocate to Earl Russell.—(Received March 22.)

Doctors' Commons, March 22, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 15th ultimo, stating that with reference to my Report of the 24th of August last, therewith returned to me, he was directed by your Lordship to transmit to me a despatch from Sir John Crampton,* conveying the reply which he has received from the Spanish Government to his inquiry as to the reasons why an indemnity has not been awarded to the owners of the "Criticado;" and was to request that I would take this paper into consideration, together with the previous correspondence forwarded therewith for my convenience, and that I would report to your Lordship my opinion whether the circumstances of the case are such as to call for the further intervention of Her Majesty's Government.

In obedience to your Lordship's commands I have taken the reply of the Spanish Government into consideration, and have the honour to report—

That it appears no demand was made for costs and damages by the owners of the "Criticado" before the proper Court, and no appeal prosecuted from the sentence. On these grounds, as well as those mentioned in my last Report, I do not advise Her Majesty's Government to take any further steps in this matter.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 151.

The Queen's Advocate to Earl Russell.—(Received April 7.)

Doctors' Commons, April 6, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 2nd instant, stating that he was directed by your Lordship to transmit to me two despatches from Her Majesty's Minister at Madrid (Nos. 90 and 92) containing correspondence connected with a complaint made to Sir J. Crampton by his American colleague regarding the imprisonment at Cadiz of certain American seamen who are stated to have shipped at New York on board the British vessel "Continental;" and

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* To Sir J. Crampton, No. 79, 1863; Sir J. Crampton, No. 80, 1864.

Mr. Layard was to request that I would report to your Lordship my opinion as to the instructions which should be addressed to Sir John Crampton in this matter.

In obedience to your Lordship's commands I have taken this matter into consideration, and have the honour to report—

That Sir John Crampton should be instructed that Her Majesty's Consul at Cadiz appears to have taken a perfectly correct view of his duty in this matter, and that the seamen must remain in prison until the term of their sentence has elapsed.

The discomforts of the imprisonment, however great they may be, have been most wilfully incurred by these men, who seem to have been very humanely treated by the master and the Consul, and to have made knowingly a false representation of their case to the American Minister.

I have, &c.
(Signed) ROBERT PHILLIMORE.

P.S.—I presume, of course, that the proceedings against these seamen were duly taken under the provisions of the Merchant Shipping Act.

R. P.

No. 152.

The Queen's Advocate to Earl Russell.—(Received August 18.)

Doctors' Commons, August 17, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 15th instant, stating that he was directed by your Lordship to transmit to me, with reference to the Report of the Queen's Advocate of the 1st August, 1861, together with the previous papers, a despatch, and its inclosures, from Her Majesty's Minister at Madrid (No. 188), containing the reply of the Spanish Government to the representations that have been addressed to them regarding the long-pending case of the "Azorian;" and Mr. Layard was pleased to request that I would take these papers into consideration, and furnish your Lordship with my opinion as to the course which Her Majesty's Government should now pursue in this case.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That it seems to be difficult to contend in opposition to the opinion of Señor Arguelles (July 17, 1860), the Legal Adviser of Her Majesty's Legation in Spain, that the act of sending the "Azorian" to Vigo was not in accordance with the letter of the Spanish Sanitary Laws; and in effect the answer of Señor Don Pacheco (July 21, 1864, Inclosure in No. 188) is in accordance with that opinion. It is not the less manifest that the law has been enforced with great and unreasonable severity, though I think there is no evidence of any malicious intention on the part of the authorities of the Teneriffe Board.

I have the honour, however, entirely to agree with the opinion expressed by his Excellency Sir J. Crampton in his letter of the 25th July last; I think that the severe losses to which the "Azorian" has been subjected, and which it is admitted by the Spanish Government were wholly undeserved on her part, resulted entirely from the defective measures of the Spanish Government, which, on the one hand, enforced the quarantine of this ship at Santa Cruz by the most rigorous and technical application of an inconvenient and badly constructed law, and, on the other hand, by the absence of adequate provisions, rendered it impossible that the quarantine should be performed at the place where it was enforced.

I therefore have the honour to advise your Lordship that a further application should be made to the Spanish Government to obtain some indemnity for the injury which the defective state of their law *alone* has inflicted upon the owners of the "Azorian." It appears to me that the further application should be founded on this ground, and accompanied by a strong expression of confident hope that such an appeal will not be made in vain to the Government of such a country as Spain, between whom and Great Britain the most amicable relations exist.

I have, &c.
(Signed) ROBERT PHILLIMORE.

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No. 153.

The Law Officers of the Crown to Earl Russell.—(Received September 7.)

Lincoln's Inn, September 5, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Murray's letter of the 24th ultimo, stating that with reference to our Report of the 21st July respecting the proceedings of the Acting British Consul at the Havana, in connection with the condemnation and sale of the British vessel "Colorado," he was directed by your Lordship to transmit to us a letter from Messrs. Rothery and Co., requesting, on behalf of the purchaser of that vessel, to be furnished with copies of certain papers connected with the sale; and to request that we would favour your Lordship with our opinion as to the answer which should be returned to this application.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That we are of opinion that the proper answer to send to Messrs. Rothery would be, that your Lordship is advised that you ought to decline to furnish copies of the letters in question; that the Messrs. Rothery must take the usual steps for obtaining whatever documents they may think necessary to put forward for the interest of their client in a Court of Justice; and that it would not be right that the Foreign Office should furnish copies of any letters which may have been officially addressed to it for the purposes of private litigation.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 154.

The Queen's Advocate to Earl Russell.—(Received October 7.)

Doctors' Commons, October 6, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 4th instant, stating that he was directed by your Lordship to transmit to me a despatch from the Acting British Consul at Havana (No. 19, August 6), inclosing copies of a correspondence between the late Mr. Consul-General Crawford and the Captain-General of Cuba, relative to the case of Mr. Walter Goodman, a British subject, who was unjustly arrested and imprisoned on the 25th of June last by the military authorities of St. Jago de Cuba, on which occasion he appears to have been subjected to great indignity; and Mr. Hammond was to request that I would report to your Lordship my opinion whether this is a case which calls for the interference of Her Majesty's Government, and if so, what steps may properly be taken in the matter.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I do not advise your Lordship to demand any pecuniary compensation for the imprisonment to which Mr. Goodman was subjected. It was the result of a *bonâ fide*, though ridiculous error on the part of the Cuban authorities, and it was of very short duration.

It must be remembered that the authorities of the city were at the moment "in a great state of alarm," and "the city virtually in a state of siege" (Mr. Vice-Consul Ramsden's despatch); and that Mr. Goodman was really believed to be making drawings of Morro Castle for hostile or rebel purposes.

The indignities and inconvenience to which he was subjected, owing to what appears to be the normal state of prisons in Cuba, were very distressing, but they were certainly not greater, probably less, than a native Spaniard or Cuban would have undergone.

I think, however, that a remonstrance might properly be made to the Spanish authorities, pointing out the unnecessary indignities to which Mr. Goodman had been exposed, but having for its main object to obtain an order that for the future a British subject, seized upon mere suspicion, should be allowed to communicate directly with Her Majesty's Consul or Vice-Consul, and that in ordinary cases a bail offered by either of those officers should be accepted and the prisoner released.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 155.

The Law Officers of the Crown to Earl Russell.—(Received November 4.)

Lincoln's Inn, November 3, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 14th ultimo, stating that he was directed by your Lordship to transmit to us a letter dated the 12th ultimo, from the Colonial Office, regarding an application made by the Spanish Consul in Jamaica for information respecting the distance to which Her Majesty's Government consider the maritime zone of Her Majesty's Colonial possessions to extend; and to request that we would report to your Lordship our opinion as to the answer which should be returned to the Colonial Office.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we think the answer to be given to the Spanish Cousul by the Governor of Jamaica should be to the following effect:—

That Her Majesty's Government, in accordance with the received usage and understanding of all the Powers of Europe and America, down to the present time, consider Her Majesty's maritime territory to extend in all places under her dominion to the distance of three miles of sea, measured from the nearest point of land. That besides this general limit, Her Majesty's Government also claim as part of her dominion the whole waters of maritime creeks and inlets, and the mouths of rivers included between headlands part of her territory, although such headlands or some parts of the coasts included within them may be more than six miles apart from each other.

That in places where the possession of particular rocks, reefs, or banks, naturally connected with the mainland of any part of Her Majesty's territory, is necessary for the safe occupation and defence of such mainland, Her Majesty's Government also claim the waters inclosed between the mainland and those rocks, reefs, or banks, whatever may be the distance between them and the nearest mainland. That Her Majesty's Government do not claim a right to treat the general maritime boundary of Her Majesty's territory as extended beyond the received distance of three-miles from the shore, by reason of modern improvements in gunnery and in the range of ordnance; nor can they admit the right of other Powers to insist upon such an extension in their own favour. For although it be true that the principle on which the three-mile limit originally became fixed, was the command capable of being exerted from the shore, by means of cannon-shot over the adjacent waters, that limit has, nevertheless, been accepted by the law of nations as certain and definite, and the inconvenience might be serious if there were no such definite conventional limit, and if controversies were liable to arise upon every occasion as to the precise extent to which the progress of new inventions in gunnery, from time to time, might possibly enable artillery placed on the shore to command neighbouring waters.

That it nevertheless appears to Her Majesty's Government to be highly desirable, and, indeed, an object of pressing importance, that the conventional limit of three miles should be definitely enlarged by the mutual consent and agreement of all the great maritime Powers of Europe and America, not, indeed, for all the purposes of national sovereignty, but so far as may be necessary to provide completely and effectually against the contingency of a violation of the shores or territorial waters of any neutral nation in time of war by warlike operations of a belligerent Power, in consequence of the increased range of modern ordnance: and that Her Majesty's Government have some reason to expect the concurrence in this opinion of the Governments of France and the United States, and will be prepared to enter into negotiations with other maritime Powers in order to secure this object.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 156.

The Queen's Advocate to Earl Russell.—(Received December 17.)

Doctors' Commons, December 16, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 15th instant, stating that he was directed by your Lordship to transmit to me a note

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(dated the 26th November), from the Spanish Minister in this country, setting forth the circumstances under which he requests the immediate liberation of the Spanish vessel "Joaquina" detained under embargo at Glasgow. Mr. Layard was also pleased to inclose two letters from the Home Office, containing the explanations which have been called for by Sir G. Grey as to the merits of the case; and to request that I would take these papers into consideration, and report to your Lordship my opinion as to the answer which should be returned to M. Comyn's application.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I presume the Treaty referred to by the Spanish Minister is that of Madrid, 1667, afterwards confirmed by the Treaty of Versailles, 1783 (2 Hertslet, 140). By clause 19 of the Treaty of Madrid, it is provided that "if any controversy happen between merchants and masters of ships, or between masters and mariners, the composing thereof shall be left to the Consul of the nation, but after such manner as he who shall not submit to the arbitrament may appeal to the ordinary justice of the place where he is subject."

It seems to me that these words do not exclude, but admit, the jurisdiction of the British Municipal Court, though recourse ought to be had to the Spanish Consul in the first instance. But if it were otherwise, and the complaint of the Spanish Consul was borne out by a Treaty between Spain and England, the Scotch Statutes cited in the letter of the Sheriff Substitute of Renfrewshire founded *primâ facie* the jurisdiction of the Court. And I agree with the Lord Advocate that the Judges can only take notice of an objection to its jurisdiction when the same is properly pleaded before it. The Spanish Consul appears to have been almost immediately apprised of the proper legal course which he ought to pursue in order to obtain the liberation of the vessel from arrest, but to have persisted in endeavouring to attain this object by private applications to the Court, to which, it was impossible the Court should accede. It appears from the Lord Advocate's letter that even now a plea to the jurisdiction of the Court may be put in; and if the Spanish Consul thinks that he is rightly advised that he has a plea, he should take this course: meanwhile he may obtain the release of the arrested vessel, by giving security for the amount, which is very small, of the decree for wages.

I have, &c.
(Signed) ROBERT PHILLIMORE.

Switzerland.

No. 157.

The Law Officers of the Crown to Earl Russell.—(*Received January* 11.)

Lincoln's Inn, January 11, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 28th ultimo, stating that he was directed by your Lordship to transmit to us the accompanying despatch and its inclosure from Her Majesty's Minister in Switzerland (No. 129), requesting instructions on a point which has arisen with reference to the legality in this country of marriages contracted in Switzerland between parties whose ties of consanguinity would be a bar to their marriage in the United Kingdom, although such marriages are permitted in the Swiss Cantons.

Mr. Hammond was also pleased to state that we should perceive that Admiral Harris is desirous of knowing, first, whether, as stated in the printed inclosure in his despatch, a marriage of the nature referred to has been pronounced null in an English Court of Law; and, secondly, if so, whether the declaration hitherto given by the English Mission at Berne to the Federal authorities, to the effect that a strict conformity in such marriages with the *lex loci* is all that is necessary to entitle them to be recognized in this country, should not be modified.

Mr. Hammond was also pleased to state that he was directed by your Lordship to

request that we would take this case into our consideration, and favour your Lordship with our opinion as to the instructions which should be given to Admiral Harris.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That Admiral Harris should be instructed to the effect that the Law of England does not recognize the validity of marriages of British subjects who are within the prohibited degrees, either by consanguinity or affinity, although the marriage be celebrated according to the *lex loci*, and be valid according to that law. That it would appear to be desirable to specify, in the form of declaration, this exception to the general rule, that marriages celebrated according to the *lex loci* are valid in England, viz., that such general rule applies only when the parties (if either of them be a British subject, owing obedience to British law) are capable, by the law of England, of intermarrying together.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 158.

The Law Officers of the Crown to Earl Russell.—(*Received December* 17.)

Lincoln's Inn, December 15, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 9th instant, stating that he was directed by your Lordship to transmit to us a despatch from Her Majesty's Minister in Switzerland (No. 124), offering a suggestion in regard to the registration of marriages solemnized in that country elsewhere than at the British Mission or Consulate.

And that this despatch having been referred to the Registrar-General, the letter inclosed (December 7) had been received from him.

Mr. Hammond was also pleased to state that, together with these papers, he was directed by your Lordship to send to us the correspondence which took place in 1857 to which the Registrar-General refers; and to request that we would take this matter into consideration, and report to your Lordship our opinion, not only as regards the general points adverted to by the Registrar-General, but also as regards the answer which should be returned to Admiral Harris.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That we agree with the opinion expressed by the Registrar-General in his letters upon this subject, 8th July, 1857, 2nd September, 1857, and 9th December, 1864. We think that an answer should be sent to Admiral Harris to the following effect: That the certificate or copy of entry of Miss Netterville's marriage should be transmitted to the Bishop of London's Office (*i. e.*, to J. Shepherd, Esq., Registrar to the Bishop of London, No. 3, Godliman Street, Doctors' Commons,) and that this course should be pursued with respect to all marriages of British subjects celebrated by ministers in Holy Orders wheresoever as well as at the Legation (under 4 Geo. IV., cap. 91); the registration of marriages at the Consulate being provided for by 12 and 13 Vict., cap. 68, and standing upon a different principle and footing from those marriages by ministers in Holy Orders. It is true that the copies of entries of marriages not celebrated at the Legation, sent to the Bishop of London's office may not be of much avail in the cases where the validity of the marriage is disputed, but it is expedient that there should be a record of these marriages preserved in this country. The custom of registering such marriages in the Bishop of London's Office has existed, we believe, since the time of Charles I; and while on the one hand we are not aware that any practical inconvenience has ensued upon it, on the other hand we do not think that at present there exists any legal substitute for such registration.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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Tunis.

No. 159.

The Queen's Advocate to Earl Russell.—(*Received August* 30.)

Doctors' Commons, August 29, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 18th instant, stating that he was directed by your Lordship to transmit to me therewith a despatch from Her Majesty's Agent and Consul-General at Tunis (No. 16) inclosing a protest drawn up by Mr. Heyn, a British merchant at Sfax, against Her Majesty's Government and Her Majesty's officers on account of losses incurred by him owing to the state of affairs at Sfax; and Mr. Hammond was to request that I would furnish your Lordship with my opinion thereupon.

In obedience to your Lordship's commands I have considered this case, and have the honour to report—

That, having reference to the papers now submitted to me, I am clearly of opinion that Her Majesty's Agent and Consul-General at Tunis took, in every respect, a correct view of the case, and that Mr. Heyn would be entitled to no compensation should he ever prefer a claim for it to Her Majesty's Government.

I have, &c.
(Signed) ROBERT PHILLIMORE.

Turkey.

No. 160.

The Attorney-General to Mr. Hammond.—(*Received January* 4.)

Hastiugs, January 2, 1864.

Dear Sir,

I AM unable to procure a complete copy of the Treaty concerning the Danubian Principalities (I presume dated August 19, 1858), which is referred to in some papers now before the Law Officers, concerning the alleged ill-treatment by the Government of Prince Couza of an Ionian monk named Niphon, the Superior of a monastery or religious house in Wallachia or Moldavia.

It is stated, in the covering letter, that "*provision was made by the great Powers of Europe in* 1858 *for the settlement of the monastic establishments* in those countries;" and that "the Government of the Principalities has, up to the present time, evaded fulfilling *the conditions of that settlement.*"

It seems to me that it would be very unsatisfactory to advise in this matter, without having before us the document or documents in which this "settlement" is contained, and seeing in what manner it is made the subject of international engagement; in truth, without even knowing what the settlement was.

Believe me, &c.
(Signed) ROUNDELL PALMER.

P.S.—There are only some immaterial extracts from this Treaty in Hertslet, and in the Blue Book of 1859.

No. 161.

The Law Officers of the Crown to Earl Russell.—(*Received January* 9.)

Lincoln's Inn, January 8, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 24th November last, stating that he was directed by your Lordship to transmit to us the accompanying papers from Mr. Edwards respecting the claim of Mr. Price against the Turkish Government, arising out of transactions connected with a proposed railway from Samsoon to Sivas; that the last Report of the Law Officers upon this claim is dated the 30th October, 1861, and was now inclosed to us, together with the other papers bearing upon the case; and Mr. Hammond was to request that we would furnish your Lordship with our opinion as to the answer which should be returned to Mr. Edwards' present application.

In obedience to your Lordship's commands we have taken this matter into consideration and have the honour to report—

That after an anxious and careful consideration of all the former proceedings in this unfortunate case, we are unable to arrive at any conclusion different from that which has been already expressed by the Law Officers, and which was in accordance with the opinion of Her Majesty's Representative at Constantinople; namely, that the deposit of Mr. Price was, under the terms of the contract, legally forfeited.

It could only be exempted from such forfeiture by invoking the protection of the 30th Article of the Concession, which provides, in substance, that war, or any other political event, which might prevent the immediate formation of the Company, and consequently might also prevent the execution of those clauses of the Agreement which had reference to fixed periods of time, should entitle Mr. Price to demand and obtain a prolongation of time from the Ottoman Government.

The troubled state of Bosnia, of Herzegovine, of Montenegro, and of Servia; the insurrection in Crete, and the massacre at Jeddah, were not political events which could be fairly represented to have prevented the formation of the Company, or the commencement of this railway from Samsoon to Sivas, in the sense of that Article, though they may possibly have contributed to lower the credit of undertakings connected with the Ottoman Empire in the European money market, and thereby to depreciate the value of shares in the proposed Company, and so increase the difficulty of obtaining shareholders and funds.

If this Article could be construed to refer to occurrences so remote from the scene of the proposed operations, and not in any way suspending the ordinary state of political relations between Great Britain and Turkey, or the pacific exercise of the ordinary powers of government by the Porte over the country in which the railway was to be made, it would be very difficult to say what possible condition of circumstances could occur in which the Company would be really bound by the fixed periods of time, disturbance and insecurity in one part or another of its dominions being almost the normal condition of the Turkish Empire.

As to the events which are said to have disturbed, or to have had a tendency to disturb the pacific relations of other countries, such as the trial of Bernard and the attempt of Orsini, they are still more clearly foreign to the scope and object of the Article in question. We ought also to state our opinion that the 23rd Article of the Concession, which provides a particular tribunal for the decision of disputes which may arise between the Porte and the Company, does not apply to this case, in which the specified time has been allowed to elapse and the forfeiture to accrue.

Considering, however, the habitual laxity and indulgence which, from the instances referred to by Mr. Price, the Porte seems to have heretofore practised in cases of this kind (and which might well have had the effect of putting the parties interested in this particular concession off their guard), we think that the strict enforcement of the terms of the contract, to the extent of declaring the deposit forfeited, was a harsher course than might reasonably have been expected from the liberality of the Imperial Government; and (although we adhere to the opinion formerly expressed by the Law Officers that Her Majesty's Government are not entitled, as a matter of right, to call upon the Turkish Government to return this deposit) it may, perhaps, be still deserving of consideration whether the good offices of Her Majesty's Ambassador at Constantinople might not again be employed in Mr. Price's favour, so far, at least, as to endeavour to obtain from the Porte the concession that this forfeited deposit of 25,000*l.* may be treated as substituted for, and accepted in satisfaction of, the deposit for the other line of railway in the Ottoman dominions (namely, from Smyrna to Cassaba) which Mr. Price seems now to have finally undertaken.

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In this attempt reference might not improperly be made to the generally disturbed condition of the Turkish territories in the early part of 1859, and to the effect of that state of things on the European money-market; although this topic must not be pushed so far as to lead to any misunderstanding either by the Ottoman Government or by Mr Price of the grounds on which Her Majesty's Government may think it right to interpose in the case.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 162.

The Law Officers of the Crown to Earl Russell.—(*Received January* 13.)

Lincoln's Inn, January 12, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 19th ultimo, stating that he was directed by your Lordship to state to us that a question is pending between the Government of the Principalities and the Monastic establishments in those countries, for the settlement of which provision was made by the Great Powers of Europe in the year 1858; that without troubling us with the details connected with this matter, your Lordship considered it was sufficient for the present purpose to inform us that the Government of the Principalities has, up to the present time, evaded fulfilling the conditions of that settlement, but has on various pretexts seized the establishments, impounded their property, dispossessed the monks, and now claims to regulate matters connected with the convents on principles arbitrarily fixed by itself; that the monastic establishments are dependent on the monasteries on Mount Athos and in other quarters without the Principalities; that the point, however, on which your Lordship requests our opinion is stated in the inclosed papers,* which give an account of the imprisonment of an Ionian monk for refusing to give up to the authorities of the Government documents connected with a monastic establishment of which he was the superior: and Mr. Hammond was to request that we would take this point into consideration with reference to the Capitulations between this country and the Porte, which are equally binding on the Principalities, and report to your Lordship our opinion whether, and in what manner, Her Majesty's Government should interfere in his behalf.

We are also honoured with Mr. Hammond's letter of the 4th instant, inclosing to us further papers bearing upon these questions.†

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That although we do not think the mere acceptance of holy orders by a natural-born British or Ionian subject in a foreign country would, in all cases and under all circumstances, be necessarily a reason for refusing to such person British protection, we agree in the view which we understand to have been taken by Mr. Hammond, namely, that Her Majesty's Government ought not, on account of the British nationality of the superior or of any other member of an ecclesiastical establishment in a foreign country, to interfere with the ordinary administration of the local law with respect to the affairs and property of such ecclesiastical establishment. Every such establishment is in the nature of a corporation, subject, of necessity, as to its property and temporal affairs, to the local law; and we think that a British subject who holds any office in any such establishment must also be subject to the local law in his official or corporate capacity, and that he is not entitled, with respect to any matter concerning himself in such official or corporate capacity, or concerning the property or affairs of the religious house of which he may be superior or member, to oust the local jurisdiction by setting up the peculiar privileges of a British subject. To this extent, the effect of incorporation into such an establishment appears to us to be virtually the same as that of naturalization, or of entrance into the military service of a foreign State.

In the particular case of the Ionian monk Niphon, the grievances of which he complains (namely, his deprivation of the office of Hegeman or Superior of the

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* Mr. Green, No. 109; telegram from Mr. Erskine, November 22; Memorandum by Sir H. Bulwer, December 12, 1864.

† Convention of August 19, 1858; Extract from Protocol of Conference held at Paris, July 30, 1858; Capitulation with Porte; Mr. Churchill, No. 30, June 4, 1839.

Wallachian Monastery of Cotareni, and his confinement, or rather seclusion under surveillance within his monastery, for refusing to give up papers relative to the Wallachian property of that monastery to the local Government), appear to us to arise out of, and to be inseparably connected with, his official or corporate character, as a member of that religious establishment. We think, therefore, that any intervention of Her Majesty's Government in his behalf ought to be founded, not upon the simple ground that he is an Ionian subject, but on the special ground that the Government of the Principalities is excluded, by the effect of the Protocol of the 30th of July, 1858, from the right which it might otherwise possess of regulating at its pleasure the secular affairs of the ecclesiastical establishments connected with Mount Athos within its limits, until such a settlement of the disputed questions relative to these establishments, as was contemplated by that Protocol, shall have been arrived at; and that in the meantime, and until such settlement, any of the Powers parties to that Protocol have a right to interfere for the protection of any of their subjects members of those establishments, whose rights as such members may be in any way invaded by the local Government.

If Her Majesty's Government should think it proper and expedient to interfere on this ground, for the protection of the Ionian monk Niphon, we are of opinion that the mode of proceeding suggested by Sir H. Bulwer should be adopted, namely, that Mr. Green should be instructed to intimate to the Wallachian authorities that unless Niphon be restored to his office and relieved from the restraints now placed upon him, Her Majesty's Government will be under the necessity of bringing his case before the Porte, as a matter of international interest between the Porte as suzerain, and Great Britain and the other Great Powers parties to the Protocol of the 30th July, and the Convention of the 19th of August, 1858, and that in the event of this remonstrance failing of effect, Her Majesty's Ambassador at Constantinople should be instructed to make an official representation of the case to the Porte accordingly.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 163.

The Law Officers of the Crown to Earl Russell.—(*Received January* 22.)

Lincoln's Inn, January 19, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 11th of January instant, stating that he was directed by your Lordship to request that we would favour you at our earliest convenience, with an opinion on the following question:—

You are aware that Her Majesty is about to abandon the Protectorate of the Ionian Islands, with a view to the annexation of those islands to the Kingdom of Greece. When that annexation takes place, which, however, may not be for four or five months from this time, Ionian citizens will no longer be under British protection.

That a question has been raised whether, under these circumstances, citizens of the Ionian States need be required to take out British certificates of registration under the Orders in Council of the 9th January and of the 17th November, 1863, to enable them to be protected as British subjects in the interval that must elapse before they become subjects of the King of Greece, and on this question Mr. Hammond was to request our opinion.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That according to the letter of the Order in Council, the taking out of a British certificate of registration would be necessary to enable Ionian citizens to be protected as British subjects; but that we think that in the peculiar circumstances of the case, directions might properly be sent to Her Majesty's Ambassadors and Consuls in the Ottoman dominions to consider Ionian citizens as entitled during this year, though unregistered, to British protection, and not to exact from them any penalties for non-registration.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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No. 164.

The Queen's Advocate to Earl Russell.—(Received February 23.)

Doctors' Commons, February 20, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 16th instant, stating that he was directed by your Lordship to transmit to me the accompanying despatch and its inclosures from Her Majesty's Chargé d'Affaires at Constantinople (No. 39), respecting a question which has arisen as to the interpretation of the Treaty of Commerce of 1861 between Great Britain and Turkey, in regard to the duty to be levied on the produce of Turkey when exported by British subjects to any other place than a British possession; and Mr. Hammond was to request that I would take this question into consideration, and report to your Lordship my opinion thereupon.

In obedience to your Lordship's commands I have taken this question into consideration, and have the honour to report—

That I am of opinion that the true and fair interpretation of the Treaty is that which His Highness Aali Pasha has put upon it, and that the whole of the IVth Article must be construed together, and so construed it appears to be concerned with exports from Turkey "to the dominions and possessions" of the other Contractlng Party to the Treaty, and that it could not have been intended that Turkish goods exported from Turkey to Austria by an Austrian subject should pay 12 per cent., and the same goods exported to the same country by a British subject should pay 8 per cent.

This would be contrary to the general scheme on which these Commercial Treaties of Turkey with foreign States have been contracted; and I think that such is not the true construction of the whole of the IVth Article, though it is the literal construction of the latter paragraph of it, taken *per se*.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 165.

The Queen's Advocate to Earl Russell.—(Received March 8.)

Doctors' Commons, March 7, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 24th February ultimo, stating that he was directed by your Lordship to transmit to me the accompanying letter dated the 16th ultimo, and its inclosure, from the Turkish Ambassador at this Court, in which he again brings to the notice of Her Majesty's Government the question of the claims of some Turkish subjects to certain lands at Thebes, and which formed the subject of my predecessor's Report of the 28th February, 1862. That upon the receipt of that Report Her Majesty's Government communicated with the Governments of France and Spain, who concurred with the views therein expressed that they were not called upon to interfere in the matter.

Mr. Hammond was also pleased to inclose the previous papers on this matter, together with the Treaties and Protocols alluded to therein; and to request that I would take the same into consideration in conjunction with the present application of the Turkish Ambassador, and furnish your Lordship with my opinion thereupon.

In obedience to your Lordship's commands I have the honour to report—

That I have perused all the papers which were before my predecessor in office, as well as the letter and inclosure from the Turkish Ambassador, and also the text of the Convention of 1837, which I think was not before him. I am unable to arrive at any other conclusion than that which he expressed in his Report to your Lordship. I think that, apart from special considerations, and upon general principles, it is hardly necessary to say that the official intervention of Her Majesty's Government would be very improper. But I am further of opinion that the special international obligations of this country, as one of the Protecting Powers of the Kingdom of Greece, do not warrant Her Majesty's Government in interfering in this matter between the kingdoms of Turkey and Greece, which, in reality, relates to a question of title to property which dates back to the year 1834, the validity of which title the Greek Government has uniformly refused to recognize, and the discussion of which it certainly appears to me that the Porte is barred from now reopening by the Convention of 1837. Perhaps, however, the best answer to M. Musurus would be, that all the papers, together with the more recent statements of His Highness Aali Pasha and of his Excellency the Turkish Ambassador, have been again subjected to a careful legal examination, and that Her Majesty's Government are advised that they ought not to alter the opinion which, in conjunction with the other Protecting Powers, they formerly expressed, namely, that no adequate ground is laid for the official interference of Her Majesty's Government in this matter.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 166.

The Law Officers of the Crown to Earl Russell.—(Received March 15.)

Lincoln's Inn, March 14, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 13th ultimo, stating that he was directed by your Lordship to transmit to us the accompanying three Reports,* addressed by Mr. Legal Vice-Consul Logie to the Judge of the Supreme Consular Court at Constantinople, reporting upon the case of an Ionian charged with the murder of a Turkish soldier; and to request that we would favour your Lordship, at our earliest convenience, with our opinion as to the instructions which it may be proper for his Lordship to give in this case.

We are also honoured with your Lordship's further commands signified in Mr. Hammond's letter of the 27th ultimo, stating that, with reference to his letter of the 13th ultimo, inclosing Reports from Mr. Logie, the Legal Vice-Consul at Smyrna, relative to the case of an Ionian charged with the murder of a Turkish soldier, he was directed by your Lordship to transmit to us a further Report from Mr. Logie, and to request that we would take the same, together with the former papers, into our consideration, and favour your Lordship, at our early convenience, with our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That, in our opinion, Mr. Consul Logie has acted with great propriety and no mean ability. The course which he has taken is in entire accordance with the Capitulations (see 2 Hertslet, p. 257), and with the Firman and Hatti-Sherif of 21st February, 1856 (10 Hertslet, 626); and we think he should be instructed to continue to refuse to join in any finding, verdict, or preliminary sentence, before the accused person has had a proper opportunity of making his defence; and, if the sentence be forwarded to the Governor without his signature or approbation, we think Her Majesty's Ambassador at Constantinople should be instructed to represent the case to the Porte, as one in which no proper trial has been had, and to demand that, until there has been a proper trial, and a sentence pronounced, after giving full opportunity of defence to the accused, with the concurrence of the English Consul, no sentence which may be pronounced against the prisoner by any other tribunal should be carried into execution.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 167.

The Queen's Advocate to Earl Russell.—(Received April 11.)

Doctors' Commons, April 9, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 4th instant, stating that, with reference to my Report of the 7th ultimo, relative to the claims of the heirs of Ismael Bey to certain lands near Thebes, he was directed by your Lordship to acquaint me that your Lordship informed M. Musurus, in accordance with the opinion therein expressed, that Her Majesty's Government saw no adequate ground for the official interference of Her Majesty's Government in this matter; and Mr. Layard was to transmit to me the answer which has been received from the Turkish Ambassador to that communication, and was to request that I would take the same into consideration, and furnish your Lordship with my opinion thereupon.

In obedience to your Lordship's commands I have taken the answer of the Turkish

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* In Sir E. Hornby's No. 1, January 18, 1864; and No. 5, February 3, 1864.

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Ambassador, and other papers in this case, into consideration, and have the honour to report—

That M. Musurus complains that the answer of my predecessor in office, given in March 1862, is unsatisfactory, because it is founded upon the interpretation of the Treaty of 1827, which Treaty, he says, is inapplicable to the present case.

I think this is an erroneous view of the opinion, which does refer to the Treaty of 1827, but which does not by any means found upon the construction of that Treaty alone the advice to Her Majesty's Government not to interfere in this dispute between the Government of the Porte and of Greece.

My predecessor (Sir John Harding) expressly says, "The notes of Conéménos Bey (March 6, 1861) and of Mehemed Djemil Bey (November 2, 1861) have failed to satisfy me that the Greek Government has, in this matter, acted in violation, either of the Treaty of 1827 (Article 2), of the arrangement of 21st July, 1832, or of any of the Protocols or international documents to which I have access, so as to justify the intervention of the three Powers."

I have already expressed my general concurrence in that opinion, and tendered my advice to Her Majesty's Government that no case has been made out by the Porte which requires the intervention of the Protecting Powers.

I will endeavour to state as concisely as I can, some of the reasons which led me to this conclusion.

Contemporaneously with the establishment of the independent Kingdom of Greece, disputes appear to have arisen relating to two classes or categories of landed property in the Province of Thebes: (1.) Property in that province possessed and not sold by Turkish subjects to foreigners; (2.) Property in that province sold by Turkish subjects to foreigners.

With respect to these two classes, or categories, the Kingdom of Greece appears to have entered into two arrangements of a formal and definite character, whatever technical title or name they bore. (*a.*) The Convention of 1837 between the Porte and Greece, which settled all claims of Turkish subjects as to property in this province; (*b.*) An arrangement of 1843 between Greece and the Protecting Powers, settling all claims as to properties sold by British subjects in 1834, to foreigners.

The first sale of the property which is the subject of this dispute took place in 1834; in that transaction a Turkish subject, Hadji Ismael Bey, was the seller, and a Russian subject, Zaharoff, was the purchaser. The lawfulness of this transaction seems always to have been denied by the Greek Government, who, it is alleged, possessed themselves *de facto* of the property.

In 1840 the purchaser, Zaharoff, sold back the property to the representatives of the original seller, Hadji Ismael Bey.

One thing, at least, is clear in this complicated matter, namely, that if the property in question belongs to any individual, and not to the Greek Government, it belongs either to the Russian or the Turkish subject. If it belonged to the Russian, by virtue of the purchase in 1834, it ought to have been included in the arrangement of 1843, effected in that year, as to all such property, between Greece and the Protecting Governments. If, on the other hand, the property belonged to the Turkish subject or his representatives, the controversy respecting it was governed by the Convention of 1837, between the Porte and Greece, the object of which was "to settle *definitively* and irrevocably" the claims made on the part of the Ottoman Porte, "*for itself and its subjects*, on account of property *in the province of Thebes*," in a particular manner, and the 3rd Article of which stipulated as follows:—"The Sublime Porte, *for itself and its subjects*, relinquishes all claims upon any property situated in the province of Thebes, of whatever nature such claim may be, or under any form in which such claim may be made; *and it will not henceforward put forward any demand, nor take any steps* towards the Greek Government, on behalf of any person whatever who may make a demand of this description, however small it may be."

Now, what is the present demand of the Porte? To enforce the claim of the representatives of one of its subjects, on the ground of their having acquired, by purchase, a property in the province of Thebes, in 1840.

I am of opinion that this Convention of 1837 presents an insuperable obstacle to the enforcement of this claim. The Porte has no standing ground, so to speak, for any claim of the kind accruing after 1837.

It is argued by the Porte that this purchase in 1840 was made by the original seller (or, what is practically the same, the representatives of the original seller) of the property in 1832; and that if the purchaser of 1832 had not been tired out by the refusal of the Greek Government to recognize his title, he would not have sold in 1840, and, therefore, that the Convention of 1837 does not apply.

I am unable to see the legal force of this argument.

Who was the owner of this property in 1837 (the date of the Convention)? The Turkish subject? Then, why was this property not placed in the category of the other property of Turkish subjects, and made the subject of pecuniary arrangement, and "definitively" and "irrevocably" settled by that Convention? No reason is offered; on the contrary, it is now alleged by the Porte that the Russian was *de jure* at least in 1837, and till 1840, the owner of the property, which in *that year* he sold back to the Turkish subject. Why, then, it is a claim expressly barred by the Convention, as having its legal title subsequent to 1837.

The Porte cannot, in my opinion, invoke the Treaty of 1832, between itself and the Protecting Powers, for the purpose of substantiating a claim against Greece, which, by the subsequent Convention of 1837, between itself and Greece, it has solemnly and expressly bound itself, as a Government, not to put forward. But this Treaty of 1832 is the foundation on which M. Musurus (16th February aud 28th March, 1864) rests his claim for the intervention of the Protecting Powers.

Nor can the Porte, in my opinion, invoke the arrangement of 1843, upon which, however, His Highness Aali Pasha appears to rely exclusively, in his despatch of the 28th January, 1864 (see inclosure in M. Musurus' note of the 16th February, 1864); because, as I understand it, this arrangement related to properties not belonging to Turkish subjects (as this property is alleged to belong), but to foreign purchasers; and it is, therefore, an arrangement with which, not the Porte, but the Protecting Powers, are concerned, and under which, moreover, all proper claimants have already been satisfied.

I have hitherto been considering this question more in the light of a controversy between the Sublime Porte and the Kingdom of Greece than as a question as to the right of the Sublime Porte to call upon the Protecting Powers, under the Treaty of 1832, to intervene for the adjustment of the claim. But, it appears to me, that, if the facts facts show, as I think they do, that there is no *primâ facie* case made out by the Porte against Greece, they show *à fortiori* that there is no case made out for the intervention of the Protecting Powers; and, moreover, under this head, the lapse of time *per se* presents a very grave consideration. Protecting Powers are called upon to enforce a complicated claim of property which originated thirty years ago, and which ought to have been disposed of either under the Arrangement of 1837 or 1842.

I agree with my predecessor, that no satisfactory reason is shown why Zaharoff did not obtain a recognition of his title, if he had a valid one, from the Greek Government; or why he did not, as other foreign purchasers did, apply to the Protecting Powers for their intervention.

I understand, as my predecessor did, that the Greek Government "offers, in the event of the claimants establishing their real ownership, to pay them an equitable indemnity upon certain bases, in accordance with the arrangements of 1837, in similar cases" (see conclusion of note of M. Couduriottis, $\frac{12}{24}$th July, 1861).

"The Turkish Government, on the other hand, insists upon the claimants receiving absolute possession of the lands, and requests the intervention of Great Britain, France, and Russia, in favour of this demand" (see conclusion of note of Mehemed Djemil Bey, 2nd November, 1861).

I must again repeat my agreement with him in his conclusion *from all the circumstances*, that no adequate case is made out for the intervention of the Protecting Powers.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 168.

The Law Officers of the Crown to Earl Russell.—(Received May 11.)

Lincoln's Inn, May 11, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Murray's letter of the 29th ultimo, stating that he was directed by your Lordship to transmit to us the accompanying despatches, as noted in the margin,* respecting a question which has been raised by the Porte as to the right of Her Majesty's Consular Agents in Tripoli to exercise jurisdiction in cases in which the plaintiff is an Ottoman subject and the defendant a British subject.

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* Mr. Erskine, No. 5, January 6; No 45, February 9, 1864.

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Mr. Murray was also pleased to inclose a Memorandum which has been drawn up in the Foreign Office on the subject; and was to request that we would take these papers into consideration, and report to your Lordship our opinion as to the course that it would be right and proper for Her Majesty's Government to pursue in this matter.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That the request of his Excellency Aali Pasha appears certainly to be well-founded upon the letter of the Capitulations, as we have had the honour to report in a similar case which lately arose in Egypt. But we think that if an immemorial usage to the contrary (as suggested by Sir E. Hornby) can be established as a matter of fact, such usage may be evidence of a concession of power beyond the letter of the Capitulations; and the alleged venality and corruption of the Tripoline Courts is a circumstance not to be disregarded in any action which Her Majesty's Government may think fit to take upon this subject.

The proof, however, of immemorial usage is manifestly no easy matter in such a case, if it be not admitted by the local authority, who has the letter of Capitulations apparently on his side; and we are led to doubt, from what is stated to have taken place in 1844, whether the usage relied upon has really been so uniform, or of so old a date, as Sir E. Hornby appears to believe.

It appears to us, under these circumstances, that where the letter of the Capitulations is insisted upon in derogation of the asserted usage, and where the usage itself, or its validity, is in dispute, it may be necessary for Her Majesty's Consul to accede to the demand; but in that case the Turkish authorities ought distinctly to understand that Her Majesty's Government assume it to be the determination of the Ottoman Government to adopt the same course in all similar cases towards *all* the Consuls of Christian Powers; and that Her Majesty's Government will not consent that British Consuls should be placed in a different position, as to the jurisdiction conceded to them, from that of the Consuls of other nations, it being quite clear that, under the Capitulations, the British Consular Courts are entitled to as great an authority as that which is conceded to the most favoured nation. And as the matter is one of considerable importance, it may perhaps be desirable, before coming to any final decision upon the point, to communicate with the other European Powers which have an interest in the question, and to endeavour to arrive at a common understanding as to the view of the effect of the Capitulations and usage, which is to be acted upon in all such cases.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 169.

The Law Officers of the Crown to Earl Russell.—(Received June 15.)

Lincoln's Inn, June 14, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 4th instant, stating that he was directed by your Lordship to transmit to us a despatch from Her Majesty's Consul at Alexandria (No. 14, May 9), inclosing a copy of a Memorial addressed to him by the Chairman of the British mercantile community at Alexandria, respecting the proposed formation of an International Company for the purpose of facilitating the transport of produce and merchandize by means of steamers, lighters, tug-boats, &c., in the harbours of Egypt, as well as on the Nile and all navigable canals.

Mr. Hammond was also pleased to state that the parties concerned in this enterprise are desirous of ascertaining whether the right of navigating the rivers and canals of the Ottoman Empire is not secured to the British flag under the most favoured nation clause, and the several stipulations with foreign Powers referred to in the Memorial; and that the question as to the right of foreigners to navigate the Nile and the Mahmoutic Canal under their own flag formed the subject of correspondence in 1856-57, and was reported on by Her Majesty's Advocate-General on the 8th of September of the latter year.

Mr. Hammond was also pleased to state that he inclosed the correspondence, and was directed by your Lordship to request that we would favour your Lordship with our

opinion with regard to the question now raised by the British mercantile community at Alexandria.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we are of opinion that the right of navigating the rivers and canals of the Ottoman Empire *under the British flag* is not secured to Her Majesty's subjects under the most favoured nation clause in the Treaties referred to in the letter of Mr. Taylor. As we agree with the elaborate and careful Report of the late Queen's Advocate on this point, dated the 13th of October, 1856 (contained in the volume transmitted to us from the Foreign Office), we do not think it necessary to state more in detail the premises which have led us to this conclusion.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 170.

The Law Officers of the Crown to Earl Russell.—(Received June 24.)

Lincoln's Inn, June 23, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 30th ultimo, stating that with reference to our Report of the 23rd of May, 1862, on the case of an Ionian named Dionysius Focca, who claims from the Moldavian Government an indemnity on account of the alleged illegal proceedings of the superior administrative authorities of Moldavia in regard to a contract he had entered into with certain of the peasant proprietors of the Abramechty estate, he was to transmit a despatch from Her Majesty's Agent and Consul-General at Bucharest (No. 24), inclosing a copy of the answer he had received to the last communication he addressed to the Minister for Foreign Affairs on the subject of this claim.

Mr. Hammond was also pleased to state that he was also to transmit the accompanying letter dated the 29th March last from Mr. Focca, protesting against the proposal of the Moldo-Wallachian authorities that he should, after so many years, be now called upon to establish his claims by the production of certain documents before a Court of Inquiry, and requesting Her Majesty's Government to insist on a settlement of his claims.

The former papers respecting this claim, Mr. Hammond was pleased to state, were inclosed therewith, and that he was directed by your Lordship to request that we would take them into our consideration, and report to your Lordship our opinion as to the course it would be right and proper to take in this matter.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we understand the Government of the Principalities to have admitted the principle of Mr. Focca's claim to compensation or indemnity; but to require the production by him of vouchers and proofs to substantiate the amount of the loss for which he claims to be indemnified, ultra the 2,600 ducats originally paid by him, and which they offer at once to repay.

Mr. Focca, on the other hand, represents that it is unreasonable now to call upon him to produce any vouchers or proofs; and that, in fact, all his vouchers and proofs are already in the possession of the Wallachian Government; the farm contract itself, on which his title is founded, and the public documents by which the illegality of the former proceedings taken against him was admitted, being apparently regarded by him as in themselves sufficient for this purpose.

These documents do appear to us to be sufficient to show that he has been illegally dispossessed, and that he is entitled to receive compensation for the loss which he has sustained; but they do not appear to us to be sufficient to establish the quantum of that loss (a point on which the Law Officers of the Crown have never hitherto been called upon to advise); and whether the proper measure of compensation is the value of the farm itself for the residue of the term at the time of his dispossession, or the amount of Mr. Focca's expenditure thereon, with interest, in either case some further inquiry and evidence seems to be necessary, in order to arrive at the sum which the Wallachian Government ought to be called upon to pay.

It is to be observed that the reimbursement of Mr. Focca's expenditure (with or without interest) seems to be the principle which the Wallachian Government are prepared

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to concede. This is involved in the proposal to return him the purchase money of 2,600 ducats. If this principle is adopted, it is clear that the Wallachian Government must be entitled to call upon Mr. Focca for some vouchers or proofs of the fact, and the amount of the expenditure on the cultivation and improvement of the lands, &c., for which he claims credit; and it does not appear from the papers that any such documents or proofs have ever been produced.

On the other hand, if the value of the farm-lease, at the time of the dispossession, is to be taken, we are unable to see how this can be said to be ascertained or ascertainable merely from what appears upon the face of the contract. The contract is one of a very peculiar character; it is made by the agents of a community of villagers or rustics, who engage for the community, not only to let certain lands to Mr. Focca as farmer for a certain term, but also to supply the farmer with ploughs, oxen, and a certain amount of labour for the cultivation of the farm, and certain fixed quantities of grain, hay, wine, fuel, game, &c., and with the use of certain buildings, and other privileges, at the charge of the community; and further, to place the members of the community themselves under certain restrictions as to the manufacture of spirituous liquors, and the consumption of their own wine, and the sale of their own produce, for the farmer's benefit. We can easily conceive that in the valuation of such a contract there may be some practical difficulties, or at least room for fair difference of judgment; even if it is to be assumed that it was in all respects binding by the local law upon all the members of the community. But we are not satisfied that so large an assumption can be safely made. The possession of Mr. Focca was, in the first instance, irregularly and illegally disturbed: afterwards restitution was made by an act, not of judicial, but of executive power; and, still later, the executive power again irregularly and illegally interposed to dispossess Mr. Focca. It may, under these circumstances, safely be assumed that he would have continued in some sort of possession of the demised lands if he had not been so dispossessed. But it is, perhaps, too much to take for granted, in the absence of any judicial decision whatever upon the case, that all the members of the community were bound by all the stipulations of the contract, or that the loss which Mr. Focca has sustained, is to be measured upon the assumption that the performance of all those stipulations could have been actively enforced for his benefit.

On the whole, our conclusion is, that if the Government of the Principalities are to be understood as now proposing an inquiry into the question of damage, and for that purpose calling upon Mr. Focca to go into evidence in support of his claim, it is proper and reasonable that such inquiry should be made, and such evidence should be given, to substantiate the amount of compensation due. We think, however, that in estimating the amount and character of evidence necessary for this purpose, due regard ought to be paid to the difficulties of proof under which Mr. Focca may be placed, both from the lapse of time and from the other circumstances consequent upon his dispossession.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 171.

The Queen's Advocate to Earl Russell.—(*Received July* 15.)

Doctors' Commons, July 14, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 8th instant, stating that with reference to the Reports from Her Majesty's late Advocate-General of the 14th of May and 10th September, 1860, he was directed by your Lordship to transmit to me a despatch, and its inclosures, received from Her Majesty's Ambassador at Constantinople, reporting the decision which has been arrived at relative to the claim advanced by Mr. Leahy against the Turkish Government, for plans and engineering service connected with a proposed railway from Belgrade to Constantinople; and Mr. Hammond was to request that I would take Sir Henry Bulwer's despatch, together with the other papers bearing upon the case, which were also sent to me, into consideration, and that I would furnish your Lordship with my opinion thereupon.

In obedience to your Lordship's command I have taken these papers into consideration, and have the honour to report—

That I am clearly of opinion that Her Majesty's Government ought not to interfere further in this matter.

The claim of Mr. Leahy has been submitted, with that gentleman's express consent, to a proper and fairly constituted tribunal, composed of two members appointed by the British Ambassador and two by the Turkish authorities. These judges, or arbitrators, have been, apparently, unanimous in pronouncing against the claim of Mr. Leahy.

The decision is accompanied by reasons which appear to be valid, and it is in accordance with the expectation of Sir H. Bulwer, who is also of opinion that the "examination" has been "impartial."

I think that Her Majesty's Government could not, without a breach of goodfaith towards the Turkish Government, press upon that Government any further investigation into the claims advanced by Mr. Leahy.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 172.

The Law Officers of the Crown to Earl Russell.—(*Received July* 25.)

Lincoln's Inn, July 23, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Murray's letter of the 8th instant, stating that he was directed by your Lordship to transmit to us therewith a despatch from the Judge of the Supreme Consular Court at Constantinople (No. 42, June 22, 1864) relative to the claim put forward by Messrs. Gregory and Spiridion Cuppa to be registered as British subjects; and to request that we would favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we are of opinion that the Judge of the Supreme Consular Court at Constantinople will be warranted in registering the Messrs. Cuppa as British subjects.

In so advising, we must be understood to reserve our opinion as to any question (if any should hereafter arise) in which the claim of these gentlemen to the privileges of British subjects, although not born on British soil, by virtue of an Act of Parliament, may be brought into competition with any claim of the country of their actual birth or residence to their allegiance.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 173.

The Queen's Advocate to Earl Russell.—(*Received August* 2.)

Doctors' Commons, August 2, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 19th ultimo, stating that he was directed by your Lordship to transmit to me the accompanying despatch and its inclosures from Her Majesty's Ambassador at Constantinople (No. 156) reporting the circumstances of the seizure by the Porte of a quantity of arms on board the British steamer "Ada," under the provisions of the Treaty of Commerce between Great Britain and Turkey of April 19, 1861, a copy of which was inclosed.

That Sir Henry Bulwer in protesting against this seizure refers to the course pursued by the Porte in regard to some arms which were restored to the Italian Government under the circumstances referred to in the accompanying correspondence; and Mr. Hammond was pleased to request that I would take this case into consideration, and report to your Lordship my opinion as to the instruction which should be given to Her Majesty's Ambassador thereupon.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That, as I understand the circumstances connected with the seizure of these arms, they were as follows:—The "Ada" was in a Turkish port laden with arms packed in

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chests, on which was the false designation of commercial merchandize: that such arms had been prohibited by a proper instrument officially notified in accordance with the provisions of the XVth Article of the Treaty between Her Majesty and the Sultan, April 29, 1861: that an attempt had been made to land these arms, which had been defeated by the vigilance of the Turkish officers, and that there is no doubt whatever that these arms were destined for importation into the Turkish territories. In these circumstances the arms in question were, I think, in the terms of the XVIIIth Article, "contraband goods liable to confiscation by the Ottoman Treasury." The circumstances of the Italian precedent referred to are, I think, correctly stated by His Highness Aali Pasha to distinguish it from the present case; and certainly the language and conduct of Her Majesty's Government on that occasion were, to say the least, not unfavourable to the exercise of the power claimed in this instance by the Ottoman authorities.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 174.

The Queen's Advocate to Earl Russell.—(Received August 15.)

Doctors' Commons, August 13, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Murray's letter of the 8th instant, stating that he was directed by your Lordship to transmit to me a despatch and its inclosures from the Judge of the Supreme Consular Court at Constantinople (No. 47) relative to the proceedings of the Turkish authorities with reference to the case of the widow Derdavit, a British protected subject, who claims her dowry out of the personal property left by her deceased husband, who was a subject of the Porte; and to request that I would take these papers into consideration, and furnish your Lordship with my opinion thereupon.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That it does not seem to be denied that Derdavit is a British protected subject. I do not find it controverted that, as a general rule, the personal property of such persons is administered by the Court of the Patriarch, or by the Tidjaret. The interference of the Mussulman Court of the Evcaff appears to have been originally justified on the ground that there was immoveable property, or vacouf. This turns out not to be the case. It is then said that the municipality paid the debts as well as the funeral; but the question by what right they did so, to the detriment of the widow, remains unanswered. As far as I am enabled to judge from these papers, and with my present information on the subject, I must advise your Lordship that the position of Sir E. Hornby is well founded and ought to be supported.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 175.

The Law Officers of the Crown to Earl Russell.—(Received August 22.)

Lincoln's Inn, August 22, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 20th ultimo, stating that he was directed by your Lordship to acquaint us that since the receipt of our Report of the 5th of April some communication has taken place with the India Office with reference to the proposed Order in Council respecting British Indian subjects in the Ottoman dominions, and to transmit to us a further draft of such Order which has been amended so as to meet the views of the India Office; and to request that we would take the same into our consideration, and report to your Lordship our opinion as to whether it may properly be submitted for Her Majesty's sanction.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That we are of opinion that the Order in Council, as altered, may be properly submitted to Her Majesty for sanction.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 176.

The Law Officers of the Crown to Earl Russell.—(Received August 26.)

Lincoln's Inn, August 24, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 18th ultimo, stating that he was directed by your Lordship to acquaint us that in consequence of the transfer of the Ionian Islands to Greece, by which the British Consular establishment in the Levant will be relieved from a considerable amount of duty, more espocially as regards jurisdiction civil and criminal, your Lordship thinks it necessary to reduce the judicial establishment in the Levant, and to combine with that reduction certain changes in the Consulate-General at Constantinople.

That at present, the commercial and judicial duties at Constantinople are performed, the former by 1st, a Consul-General; 2nd, a Vice-Consul Cancellier; and 3rd, a Vice-Consul: the latter by 1st, a Judge of the Consular Court; 2nd, a Vice-Consul Cancellier and Registrar; and 3rd, a Vice-Consul and Law Secretary.

That your Lordship proposes that for the future the office of Consul-General and Judge of the Consular Court shall be almagamated and held by one person, and that your Lordship contemplates naming to fill the combined offices one of the present legal Vice-Consuls. That this officer will continue to control in the exercise of their judicial functions the several Consuls in other parts of the Ottoman dominions, and that he generally will execute all the other duties devolving under existing Orders in Council on the Judge of the Supreme Consular Court. That he will be assisted, as regards his commercial duties as Consul-General, by a Commercial Vice-Consul, and as regards his Magisterial duties by a Law Secretary, who will hold, as now, a commission as Vice-Consul. That there will be a sufficient establishment of clerks to carry on the subordinate duties of the combined offices.

And that in addition to this alteration, your Lordship proposes to abolish the office of Legal Vice-Consul at Smyrna, leaving there a Law Clerk, though without a commission as Vice-Consul, to assist the Consul in the execution of the judicial duties which may devolve on him as on other Consuls in the Ottoman dominions.

That with reference to these proposed arrangements, Mr. Hammond was directed by your Lordship to transmit to us the Order in Council, Regulations, and Instructions to Consuls in regard to judicial matters now in force in the Ottoman dominions, and to request that we would have the goodness to inform your Lordship whether it will be necessary to make any alterations in any of those documents, in consequence of the proposed amalgamation of the offices of Consul-General and Judge of the Supreme Consular Court.

In obedience to your Lordship's commauds we have taken this matter into our consideration, and have the honour to report—

That with reference to the three instruments, viz., the Order in Council of the 9th January, 1864; the Rules for the Supreme and other Consular Courts, framed under the authority of that Order; and the Circular Letter of General Instructions by the Judge of the Supreme Court, we are of opinion that it will be necessary to make alterations in the first of these instruments only, and that that alteration should be effected by a Supplemental Order in Council, which would carry into effect the changes contemplated by your Lordship.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 177.

The Law Officers of the Crown to Earl Russell.—(Received October 11.)

Lincoln's Inn, October 10, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 14th ultimo, stating that he was directed by your Lordship to transmit to us the accompanying despatch from Major Stokes (No. 17), calling attention to the effect of the Order in Council of the 9th January, 1863, on certain clauses relating to the Danube navigation, referred to in the Orders in Council of January 7 and March 25, 1862, copies of which were inclosed; and Mr. Hammond was to request that we would take

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these papers into consideration, and report to your Lordship our opinion on the subject, together with any observations we may have to offer thereupon.

We are also honoured with Mr. Hammond's second letter dated the 14th ultimo, transmitting to us, by your Lordship's direction, copy of a Judgment recently delivered by the Judicial Committee on an Appeal from the Supreme Consular Court at Constantinople, in the running-down case of the "Mars" and "Smyrna," from which we should perceive that the Committee declare the regulations issued by the Danube Commission to be invalid. Mr. Hammond also inclosed all the Treaties and papers respecting those regulations, and another despatch from Major Stokes (No. 16), having reference to the above subject, and was pleased to request that we would furnish your Lordship with our opinion as to the course which under the circumstances should be pursued.

We are also honoured with Mr. Hammond's letter of the 15th ultimo, stating that with reference to our letter of the 11th March, 1862, forwarding a draft of an Order in Council enabling British Consular Officers in the Delta of the Danube to enforce the regulations framed by the European Commission of the Danube, he was directed by your Lordship to transmit to us a note dated the 13th ultimo, from the Austrian Chargé d'Affaires at this Court, together with the memorandum therein referred to dated the 5th December, 1861, which was communicated to the Foreign Office by the Austrian Ambassador on the 6th of December, 1861. That these papers refer to the collision of the "Mars" and "Smyrna," and Mr. Hammond stated that in consequence of the decision of the Judicial Committee of the Privy Council in that case which was referred to us on the 14th instant, your Lordship is in doubt as to the answer which, under these circumstances, should be given to Count Wimpffen, and would be glad to be furnished with our opinion on the subject.

We are also further honoured with Mr. Hammond's letter of the 24th ultimo, transmitting to us the accompanying despatch from the Judge of the Supreme Consular Court at Constantinople (No. 57), inclosing extracts from the "Levant Herald," respecting the Judgment recently delivered by the Judicial Committee in the case of the collision which took place on the Danube between the "Mars" and "Smyrna," and containing observations on the subject; and Mr. Hammond was to request that we would take these papers into consideration, with reference to those referred to us in his letter of the 14th instant, and report to your Lordship our opinion as to the instructions which it would be right and proper to give in regard to the questions raised therein.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That these papers relate to a very important and difficult subject, which cannot, we think, safely or properly remain in its present position. We propose to advert to the several matters on which we are requested to advise in the following order:—

1. As to the recent Judgment of the Privy Council in the case of the "Mars" and "Smyrna."

That Judgment was given in a civil action, brought by an Austrian against an English Steam Navigation Company, in the British Consular Court at Galatz, which was taken by successive appeals before the Supreme Consular Court at Constantinople and the Judicial Committee of the Privy Council. The cause of action was the loss, by a collision with the English Company's ship "Smyrna," of the Austrian Company's steamer "Mars," on the 6th November, 1860, while navigating the Sulina Channel of the Danube, agreeably to the regulations made on the 27th June, 1860, by the European Commission of the Danube. The "Smyrna" was navigating according to the previous rule of the river, the two rules being at variance with each other, and the old rule (apparently) being in itself reasonable and proper. All these Courts decided in favour of the English Company, on the following grounds:—

(1.) That the English ship was in the right, unless the regulations of the European Commission were binding.

(2.) That the Articles of the Treaty of Paris, under which the European Commission was constituted, did not empower that body to make those or any other regulations concerning the police or navigation of the river.

(3.) That there was no evidence of any Legislative Act of the Turkish or Moldavian Government sufficient to give to those regulations, if inoperative *per se*, the force of local law in that part of the river where the collision took place.

A serious doubt was suggested (though not solved) in Lord Cranworth's Judgment, whether (having regard to the political relations between the Porte and the Danubian Principalities, and the provisions of the Treaty of Paris as to the constitution of the intended Riverain Commission) it would be competent for the Sultan alone to give to any such regulations the force of law within the ceded territory, which was by the Treaty

annexed to Moldavia. Nothing was, or indeed could be, determined as to the operation of Her Majesty's Orders in Council of the 6th January and 25th March, 1862, which had not been made when the collision took place; nor was it disputed that particular rules as to the navigation of the river might, by length of usage, acquire the force of law, even if originally introduced without competent authority. But there had been no such usage when this collision took place.

The Judgment, therefore, of the Privy Council has conclusively settled (contrary to the view which seems to have been taken by the present Lord Chancellor when Attorney-General) that, in making these regulations, the European Commissioners exceeded the powers given to them by the Treaty of Paris; and it has also determined that in order to make any such regulations operative by virtue of the territorial authority of the Local Government, some Legislative Act, of a formal and authentic character, was, and is, requisite, beyond the mere acquiescence of the Porte in the unauthorized acts of its own and the other European Commissioners.

The importance of this determination will be apparent when it is recollected that (according to the opinions given by our predecessors in office, and adopted by Her Majesty's Government in their communications with the Governments of France and Turkey in 1857 and 1859, without objection, apparently from either of those Powers) there was no basis on which any Orders in Council could properly be made by Her Majesty, under the Foreign Jurisdiction Act, to enforce rules made by the European Commission against British subjects navigating the Danube, except the territorial authority of Turkey within the Danubian Principalities, and the power of the Local Government (which it was assumed would be duly exercised) to give the force of law to those regulations within that part of its territory. It was upon this basis that the Orders in Council of the 6th January and 25th March, 1862, were made, after considerable delay arising out of doubts which were felt as to the sufficiency of the existing Capitulations for that purpose; which doubts were in the end waived, more out of deference to the contrary view taken by France and Austria and acquiesced in by Turkey herself, than because they were removed by any decisive argument.

In the meantime the necessity for some formal Legislative Act, by the territorial authority competent to make laws for the Danube below Isatcha, was unfortunately overlooked: and it seems to have been, on all sides, assumed that no difficulty would or could arise upon that point. The decision, however, in the case of the "Mars" and "Smyrna" shows that this omission, unless remedied, may possibly prove fatal to all these regulations, and may become a fruitful source of confusion, litigation, and injustice. The first step, therefore, which we advise Her Majesty's Government to take is to represent to the Porte the absolute and urgent necessity for such a formal and authentic Legislative Act as may confirm and give (as from the dates at which they were respectively promulgated) the force of local laws to all these regulations, to which end it may be necessary to obtain the concurrence of the proper Moldavian authorities, if, by the Constitution of the Principalities, laws of this nature, for the navigation of the river within their limits, cannot be enacted by the sole authority of the Porte. We think it also desirable that all the Contracting Powers, parties to the Treaty of Paris, should (if possible) be induced to express their assent, by some formal Diplomatic Act, to this mode of provisionally regulating the police and navigation of the Lower Danube, until the proposed Riverain Commission shall be duly constituted, in order that there may be no apparent variance between the means adopted for the establishment of such regulations and the international engagements contained in the Treaty. Should there prove to be any serious difficulties in the way of the course which we have thus recommended, the only alternative which we are able to point out is that the Riverain Commission, contemplated by the Treaty, should be, as soon as possible, constituted and assembled, and that in the meantime the effect of the regulations which have been made and put in force by the European Commission should be left to depend upon such validity as they may have acquired by usage and practice, and also (as far as British subjects are concerned) upon such operation, if any, as the Consular Courts and the Privy Council may consider themselves bound to attribute to the Orders in Council of the 6th January and the 25th March, 1862, and to any supplementary Orders which may be hereafter made.

2. As to Sir Edmund Hornby's despatch of the 9th September, 1864, and the letter of Major Stokes to the "Levant Herald," inclosed therein.

These documents raise the question as to the validity and effect of the Orders in Council of the 6th January and 25th March, 1862, or, rather, the latter of these Orders, without which the effect of the former would probably have been limited to regulations duly made by the European Commission within the scope of the powers given to them by the Treaty of Paris. It was upon the receipt of a despatch from Sir E. Hornby (No. 8,

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29th January, 1862), suggesting that such was the proper construction of the Order of the 6th January, 1862; and also mentioning that, in the case of the "Mars" and "Smyrna," the Consular Court at Galatz had held the Regulations of June 1860 to be *ultra vires* of the Commissioners; that the latter Order was made in order to give the force of law, as against British subjects in the Levant, to "all the rules, orders, and regulations concerning the navigation of the River Danube," &c.; which "had, in fact, been made and promulgated by the Commission," according to the view of their own authority, on which they had until then acted. Major Stokes, in the published letter inclosed by Sir E. Hornby, not only assumes these Orders in Council to be effectual for their intended object, so as to govern all questions arising before British Tribunals subsequently to the 25th March, 1862, under Regulations made before that date by the Commission, but he also represents them as giving the force of law, prospectively, to all such *other* provisional "Regulations *as might from time to time be enacted*" by the same authority. In this, however, Major Stokes is clearly mistaken. There are no future or prospective words in the Order of the 25th March, 1862; and it was considered by the Law Officers, when settling the form of that Order, that no such provision could legally or effectually be made beforehand for confirming any future acts which might be done by the Commissioners in excess of their own proper authority.

If, therefore, the sole question were that which Sir E. Hornby in terms puts to your Lordship, viz., "whether the Orders in Council of 1862 are to be held as *conferring authority on the Commissioners to give validity to their Regulations, and to render them binding on British vessels,*" the answer must certainly be in the negative.

It is clear that the Order in Council of the 25th March, 1862, only purports to confirm what had been then already done; and any Regulations made by the Commissioners, in excess of their powers under the Treaty, are validated and rendered binding upon British vessels (if at all), not by any delegation of authority to the Commissioners, but by the direct authority of Her Majesty, under the Foreign Jurisdiction Act.

If, however, Sir E. Hornby desires to elicit from Her Majesty's Government any expression of opinion as to "the validity of the two Orders in Council," on which he himself thinks it improper to "venture an extrajudicial opinion," we humbly conceive that it is the duty of Her Majesty's Government to assume the validity and efficacy of these Orders, as against British subjects in the Levant, for the purposes for which they were made, until they shall either be revoked or declared void by some competent judicial authority. In point of construction, the Order of the 25th March, 1862, seems to us clear and unambiguous; the sole question (as we conceive) must be, whether it was or was not within the powers given to Her Majesty by the Foreign Jurisdiction Act. In the event of that question being raised in any British Court of Justice, its decision must depend upon the points adverted to in the several opinions of the former Law Officers, dated respectively the 14th and 18th April, the 28th May, and the 30th June, 1857; the 12th February, the 21st April, and the 20th June, 1859; the 1st February, and the 21st November, 1860; to which we think it sufficient to refer, without ourselves entering further into the consideration of those points than has already been done in our remarks upon the Judgment in the case of the "Mars" and "Smyrna."

The revocation of the Orders in Council of the 6th January and the 25th March, 1862, is a step which we should by no means be prepared to advise (in the absence of any binding decision against their validity), unless there were reason to believe that the Regulations made by the European Commission are now regarded as invalid, or would hereafter be so treated in practice, by the other Powers parties to the Treaty of Paris. All the information, however, which we possess leads us, upon that point, to exactly the opposite conclusion.

3. As to the reply which your Lordship should be advised to give to the letter of the Austrian Chargé d'Affaires, dated the 13th September, 1864.

We think it may be proper for your Lordship to state to the Austrian Chargé d'Affaires, that Her Majesty's Government has always been desirous, in co-operation and concert with the Powers parties to the Treaty of Paris, to uphold (as far as Her Majesty is by law enabled to do so) the validity of the Regulations made on the 27th June, 1860, by the European Commission of the Danube, and that, for that purpose, the several Orders in Council of the 6th January and 25th March, 1852, were made. That the case of the "Mars" and "Smyrna" arose out of an accident which had occurred before the dates of those Orders; and that one of the highest tribunals of this realm has now determined, upon the construction of the terms of the Treaty of Paris, that the European Commissioners had not, by virtue of that Treaty, any power to make those regulations, and that it did not appear that they had ever been established by competent authority, as the local law of the territory traversed by the Danube below Isatcha.

That, in these circumstances, it is possible that the legal validity of Her Majesty's Orders in Council of January and March 1862 may be liable to be called in question, and that it seems to Her Majesty's Government to be highly desirable to take proper steps, without further delay, for placing the validity of the Regulations, as the local law of the Danube below Isatcha, upon a footing beyond the reach of future controversy; for which purpose the aid of the Turkish and perhaps of the Moldavian Government may be necessary, and that Her Majesty hopes she may count upon the co-operation of the Emperor of Austria in the requisite measures for accomplishing those objects. At the same time, it may be proper to add that it would be inconsistent with the principles of law which prevail in this country for Her Majesty's Government to take upon themselves to give any orders or directions to the Judges of Her Majesty's Consular Courts in the Levant, as to any legal questions connected with these Regulations which those Judges may hereafter be called upon to decide; and that any such orders or directions, even if they were given, could have no force or effect.

4. As to Major Stokes' despatch of the 3rd September last, calling attention to the effect of the Orders in Council of the 9th January, 1863, upon the two Orders of the 6th January and 25th March, 1862.

Major Stokes is right in his observation that the effect of the repeal of the former Order (27th August, 1860), regulating the Consular jurisdiction in the Levant, by the Order of the 9th January, 1863, is to render certain material portions of the two Orders of January 6 and March 25, 1862, inoperative. The proper remedy for this will be to substitute, by another Order in Council, the procedure under the Order of January 9, 1863, instead of that under the revoked Order of August 27, 1860, for the purposes mentioned in the two Orders of the 6th January and 25th March, 1862. It will, however, be for your Lordship to determine whether this shall at once be done, or whether it had better be postponed until the Regulations made by the European Commission of the Danube have been clearly established as law in the territory below Isatcha by the legislative authority competent for that purpose, in which event a general revision and amendment of these Orders may be desirable.

5. As to Major Stokes' despatch of the 1st September last, inclosing copies of Protocol 165 of the European Commission, with the project of a system of Procedure annexed thereto.

The object of the system of procedure contained in the Annex to this Protocol is to provide a simple and summary method of enforcing the Regulations of the European Commission with respect to the police and navigation of the Danube.

If the proposed system of procedure were agreed to by the European Powers, it would require a distinct legislative Act by the authority capable of legislating for the territory traversed by the Danube below Isatcha, in order to give it validity and effect; and if it had been in itself unobjectionable, we should have regarded with satisfaction so convenient and favourable an opportunity for obtaining from that authority a legislative recognition of the validity, as local law, of all the Regulations heretofore made by the European Commission.

Major Stokes, however, has very properly reserved this project for the consideration of Her Majesty's Government before finally giving his own assent to it as Her Majesty's Commissioner, on account of its containing certain provisions at variance with the principles on which justice is usually administered in Great Britain and other civilized countries.

By the most important of those provisions it is proposed in substance to enact, (1), that persons accused of offences against the Danubian Regulations shall not be at liberty to controvert the truth of any evidence given against them by officers of the river police (some of whom may, at the same time, act as their judges), without depositing a sum of about 50*l.*, to be forfeited unless the falsehood of the accusation is afterwards successfully shown; and, (2), that the crews of any vessels whose captains may be accused by the river police of infringing the regulations shall not be competent witnesses to disprove such accusations.

We regard these provisions as so plainly and irreconcileably opposed to every principle of reason and justice as to make it absolutely necessary for your Lordship to instruct Major Stokes to withhold his consent, as Her Majesty's Commissioner, from this or any other project of which the same or any similar provisions may form part.

We have, &c.

(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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No. 178.

The Queen's Advocate to Earl Russell.—(*Received October* 29.)

Doctors' Commons, October 28, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 25th October instant, stating that he was directed by your Lordship to transmit to me the accompanying despatch from Her Majesty's Chargé d'Affaires at Constantinople (No. 54), respecting the refusal of Her Majesty's Consul at Trebizond to quit the house which he rented from the Apostolic Mission at that place; and to request that I would take these papers into consideration, and furnish your Lordship with my opinion thereupon.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That these papers lead me to the same conclusion as that at which Sir E. Hornby has arrived.

It is admitted by Mr. Consul Stevens that the written contract under which he had obtained a lease of the house in question from the Apostolic Mission at Trebizond had expired on the 1st of May, 1863. After this period he still continued to reside in the house, but upon what terms is a matter of dispute between him and his landlord, and it is impossible not to agree with the opinion of M. Schefer to M. Bonnières (No. 2 in Mr. Stuart's No. 54 of October 12, 1864), that the absence of any writing upon this point is much to be regretted. The fact appears to be, that though no new lease was signed between the parties, Mr. Stevens was allowed to continue his occupation of the house up to the 30th April, 1864. But it seems hardly necessary to inquire whether the correct version be given by Mr. Stevens or by the Head Friar, Father Philip, as to the terms on which this prolonged occupation was permitted, for it is not denied that, both towards the end of March and the beginning of April 1864 Mr. Stevens received formal notice from Father Philip that he might stay in the house, upon certain terms, till the 1st of October following, but that then he must positively quit it. From the date of this notice Mr. Stevens certainly appears to me to have conducted himself in a manner which is much to be lamented. He must have been aware that he had no legal or moral ground for refusing to leave the house after the expiration of the six months' notice.

He says, I have no doubt with perfect truth, that his principal reason for refusing to go out on the 31st of October was, that "he could not obtain another house in so limited a time, suitable to the wants of his numerous family, the winter being near."*

Accordingly he determines to prolong his possession by a law suit before a Turkish Tribunal. The French Consul, however, considers, and it appears to me, as it did to Sir E. Hornby, justly, that this is a matter over which he has jurisdiction, although, possibly, it may be, owing to the cause of the dispute being the possession of a house, a concurrent jurisdiction with that of the Turkish Tribunal.

In truth, however, no tribunal which paid any regard to justice could (it appears to me) come to any other conclusion than that it was competent to the proprietor of the house, in the circumstances, to give his tenant, whose original lease had expired, notice to leave the house after the period of six months had elapsed from the time when the notice was given.

On the whole, I am of opinion that Mr. Consul Stevens should be apprized that Her Majesty's Government agree with the view which Mr. Stuart and Sir E. Hornby have taken of this matter, and expect that Mr. Stevens will cease to occupy the house of the Apostolic Mission at Trebizond contrary to the wishes of the proprietor.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 179.

The Law Officers of the Crown to Earl Russell.—(*Received November* 15.)

Lincoln's Inn, November 14, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 2nd of November instant, stating that he was directed by your Lordship to transmit to us the accompanying papers respecting an export duty of 5 per cent. recently re-imposed by Prince Couza on certain productions of the Danubian Principalities; and

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* Mr. Stevens to Sir H. Bulwer, September 23, 1864 (Inclosure 11).

to request that we would take the same into our consideration, and that we would favour your Lordship with our opinion as to the right of Prince Couza to impose this permanent export duty.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That the real question seems to be whether this re-established duty of 5 per cent. be or be not of a permanent character; because if it be, we are clearly of opinion that its imposition is a plain violation of the IVth Article of the Treaty of Kanlidja, the provisions of which are, we presume, undoubtedly made binding upon the United Principalities of Moldavia and Wallachia by the XXth Article of that Treaty. We have carefully examined the decree of Prince Couza, and it appears to us that this instrument must be taken as imposing a permanent duty of 5 per cent. *ad valorem* upon the export of the articles referred to in its clauses; and we are of opinion that Prince Couza had not the right to impose this permanent export duty.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 180.

The Law Officers of the Crown to Earl Russell.—(*Received November* 15.)

Lincoln's Inn, November 14, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 17th ultimo, stating that he was directed by your Lordship to transmit to us the accompanying despatch from Her Majesty's Chargé d'Affaires at Constantinople (No. 13) respecting the course pursued by the Turkish Government in conceding to the trade of Austria certain privileges on the frontier provinces which are not conceded to British trade; and to request that we would take the same, together with the former papers, which were therewith annexed, into our consideration, and favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we think the answer of His Highness Aali Pasha does not meet the grounds of objection stated by Sir H. Bulwer to the exclusive commercial privileges granted to Austria in the frontier provinces, especially Bosnia and the Herzegovine.

The answer admits that these privileges constitute an exception to the general principle of duties between the Porte and the foreign Powers, but seeks to justify the exception on the ground of a peculiar custom and the peculiar relations and conditions of these border provinces.

We do not think that these circumstances justify the Porte in introducing an exception in favour of Austria, whereby goods can be introduced to and from those provinces upon more favourable terms by the subjects of that country than by the subjects of Great Britain; and we are of opinion that the construction put by Sir H. Bulwer upon the Treaty engagements of the Porte in this matter is correct.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 181.

The Law Officers of the Crown to Earl Russell.—(*Received November* 18.)

Lincoln's Inn, November 17, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 27th ultimo, stating that he was directed by your Lordship to transmit to us the accompanying drafts which had been drawn up in accordance with our Report of the 10th October upon the questions therein referred to, respecting the regulations issued by the European Commission of the Danube for the navigation of that river; and to

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request that we would take the same into consideration, and favour your Lordship with any observations we might wish to offer thereupon.

Mr. Layard was also to inform us, with reference to that part of our Report which confirms the view taken by Major Stokes of the effect of the Order in Council of the 9th of January, 1863, upon the two Orders of the 6th of January and 25th of March, 1862, that your Lordship was of opinion that, as there may be a long delay in carrying out the proposals alluded to in the accompanying drafts, it would be advisable that a new Order in Council should at once be issued to clear up the discrepancies at present existing, and that he was accordingly to request that we would be good enough to prepare such draft Order in Council.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we have perused the drafts which accompany the letter of Mr. Layard, and it does not occur to us to make any observations thereupon, in addition to those which we have had the honour to offer on the subject in our former Report; and that we have drawn the draft of a new Order in Council, which will have the effect of remedying the evil complained of by Major Stokes in his letter of the 3rd September, 1864, consequent on the repeal of the Order in Council of the 27th August, 1860. We presume that this Order will be made at the same Council with the proposed new General Order as to Consular jurisdiction in the Levant, on which we have recently advised in conjunction with Mr. Reilly, and we have prepared it accordingly.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 182.

The Law Officers of the Crown to Earl Russell.—(Received November 29.)

Lincoln's Inn, November 29, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 18th of November instant, stating that he was directed by your Lordship to transmit to us the accompanying despatch from Her Majesty's Chargé d'Affaires at Constantinople (No. 79), inclosing an extract of an instruction which his Prussian colleague had addressed to the Prussian Consul-General at Bucharest resspecting a circular (of which a copy was annexed) which had been issued by the Moldo-Wallachian authorities with regard to the expulsion of foreigners from the Principalities; and to request that we would take these papers into our consideration, and inform your Lordship whether we consider Her Majesty's Government should give to the British Representatives in the Principalities instructions similar to those addressed to the Prussian Consul-General at Bucharest.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That we do not think it would be expedient that Her Majesty's Government should issue to the British Representatives in the Principalities instructions similar to those addressed by Baron Steffens to the Prussian Consul-General at Bucharest. We observe that the despatch of Baron Steffens appears to interpret the circular of the Moldo-Wallachian Government as contemplating the "extradition" of persons accused of political offences in the Principalities upon the demand of foreign Powers. We do not so understand it: it seems to us merely to give notice that foreigners who have been, or may be, engaged in political intrigues against the internal peace of the Principalities, or in violation of their neutrality towards foreign Powers, will be liable to be ordered to leave that country, and that this will be done with all due regard to international obligations.

We think that it would be better for Her Majesty's Government not to assume that anything will be done under this circular in derogation of the rights secured by Treaty to Her Majesty's subjects. If any individual case should arise in which, under colour of this circular, wrong is done to any British subject, it will then be proper for Her Majesty's Government to interfere. An examination of the circumstances of each case will show whether the Capitulations have been violated or not, and whether the action of the local Government has been legitimate or not with respect to the expulsion of any British subject. But it would be difficult to deny generally, and *à priori*, the right of the Moldo-Wallachian Government to expel from its territory foreigners who may have been guilty of abusing its hospitality in the manner described (upon the face of it) by this circular; and we do not think that any renunciation of that right can be found in the Capitulations and Treaties between the Porte and Great Britain.

We have, &c
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 183.

The Law Officers of the Crown to Earl Russell.—(Received December 7.)

Lincoln's Inn, December 6, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Murray's letter of the 14th ultimo, stating that he was directed to transmit to us therewith a despatch from Sir E. Hornby (No. 67), raising a question with respect to probate duty, as to whether an interest in land in Turkey, where no foreigner can hold land, is to be considered in the nature of personalty or of real estate; and to request that we would take this paper into consideration, and furnish your Lordship with our opinion upon the point in question.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That a foreigner being, by the Turkish law, incapable of holding land in Turkey, any interest which he has practically therein exists by sufferance, and upon the terms (as we collect) of having it compulsorily turned into money by sale after his death. We presume that, under these circumstances, the former Law Officers, in March 1861, considered the situation of such property to be most analogous to that of real estate in England, held under a title by which it is made subject to an absolute trust for sale, or (as the phrase is) "converted," in equity, into personal estate. The proceeds of real estate, so situated in England, are distributable as personal estate, but the property itself does not vest in executors or administrators by virtue of any probate or letters of administration. Nor is such property, or the produce of the sale thereof (unless already sold, or contracted to be sold, in the lifetime of the testator or intestate), chargeable with any probate or administration duty (Custance *v.* Bradshaw, 4 Hare, 315; Matson *v.* Swift, 8 Beavan, 368; Attorney-General *v.* Bruming, 8 House of Lords, 260).

Following this analogy, and not dissenting from the view of our predecessors, we are of opinion that the fees imposed by the Levant Orders in Council, in lieu of probate duties, &c., are not payable in respect of the interest of a British subject in Turkish real estate.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 184.

The Law Officers of the Crown to Earl Russell.—(Received December 19.)

Lincoln's Inn, December 17, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 10th instant, stating that he was directed by your Lordship to transmit to us the accompanying despatch and its inclosures from Her Majesty's Chargé d'Affaires at Constantinople (No. 112), respecting a question which had arisen at Bagdad as to the right of English and American missionaries to claim the same privileges as are accorded to Roman Catholic religious establishments with respect to the payment of Custom duties; and to request that we would take the same into our consideration, and favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That before we express an opinion upon this subject we should desire to be furnished with the precise statement of the reasons upon which the Customs Master at Bagdad

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founded his decision that the English and American Church Missions were on a different footing from the Roman Catholic establishments with respect to the payment of Custom duties; and also with a reference to the express words of any Treaty or Convention by which Roman Catholic establishments are so exempted.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

United States.

No. 185.

The Law Officers of the Crown to Earl Russell.—(*Received January* 6.)

Lincoln's Inn, January 6, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 18th ultimo, stating that he was directed by your Lordship to transmit to us the accompanying papers,* respecting the case of the "Pacifique," a British schooner belonging to Quebec, which was captured in March last off the coast of Florida by the United States' cruizer "Stars and Stripes" and taken into Key West, where she was released by the Prize Court.

Mr. Hammond was also pleased to state that application has been made to Lord Lyons to present to the United States' Government a claim on behalf of the owners of the "Pacifique," and the consignees of her cargo, on account of losses sustained by the capture and detention: but that his Lordship had not thought it right to make an application to the United States' Government without previously submitting the case to Her Majesty's Government. And that he (Mr. Hammond) was directed by your Lordship accordingly to request that we would take the case of the "Pacifique" into our consideration, and favour your Lordship with our opinion as to the instructions which should be addressed to Lord Lyons thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we are clearly of opinion that in this case no demand ought to be made by Lord Lyons upon the United States' Government for any indemnity. The English Prize Court would have decreed, in similar circumstances, that there was a probable cause of capture, and that the expenses incident to the capture must be defrayed by the vessel. It was the duty of the owners, if dissatisfied, to have appealed to the superior Court; and if (as we recollect) they were satisfied that they had no case for asking damages from the Prize Court, Her Majesty's Government can have no case for seeking an indemnity from the Government of the United States. Upon both grounds we think that Lord Lyons exercised a wise discretion in refusing to make any application to the United States' Government.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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* Consul Archibald, No. 85, April 28; No. 95; Lord Lyons, No. 850, November 27.

No. 186.

The Law Officers of the Crown to Earl Russell.—(*Received January* 12.)

Lincoln's Inn, January 9, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 30th of December, 1863, stating that he was directed by your Lordship to transmit to us a despatch, with its inclosures, from Lord Lyons (No. 859, December 7) in which he requested further instructions with reference to the case of British subjects, prisoners of war to the United States, who assert that at the time of their capture they were serving by compulsion in the so-called Confederate army.

Mr. Hammond was also pleased to transmit to us the previous correspondence,* and to request that we would take this matter into our consideration, and in reference to the Queen's Proclamation favour your Lordship with our opinion as to the instructions which should be addressed to Lord Lyons.

We are also honoured with your Lordship's commands signified in Mr. Hammond's note of the 1st January instant, stating that he was directed by your Lordship to transmit to us the accompanying papers† respecting the case of Joseph Taylor, a prisoner of war to the United States; and to request that they might be considered, together with those which were sent to us on the 30th ultimo, relative to the case of other British subjects who have been taken in battle by the United States' forces.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That it appears to us that the course which Lord Lyons has pursued, and intends to pursue, in this difficult matter is very expedient and proper.

The application for release, even in special cases, where the fact of serving in the enemy's army is undeniable, cannot be put upon the ground of strict right, and the habit of indiscriminately making such application would, if adopted, have the effect which Lord Lyons points out, of weakening the effect of any well-founded application in the case of a particular individual.

With respect to the concession which the United States' authorities are willing to grant to British subjects who will take the oath of allegiance to the Government of the United States, we think that Her Majesty's Representative at Washington cannot give any encouragement or countenance to such a mode of solving the difficulty. But if (as appears possible) a like concession should be made in favour of British subjects who may be willing to take an oath of neutrality during the pending civil contest, we see no objection to this mode of obtaining their release from imprisonment. It would also seem to us very proper that Lord Lyons should exert his influence, as far as he may find opportunity, in favour of the petitions of those British prisoners who desire not to be exchanged, but to be detained as prisoners at New York.

With respect to the case of Joseph Taylor, we think that the observations of Lord Lyons are perfectly just and conclusive.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 186*.

The Law Officers of the Crown to Earl Russell.—(*Received January* 11.)

Lincoln's Inn, January 11, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 30th ultimo, stating that he was directed by your Lordship to transmit to us a despatch and its inclosures from Lord Lyons (No. 880, December 15), respecting the case of a British subject named Kennedy, who formerly held a commission in the Confederate service, and who was arrested by the United States' authorities in July last.

And to request that we would take Mr. Kennedy's case into our consideration, and favour your Lordship with our opinion thereupon; but Mr. Hammond was directed by your

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* Lord Lyons, No. 296, May 5; to Lord Lyons, No. 229, May 22; Lord Lyons, No. 425, June 12; Mr. Stuart, No. 46, July 6; No. 59, July 13; to Mr. Stuart, No. 43, July 31, 1863.

† India Office, November 18; to Lord Lyons, No. 586; Lord Lyons, No 860.

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Lordship to add that, in your Lordship's opinion, Her Majesty's Government ought not to interfere.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That we have the honour to agree with your Lordship that this is a case in which Her Majesty's Government ought not to interfere.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 187.

The Law Officers of the Crown to Earl Russell.—(Received January 12.)

Lincoln's Inn, January 11, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 30th ultimo, stating that he was directed by your Lordship to transmit to us a letter dated the 14th October ultimo, from William Thompson, stating that he is a British subject, and that he is at present confined at Hilton Head on a charge of using treasonable language against the Government of the United States. And that he was directed by your Lordship also to transmit to us a despatch and its inclosures from Lord Lyons (No. 861, December 7, 1863) reporting upon this case, and to request that we would take the same into our consideration, and favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into our consderation, and have the honour to report—

That it should be clearly represented to the United States' Government that Her Majesty's Government can never admit it to be lawful to imprison a British subject for attempting to run a blockade. This is not the penalty which international law attaches to the offence, and it is a question of international law alone. If, however, Thompson either be an American subject, or, being a British subject, has enlisted in the Confederate or Federal service, there is no ground for the interference of Her Majesty's Government.

It does not appear why Mr. Seward did not signify to the authorities at St. Augustine that Thompson had been released (which must have been the case) from Fort Lafayette, on evidence of his being a British subject.

In the present state of circumstances, however, it will be the best course to wait the result of the trial, which is represented to be near at hand. At the same time, Lord Lyons should be prepared to contend for Thompson's release if he should be proved to be a British subject and at the time of his seizure to have been engaged in no offence against the United States' Government.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 188.

The Law Officers of the Crown to Earl Russell.—(Received January 12.)

Lincoln's Inn, January 12, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 4th instant, stating that he was directed by your Lordship to transmit to us the accompanying despatch from Her Majesty's Consul at New York (No. 214), inclosing copies of the judicial proceedings in the cases of the "St. George," "Anglia," "Scotia," and "Emma;" and to request that we would take the same into our consideration, and favour your Lordship with any observations we might have to offer thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That all these vessels and their cargoes appear from the evidence to have been

rightfully condemned as prizes of war for violating the blockade established by the United States' Government.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 189.

The Law Officers of the Crown to Earl Russell.—(Received January 13.)

Lincoln's Inn, January 12, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 31st ultimo, stating that he was directed by your Lordship to transmit to us, together with papers bearing upon similar cases,* a letter from Messrs. Bennett and Wake,† respecting the seizure of the British barque "Science" by a Federal cruizer at Matamoros.

Mr. Hammond was also pleased to state that we should perceive by the papers inclosed that your Lordship has called upon Lord Lyons for a report on the cases of the "Volant" and Dashing Wave, but as cases of the same kind appear to be frequent, your Lordship takes the opportunity of the further representation just received respecting the "Science," to ask our opinion as to the facts as they appear in these papers, and as to any general instructions which might be given to Lord Lyons applicable to such cases.

We are also honoured with your Lordship's commands signified in Mr. Hammond's letter of the 6th instant, stating that with reference to his letter of the 31st ultimo, respecting the cases of the British vessels "Volant," "Dashing Wave," and "Science," captured by Federal cruizers at Matamoros, he was directed by your Lordship to transmit to us therewith, a letter dated 5th instant, and its inclosures from Messrs. F. de Lizardi and Co. respecting a quantity of specie shipped by them on board the "Dashing Wave," and to request that we would take the Messrs. Lizardi and Co.'s letter into our consideration, together with the papers respecting this case already before us, and favour your Lordship with our opinion therefrom.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we presume that the "Science" was not seized in Mexican waters. But even on this assumption she appears, on the present papers, to have been most unjustifiably and illegally seized. According to these papers her imputed offence was having, or having had, contraband on board; but the obvious answer is, first, that cotton, of which her return cargo was composed, is not contraband, and that the cargo with which she arrived at Matamoros (of whatever articles composed) had been, before her seizure, actually and *bonâ fide* delivered in Matamoros (a neutral port) to Mexican consignees. Secondly, that if her trade was *bonâ fide* between Great Britain and Matamoros only, she would not be guilty of carrying contraband.

We think that Lord Lyons should be instructed to make an explicit and immediate remonstrance in this case, and in all cases exactly similar, to the United States' Government; for though the "Science" and other ships mentioned in these papers will probably not be withdrawn from the Prize Court, the ships ought, if the present story be in every respect true (a proviso which experience teaches us to be very necessary), to be restored with full damages, and a remonstrance now may aid this result.

With regard to the 12,000*l.* specie shipped by Messrs. Lizardi and Co. on board the "Dashing Wave," we think that those gentlemen should be told that their proper course is to appear in the Prize Court as claimants of that part of the cargo, which, if their statement is correct, ought to be restored to them; but if it should appear that the capture of the ship was justifiable, Messrs. de Lizardi and Co. will not be entitled to any damages.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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* Messrs. Gallichan and Co., December 17, 1863; Messrs. Bateson and Robinson, December 18; Messrs. Bischoff and Sons, December 18; to Messrs. Bischoff and Sons, December 26; to Lord Lyons, No. 639.

† Messrs. Bennett and Wake, December 30, 1863.

1864

No. 190.

The Law Officers of the Crown to Earl Russell.—(Received January 13.)

Lincoln's Inn, January 12, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 28th ultimo, stating that he was directed by your Lordship to transmit to us a letter dated the 21st ultimo from Mr. Joseph Hansard, a British subject, who states that he has resided for twenty-five years in the Southern States of America, and at the date of his letter was about to return thither, calling attention to that part of President Lincoln's Message which classes with belligerents, on whose behalf their Government cannot expect any privileges or immunities distinct from that character, foreigners residing within the lines of the insurgents; and Mr. Hansard asks whether he will not be protected in all his rights as a British subject in the lawful prosecution of his business; and Mr. Hammond was to request that we would take Mr. Hansard's letter into consideration, and furnish your Lordship with our opinion as to the answer which should be returned thereto.

In obedience to your Lordship's commands we have taken Mr. Hansard's letter into consideration, and have the honour to report—

That we think the answer to Mr. Hansard should be to the effect, that he must be aware that voluntarily to resort to a country in which a civil war of the most exasperated kind is raging is to place himself in a position of danger, from the possible consequences of which he cannot expect that Her Majesty's Government should guarantee him.

If by long residence and purchase of landed property he has, as would appear to be the case, so far incorporated himself with Georgia as to have made that State his home, and to have established himself there for all practical purposes, he can hardly complain of the law which allows the belligerent to treat him like any other permanent inhabitant of that country. At all events, he must understand that if he takes this step he will do it on his own responsibility; and he must not take it on the supposition that Her Majesty's Government will hold themselves bound to interfere, at the risk of embroiling this country in war, on his behalf, or on that of any other natural-born subject of Her Majesty who may desire to obtain, practically, the advantages of two distinct nationalities, and who may wilfully incur the peril of being treated as an enemy by residence in a foreign country divided by civil war.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 191.

The Queen's Advocate to Earl Russell.—(Received January 15.)

Doctors' Commons, January 14, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 9th January instant, stating that he was directed to transmit to me a letter dated the 4th instant from the Admiralty, inclosing copies of a letter from Vice-Admiral Milne, with other papers, on the subject of the repair at Bermuda of certain vessels employed in running the blockade of the ports of the so-called Confederate States; and to request that I would take these papers into consideration, and report to your Lordship my opinion thereupon.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That it is certainly no part of the duty of a neutral Government, according to the existing usage and practice of international law, to inquire into the destination of merchant-vessels belonging to its country, or to aid by any domestic regulations, directly or indirectly, the maintenance of the belligerent's blockade, which he, and he alone, is bound to make effectual. His right to capture the neutral vessel which attempts to break the blockade, or to seize contraband merchandize on board of her, is not attended by any correlative obligation *on the part of the State* to which the vessel belongs to take any active steps in support of this right. The neutral State cannot lawfully complain if the vessel or the merchandize be thus captured or thus seized by the belligerent cruizer; but with this passive acquiescence, so to speak, in the act of the belligerent, the strict obligations of neutrality in this matter, *so far as the State is concerned,* are satisfied. I do not, therefore, think that the United States' Government would be legally warranted in preferring a formal complaint against Her Majesty's Government for allowing, among other British vessels, some to be repaired in Government dockyards which were, without the privity or consent of the Government, employed in breaking the blockade. In other words, the belligerent Government would have no legal right to call upon the neutral Government to exclude from the general privilege of repair in the dockyards (of which too its own vessels, in this instance, partakes) a particular class of British vessels, which they alleged to be, or which were commonly reported to be, what are called blockade runners. It is of course competent to Her Majesty's Government, or to the Admiral representing Her Majesty's Government, to make a regulation excluding certain vessels from this privilege; and, regard being had to the particular circumstances of this war and to the position and peculiar character of the Bermuda Islands, the exclusion of particular vessels, which after having been repaired in these docks have proceeded to break the blockade, may be, probably is, a justifiable and prudent measure, though this is a power which ought, I think to be sparingly exercised; but it certainly seems to me that the exaction, from all vessels seeking repair, of a bond that they "shall not be engaged within three months, directly or indirectly, in the business of breaking the blockade," is, independently of the difficulty and extreme inconvenience to the Government incident to a proceeding for the enforcement of penalties for the breach of such bond, open to the general objection of being far too strong a measure for a State, desirous of maintaining a strict neutrality, to adopt; a step approaching too closely the act of assisting one belligerent to maintain against another his blockade, which, it must always be remembered, the belligerent is bound by law to render sufficient for its purpose by his own means at the place where it is instituted.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 192.

The Queen's Advocate to Earl Russell.—(Received January 15.)

Doctors' Commons, January 15, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 6th January instant, stating that he was directed to transmit to me a letter dated the 5th instant, with its inclosures, from Mr. James Crutchett, requesting the interference of Her Majesty's Government to procure compensation for his property in Washington, which he states has been appropriated by the United States' Government for military purposes; and Mr. Hammond was to request that I would take this case into consideration and furnish your Lordship with my opinion thereupon.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I am clearly of opinion that it appears from the whole correspondence, and especially the letter of Lord Lyons (dated 23rd April, 1863), that Mr. Crutchett has already obtained from Her Majesty's Representative at Washington all the assistance which he could reasonably expect, and more than, as a matter of strict right, he was entitled to. Mr. Crutchett is a British subject, but is also a domiciled citizen of the United States in the strongest sense of the term. He was married and settled himself in Washington, and the claim in question relates to the manner in which real property (or property partaking closely of that character) has, in a great emergency, been dealt with by the United States' Government. It is clear that Her Majesty's Government cannot officially interfere in cases of this description. Mr. Crutchett must have recourse to the same remedies as any other citizen of the United States, with whom, so far as this property is concerned, he must be considered as on an equal footing. Though the question has assumed a very complicated form, he certainly appears to have been ill treated, and it is a matter of satisfaction that he has obtained the good offices of Lord Lyons, which have produced the result stated in his Lordship's letter of 23rd April, 1863. I cannot advise your Lordship that any further intervention on the part of Her Majesty's Government would be expedient.

I have, &c.
(Signed) ROBERT PHILLIMORE.

1864

No. 193.

The Law Officers of the Crown to Earl Russell.—(Received January 18.)

Lincoln's Inn, January 15, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 1st instant, stating that he was directed by your Lordship to transmit to us two despatches and their inclosures, from Lord Lyons, respecting the case of the "Chesapeake" (No. 876, December 11th, and No. 886, December 15th), an American steamer plying between New York and Portland, which was seized and taken into a British North American port by a party of men who embarked in her as passengers at New York; and Mr. Hammond was to request that we would take these papers into consideration, and report to your Lordship our opinion whether the transaction is one in regard to which the British Government could interfere to seize the vessel and hand over the parties to be tried in the United states.

We are also honoured with Mr. Hammond's several letters dated respectively the 7th, 8th (three letters), and 9th instant, transmitting to us the further papers marked in the margin,* relating to this matter, for our consideration.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we think Her Majesty's Government might properly have interfered to seize the "Chesapeake," and to deliver her up to the Government of the United States. There could be no doubt on this point, unless she were to be regarded as a lawful prize of war, not abandoned by her captors. But even if she were so regarded, she was brought into British waters in contravention of Her Majesty's orders (which forbid either belligerent to bring any prize within British jurisdiction), for the manifest purpose of avoiding recapture; and her captors, while she was there, disposed of the greater part of her valuable cargo.

This was such an invasion of the territorial rights of Her Majesty, and such a disregard of Her Majesty's orders, made for the preservation of her neutrality, as (having regard to the very peculiar circumstances of the case) would, in our opinion, fully warrant Her Majesty in availing herself of her territorial sovereignty to restore the ship to its original owners, without going through the forms of any proceeding in the Vice-Admiralty Court of Nova Scotia; and, indeed, we think, that, in taking this case into the Vice-Admiralty Court (unless this has been done at the instance of any claimant), the Colonial Government may, perhaps, have acted without adequate consideration of the effect of Her Majesty's orders against bringing prizes into British ports; and that some embarrassment may possibly arise if the question of prize or no prize should be entertained and adjudicated upon by that tribunal.

With respect to the delivery up of the captors for trial in the United States, this would clearly be proper, under the Xth Article of the Ashburton Treaty, of the 9th of August, 1842 (6 Hertslet, pp. 859, 860), and the Imperial statute 6th and 7th Vict., cap. 76, if, in taking the proceedings required by the statute before any Justice of the Peace or other person having power to commit for trial persons accused of crimes against the laws of Nova Scotia, such evidence should be given upon oath as, according to the law of Nova Scotia, would justify the apprehension and committal for trial of the persons accused, upon a charge of piracy or of murder, if the acts alleged in support of the charge had been there committed; but not otherwise.

The question, therefore, whether the capture of the "Chesapeake" was an act of war or of piracy (on which the further question, whether murder was committed or not, also depends), must be considered, in the ordinary course of law, by the Magistrate in Nova Scotia before whom the charge, with a view to extradition, may be made. It must be remembered that, if a case for extradition should be holden by the Magistrate to have been made out by the evidence before him, the statute, though it empowers, does not peremptorily require, the Governor to deliver up the person accused; so that a doubtful case might still, if necessary, be reserved for consideration by Her Majesty's Government; but without the authority of the Magistrate no extradition can take place. Warrants for the arrest of the persons appear to have been, in fact, granted, upon the demand of the United States' Government, by the proper Nova Scotian authorities, and, we think, rightly; because the seizure of a United States' merchant-vessel, and the homicide of one of her officers, by persons who came on board her as ordinary passengers at New York, is

primâ facie piracy and murder. But we find it stated in some of the papers (see particularly the telegram No. 9, in Inclosure 2 of the letter from the Colonial Office, dated 7th January, 1864), that Lieutenant Braine, who commanded the capturing party, represented himself to be a Confederate officer, and professed to have acted in this transaction, not only under a commission, or letters of marque, from Mr. Jefferson Davis, but also under express instructions from the Confederate Government, to capture this particular steamer.

Should these representations prove to be correct, we apprehend that the acts in question would not properly be within the category of piracy or murder, but ought rather to be deemed by neutral nations to be acts of war; however unjustifiable the stratagem resorted to to obtain possession of the "Chesapeake" may be considered to be. And if the correctness of this view of the facts should be established by evidence, we think the British Government could not properly interfere to hand over these parties to be tried by the United States.

The only other matters appearing in these papers which require notice from us, are the proceedings of the United States' ships "Ella and Annie" and "Dacota" within British waters, the proceedings thereon of the Nova Scotia Government, and the circumstances under which the man Wade effected his escape from Halifax.

Nothing can be more manifest than that a wilful and flagrant violation of Her Majesty's territory was committed by the officers of the United States' ship "Ella and Annie," and that the facts were deliberately misrepresented by the Commander of the "Dacota" to the Government at Halifax, while professing to show respect to Her Majesty's territorial rights. But as the United States' Government have not attempted to justify these acts, or to take any advantage of them, but have, on the contrary, expressed their readiness and desire to make all proper and suitable reparation for them, it does not seem necessary for us to dwell further on that subject.

The conduct of Major-General Doyle, under these circumstances, seems to us to have been altogether becoming and proper, and to have adequately vindicated the honour and dignity of Her Majesty's Crown, without neglecting anything which, under the terms of the Ashburton Treaty, might still reasonably be due (notwithstanding the offence committed), to the United States' Government.

It may, perhaps, be regretted that more effectual precautions were not taken to prevent the escape from justice of any of the persons landed from the "Dacota's" boat, for whose arrest warrants had been issued; but it cannot be imputed to the Colonial Government as a fault, that they did not foresee or guard against a proceeding so extraordinary as that which actually took place.

The escape of Wade, by the assistance of certain of the bystanders (however illegal and censurable the conduct of those who abetted it may be), cannot justly be made the foundation of any international complaint by the United States' Government. There is not the slightest reason to suppose that it was connived at by any of the Colonial authorities; and when the facts are borne in mind that Wade had, up to the moment of his being put on shore, been kept under restraint by means absolutely unlawful and derogatory to Her Majesty's territorial rights—(handcuffs, as we understand, were only at that instant removed from his hands), and that it was, therefore, necessary to give him some interval (however short) of liberty, before the civil process of arrest could properly be executed, it is impossible not to see that the lawless steps taken for his escape, and the success which attended them, were, in a very great degree, the consequences of the equally lawless acts previously committed by the naval officers of the United States.

We have, &c.

(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

P.S.—Since writing the above, we have received Mr. Hammond's letter of the 14th instant, inclosing the printed papers relating to the ship "Orwell." We do not, however, think that the case of the ship "Orwell" furnishes any rule for that of the "Chesapeake."

R. P.
R. P. C.
R. J. P.

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* Lord Lyons, No. 903, December 21; Inclosures 2 and 13 in Lord Lyons' No. 903; Mr. A. Stewart, December 24, 1863; Colonial Office, January 7; Admiralty, January 6, 1864; Lord Lyons, No. 913, December 24, 1863.

1864

No. 194.

The Law Officers of the Crown to Earl Russell.—(*Received January* 18.)

Lincoln's Inn, January 15, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 24th ultimo, stating that he was directed by your Lordship to transmit to us therewith a letter dated the 22nd December ultimo, and its inclosures, from the Board of Admiralty relative to the proceedings of the United States' ship "Vanderbilt" at the Cape of Good Hope, and the seizure by that ship of the Colonial vessel "Saxon" at Angra Pequena; and Mr. Hammond was also pleased to inclose a letter dated the 24th December from the Colonial Office on this subject, and to request that we would take the same into our consideration, and furnish your Lordship with our opinion thereupon.

We are also honoured with Mr. Hammond's letter of the 6th instant, inclosing to us a letter from Messrs.Hamilton and Co. dated the 4th January and also with his further letter dated the 9th instant, transmitting to us a despatch, with its inclosures, from the British Consul at New York (No. 218), reporting the arrival at that place of the "Saxon" in charge of a prize-crew.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That the circumstances of this case may possible raise a question of considerable difficulty and novelty.

We should, therefore, desire to wait for a fuller and further communication of all the facts before we tender any final advice to your Lordship.

We should desire, particularly, to know when and by what means, and for what consideration, or under what arrangements, the "Saxon" became interested or concerned in the shipment or carriage of the wool taken by the "Alabama" in the "Sea Bride" which had been deposited at Angra Pequena; and whether the coals stated to have been seized by the "Vanderbilt" were at the time of seizure on shipboard or on land; and whether they were being conveyed, or had been deposited in the place where they were found, by the "Saxon" for any purpose connected with the supply of the "Alabama."

In the meantime it may not be improper to instruct Lord Lyons to bring under the notice of the United States' Government the apparently extraordinary circumstances of this capture, at so great a distance from American waters, of a British Colonial vessel, certainly not exposed to the suspicion of contemplating any breach of blockade, nor (so far as appears) of carrying contraband of war to the enemies of the United States; and to request the United States' Government either to direct the immediate release of the "Saxon," with proper compensation to her owners, or at least to explain the grounds on which her seizure and detention are supposed to be justified.

We have, &c.

(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 195.

The Attorney and Solicitor-General to Earl Russell.—(*Received January* 19.)

Lincoln's Inn, January , 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 21st ultimo, stating that with reference to our Report of the 24th of last July, he was directed by your Lordship to transmit to us, together with the previous papers,* a despatch from Lord Lyons † inclosing the answer returned by the United States' Government to the representation which, in conformity with the advice contained in our Report, was addressed to that Government respecting the case of Mr. Hardcastle, the British subject who was shot by a sentry in the Old Capitol Prison at Washington. And to request that we would again take this case into our consideration, and report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we regret to state, that, in our opinion, the explanation offered by the United States' Government for this unhappy act of their officer, causing the death of an innocent British subject, is in every respect extremely unsatisfactory, and calls for a strong remonstrance on the part of Her Majesty's Government. It appears to us clear that, according to all the well-known rules of civilized warfare, Hardcastle was unlawfully imprisoned; and for the consequences, whether accidental or not, which ensued upon this unlawful imprisonment, those who ordered it must be considered responsible. It is admitted that Hardcastle arrived within the territory of the United States, and within the Federal lines, under a flag of truce, and with a safe-conduct pass from the military authorities; and we are wholly at a loss to understand the interpretation which (we believe for the first time) is sought to be put upon such an instrument by the United States' Government. It is impossible to consult the writings of any accredited jurist without seeing that such instruments are holden sacred by all States, and that a safe-conduct is always defined as a privilege which ensures safety to those who hold it, while passing or being within the place permitted by the instrument (see Vattel, l. 3, c. 17); and it is manifest that the effect of such an instrument is altogether rendered null and void by the pretence that the party holding it may be detained as a prisoner, precisely in the same manner as if it had not been granted to him. Such an interpretation, in fact, makes what is called an instrument of safe-conduct a mere snare to the unfortunate person who has been deceived into placing faith in it, and is wholly contrary to the usage and practice of all civilized States, as well as to the common notions of justice and good faith. We turn from this subject to the facts, such as they are now alleged, in justification on the part of the United States' Government. In the first place, it is to be observed that none of the acts alleged in justification could by possibility have caused the imprisonment, inasmuch as they rest upon no evidence but the statement of the jailor (whom the dead man cannot contradict) of Hardcastle's conversation with him *after* he was imprisoned. We literally can find no evidence of any other kind throughout these papers, from which the faintest trace of guilty or improper conduct on Hardcastle's part can be inferred. Lastly, it is not a little remarkable that the allegation now made, that Hardcastle as well as Pleasanton put his head over the screen when he was shot by the sentinel, was not brought forward in the first instance (see letter of General Martindale to Mr. Stanton, June 15, 1863, Inclosure 19 in No. 572; and letter of Captain Mix to General Martindale, May 25, Inclosure 20 in No. 572). It was then represented that Pleasanton's head was above the screen, but not that Hardcastle's head was also in the same position; and it is hardly possible to conceive (regard being had to the gravity of the matter) that such a fact, if really true, should not have appeared as the result of the first inquiry.

In conclusion, we can only repeat our opinion that the case seems to require a very strong protest on the part of Her Majesty's Government. It may, perhaps, be a matter for consideration whether any reparation in the shape of a pecuniary payment should be required for the family of the deceased person. We do not, however, understand that any such reparation has, as yet, been asked for by the parties interested, who have been in communication with Her Majesty's Government.

We have, &c.

ROUNDELL PALMER.
R. P. COLLIER.

No. 196.

The Law Officers of the Crown to Earl Russell.—(*Received January* 19.)

Lincoln's Inn, January 19, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 28th ultimo, stating that with reference to our Report of the 31st October last, he was directed by your Lordship to transmit to us, together with the previous papers, the correspondence which has since passed respecting the case of the "Labuan,"* including the notes which have been exchanged between Lord Lyons and Mr. Seward relative to the course pursued by the United States' District Attorney in sending to Matamoros for additional evidence; and Mr. Hammond was to request that we would take these further papers into consideration, and report to your Lordship our opinion thereupon.

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* Lord Lyons, No. 572; to Lord Lyons, No. 434; Lord Lyons, No. 724; Mr. Stuart, No. 5.
† Lord Lyons, No. 820, November 17, 1863.

* To Lord Lyons, No. 572, November 7; Lord Lyons, No. 784, November 3; Messrs. Lefevre and Co., November 16; to Messrs. Lefevre and Co., November 20, 1863.

In obedience to your Lordship's commands we have taken these further papers into consideration, and have the honour to report—

That it is not easy to understand the exact meaning of Mr. Seward's letter (25th November) to Lord Lyons; but that it does not appear to us by any means satisfactory. An injury has been inflicted upon one of Her Majesty's subjects by the unlawful act of a ship commissioned by the United States' Government. Redress, taking the form of damages, is due for this injury.

The circumstances of the particular case, as appearing by the evidence on which the captured vessel was released, afford no possible excuse for the capture; unless, indeed, every illegal capture is to be excused by the mere suggestion that the officer making it may have possibly misconceived the law and his duty. The other information communicated at the time of the capture, and afterwards to Her Majesty's Government, and by their orders to the Government of the United States (to which no answer has ever been given). tends only to give a still more aggravated character to the wrong.

Her Majesty's Government are not, strictly speaking, in any way concerned with the manner or mode in which the money necessary to pay the just amount of damages is in such a case to be provided; and although they would of course wait for a reasonable period until the Appropriation Act referred to by Mr. Seward could be passed, according to the forms of the United States' Constitution, nevertheless they are entitled to express their deep regret and dissatisfaction at the unusual, and probably unprecedented, course which has been pursued by the United States' Government in this matter; a course different from that which has been pursued in other cases depending upon the same principles, towards other European Governments, and which, if persevered in, would appear to hold out little prospect of just satisfaction being made in the manner to be expected from a friendly nation, for any wrong which Her Majesty's subjects may sustain by reason of any of the belligerent operations of the United States.

It may be proper again to remind the United States' Government that Her Majesty's Government have from the very first considered, and have endeavoured to impress upon, the United States' Government, that the question of damages in this case, having regard to all its circumstances, was one which ought to have been settled immediately between the two Governments, without any reference to the Prize Court at all.

They acquiesced, not without remonstrance, in the original desire of the United States' Government to be fortified in their own *primâ facie* conclusion that the capture was illegal by the decision of their Prize Court. That decision having been pronounced, and having finally and conclusively established the illegality, the United States' Government, instead of at once ascertaining by the means usual between Governments the proper amount of compensation, again desired to use, for that purpose also, the machinery of the same Prize Court. Against this new source of expense and delay, Her Majesty's Government again remonstrated; and it now appears that the only result of that proposal has been to postpone any progress towards the settlement of this matter for more than eight months, while attempts have been said to be making to obtain from Matamoros new and *ex parte* evidence in explanation of the grounds or circumstances of the capture, of a nature not at all calculated to affect the question of the amount of damage sustained, and which neither is now, nor can regularly be brought, before the Prize Court. In the meantime, one of the United States' Circuit Judges (Judge Nelson) has decided upon an appeal in another cause (the case of the "Empress"), that the Prize Court has no jurisdiction or power to award any damages at all against the United States' Government, nor even against the captors, in any case whatever in which a capture has been illegally made by a public ship of war of the United States; but that, in all such cases, the question of damages must be determined, extra-judicially, between Government and Government.

The position, therefore, as to damages, for which Her Majesty's Government have throughout contended in this case, has been solemnly and deliberately affirmed by a judicial authority of the United States, higher than that of the Court which released the "Labuan," and before which it has been proposed to take further proceedings upon this subject; and it is manifest that, even if, at the express instance and request of the District Attorney of the United States, the Prize Court could be induced to enter into the question of damages at all, it would do so, not in the exercise of its proper jurisdiction, but in the way only of extra-judicial arbitration. The British claimant has not by law the right, and cannot therefore be under the obligation, to seek for redress by any such method; and Her Majesty's Government cannot reasonably be expected to acquiesce in the substitution of this new and anomalous kind of one-sided arbitration, for that

generally in use, when a question of mere amount is in difference between two independent Governments.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 197.

The Law Officers of the Crown to Earl Russell.—(Received January 20.)

My Lord,
Lincoln's Inn, January 19, 1864.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 1st instant, stating that he was directed by your Lordship to transmit to us the correspondence, as marked in the margin,* between the Foreign Office and the Colonial Office, by which it would be seen that the Duke of Newcastle is of opinion that although the IXth Article of the Treaty between this country and the United States for the suppression of the Slave Trade provides for the delivery to the American authorities of United States' citizens found on board a vessel *sailing without flag or papers, and condemned as a slaver*, yet that the Act of Parliament 25 and 26 Vict., cap. 40, sec. 16, under which alone British authorities could give effect to the provisions of the Article in question, does not follow the Treaty stipulation, but only provides that it shall be lawful for the authorities to order any person found on board such vessel at the time of capture to be *conveyed within the jurisdiction of the nation under whose flag such vessel so condemned as aforesaid was sailing at the time of capture, or to which such vessel may belong*. That the Duke of Newcastle holds, therefore, that the Treaty and the Act of Parliament are at variance on this point, and that the provisions of the Act would not authorize British authorities to deliver up to United States' authorities citizens of the United States who may be captured on board a vessel taken and condemned for being engaged in the Slave Trade without flag or papers; and Mr. Layard was to request that we would take these papers into consideration, and furnish your Lordship with our opinion upon this case.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That this was a vessel sailing without flag or papers, condemned by an English "competent Court" for being engaged in the African Slave Trade. On board this vessel a citizen of the United States is found, and the question arises as to what course ought to be pursued with respect to him under the IXth Article of the African Slave Trade Treaty, as carried into execution by the 16th section of the 25th and 26th Vict., cap. 40.

We are of opinion that the IXth Article, properly construed, directs that a foreign subject so found should be delivered up to the State to which the vessel belonged in which he was found, and not to the State (unless it happened to be the same) of which the individual was a subject; and we think that this provision of the IXth Article is sufficiently given effect to by the 16th section of the Statute, which says that the captain, &c., or any person found on board, at the time of the capture "of any vessel which shall have been so condemned as mentioned in the IXth Article, shall be forthwith conveyed within the jurisdiction of the nation under whose flag such vessel was sailing at the time of capture, or to which such vessel may belong." The last alternative extends to the case of a vessel sailing without a flag.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 198.

The Law Officers of the Crown to Earl Russell.—(Received January 23.)

My Lord,
Lincoln's Inn, January 23, 1864.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 30th ultimo, stating that he was directed by your Lordship to transmit to us, together with the previous papers,* the accompanying further despatches from Lord Lyons, and a letter and its inclosures from the Admiralty,† respecting the case of the British vessel "Sir W. Peel," which was seized by the United States' cruizer "Seminole" in the Mexican waters of Matamoros; and Mr. Hammond was to request that we would take these further papers into consideration, and report to your Lordship whether they induce us to alter the view of this case taken in our Report of the 26th ultimo (November); and was to add that in accordance with that Report Lord Lyons was informed on the 7th instant (December) that in the opinion of Her Majesty's Government it would not be right that he should make any further representation to the United States' Government pending the result of the inquiry before the Prize Court.

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* To Colonial Office, August 4; Colonial Office, December 1; to Colonial Office, December 8; Colonial Office, December 22, 1863.

We are also honoured with Mr. Hammond's letters of the 6th, 9th, and 20th instant, transmitting to us, for our consideration, further depatches and papers relating to this case.‡

In obedience to your Lordship's commands we have taken these further papers into consideration, and have the honour to report—

That the new circumstances revealed in these papers do induce us to alter our opinion as to the propriety and expediency of an official interference by Lord Lyons, previously to the decision of the Prize Court in this case; that we must observe *that the claimant's counsel*, Mr. Briggs, appear to have thought that the fact of the violation of neutral territory could only be alleged in the Prize Court by the neutral Government whose territory was violated; but we think that this is an error. Such a fact cannot be alleged by an enemy; but we know of no authority for saying that it may not be put forward by a neutral whose ship has been captured within the territory of another neutral Power; and in principle it would appear to us to be competent to such neutral to claim release on the ground that the belligerent had no jurisdiction in the spot where he made the capture. It is scarcely possible to doubt, from the evidence of the captor's intercepted letter—the genuineness of which we think Lord Lyons is entitled to assume—that this vessel was knowingly seized by the captor in neutral waters; that she was seized in violation of international law, and of the American orders, without preliminary examination; and that she was seized partly on account of her homeward cargo being cotton, which the captor knew was not contraband, but chose to treat as contraband. There also seems only too much reason to infer, from the 5th paragraph of the same intercepted letter, beginning "the vessel is perfectly ventilated with air-ports," &c. (and it is a fact well calculated to excite the alarm and vigilance of every neutral maritime Power), that the captor was greatly influenced in this unjust proceeding by the desire of employing this vessel in the service of the United States; a fact which, we may observe in passing, justifies the remonstrance which we recommended should be addressed to Mr. Seward some time since upon the subject of forcing British vessels, before condemnation, into the naval service of the United States.

We think that Mr. Seward, if the genuineness of the letter be admited, can scarcely fail to see the necessity of causing the immediate restitution, with proper indemnification to the owner, and with proper *rebuke to* the captor.

We have, since this Report was prepared, read the further evidence relative to the "Sir W. Peel," contained in the inclosures of Admiral Milne's despatch sent to us in Mr. Hammond's letter of the 6th instant; and we are confirmed by the perusal of this evidence in the opinion which we have expressed. Indeed, regard being had to the proceedings of the United States' cruizers with respect to British vessels at Matamoros, we doubt whether a peremptory demand for the release of the "Sir W. Peel" would not be warranted by the facts; but we are indisposed to advise the adoption of this course until we see what the conduct of the United States' Government will be upon the whole subject of seizing neutral vessels in those waters, and the general question of trading with the Confederates, as to which we have made a further Report, to which we beg to refer, in answer to Mr. Hammond's letter of the 18th instant.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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[*] Mr. Harper, October 22; to Mr. Harper, October 23; Lord Lyons, No. 781, November 3; No. 822, November 17; to Lord Lyons, No. 610, December 7, 1863.

[†] Lord Lyons, No. 854, December 1; No. 862, December 7; Admiralty, December 22, 1863.

[‡] Lord Lyons, No. 901; No. 901; No. 908; No. 916, December 29, 1863.

No. 199.

The Law Officers of the Crown to Earl Russell.—(Received January 28.)

My Lord, *Lincoln's Inn, January* 27, 1864.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 21st instant stating that with reference to our Report of the 15th instant he was directed by your Lordship to transmit to us the accompanying further despatches from Lord Lyons,* and also a further letter and its inclosures from the Colonial Office, respecting the case of the "Chesapeake;" and to request that we would take the same into our consideration, and furnish your Lordship with our opinion thereupon.

We are also honoured with Mr. Hammond's letter of the 25th instant, transmitting for our consideration a further despatch from Lord Lyons respecting this case (No. 21, January 12, 1864).

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That it appears to us expedient to make some observation upon the construction put upon the Treaty of Extradition, and of the Statutes 6th and 7th Vict., cap. 76 (which should be read in connection with 8th and 9th Vict., cap. 120), by his Excellency the Governor of New Brunswick, in his despatch to his Grace the Duke of Newcastle.

1st. We think that the opinion of his Excellency, that he ought to issue the original warrant upon a bare requisition of the proper United States' officer without reference to any depositions, is not quite correct. We think that, though the office of his Excellency in this matter is to a great degree ministerial only, nevertheless he must exercise some discretion as to the reasonableness of the requisition, and must satisfy himself that it is founded upon some *primâ facie* evidence of an offence within the meaning of the Statutes; and the 2nd Section of the Statute (6th and 7th Vict., cap. 76), appears to contemplate the laying of some depositions before the Governor previously to the issue of the original warrant.

We think, also, that care should be taken to adhere in all such cases to the rule (laid down in the Report of the Law Officers, dated 27th December, 1852), that the requisition should show upon the face of it that the particular case is within the terms of the Statute. We make this observation, because the requisition addressed by the United States' Consul at St. John's to the Lieutenant-Governor of New Brunswick on the 22nd December last is, on the face of it, defective, as not showing that the alleged offence of piracy was committed within the jurisdiction of the United States; which is an indispensable requisite to bring the case within the Treaty and the Statute. It is true that the defect is not one which can vitiate the subsequent proceedings; and the depositions of Wade, Wollest, and Daniel Henderson, which accompanied the requisition, showed that the acts alleged to constitute the offence were done at sea, on board a ship (and therefore within the jurisdiction) of the United States; but this ought to have appeared on the face of the requisition itself.

2nd. We agree with his Excellency that the Magistrate to whom the Governor's warrant is produced must, before, in the first place, issuing his own warrant for the apprehension of the person accused, and afterwards, before committing him for trial, receive evidence which, in the language of the Statute, "would justify the *apprehension* and *committal for trial*" of the accused person, if he were to be tried for the crime of which he is accused in New Brunswick.

3rdly. We think that his Excellency is not, as he supposes himself to be, absolutely without discretion when the Magistrate shall have certified to him the committal of the accused person; for although, generally speaking, it would be his duty forthwith to order the person so committed to be delivered up to the proper United States' authority, yet cases might possibly arise in which it would be his duty to refer the matter to Her Majesty's Government before taking that step.

4thly. We agree with the opinion of his Excellency, and of the Law Officers of New Brunswick, that the Governor ought not to issue the original warrant unless it is alleged that the accused party is actually at the time within his jurisdiction.

5thly. The question whether the Counsel for the accused person are entitled to a copy of the requisition and accompanying depositions upon which the original warrant was founded, is not without difficulty. We incline, however, to the opinion that inasmuch as the requisition is the foundation of all the proceedings under the Statute, and as the accused person may be heard by his Counsel before the magistrate, and as the matter affects his personal liberty, it would be generally proper that his Counsel should be allowed a copy of these papers.

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[*] Lord Lyons, No. 920, 1863; No. 929, 1863; No. 5, 1864.

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With respect to the new despatches from Lord Lyons, it does not occur to us that they call for any detailed expression of opinion, over and above that which we have already had the honour to offer respecting the subject in our former Reports in the case of the "Chesapeake." The apology made by the United States' Government for the violation of British territory by their officers appears to have been ample and unreserved; and on this point nothing further seems to be required. The only new statement of fact which seems to call for notice by Her Majesty's Government is Mr. Seward's allegation (see Lord Lyons' despatch of 31st December, No. 929), that Braine, and several others of the alleged pirates, are "themselves Nova Scotians;" in connexion with which, we may also notice the statement appearing in Mr. Gordon's despatches, or in some of the papers transmitted by him, that others of the same party are natives or inhabitants of New Brunswick. If this be so, it will be difficult for natural-born British subjects who have acted as these persons seem to have done to exonerate themselves from the charge of piracy; and the defence, that they were in the service of the Confederate States, involves (at the very least) an addition that they violated the Foreign Enlistment Act.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 200.

The Law Officers of the Crown to Earl Russell.—(Received January 29.)

Lincoln's Inn, January 27, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 13th instant, stating that he was directed by your Lordship to transmit to us the accompanying despatch from Lord Lyons (No. 907), inclosing a copy of the opinion delivered by Judge Betts in the case of the "Stephen Hart," and to request that we would take the same into our consideration and favour your Lordship with any observations we might have to offer thereupon.

Mr. Hammond was also pleased to state that the previous papers relating to this case were also inclosed for reference if required.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That we are of opinion that this vessel and cargo were lawfully condemned.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 201.

The Law Officers of the Crown to Earl Russell.—(Received January 30.)

Lincoln's Inn, January 29, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 20th January instant, stating that, with reference to our Report of the 15th instant respecting the case of the "Saxon," he was directed by your Lordship to transmit to us, together with the former papers,* a despatch from Her Majesty's Consul at New York,† inclosing a copy of a deposition made before him by the second mate of that vessel respecting the circumstances of her capture, and also respecting the shooting of James Gray, the first mate of the "Saxon," by an officer of the "Vanderbilt" named Donohoe; and to request that we would take these papers into our consideration, and report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That if the deposition of David Aitchison contains the truth, the United States' officer Donohoe ought to be tried without delay for the wilful murder of an innocent British

subject. It is hardly necessary to observe that this deposition, although it throws no new light upon the cause of the capture, imparts a still graver character to the case of the "Saxon," which was, independently of it, one which called for a prompt and careful investigation into all the proceedings of the United States' steamer "Vanderbilt."

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 202.

The Law Officers of the Crown to Earl Russell.—(Received February 1.)

Lincoln's Inn, January 30, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 27th instant, stating that he was directed by your Lordship to transmit to us a letter dated the 25th January, and its inclosures, from the Admiralty, respecting the case of the "Saxon" and the shooting of the chief mate by an officer of the United States' ship "Vanderbilt;" and to request that we would take these papers into our consideration together with those on the same snbject which were referred to us on the 20th instant.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That our Report upon the papers transmitted with Mr. Hammond's letter of the 20th instant had been already prepared, and was in course of signature, when these further papers arrived.

That the only point of importance to which we have not adverted in our former Reports on this subject is the character of the Penguin Island, near Angra Pequena. We are desirous that it should be understood that we think ourselves at present bound to consider both these places as *not* forming part of Her Majesty's territories.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 203.

The Law Officers of the Crown to Earl Russell.—(Received February 1.)

Lincoln's Inn, January 30, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 16th instant, stating that, with reference to our Report of the 12th instant, respecting the recent seizure of British vessels at Matamoros by United States' cruizers, he was directed by your Lordship to transmit to us, together with the previous papers,* a letter from the Admiralty, inclosing copies of a letter, with other papers, received from Vice-Admiral Milne upon the same subject; and Mr. Hammond was to request that we would take into consideration the additional information furnished by Vice-Admiral Milne, and favour your Lordship with our opinion thereupon.

We are also honoured with Mr. Hammond's letters of the 20th and 26th instant, transmitting to us further despatches and their inclosures from Lord Lyons on the same subject.†

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That the additional information now furnished by Admiral Milne tends strongly to confirm the opinion which we have had the honour to express both as to these vessels and in the case of the "Sir W. Peel."

We agree with Admiral Milne that the conduct of the American cruizers in the waters of Matamoros, and still more the principle upon which that conduct appears to be justified, require to be brought under the most serious consideration of the United States' Government; and we think that Lord Lyons should be instructed, with all convenient speed, to lay before that Government the opinion of Her Majesty's Government as to the facts disclosed in the despatch of Admiral Milne, and the inclosures accompanying it.

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* Admiralty, December 22; Colonial Office, December 24, 1863; Messrs. Hamilton, January 4, 1864; Consul Archibald, No. 218, 1863.

† No. 2, January 5, 1864.

* Admiralty, January 14, 1864; Messrs. Gallichan, December 17; Messrs. Bateson and Robinson, December 18; Messrs. Bischoff, December 18; to Messrs. Gallichan, December 26; to Messrs. Bischoff, December 26; to Messrs. Bateson, December 26; to Lord Lyons, No. 639; Mssrs. Bennett, December 30, 1863; Messrs. Lizardi, January 6, 1864.

† Lord Lyons, No. 917, December 29, 1863; No. 16, January 12, 1864.

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It is at least satisfactory to observe, that whatever errors in point of law the letter of the United States' Commander Woolsey to Mr. Vice-Consul Paul Ziern may contain, it is written in the most unobjectionable tone and spirit.

We return to the despatch of Admiral Milne for the purpose of considering, in their order, the various paragraphs relating to facts and law which are contained in it.

As to the first, namely, as to vessels seized in United States' waters with contraband of war actually on board. In these cases we agree with Admiral Milne that the action of the captors and of the Prize Courts should not be interfered with.

With regard to the second paragraph, we also agree with him, that vessels supposed to have carried contraband on their outward voyage, but which are found to have none on board, and which have wholly or partially shipped a return cargo of cotton, or other innocent merchandize, ought not to be seized. The true maxim of law respecting the carriage of contraband is, that it constitutes no just cause of capture, unless the vessel is taken *in delicto*, and that the offence is deposited with the cargo; and we think that vessels seized, avowedly either because they have shipped a cargo of cotton, after having deposited, as appears to have been the case of the "Science," on shore, without seizure, a cargo of contraband (more especially if that cargo has been landed, as seems to have been the case with the ship in question, in Mexico and not in Texas), ought hereafter to be made the subject of an immediate application for release and redress by Her Majesty's Representative at Washington to the United States' Government.

As to the third paragraph, the "Volante" appears to have had cloth suited for regimental purposes on board, and, unless she was seized in neutral waters, her case is one which might fairly be taken before the Prize Court.

As to the fourth and fifth paragraphs, the "Dashing Wave," like any other neutral vessel, ought not to have been seized before a search instituted by the captor had established that she had contraband of war on board, or that there was some other *primâ facie* ground for capture; and this is a point of law the practical breach of which by the United States' cruizers should be again pressed on the United States' Government.

The sixth paragraph of Admiral Milne's letter relates to the alleged determination of the United States' Government to direct their cruizers to seize neutral vessels in United States' waters for trading *simpliciter* with the Confederates, and apart from all considerations connected with questions of contraband or blockade. The allegation, unfortunately, seems to be but too well founded, as appears both by the passage cited from the letter of the United States' commander, Woolsey, and by the fourth article of the Instructions, marked E, referred to in Captain Maguire's letter to Admiral Milne (Inclosure No. 17 in Admiral Milne's letter, No. 797).

This is an untenable and erroneous position of international law. It does not seem even to be qualified, in the documents to which we have referred, by any reference to the question whether the ships seized are, or are not, carrying enemy's goods; and even if it were limited to cases in which the neutral vessel had enemies' goods on board, it would be at variance with the rule laid down on that subject by the Declaration of Paris, upon which the United States' Government have repeatedly declared their intention of acting during the present war.

It would certainly also appear from Commander Woolsey's letter, that he considers himself instructed to seize neutral vessels carrying goods *bonâ fide* destined for Mexico, which would be contraband if the ship were carrying them to the Confederate States.

This also is a matter for grave remonstrance with the United States' Government.

As to the seventh paragraph, we are not aware upon what principle the United States' Government claim jurisdiction for the distance of three leagues from the coast of Texas. We have often had occasion to remark that three miles is the distance settled by existing international law, and which must be adhered to during the present war. This also is a matter on which explanations ought to be requested.

In conclusion, we have to observe that the instructions of Admiral Milne to Captain Maguire appear to us proper in the circumstances, but that if the practice of seizing British vessels in Mexican waters should be persevered in, we think Her Majesty's Government would be perfectly justified in giving instructions to the Admiral on the station (notice of which, if given, should be communicated to the United States' Government), to prevent, even by force if necessary, the seizure of British vessels in Mexican waters by United States' cruizers.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 204.

The Law Officers of the Crown to Earl Russell.—(*Received February* 1.)

Lincoln's Inn, January 30, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 11th instant, stating that with reference to the Law Officers' Reports of the 31st of March and the 3rd of July last, respecting the case of Mr. Shaver, he was directed by your Lordship to transmit to us, together with the previous papers, a despatch and its inclosures from Lord Lyons (No. 906), relative to a proposal of Mr. Benjamin that Mr. Shaver's claim should be compromised; and to request that we would take this case again into our consideration, and favour your Lordship with our opinion with regard to Mr. Benjamin's proposal.

Mr. Hammond was also pleased to state that we should observe from the instruction addressed to Lord Lyons on the 9th of July, that his Lordship was informed that Her Majesty's Government would reserve Mr. Shaver's claim for further discussion hereafter.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That, although we feel strongly that Mr. Shaver has been unjustly dealt with by the United States' Government, we agree with Lord Lyons that no benefit could accrue to that gentleman, in the present circumstances, from attempting to propose what Mr. Benjamin calls a "compromise" to the United States' Government. His Excellency would of course avail himself of any opportunity that might unexpectedly present itself for obtaining any favourable settlement of Mr. Shaver's claim.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 205.

The Law Officers of the Crown to Earl Russell.—(*Received February* 2.)

Lincoln's Inn, February 2, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 28th ultimo, stating that he was directed by your Lordship to transmit to us a copy of a letter, dated the 26th ultimo, from the Treasury, inclosing a copy of a letter from Messrs. Laird; and with reference thereto Mr. Hammond was to request that we would inform your Lordship when the case of the iron-clads is likely to come before the Court of Exchequer.

In obedience to your Lordship's commands, in reference to Messrs. Laird's letter, we have the honour to report—

That the "information" in the case of the iron-clads will be filed in a few days; but as it may probably be necessary to send a Commission abroad to take evidence, it is not possible now to say when that case is likely to come on before the Court of Exchequer.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 206.

The Law Officers of the Crown to Earl Russell.—(*Received February* 3.)

Lincoln's Inn, February 2, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 27th ultimo, stating that he was directed by your Lordship to state to us that before it was possible to address an instruction, in conformity with our Reports of the 23rd instant, to Lord Lyons respecting the case of the British vessel "Sir William Peel," further papers, namely, those inclosed in Lord Lyons' despatch No. 16 of the 12th instant (ultimo), relative to British vessels captured by United States' cruizers in the Rio

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Grande (referred to the Law Officers, January 26); and the despatch and its inclosures which accompanied this (Mr. Hammond's) letter were received from Lord Lyons (No. 17 of January 12), and that your Lordship thinks it desirable that we should have an opportunity of perusing these papers before the instruction to Lord Lyons respecting the case of the "Sir William Peel" is sent off. Mr. Hammond was, consequently, to request that we would take these further papers into consideration, and furnish your Lordship with any further observations which we may have to offer upon the case. The previous papers were also sent.

In obedience to your Lordship's commands we have considered the further papers referred to, and have the honour to report—

That these further papers do, in our opinion, strengthen the expediency of the course of action which, in our last Report, we had the honour to suggest as proper to be pursued.

The letter of the United States' Commander avows as the reason for the seizure of this neutral British vessel, that she "had been landing a portion of her cargo, contraband of war, and was receiving Confederate cotton from Confederate agents at Brownsville."

This is in accordance with the intercepted and printed letter, to the effect that he relied upon the United States' Government supporting him in the seizure of neutral vessels laden with Confederate cotton, as being contraband. It is true, that he now adds, that on searching the ship *after* taking possession of her, he "found sufficient contraband of war to justify the seizure." But, in the first place, it has been seen that this officer considers what he calls "Confederate cotton" to be contraband of war; and secondly, the search, which is to justify a seizure, ought, by international law, to precede, and not to follow, the act of taking possession. Confessedly, therefore, Commander Rolando disregarded, at the time of making this capture, the rules of international law; and with his intercepted letter before us, and with the fact that the Prize Court at New Orleans was unable to find any justification for the capture without further proof, we think that no weight ought to be attached to the pretext, that contraband was found on board the vessel.

It does not seem to us, unless the authenticity of the printed letter be denied, that, in the face of such positive avowals of a violation of international law on the part of the captor, it is any sufficient answer from the belligerent's Government to the neutral Government, that this case is before the Prize Court, and that certain statements as to the demeanour and subsequent conduct of the captors, comparatively immaterial, and entirely unconnected with the question whether the capture was justifiable or not, are now denied. The printed letter shows that the seizure was made upon a wrong principle, on which the captor intentionally acted, and which seems also to have been acted upon in a similar manner by other United States' cruizers at Matamoros, in open defiance of neutral rights.

For this reason, as well as on the ground of the injustice done to the owners of this particular vessel, we think that Lord Lyons may properly be instructed to make the remonstrance which we advised in our former Report.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 207.

The Law Officers of the Crown to Earl Russell.—(Received February 3.)

My Lord,
Lincoln's Inn, February 2, 1864.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 25th ultimo, stating that with reference to our Report of the 28th of October last, he was directed by your Lordship to transmit to us, together with the previous papers,* a further note from Mr. Adams,† again calling the attention of Her Majesty's Government to the circumstances connected with the capture of the barque "Sea Bride," of Boston, by the "Alabama," and putting forward a claim against Her Majesty's Government for compensation on account thereof; and to request that we would take these papers into consideration, and favour your Lordship with our opinion as to the answer which should be returned to Mr. Adams.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we think an answer should be sent to Mr. Adams to the effect, that the Governor of the Cape of Good Hope was satisfied upon the evidence adduced before him, which has also satisfied Her Majesty's Government, that the "Sea Bride" was not captured within the territorial waters of Her Majesty.

That with respect to the claim founded upon "the general argument," to which his Excellency refers, Her Majesty's Government have only to repeat that they, in every respect, and most advisedly, adhere to the answer which they have on former occasions had the honour to address to that argument.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 208.

The Law Officers of the Crown to Earl Russell.—(Received February 3.)

My Lord,
Lincoln's Inn, February 2, 1864.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 22nd ultimo, stating that he was directed by your Lordship to transmit to us a note dated the 19th ultimo from Mr. Adams, inclosing a printed paper which purports to be a copy of the Report for 1863 of the Secretary of the Navy of the so-styled Confederate States, and calling, by the direction of the Government of the United States, the attention of Her Majesty's Government to certain passages in the same; and Mr. Hammond was to request that we would take these papers into consideration and furnish your Lordship with our observations thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That it would seem to us proper, in the answer which may be given to Mr. Adams, to point out that the document transmitted by him appears to Her Majesty's Government to contain the strongest proofs (if any were wanted) that Her Majesty's Government have endeavoured in good faith to observe, strictly and impartially, under circumstances of no small difficulty, the obligations of neutrality which they have undertaken; and that the practical effect of their doing so has been advantageous, in no slight degree, to the more powerful of the two belligerents, namely, the United States.

What is termed in Mr. Mallory's Report "the unfriendly construction of Her Majesty's laws," is therein made matter of grave complaint against England by the Government of the Confederate States; while to the same cause is ascribed the fact that the Confederate States have been prevented from obtaining the services of the greater part of a formidable war fleet, which they had desired to create.

We agree very much with Mr. Adams as to the nature and importance of the admissions made in Mr. Malloy's Report, of the endeavours of the Confederate Government, by their agents in this country and in Canada, to violate in various ways Her Majesty's neutrality. Her Majesty's Government have (we believe) already taken steps to make the Confederate Government aware that such proceedings cannot be tolerated: and, although the tone of Mr. Adams's letter is not such as to encourage Her Majesty's Government to communicate with him on that subject without much reserve, we think that he may, without impropriety, be informed that the admissions to which he invites attention have not failed to receive from Her Majesty's Government the consideration which they undoubtedly deserve.

We think it impossible to pass by without special notice the following portion of Mr. Adams' letter:—"I am further directed respectfully to represent that the toleration of the avowed enemies of the United States, whilst known to be carrying on these hostile practices, now fully revealed, within the British realm and its dependencies, without restraint of any kind, cannot be regarded as an exercise of the unquestioned right of sheltering political exiles, but rather as equivalent to permitting them to abuse that right for the purpose of more effectually availing themselves of British aid and co-operation, now notoriously given them, in waging war with a country with which Great Britain is at peace."

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* Mr. Adams, September 29; Admiralty, October 21; to Mr. Adams, October 29, 1863.

† Mr. Adams, January 20, 1864.

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We presume that, in reply to this suggestion, your Lordship will think it right to state that Her Majesty's dominions must necessarily continue to be open to the subjects of both belligerents as long as Her Majesty is at peace with both of them; and that Her Majesty's Government will, at the same time, continue to put in force (as they have hitherto done), to the full extent of the means in their power, the laws of this country against those subjects of both belligerents who may be found, by transgressing them, to have abused the rights of hospitality and offended against the authority of the Crown.

With respect to the repetition by Mr. Adams of the old complaint, that Her Majesty thought fit, upon the original commencement of hostilities, to recognize the status of belligerents in both the parties to this unhappy contest, we can but repeat the observation which we have had occasion to make on many former occasions, that any other course would have justly exposed this country to a charge of violating the clearest principles and soundest precedents of international law.

(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 209.

The Law Officers of the Crown to Earl Russell.—(Received February 6.)

Lincoln's Inn, February 5, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 29th January ultimo, stating that he was directed by your Lordship to state to us that while your Lordship had before you our Report of the 19th ultimo containing observations upon the course pursued by the United States' authorities in the case of the "Labuan," the accompanying despatch was received from Lord Lyons (No. 4, January 12), reporting that he had been informed by Mr. Seward that, from explanations made by the judicial authorities, he had reason to believe that the decision in the case of the "Empress" would not preclude the Prize Court from entertaining the question of compensation in the case of the "Labuan." That Mr. Seward further informed Lord Lyons that peremptory orders had been given that the additional evidence sought for from Matamoros should be obtained without delay, and that he had given to the Consul charged with procuring foreign testimony positive directions to execute the commission so that the proceedings for the assessment of the compensation should be brought to a conclusion in time to enable the Executive Government to make application to Congress for an appropriation during the present session of that Body. That under these circumstances your Lordship proposes to send to Lord Lyons the instruction of which the draft is inclosed; but that before doing so your Lordship requested that we would take the proposed instruction into consideration and furnish your Lordship with our opinion whether it is right and proper to be sent.

In obedience to your Lordship's commands we have taken this instruction into consideration, and have the honour to report—

That the letter appears to us proper to be sent; but as we are not prepared to admit that the decision of the Prize Court in the case of the "Empress" is correct, so far as relates to the liability of the officers making an illegal capture, to damages, we would suggest the expediency of omitting the words "nor even against the captors," in the passage referring to that decision.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 210.

The Law Officers of the Crown to Earl Russell.—(Received February 6.)

Lincoln's Inn, February 6, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 1st instant, stating that with reference to his letter of the 30th ultimo, he was directed by your Lordship to transmit to us for our consideration in connection with the other papers relating to the case of the "Saxon," a further letter dated the 1st instant

from Messrs. Sinclair, Hamilton, and Co., from which we should see that the second mate of that vessel is now in England and prepared to give evidence with regard to the death of James Gray; and Mr. Hammond was to request that we would inform your Lordship whether we consider it expedient that we should see this person, and if so, on what day it would be convenient to us to examine him.

Mr. Hammond was also pleased to inclose to us the draft of an instruction addressed to Lord Lyons on this subject by the mail of Saturday the 30th ultimo (No. 39, January 30, 1864).

In obedience to your Lordship's commands we have the honour to report—

That the instruction proposed by your Lordship to be sent to Lord Lyons appears to us to be right and proper.

That we do not think any advantage would arise from our having a personal interview with the second mate of the "Saxon;" but any statement which the mate may be disposed to make might be taken down in writing by the Solicitor to the Treasury, and afterwards (if necessary) submitted to us.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 211.

The Law Officers of the Crown to Earl Russell.—(Received February 8.)

Lincoln's Inn, February 8, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 30th ultimo, stating that with reference to the case of the "Sea Bride," and the proceedings at the Cape of Good Hope of the Confederate steamer "Alabama," and her reputed tender the "Tuscaloosa," he was directed by your Lordship to transmit to us, together with the previous printed papers, a letter dated the 29th ultimo from the Colonial Office, inclosing a copy of an instruction which was addressed by the Duke of Newcastle to Governor Wodehouse on the 5th of November, in the terms of our Report to the Foreign Office of the 19th of October last, and a despatch which has been received from Governor Wodehouse in reply. That we should observe that it is stated that the Duke of Newcastle proposes to inform Sir Philip Wodehouse that it was not intended to censure his conduct in any respect, or to express a doubt as to its propriety in regard to the "Sea Bride:" but that his Grace wishes to be informed what instruction should be given to the Governor on the second and third points raised in his despatch, and also to be able to convey to the Governor such instructions as may be necessary by the mail of the 5th of February instant; and Mr. Hammond was accordingly to request that we would take Governor Wodehouse's despatch into consideration, and furnish your Lordship, in time to admit of an answer being made to it by the outgoing mail, with our opinion on the points with regard to which Sir Philip Wodehouse asks for further instructions.

In obedience to your Lordship's commands we have taken Sir Philip Wodehouse's despatch, and the other papers in this case, into consideration, and have the honour to report—

1. That, with reference to Sir P. Wodehouse's present explanation, that "the facts were not disputed, &c.," we cannot but observe that the possibility of a dispute about the facts relative to the "Tuscaloosa" was assumed in the opinion of the Colonial Attorney-General, dated the 7th August, 1863 (paragraph 4), where it was said, "no means exist for determining whether she has or has not been judicially condemned by a Court of competent jurisdiction."

It was with reference to the ground so taken by the Colonial Attorney-General that we suggested the propriety, under such circumstances, of making those inquiries which Sir Philip Wodehouse now says were rendered unnecessary by the notoriety of the real facts.

2. With respect to the passage, cited by the Colonial Attorney-General, from "Wheaton's Elements" ("Lawrence's Wheaton," second edition, page 663), and which was considered by us to have "no direct bearing upon the question, whether in the case of a vessel duly commissioned as a ship of war, after being made prize by a belligerent Government, without being first brought *infra præsidia*, or condemned by a Court of Prize, the character of prize, *within the meaning of Her Majesty's orders*, would or would

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not be merged in that of a national ship of war," we beg to submit the following remarks:—

This passage, and the authorities referred to by Wheaton in support of it, relate to the construction placed by the Prize Courts of Great Britain upon particular words in certain English (and which also occur in certain American) Prize Acts (see particularly 45th Geo. III, cap. 2, sec. 7). By these Acts the rule, previously applicable in this country, to cases of recapture was extended, and provision was made for the restitution to the original owners on payment of salvage of all British or neutral vessels "taken as prize" by the King's enemies, at whatever subsequent time they might have been recaptured; subject, however, to the exception expressed in the following words:—"But if such ship or vessel so retaken shall appear to have been, after the taking by His Majesty's enemies, *by them set forth as a ship or vessel of war*, the said ship or vessel shall not be restored to the former owners or proprietors, but shall in all cases, whether retaken by any of His Majesty's ships or by any privateer, be adjudged lawful prize for the benefit of the captors." The passage in Wheaton relates solely to this statutory exception from the statutory rule of restitution. For this purpose, in several cases, the actual use and employment of a captured vessel as a fighting ship, in the capture of British vessels, and in other actively hostile operations, was held to constitute a "setting forth as a ship or vessel of war," although she had never been condemned, nor regularly commissioned, nor employed in such hostile service by the direct authority of the captor's Government. But these British Prize Acts (none of which are now in force) and the decisions upon them cannot be regarded as establishing any general rule for the interpretation of the word "prizes," in Orders of Her Majesty issued for quite a different purpose during a war in which she desires to remain strictly neutral, and which orders contain no exception of such prizes as may, after their capture, have been "set forth" by the captors "as ships or vessels of war." The word "prize" continues to be, in its natural sense, applicable to a captured vessel remaining under the power and control of the captor, whether it be "set forth" by him "as a ship or vessel of war," or not; and, but for the express exception in the 7th section of the 45th Geo. III, cap. 72, captured vessels which had been so employed would have been equally liable with all others to restitution, in case of recapture. We repeat, therefore, that the passage cited from Wheaton has no direct bearing upon the present question, though some argument from analogy might, perhaps, be founded thereon.

3. We do not think it would have made any real difference, in the case of the "Tuscaloosa," even if there had been no cargo on board. We are far, however, from being satisfied that any of the acts which are shown to have been done by Captain Semmes, with respect to this vessel, before she was brought within British waters, would have constituted, according to the doctrine of Wheaton, a "setting forth as a vessel of war," within the meaning of the exception already referred to, if the question had arisen under the English, or the corresponding American Prize Acts. The general statement made by Wheaton must be read in the light of the authorities to which he refers. There is no instance, of which we are aware, in which any ship has been treated by a Prize Court as "set forth for war," without either having a regular and independent commission as a ship of war from a belligerent Government, or having been actually employed as a fighting ship in offensive operations of war. In the case most like the present (the "Georgiana," 1 Dodson, page 397), the captured vessel was supplied by the captor with ten guns, in addition to eight which she already had, when taken, and sixty men were put on board her, "under a commissioned officer, who was directed to cruize against British vessels, which he did; and he suceedced in making three captures. The vessel, therefore," we quote the words of Sir W. Scott, at page 41, "was engaged in actual hostilities."

It was attempted, in the argument of that case, on the part of the owners claiming restitution, to compare this employment to that of a tender to a man-of-war, "which description of vessel is not commissioned, and is incapable of taking prizes for its own benefit." And there is nothing in Sir W. Scott's Judgment to lead to the conclusion that she would not have been restored to her original owners, if the only proof of her employment in hostile operations had consisted in the mere fact of her being used as a tender to the ship by which she was taken.

4. With respect to the general question, whether a captured vessel, regularly commissioned as a ship of war of the captor's Government, before being brought *infra præsidia*, or condemned, may not cease to have the character of a prize, within the meaning of Her Majesty's orders against bringing prizes within her ports, we are by no means prepared to say that circumstances might not occur (*e.g.*, if the captured vessel were cruizing, under such a commission, as an independent ship of war, apart from the captors, and beyond their power and control) which would have that effect. But when the question is, whether Her Majesty's Orders have been observed or violated (and this is really the only question in the present instance), we think that a vessel which, having been captured and not condemned, nor brought *infra præsidia*, nor separately and independently commissioned, but remaining still under the control and power of the captors, is brought into a British port in a state of dependence upon the captors, with a crew placed on board by them, ought to be regarded and treated as a prize, within the meaning of those Orders; and that she cannot be withdrawn from their operation on the pretext that she has been converted into a tender to the capturing vessel. If Her Majesty's Orders are to have any force at all, such an evasion of them cannot, we think, be permitted.

Upon this point we adopt, and entirely agree with, the just and pointed remarks made by Sir Baldwin Walker, in his letter to Sir P. Wodehouse of the 8th of August, 1863. Nor can we fail to observe, that if there is any case in which the rule against bringing captured United States' vessels into British ports ought to be enforced with severity and strictness, it is that of a ship of war fitted out in, and principally manned from, this country, in violation of the neutrality laws of Great Britain.

We think it necessary, however, to guard these concluding remarks by adding, that, as the captain of the "Alabama" has been led to suppose that a rule, different from that which we think the correct one, will be applied within British waters to captured vessels in the peculiar circumstances of the "Tuscaloosa," it would not now be proper to enforce Her Majesty's Orders against captured vessels so situated (if hereafter brought by him into any British port), in the way suggested at the end of the Duke of Newcastle's despatch, withont some previous notice, offering him the opportunity of promptly removing such vessels beyond British jurisdiction, which notice (of course) need not be repeated on any subsequent occasion.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 212.

The Queen's Advocate to Earl Russell.—(Received February 8.)

My Lord, *Doctors' Commons, February* 8, 1864.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 1st instant, stating that with reference to my Report of the 9th of May last, he was directed by your Lordship to transmit to me, together with the previous papers,[*] a despatch from Lord Lyons,[†] inclosing a copy of a note from Mr. Seward forwarding explanations given by military officers of the United States with regard to the complaint of Mr. Alexander Nicol, that his property at Kingston, North Carolina, had been wantonly plundered by the Federal troops during their occupation of that town in December 1862; and Mr. Hammond was to request that I would take these papers into consideration, and furnish your Lordship with my opinion on the case, as represented in the papers now transmitted by Lord Lyons.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That Mr. Nicol in his affidavit (No. 1 in Mr. Walker's despatch No. 58) stated that in discovering the plunder of his house, he "immediately went to the Federal Provost Marshal, and informed him who I was, and what had been done during my absence. He seemed surprised, and said it ought not to have been done, and informed me that I should be indemnified for my loss," &c. But the Provost Marshal in the affidavit now submitted to me, entirely denies this statement.

In this conflict of evidence Her Majesty's Government can only desire Mr. Nicol to be apprised that they have caused his case to be laid befor the United States' authorities, and that they, and especially the Provost Marshal, deny the accuracy of his statement, and maintain that his house was not plundered by their troops. Her Majesty's Government can therefore only regret that Mr. Nicol has suffered, in common with other persons, the misfortunes incident to those who live in a city in which a battle has been fought.

I have, &c.
(Signed) ROBERT PHILLIMORE.

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[*] Consul Walker, No. 58; to Lord Lyons, No. 278, May 12; Lord Lyons, No. 509, June 8, 1863.

[†] Lord Lyons, No. 9, January 12, 1864.

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No. 213.

The Law Officers of the Crown to Earl Russell.—*(Received February* 9.)

Lincoln's Inn, February 9, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 6th instant, stating that he was directed by your Lordship to state to us that an intimation has been given to the Foreign Office by a member of the House of Commons of his intention to move for the production of the following papers, viz.:—"All correspondence with the Federal Government or Mr. Adams on the subject of the iron-clads seized at Liverpool;" and "all correspondence between the various Departments of Her Majesty's Government or offices in Her Majesty's service and Messrs. Laird Brothers:" That there has been no direct correspondence on this matter between Her Majesty's Legation at Washington and the Federal Government, with the exception of the official communication which Mr. Hammond inclosed; but as we are aware, there has been some correspondence between your Lordship and Mr. Adams: that that correspondence is printed in the confidential collection of papers respecting the iron-clads now in our possession, and it appears in the collection of correspondence on foreign affairs recently laid before Congress by the Government of the United States; that for our greater convenience Mr. Hammond inclosed it in a separate form; that the whole of the correspondence between the various Departments of Her Majesty's Government or offices in Her Majesty's service, so far as the Foreign Office is acquainted with it, with Messrs. Laird Brothers up to the time of the seizure of the vessels, is printed in the collection now in our possession, and the correspondence has since that time, doubtless, been laid before us by the Solicitor of the Treasury; and Mr. Hammond was to request that we would state to your Lordship whether the presentation to Parliament of either or both of the two series of correspondence referred to, and its consequent publication, would be advisable, or would at all interfere with the legal proceedings which are being carried on against these vessels.

In obedience to your Lordship's commands we have the honour to report—

That having regard to all the circumstances of this case, we are of opinion that it would be inexpedient, and possibly productive of future inconvenience at the trial, to allow either or both of the series of correspondence referred to, to be at present laid before Parliament. The mere correspondence with Mr. Adams and with the Messrs. Laird might no doubt be produced, without disclosing the evidence for the Crown. But it appears to us that the Government would run the risk of exposing itself to the evil of a discussion in Parliament, in which they would be placed at great disadvantage; and that, moreover, by a partial publication of papers in this case, omitting those which constitute the real justification for these proceedings, and without which the action taken by the Government cannot be made fully intelligible, a mischievous prejudice might be created in the public mind.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 214.

The Queen's Advocate to Earl Russell.—*(Received February* 9.)

Doctors' Commons, February 9, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 6th February instant, stating that he was directed to transmit to me the accompanying correspondence with Her Majesty's Minister and the French Ambassador in this country, and a letter which has been received from Mr. Mott. That the letter relates to the wish of the French Government to be allowed to export through the blockade at Richmond a quantity of tobacco belonging to that Government said to have been purchased *before* the commencement of the civil war. That I should observe that, in the outset, Mr. Seward adverted in conversation with Lord Lyons to the effect which such permission, to export through the blockade, might have upon the general validity of the blockade; but that that question was dropped without any decision being taken on the point, and that the other condition adverted to by Mr. Seward was met by the acquiescence of Her Majesty's Government in the arrangement for the export of tobacco. That it appears, however, by the French Ambassador's recent communication that part of the tobacco was purchased by the French Government *after* the outbreak of hostilities, and the French Government now seek to obtain from Her Majesty's Government a like acquiescence in regard to that portion of the tobacco, the question of the effect of such a measure on the validity of the blockade being again raised by Mr. Mott; and Mr. Hammond was pleased to request that I would take the matter into consideration, and report to your Lordship my opinion on that point.

In obedience to your Lordship's commands I have taken this question into consideration and have the honour to report—

That with respect to the tobacco purchased *before* as well as that purchased *after* the institution of the blockade, it is to be observed that as neither class of tobacco was placed on board lighters or other vessels previously to the blockade, both were, strictly speaking, without the operation of the rule of law and practice which only permits such goods to be exported after the institution of the blockade. The latter class stands, however, obviously on a much less favourable position, and the license to export in this instance is certainly a greater stretch of power on the part of the belligerent who imposes the blockade. Having regard, however, to our own practice during the last war with France, with respect to licences, it would not be competent for Her Majesty's Government (even if they were so minded) to contend that such a special license of exportation, as is now sought for, invalidated the blockade. The law upon this subject was, I think, correctly laid down by Dr. Lushington in the last war (1855) as follows:—"With respect to the grant of licences I concur with Lord Stowell (the "Fox," 1 Edwards, 380), though I believe the question was never raised, that the grant of licenses has never been held to vitiate a blockade, and I am of opinion that where such licences were granted upon peculiar and special occasions, and for such only, the doctrine is true; and for this reason, because special occasions might arise, which might call for the grant of such licences, and be productive of no perceptible injury to the subjects of neutral States or their commerce." This doctrine appears to have been admitted by the Privy Council. (The "Franciska," 10 Moore Privy Council Reports, 49).

It will be observed that the remarks of the learned Judge apply to a relaxation of the blockade by the belligerent who imposed the blockade in favour of his own subjects. I am, however, clearly of opinion, upon general principles, that any relaxation in favour of particular neutral States which exceeds a special occasion might invalidate the blockade. But I am also of opinion that the permission now sought for by France, if conceded by the United States, would not authorize Her Majesty's Government to insist that the blockade was broken. I use the words "Her Majesty's Government" advisedly, because it must be remembered that it will be competent to any *individual* to raise the question before the United States' Courts of Prize, and they may (as our Judicial Committee of Privy Council did upon other grounds in the case of the "Franciska") hold, notwithstanding the permission of their Government, that the blockade has been, upon principles of international law, invalidated.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 215.

The Law Officers of the Crown to Earl Russell.—*(Received February* 9.)

Lincoln's Inn, February 9, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 20th ultimo, stating that he was directed by your Lordship to transmit to us a despatch and its inclosures from Lord Lyons (No. 918), respecting the case of the "H. G. Berry," which with other British vessels bound from New Orleans to Matamoros, was detained by the United States' authorities, in order to prevent their carrying intelligence of preparations which were, at the time, making at the former port for the expedition to the coast of Texas opposite Matamoros: and Mr. Hammond was to request that we would take this case into consideration and report to your Lordship our opinion thereupon: and was to add that the instruction in the case of the "Labuan" referred to by Lord Lyons, was founded upon a Report from Her Majesty's Advocate-General, dated the 5th of January, 1863.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That we are of opinion that the opinion of ths Queen's Advocate in the case of the

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"Labuan" was well founded, and that the principle of it is applicable to the present case and others *ejusdem generis*.

The principle on which this detention is justified, is the urgent military necessity of the belligerent to prevent the issuing from his own ports of vessels which he apprehends will apprise his enemy of his strategic plans, and by so apprising him defeat the execution of them.

It is to be observed that the United States' officer, General Canby, states (Inclosure 19 in Lord Lyons' letter),—

1st. That the same restriction was placed upon all vessels, *national* and *foreign*;

2nd. That it was limited to a few days;

3rd. That it was limited to vessels going to that part of the enemy's coast to which the military expedition was about to be sent.

This detention, therefore, of the "H. G. Berry" must be assumed to be a *bonâ fide* act, if not of self-defence, of belligerent exigency; an act extending equally and impartially to all, native and foreign, subjects.

We think that such an act affords no grounds for remonstrance on the part of Her Majesty's Government.

Of course, if any compensation in the way of demurrage or otherwise should be granted by the United States' Government to native or foreign subjects, it must be accorded to the owners of the "H. G. Berry."

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 216.

The Law Officers of the Crown to Earl Russell.—(Received February 10.)

My Lord, *Lincoln's Inn, February* 10, 1864.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of this day's date, stating that he was directed by your Lordship to transmit to us therewith a letter from the Board of Admiralty, respecting instructions which they propose to send *this evening* to the Commanding Officer in the East Indies, having reference to the conduct to be observed in regard to Confederate vessels of war in British ports; and to request that we would take the same into our consideration, and report to your Lordship at our earliest convenience whether those instructions can properly be sent.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we think the proposed instructions are proper, and such as ought to be sent.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 217.

The Law Officers of the Crown to Earl Russell.—(Received February 11.)

My Lord, *Lincoln's Inn, February* 10, 1864.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 8th February instant, stating that with reference to our Report of the 13th of November last, on the case of the "Margaret and Jessie," he was directed by your Lordship to transmit to us, together with the previous papers, a despatch from Lord Lyons inclosing a copy of the note in which he communicated to Mr. Seward the evidence showing that the pursuit of that vessel by the United States' gun-boat "Rhode Island" involved a violation of Her Majesty's territorial jurisdiction; and also a despatch inclosing a copy of the note of acknowledgment which he had received from Mr. Seward in reply; and to request that we would take these further papers into our consideration, and favour your Lordship with any observations which we might have to offer thereupon.

Mr. Hammond was also pleased to add that notice had been given that this case is to be brought before the House of Commons on Friday next.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That upon these additional papers now submitted to us, we have only to observe that Lord Lyons should be instructed to keep a vigilant watch upon the proceedings of the United States' Government, and to avail himself of the earliest opportunity of pressing them for a decision, upon a subject which Her Majesty's Government have great reason to regret has not already been satisfactory disposed of.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 218.

The Queen's Advocate to Earl Russell.—(Received February 11.)

My Lord, *Doctors' Commons, February* 10, 1864.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 6th February instant, stating that he was directed to state to me that your Lordship has observed that in the course of the present civil war in North America, the Government of the United States and their authorities have declared cotton, and almost every article of food and material of clothing, to be contraband; and Mr. Hammond was to request that I would furnish your Lordship with my opinion whether the United States have any right to extend the list of contraband as regards neutral nations.

In obedience to your Lordship's commands I have taken this question into consideration, and have the honour to report—

That contraband, according to existing international law is of two kinds: that species which is unquestionably *bellici usûs;* that which is *ancipitis usûs*. With respect to the former species, though the enumeration of articles has varied in different Treaties, at different periods, with different States, there has always been the prevailing characteristic that they are articles capable of direct warlike use. With respect to the latter species, sometimes designated by jurists contraband *per accidens*, in this category are included articles which, the state of the war and the character and destination of the cargo being considered, may be fairly considered as intended for the use of the army or navy of the belligerent; *e. g.*, provisions *bound to a port besieged or blockaded*, timber, naval stores, have been considered by the English Prize Court as such; and somewhat reluctantly, but finally, admitted so to be by the Prize Courts of the United States. (1 Kent's "Commentaries," 143, the "Commercen;" 1 Wheaton's "Reports," 387.)

In the Treaty between Great Britain and the United States (4th November, 1796), an enumeration of articles of direct contraband, *bellici usûs*, occurs in Article XVIII, under the two heads of "all arms and implements serving for the purposes of war by land or by sea," and "generally whatever may serve directly for the equipment of vessels, unwrought iron and fir planks only excepted; and with respect to contraband *per accidens*, there is a special stipulation as to "provisions and other articles" being regarded as contraband, though "not generally contraband," in certain cases; and an arrangement that, on account of the difficulty of ascertaining these cases, to prevent inconvenience, certain articles shall not be confiscated but subject to the right of pre-emption.

It is not unimportant to observe, that when the British Government issued, in April 1795, an Order in Council instructing its cruizers to stop all vessels laden with provisions bound to any port of France, that the United States strongly objected to this Order, which was afterwards revoked; that the question of its legality was afterwards made the subject of discussion before a Mixed Commission, which decided in favour of the view taken by the United States. The argument adduced by that Government, at that time, appears to be well worthy of your Lordship's attention, from its bearing upon the general subject of the competence of the belligerent to augment at his pleasure, and by refined inferences drawn from the possible indirect consequences of allowing the importation of particular articles, the catalogue of contraband. "If the mere hope," the United States' Government argued, "however apparently well founded, of annoying or reducing an enemy by intercepting the commerce of neutrals in articles of provision (which in themselves are no more contraband than ordinary merchandize) to ports not besieged or blockaded, would authorize that interruption, it would follow that a belligerent might at any time prevent, without a siege or blockade, all trade whatsoever with its enemy; since there is, at all times, reason to believe that a nation having little or no shipping of its

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own, might be so materially distressed by preventing all other nations from trading with it, that such prevention might be a powerful instrument in bringing it to terms. The principle is so wide in its nature that it is, in this respect, incapable of any boundary. There is no solid distinction, in this view of the principle, between provisions and a thousand other articles. Men must be clothed as well as fed, and even the privation of the conveniences of life is severely felt by those to whom habit has rendered them necessary. A nation, in proportion as it can be debarred its accustomed commercial intercourse with other States, must be enfeebled and impoverished; and if it is allowable to a belligerent to violate the freedom of neutral commerce in respect to any one article, not contraband *in se*, upon the expectation of annoying the enemy, or bringing him to terms by a seizure of that article and preventing it reaching his ports, why not, upon the same expectation of annoyance, cut off, as far as possible, by captures, all communications with the enemy, and thus strike at once effectually at his power and resources?" (Lawrence's "Wheaton on International Law," part iv, p. 794.)

The sound and true inference from the history and practice of international law on this subject is, that no articles can be seized by a belligerent from a neutral vessel, as contraband, which are not directly or indirectly subservient to the military and naval uses, as distinguished from the ordinary and commercial uses, of the belligerent. And I am clearly of opinion that there is no authority derived from principle, the reason of the thing, authority, or precedent, which can authorize the United States' Government in adding, during the war and without the consent of neutral States, to the category of contraband cotton or articles *ejusdem generis*, or ordinary clothing, or materials for ordinary clothing, or provisions not destined for a blockaded port. To assume such a power is practically to assume the power of interdicting all commerce between the neutral and the belligerent States.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 219.

The Law Officers of the Crown to Earl Russell.—(Received February 11.)

Lincoln's Inn, February 11, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 5th instant, stating that with reference to his letter of the 30th ultimo respecting the case of the "Chesapeake," he was directed by your Lordship to transmit to us two further letters dated the 4th instant, and their inclosures, from the Colonial Office respecting this case; and to request that we would take these papers into consideration, and favour your Lordship with such observations as we might have to offer thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That the papers now submitted to us do not appear to raise any question which we had not considered in our former Reports on this subject to your Lordship.

We think that his Excellency the Governor of New Brunswick exercised a wise discretion in allowing the accused persons copies of the Requisition and Warrant. The objections to the formal character of the Requisition were anticipated in our former Report.

The conclusion of the trial not being stated in these papers, we have no further observations to offer respecting them.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 220.

The Law Officers of the Crown to Earl Russell.—(Received February 11.)

Lincoln's Inn, February 11, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 8th instant, stating that he was directed by your Lordship to transmit to us

the accompanying further despatch from Lord Lyons (No. 44, January 26) respecting the case of the "H. G. Berry," which he was directed by your Lordship to request us to have the goodness to take into consideration, together with the papers inclosed in his letter of the 20th ultimo.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That these additional papers do not affect the Report which we have had the honour to make on this subject; unless, indeed, it is to be understood from certain expressions in the protest that General Stone intends to detain indefinitely the ship, and prevent her altogether from pursuing at any time her voyage to Matamoros. That would be a stretching of the doctrine of "military necessity" beyond the limits within which it has usually been applied, and would warrant remonstrance on the part of Her Majesty's Government.

It might be desirable that the attention of Lord Lyons should be directed to this point.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 221.

The Law Officers of the Crown to Earl Russell.—(Received February 12.)

Lincoln's Inn, February 12, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 1st instant, stating that he was directed by your Lordship to transmit to us a letter dated the 25th ultimo from Mr. Adams, inclosing copies of papers taken in steamers engaged in running the blockade of the Southern ports, and which Mr. Adams states furnish another strong instance of the manner in which the insurgents habitually abuse the belligerent privileges conceded to them by this country. And Mr. Hammond was to request that we would take Mr. Adams' note and inclosures into our consideration, and furnish your Lordship with our observations thereupon.

In obedience to your Lordship's commands we have taken Mr. Adams' note and inclosures into consideration, and have the honour to report—

That we regret to observe the tone of menace in which this letter of Mr. Adams is written.

That Mr. Adams should be apprized that Her Majesty's Government are not prepared to allow any alteration in the well-established practice of international law to be introduced to the injury of neutral States on account of the exigencies or distresses of either belligerent.

That Mr. Adams must be aware, as every American jurist is aware, that it is not competent to a belligerent Government to treat the subjects of neutral States taken on board vessels (other than ships of war of the enemy) endeavouring, or alleged to be endeavouring, to break the blockade as prisoners of war; and that Her Majesty's Government cannot permit the subjects of Her Majesty to be made exceptions to the general rules and practice of international law on this or any other subject.

That the rights of visit and search and of blockade are belligerent rights, which press already with sufficient severity upon neutrals, and which (as Her Majesty's Government have before had occasion to observe in their correspondence with the United States' Government during this war) would be intolerable without a faithful and scrupulous observance on the part of the belligerent of his corresponding obligations.

That Her Majesty's Government can in no way be responsible for the conduct of the Confederate belligerent, and when it is said that they "habitually abuse the privileges which have been conceded to them by Great Britain," Her Majesty's Government have to observe that, not only Great Britain, but every other neutral State has, necessarily, recognized them as belligerents, and has, therefore, necessarily conceded to them, not "privileges" but the same "rights" as they are bound by international law to concede to all belligerents, and as they have conceded to the United States.

That Her Majesty's Government regret that any of Her Majesty's subjects should violate the blockade; but it must be remembered that the blockade is one of most unusual and gigantic proportions, severely affecting the welfare of no inconsiderable portion of Her Majesty's subjects; and that the penalty of confiscation and condemnation

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of British property to a very large amount has constituted, to say the least, no very inadequate punishment of the offenders. At all events, whether adequate or not in the view of the United States, it is the only penalty to which they are, or can be made, subject, according to the known rules of international law. If the fact be (as these papers seem to show) that some ships employed in running the blockade (but not navigated as vessels of war) are the property of the Government of the Confederate States, this fact cannot, in the judgment of Her Majesty's Government, furnish any justification whatever for the treatment of British subjects in a manner not warranted by international law, even if the British flag is improperly used to disguise the true character of such ships.

With respect to the charge preferred against Lieutenant Rooke, Her Majesty's Government do not perceive that the facts alleged amount to a participation by that officer in any warlike service or operation on the part of the Confederate States. But Her Majesty's Government will not fail to take the proper steps against any officer bearing Her Majesty's Commission, who shall be proved to have illegally contravened Her Majesty's orders to all her subjects to observe a strict neutrality during the present deplorable war.

With respect to the alleged intentions of a certain iron-ship builder named James Ash, and of a firm called Stringer, Pembroke, and Co., to build steamers for the Confederate belligerents, Mr. Adams is well aware of the determination of Her Majesty's Government to put in force to the utmost of their power the provisions of the Foreign Enlistment Act against every subject in this country who shall violate these provisions, and as to whose offence they may be able to obtain legal and proper evidence; without which evidence it is (as Mr. Adams must be well aware) as impossible to act in Great Britain against the persons or property of British citizens, as it would be against the persons or property of citizens of the United States in that country under any circumstances other than those of the present civil war.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 222.

The Law Officers of the Crown to Earl Russell.—(*Received February* 13.)

My Lord,
Lincoln's Inn, February 13, 1864.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 30th ultimo, stating that, with reference to our Report of the 15th ultimo, he was directed by your Lordship to transmit to us the accompanying further papers received from the Colonial Office, and from Messrs. Hamilton and Co.,* respecting the seizure of the British barque "Saxon" by the United States' steamer "Vanderbilt;" and Mr. Hammond was to request that we would take this case into consideration, and report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That, in addition to the Report which we have already had the honour to make upon this subject, we have only to state that we infer, from the papers now submitted to us, that Angra Pequena (the name seems to indicate that that it may have been, at one time, Portuguese territory) is now a deserted spot, and that the Proclamation of Sir G. Grey (12th August, 1861), purporting to extend the jurisdiction of the Crown over it, was not previously authorized, and has never since been recognized or confirmed by Her Majesty.

If this be so, no violation of British or neutral territory appears to have taken place; and the jurisdiction of the United States' Prize Court could not on that account be contested.

It seems, moreover, to have been admitted by one of the owners of the "Saxon," to Sir P. Wodehouse, that the "Saxon" had been actively engaged in taking on board part of a prize cargo landed from the "Tuscaloosa," for the purpose of conveying it to market, as the property, and on account, of Captain Semmes, of the "Alabama;" acting, in short, almost as a tender to the "Alabama," for that purpose.

If these facts should be established in evidence, a grave question of international law may be raised before the Prize Court, for the solution of which, perhaps, no exact precedent could be found. Until such question is distinctly raised, we do not desire to express any positive opinion respecting it. But we may observe that an argument to the effect that the "Saxon" had identified herself by such conduct with the enemy's ship, for the time at least, would seem to us (at present) to be not *without* plausibility; and we entirely agree with Sir P. Wodehouse, that the case must, under these circumstances, be left to the decision of the Prize Court.

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* Colonial Office, January 28; Messrs. Hamilton and Co., January 29, 1864.

With respect to the murder of the mate of the "Saxon," the previous accounts are, unhappily, confirmed by these papers; and certainly pecuniary compensation to the widow ought to form a part of the redress which the United States' Government should be called upon to make for this atrocious act of their officer.

On the subject of the coals taken by the "Vanderbilt" from Penguin Island, it does not seem to be necessary to say more than that we fail to see any justification or excuse for the lawless way in which they were appropriated by the captain of that vessel. We collect from Sir P. Wodehouse's despatch that the act is not justified by the United States' Consul at the Cape Colony, and that a pecuniary compensation to the owners is likely to be made; but we should, nevertheless, think it proper that some notice should be taken of this subject in the representations which Lord Lyons may be instructed to make to the Government of the United States.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 223.

The Law Officers of the Crown to Earl Russell.—(*Received February* 13.)

My Lord,
Lincoln's Inn, February 13, 1864.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 8th February instant, stating that he was directed by your Lordship to transmit to us the accompanying despatches and their inclosures from Lord Lyons,* respecting the treatment to which British subjects found on board of vessels captured by United States cruizers for breach of blockade, are subjected by the United States' authorities; and to request that we would take this subject into our consideration, and report to your Lordship our opinion thereupon.

Mr. Hammond was also pleased to state that the instructions to Lord Lyons which were referred to by your Lordship were founded upon the Queen's Advocate's Report of the 23rd of June on the case of the "Granite City," and on our Report of the 29th of August last in the case of the "Victor."

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That with respect to these cases generally, the systematic treatment of British subjects by United States' officers which they disclose appears to us to deserve the serious and immediate consideration of Her Majesty's Government, and the matter assumes an aspect of the gravest importance when we examine the terms of the letter from Mr. Adams of the 25th of January to your Lordship, on which we have already had the honour to report.

There is a very suspicious appearance of a determination having been secretly taken by the United States' Government to treat as prisoners of war the crews of all prizes in order to stop the continual violation of their blockade.

As to the case of O'Neill. The injuries inflicted upon this person are, in our opinion, most unsatisfactorily accounted for by the United States' Government; indeed, as to his detention for seven months as a prisoner, and during a portion of that time in a common jail, no excuse whatever is offered.

As to the severe wound which he received from the United States' officer, we think the justification offered is in itself incredible, and, as far as we can judge, unsupported by facts.

Unfortunately, it is not the only instance which has occurred in which a United States' officer has had recourse to the brutal act of shooting an unarmed and unresisting man on board a captured vessel; and we think it would be right to press that the officer should be put upon his trial for this offence.

With respect to Patrick Hamilton. The only defence for his imprisonment is to be

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* Lord Lyons, No. 52, No. 53, No. 54, No. 55, January 26, 1864.

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found in the letter of Mr. Welles to Mr. Seward (Inclosure 21 in Lord Lyons' despatch No. 53), and we agree with Lord Lyons in considering this justification as entirely unsatisfactory.

With respect to the case of the master and crew of the "Banshee," the excuse for the imprisonment of these persons appears to us very suspicious, and to bear strong marks of having been devised to cover a transaction originally illegal and indefensible. But as Lord Lyons intimates that the Judgment condemning the "Banshee" may throw a light upon the whole subject it would be better to wait for the arrival of that Judgment in order that the validity of Mr. Seward's defence, if he still persists in it, may be more thoroughly sifted than it can be on the present materials.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 224.

The Law Officers of the Crown to Earl Russell.—(Received February 18.)

Lincoln's Inn, February 16, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 8th instant, stating that he was directed by your Lordship to transmit to us three despatches and their inclosures from Lord Lyons,* reporting the cases of Mr. Canty, Mr. Eneas, and Mr. Rahming, three British subjects who have been arrested and are now in confinement at New York.

Mr. Hammond was also pleased to state that in requesting us to take these cases into our consideration, and to report to your Lordship our opinion thereupon, he was to state that your Lordship proposes to instruct Lord Lyons to state to Mr. Seward that Her Majesty's Government consider that they have a right to expect that, when a British subject is arrested, no delay should occur in giving Her Majesty's Minister, on his application, information of the grounds on which the arrest is made.

In obedience to your Lordship's commands we have taken these cases into our consideration, and have the honour to report—

That we are of opinion that the instructions which your Lordship proposes to send to Lord Lyons upon the general subject of the arrest of British subjects are right and proper.

With respect to the particular cases of Mr. Rahming, Mr. Eneas, and Mr. Canty, we are not of course able, upon the present papers, to form any opinion as to the sufficiency or insufficiency of the grounds upon which they have been arrested. But we must observe that the answers of Mr. Seward to Lord Lyons seemed to us very insufficient, and scarcely consistent with the respect due to the gravity of the cases concerning which information is sought, or the position of Her Majesty's Representative.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 225.

The Law Officers of the Crown to Earl Russell.—(Received February 18.)

Lincoln's Inn, February 16, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 9th instant, stating that he was directed by your Lordship to transmit to us the accompanying despatch and its inclosures from Lord Lyons (No. 61) respecting a Military Commission which has been appointed to investigate the cases of persons under arrest at Fort Lafayette and Fort Warren, and before which it seems probable that several British subjects will be brought; and to request that we would take these papers into consideration, and favour your Lordship with any observations which we might have to offer thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we understand that the Habeas Corpus Act is still suspended in the United States, and that British prisoners are to be tried in the same manner as native subjects and the subjects of other countries accused of political crimes. Assuming this to be the case, we do not think that Her Majesty's Government can enter into any valid protest against the proposed mode of investigation. But we think that the letter on this subject of Lord Lyons to Mr. Seward is very proper, and that he ought to be instructed to press for an answer to it; and that Her Majesty's Government should be informed of the result of the inquiry in every case in which it affects any British subject.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE

No. 226.

The Law Officers of the Crown to Earl Russell.—(Received February 19.)

Lincoln's Inn, February 18, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 8th instant, stating that he was directed by your Lordship to transmit to us a despatch and its inclosures from Her Majesty's Minister at Washington (No. 57, January 26), respecting the case of Mr. James McHugh, a British subject who is imprisoned in Fort Lafayette; and Mr. Hammond was to request that we would take Mr. McHugh's case into consideration, and report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands we have taken Mr. McHugh's case into consideration, and have the honour to report—

That this case presents a different aspect from the others on which we have had the honour to report.

Mr. McHugh being domiciled in America at the breaking out of the war, appears to have so mixed himself up with affairs of the Confederate belligerent as to render his detention not altogether unreasonable. We shall, however, be in a better position to form a judgment as to this case when we have seen the explanations which he offers in answer to the accusation of Mr. Seward.

The intimation of Mr. Seward that the "Bermuda" and other vessels whose cargo is laden by Fraser, Trenholm, and Co. will be henceforth presumed to be war transports till the contrary is shown, opens a very serious and important question for consideration.

As at present advised, we are not prepared to admit that it is competent to the United States' Government, as against British subjects, to act, without further evidence, upon such a presumption.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 227.

The Queen's Advocate to Earl Russell.—(Received February 19.)

Doctors' Commons, February 18, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 13th instant, stating that he was directed by your Lordship to request that I would inform your Lordship, with reference to my Report of the 10th instant, whether the opinion therein expressed with regard to contraband of war applies to export from, as well as to import into, the so-called Confederate States.

In obedience to your Lordship's commands I have the honour to report—

That the opinion which I had the honour to express in my Report of the 10th instant, with regard to contraband of war, does apply to export of cotton from, as well as import of cotton into, the so-called Confederate States.

This opinion is of course irrespective of the operation of a blockade upon neutral vessels, and confined to the question of contraband, apart from any other consideration.

I have, &c.
(Signed) ROBERT PHILLIMORE.

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* Lord Lyons, No. 58, No. 59, No. 60, January 26, 1864.

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No. 228.

The Law Officers of the Crown to Earl Russell.—(*Received February* 19.)

Lincoln's Inn, February 19, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 12th February instant, stating that, with reference to his letter of the 30th ultimo respecting the seizure of the British barque "Saxon" by the United States' steamer "Vanderbilt," he was directed by your Lordship to transmit to us the accompanying further papers in this case as marked in the margin,* and to request that we would take them into consideration, together with those inclosed in his above-mentioned letter, and favour your Lordship with our opinion thereupon.

We are also honoured with your Lordship's commands signified in Mr. Hammond's letter of the 17th February instant, stating, that with reference to his letter of the 12th instant respecting the case of the "Saxon," he was directed by your Lordship to transmit to us a further letter from Messrs. Sinclair, Hamilton, and Co. dated the 17th instant, relative to the coals belonging to Messrs. Anderson, Saxon, and Co., which were appropriated at Penguin Island by the United States' ship "Vanderbilt;" and to request that we would take this letter into our consideration, together with those now before us, and favour your Lordship with any observations we might have to offer thereupon.

Mr. Hammond was also pleased to add that, in conformity with the advice tendered in our Report of the 13th February, Lord Lyons had been instructed to claim on behalf of Messrs. Anderson, Saxon, and Co., full compensation for the value of the coals taken by the "Vanderbilt," as well as for the loss they may have thereby sustained.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That we are of opinion that Messrs. Anderson, Saxon, and Co. are entitled to full compensation for the coals belonging to them, which were unlawfully taken by the "Vanderbilt," and we are further of opinion that the unlawful act itself ought to be the subject, as we have already had the honour to report, of a substantive remonstrance to the United States' Government.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 229.

The Law Officers of the Crown to Earl Russell.—(*Received February* 19.)

Lincoln's Inn, February 19, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 5th of February instant, stating that with reference to our Report of the 12th of December last, he was directed by your Lordship to transmit to us, together with the previous papers, a despatch from Her Majesty's Consul at New York (No. 14, January 22, 1864), inclosing a printed copy of the Judgment of condemnation pronounced by Judge Betts in the case of the "Springbok," and to request that we would take this Judgment into our consideration and favour your Lordship with our observations thereupon.

Mr. Hammond was also pleased to add that as notice had been given that this case was to be brought before the House of Commons on Friday the 12th instant, it would be convenient if your Lordship could be put in possession of our Report on or before that date.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we have perused the printed Judgments in the case of the "Springbok," and that we see no reason to depart from the advice which we had the hononr to offer in our former Report, viz., that the Government are not called upon officially to interfere in this matter, but the owners must be left to the usual and proper remedy of an appeal; on the contrary, we are bound to state that a careful perusal of this elaborate and able Judgment, containing the reasons of the Judge, the authorities cited by him in support of it, and the important evidence properly invoked from the cases of the "Stephen Hart" and the "Gertrude" (which we now see for the first time), in which the same parties were concerned, go so far to establish that the cargo of the "Springbok" (containing a considerable portion of contraband) was never really and *bonâ fide* destined for Nassau, but was either destined merely to call there, or to be immediately transhipped after its arrival there, without breaking bulk and without any previous incorporation into the common stock of that colony, and to proceed to its real destination, being a blockaded port. The complicity of the owners of the ship with the design of the owners of the cargo is, to say the least, so probable on the evidence, that we should find great difficulty in contending that this ship and cargo had not been rightly condemned.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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* Messrs. Sinclair and Co., February ; Ditto, February 3, Private; to Colonial Office, February 5; Colonial Office, February 8; Messrs. Sinclair and Co., February 8, and February 12; Colonial Office, February 12, 1864.

No. 230.

The Law Officers of the Crown to Earl Russell.—(*Received February* 19.)

Lincoln's Inn, February 19, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 25th ultimo, stating that he was directed by your Lordship to transmit to us, together with the previous papers, a despatch from Her Majesty's Consul at New York (No. 220, December 28), reporting that the British steamer "Antona" had been condemned in the United States' District Court, on the ground of an attempt to break the blockade of the port of Mobile; and to request that we would take this decision into our consideration, and favour your Lordship with our opinion thereupon.

In obedience with your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That, assuming the printed report of this case to be substantially accurate, the "Antona" appears to have been rightly condemned for attempting to break the blockade.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 231.

The Queen's Advocate to Earl Russell.—(*Received February* 19.)

Lincoln's Inn, February 19, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 13th instant, stating that with reference to my Report of the 15th ultimo, he was directed by your Lordship to transmit to me a further letter, dated the 12th instant, from Mr. Crutchett, requesting Her Majesty's Government to reconsider their decision not to interfere in regard to his claim on the Government of the United States.

Mr. Hammond was pleased to inclose Mr. Crutchett's former application, and the answer, founded on my above-mentioned Report, which was returned thereto;* and was to request that I would again take this case into consideration, and inform your Lordship whether I see any reason to alter my previous opinion thereupon.

In obedience to your Lordship's commands I have taken this case again into consideration, and have the honour to report—

That it appears upon the face of the petition addressed by Mr. Crutchett to the President, and by the other papers, that Mr. Crutchett has been for a great many years, by residence, by marriage, by occupation, by the investment of his fortune, domiciled in the United States; and I am clearly of opinion that in every sense, except as to political privileges, he must be so considered by the law of England, as well as that of the United States.

That about eight years ago he established on ground which he had purchased sixteen years ago (page 49) a factory, with machinery and necessary appurtenances at Mount Vernon, "in view" (to use the words of his petition to the President, page 5) "of ulti-

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* From Mr. Crutchett, January 5; to Mr. Crutchett, January 21, 1864.

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mately aiding the building of the 'Washington National Monument,' and restoration of the Home of Washington."

That after the battle of Bull's Run this factory and premises were, and continue to be, occupied by the United States' Government as a matter of military necessity.

A correspondence ensues between Mr. Crutchett and the military and civil authorities, the former demanding compensation, estimated at a certain amount, the latter asserting that the premises and machinery have not been damaged, and moreover denying the correctness of the estimate put by Mr. Crutchett upon the value of his factory, and offering what they allege to be ample compensation, namely, a rent of 50 dollars per month, but expressing great doubts (Mr. Camp to Quartermaster Meigs, April 9, 1862, page 38), as to the validity of Mr. Crutchett's title to the property in question, as the estate is encumbered, and creditors claim the rent which the military authorities are willing to pay.

Eventually, however, and after Mr. Crutchett has put his case into his hands of legal advisers, and with some assistance on the part of Lord Lyons, Mr. Crutchett receives, under protest, the 50 dollars per month, reserving to himself the right of taking further action against the United States' Government. He then comes to this country, and asks Her Majesty's Government to interfere officially, and to obtain for him what he considers to be proper compensation for the value of his house, factory, and land at Washington.

I must repeat my opinion that this is not a case in which Her Majesty's Government ought officially to interfere; that Mr. Crutchett must seek his remedy according to the law of the country in which he is domiciled, and in which his property is situated, against the alleged wrongdoers to that property.

I have, &c.
(Signed) ROBERT PHILLIMORE.

P.S.—Perhaps your Lordship would think it desirable in answering Mr. Crutchett's last letter to recapitulate the heads of this Report.

R. P.

No. 232.

The Law Officers of the Crown to Earl Russell.—(*Received February* 20.)

Lincoln's Inn, February 20, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of yesterday's date, stating that he was directed by your Lordship to transmit to us therewith a statement made to the Solicitor to the Treasury by Horace Carrew, late a seaman on board the "Saxon," respecting the murder of the mate of that vessel; and to state to us that your Lordship proposes to send a copy of this paper to Lord Lyons by the mail of this day, but would be glad to have any observations which we might see occasion to offer upon it, for Lord Lyons' instruction.

And that he was further to inquire whether we should wish any direction to be given to the Solicitor to the Treasury for communicating with this seaman.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That the deposition of Horace Carrew bears upon the face of it evident signs of truthfulness; and it appears to us to throw more light upon this unhappy transaction than any of the other statements which we had previously seen.

It seems that the "Saxon," when captured, was engaged in taking on board from the rocks at Angra Pequena, with the assistance of some of the men belonging to the Cape schooner "Atlas," a number of bales of skins and cotton wool, which had previously been deposited there evidently for that purpose.

We know, from other sources of information, that these goods had formed part of the "Tuscaloosa's" or "Conrad's" cargo, and that the "Atlas" was a vessel then acting in concert with the "Alabama" and the "Tuscaloosa."

After the prize crew from the "Vanderbilt" had taken possession of the "Saxon," these men from the "Atlas" came off in their boat, bringing fish; and on their asking whether they "might have any meat," the American officer in charge gave the captain of the "Saxon" leave to let them have some.

Upon this permission they proceeded to act in such a manner as to make it apparent that they intended to take all the meat (of which there seems to have been a considerable

quantity) out of the ship; and then, on the officer in charge saying that they should have no more, the captain of the "Saxon," both by word and act, openly resisted his orders, and for so doing was justifiably put under arrest.

It was during the excitement which immediately followed this event, that Mr. Gray, the second mate, came forward, and that the United States' officer Donaghan, having three times (with great rapidity) ordered him to "go down," threatening, finally, to shoot him if he did not, put his left hand on him, and pushed him, and then, as Mr. Gray fell back, "wheeling round to save himself as he fell, and turning his face towards Donaghan," the fatal shot was fired.

It will not surprise us if the United States' Government should look upon this narrative, as tending, in its general effect, to excuse Donaghan from the guilt of deliberate murder. It may, perhaps, be contended that the indications of resistance on the part of the captain of the "Saxon," which had led to his being placed under restraint, might have caused the action of Mr. Gray to be misinterpreted; and what immediately followed when the senior American officer in charge called out, "Draw swords!" and when the prize crew drew their cutlasses, and presented their pistols at the breasts of the men who had gathered round Mr. Gray's body, asking "whether they wanted to take the ship back," may be said to be consistent with this view of the case.

If any such view as this (which of course is not one to be suggested on the part of Her Majesty's Government), should be taken of this evidence by the Government of the United States, the proper answer (as it seems to us) would be, that as there does not appear to have been any reason for supposing that the "Alabama" was then in the neighbourhood, the apprehension of any attempt at rescue, in the presence of the "Vanderbilt," could not be seriously entertained; and as no violence was actually attempted or threatened against the persons of any of the prize crew on board, the misbehaviour of the captain would not, in our judgment, afford any admissible excuse for the employment of deadly weapons, even if the demeanour and conduct of Mr. Gray had been much more equivocal than they were.

Be this as it may, we think it would be right to all parties that the evidence of so fair and honest a witness as Horace Carrew should be forthcoming on the inquiry which is about to be held; and we think, therefore, that it would be well for the Solicitor of the Treasury to be instructed to make such arrangements as will enable his evidence to be taken on that inquiry.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 233.

The Law Officers of the Crown to Earl Russell.—(*Received February* 20.)

Lincoln's Inn, February 20, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 6th instant, stating that he was directed by your Lordship to transmit to us a despatch from Mr. Consul Archibald (No. 16), inclosing a copy of the Judgment of the Circuit Court, reversing the decision of the District Court in the cases of the "Alliance" and "Gondar," which formed the subject of the Law Officers' Reports of the 25th of June, 1862; and Mr. Hammond was to call our attention to the case of the "Empress," contained in Judge Nelson's decision inclosed in Mr. Archibald's above mentioned despatch.

With reference to the above we have the honour to report—

That we are glad to be informed that the Court has reconsidered its powers as to costs and damages, and does not adhere to its opinion in the "Empress," so far as relates to the award of costs and damages against the officers making the capture, on which point that Judgment was, in our opinion, erroneous; although it was perfectly correct in deciding that the Prize Court could not award costs or damages against the United States' Government.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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No. 234.

The Law Officers of the Crown to Earl Russell.—(Received February 20.)

Lincoln's Inn, February 20, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 15th instant, stating that he was directed by your Lordship to transmit to us a letter dated the 15th instant and its inclosures from the Admiralty, reporting the detention of the barque "Tuscaloosa" by the British authorities at Simon's Bay on her return to that anchorage on the 26th of December last, and requesting to be informed, with reference to the concluding paragraph of our Report of the 8th instant respecting that vessel, what instructions should be given to Sir Baldwin Walker; and to request that we would take this matter into our consideration and favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That we are clearly of opinion that the "Tuscaloosa" ought in the particular circumstances of the case to be restored to the Lieutenant of the Confederate States who lately commanded her. In our last Report we expressly stated that, inasmuch as neither the Captain of the "Alabama" nor the officer in charge of the "Tuscaloosa" had received any intimation of the altered course which Her Majesty's Government might be about to adopt respecting her, good faith would require that she (or any other vessel under similar circumstances*) should not be seized without due notice being previously given. We think that the protest of Lieutenant Low is well founded in this respect. We are of opinion that when the "Tuscaloosa" is restored, Lieutenant Low should be duly warned that if she re-enters any of Her Majesty's ports or harbours she will be liable (unless Her Majesty's Government should see any reason to the contrary) to be detained and restored to her original owners, as a prize vessel captured by a ship fitted out and manned in violation of the laws made for the preservation of British neutrality, and brought into British waters in contravention of Her Majesty's orders. We may refer to our last Report on this subject, as to the circumstances which might make a difference in the proper mode of treating such a vessel. A condemnation in a Prize Court, or a regular and independent Commission as a public ship of war direct from the Confederate Government would (in our opinion) certainly have that effect.

If, in any future case, there should be reason to entertain serious doubt as to the true character of any vessel which, having been captured by any Confederate ship fitted out in or manned from this country in violation of the Foreign Enlistment Act, has afterwards been employed as a vessel of war, and brought as such into a British port (or if there should be probable reason for supposing that such vessel, after previous recognition as a ship of war, has come in inadvertently, without knowledge of Her Majesty's orders), we think the most advisable course will be to order her immediate departure, with a similar notice as to the consequences of her continuance or return within British jurisdiction; and not to proceed to make an actual seizure, until such notice has been given, and disregarded.

We think it necessary to add, that the suggestion made in our Report of the 19th October last (as to the course which it might have been most consistent with Her Majesty's dignity, and most proper for the vindication of her territorial rights, to pursue in such a case as that of the "Tuscaloosa") is to be understood only with reference to prizes taken by the "Alabama," or by any other ship known to have been fitted out or manned in violation of the laws of Great Britain. If it should happen that any duly commissioned ship of war, either of the Federals or of the Confederates, not known to have been fitted out or manned in violation of the laws of Great Britain, should bring any Prize taken by her into British waters, in contravention of Her Majesty's orders against bringing in prizes, the proper course (in such a case) would be, not to seize or restore the prize, but simply to require the immediate departure both of the captured and of the capturing vessel. It is only when the capturing vessel has been fitted out or manned in violation of our own laws that the right or obligation of taking possession of the prize, for the purpose of making restitution, supersedes the general obligation to respect the public commission, and the actual possession of the capturing vessel.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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* *i.e.*, a vessel which had been on a previous occasion deliberately, and with knowledge of the circumstances, admitted into Her Majesty's ports as being a recognized ship of war, and not a prize.—R. P.

No. 235.

The Law Officers of the Crown to Earl Russell.—(Received February 20.)

Lincoln's Inn, February 20, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 4th instant, stating that he was directed by your Lordship to transmit to us a letter dated the 30th ultimo, from the Board of Trade, inclosing an application from Mr. John Mulholland, requesting Her Majesty's Government to obtain from the United States' Government permission for the removal of certain cotton stated to belong to British subjects, from the so-called Confederate States; and Mr. Hammond was to request that we would take this matter into consideration, and furnish your Lordship with our opinion as to the course which it would be proper for Her Majesty's Government to take.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we are of opinion that it would be proper that Her Majesty's Government should make the application which is requested to the United States' Government.

The facts that the cotton represents the dividend of a railway due to a foreign and neutral creditor, the contract having been entered into while the territory occupied by the railway was under the authority of the United States, and that a portion of the railway is now in the occupation of and used by the United States' authorities, afford sufficient reasons for the application; and it may reasonably be hoped that one alternative, at least, of it may be granted, namely, the protection of the cotton from belligerent seizure or destruction.

We think it necessary, however, to add, that this application can only be addressed to the equitable consideration of the United States' Government, and cannot be made as a matter of right.

The case is one of Confederate property, transferred to the British creditors of the Company after the commencement of the war, and still remaining (as it has always been) within the territory of the enemies of the United States.

On general principles it is not competent for a belligerent, by a transfer made during war under such circumstances, to confer upon the subject of transfer a title to the special protection and privileges of neutral property.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 236.

The Law Officers of the Crown to Earl Russell.—(Received February 22.)

Lincoln's Inn, February 22, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 27th ultimo, stating that he was directed by your Lordship to transmit to us a despatch from Lord Lyons (No. 15, January 12), inclosing copies of his correspondence with Mr. Seward on the subject of an order of the Navy Department, published in the "National Republican" newspaper, containing regulations respecting captures made by "armed vessels in the service of the United States, under circumstances which would entitle a vessel of the navy to prize money."

That your Lordship thinks it right we should see these papers, and that if we should have any observations to offer, your Lordship requests we would furnish your Lordship with them.

In obedience to your Lordship's commands we have considered this correspondence, and have the honour to report—

That, as far as we are able to understand the explanations of Mr. Welles and Mr. Seward, the United States' Government have armed vessels in the service of the United States not belonging to the navy, and not entitled to the privileges of commissioned cruizers, and these vessels are "authorized to make prizes" from belligerents, not from neutrals. But for the statements in Mr. Seward's note to Lord Lyons of 4th January, 1864, that "there are no private armed or non-commissioned vessels," and that the vessels referred to are either commissioned through the United States' War Department as transports, or through the United States' Treasury for the purposes of the revenue,

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we should have understood them to be a species of privateers with limited powers. It is impossible not to foresee that serious questions may arise from such an anomalous class of vessels, which will probably seize as a belligerent some neutral vessel; but we cannot say that the Act in question is beyond the power of the United States' Government, or that, as explained, it is intended to affect (whatever may be its practical result) neutral States.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 237.

The Law Officers of the Crown to Earl Russell.—(Received February 22.)

Lincoln's Inn, February 22, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 21st instant, stating that with reference to our Reports of the 8th and 20th instant, respecting the case of the "Tuscaloosa," prize to the Confederate steamer "Alabama," he was directed by your Lordship to transmit to us therewith, for our consideration, the draft of a despatch to Lord Lyons, founded on those Reports; and Mr. Hammond was to request that we would state to your Lordship our opinion at our earliest convenience on this draft, particularly with reference to the bearing that it may have in the discussion with the Government of the United States in regard to the case of the "Alabama," and also as to the expediency of entering into the question with Lord Lyons at such length.

In obedience to your Lordship's commands we have the honour to report—

That we have taken the liberty to make certain alterations in and additions to some passages in the draft despatch, which we venture to recommend to your Lordship's adoption; and that the despatch so modified may, in our opinion, properly be sent, and that we think the adoption of the course thereby announced on the part of Her Majesty's Government will not be an admission of, and will not tend to involve this country in, any liability for captures by the "Alabama," not brought into British ports.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 238.

The Law Officers of the Crown to Earl Russell.—(Received February 22.)

Lincoln's Inn, February 22, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 3rd instant, stating that he was directed by your Lordship to transmit to us the accompanying papers, from which we would learn the particulars of a question which has arisen with regard to the proposed issue to Mr. Dumas, as the London agent of Messrs. R. Wood and Son of New York, of a British licence to collect, for a period of five years, certain phosphatic substances found on the Island of Sombrero in the West Indies; and Mr. Hammond was to call our attention to the letter from the Colonial Office of the 28th ultimo, from which it appears that the Commissioners of Land and Emigration have been instructed to take the necessary steps for issuing the licence, which has been approved by the Attorney and Solicitor-General: and Mr. Hammond was to state that as it is proposed that your Lordship should address to Mr. Adams a communication respecting the reservation of the United States of any claim that State may pretend to have over Sombrero, your Lordship requests we will peruse the correspondence, and furnish your Lordship with our opinion thereupon, and more particularly as to the terms in which we would advise that the communication to Mr. Adams should be couched.

In obedience to your Lordship's commands we have perused the correspondence in this matter, and have the honour to report—

That we think your Lordship might properly state to Mr. Adams that Her Majesty has granted a lease of the island for certain purposes, and under certain conditions, to the agent of Messrs. Wood and Co. of New York.

That your Lordship is aware that the United States' Government desire to reserve to themselves the right of calling in question (if they should think fit hereafter to do so), the title of Her Majesty to that island; and that on the present occasion it is mutually understood between the two Governments that the acquiescence of the United States' Government in this particular act of Her Majesty's Government is not to prejudice or affect any claim which the United States may hereafter think fit to advance with respect to the island.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 239.

The Law Officers of the Crown to Earl Russell.—(Received February 22.)

Lincoln's Inn, February 22, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr Hammond's letter of the 10th of February instant, stating that he was directed by your Lordship to transmit to us the accompanying despatches as marked in the margin,* respecting the case of Lieutenant Rooke, an officer in Her Majesty's service, who has, under the circumstances therein set forth, been arrested at New York, and confined in Fort Lafayette; and to request that we would take this case into consideration, and favour your Lordship with any observations which we might have to offer thereupon.

In obedience to your Lordship's commands we have taken this case into our consideration, and have the honour to report—

That on the present evidence we are of course unable to form any decided opinion upon the case, but enough appears to show that regard being had to the commission he holds, and to Her Majesty's Proclamation, Lieutenant Rooke has acted with great indiscretion and imprudence, of which it is only just to say he appears to be himself aware.

If his statements may be relied on (which we see no reason to doubt), he seems to us to have already suffered as much as his fault deserves; and unless the contents of the letters of which he was the bearer should turn out to have been of real political importance, his prolonged detention as a prisoner would, in our opinion, be a very harsh proceeding on the part of the United States' Government.

We think, however, that no further steps can be taken until Mr. Seward has again made a report to Lord Lyons upon the subject, especially as it is reasonable to conclude that he will do so in a short period of time.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 240.

The Law Officers of the Crown to Earl Russell.—(Received February 26.)

Lincoln's Inn, February 26, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 19th February instant, stating that, with reference to our Reports of the 12th and 13th instant, he was directed by your Lordship to request that we would inform you whether, supposing a vessel belonging to the Confederate Government, and which, accordingly, was not a British vessel, having no British owner, was captured by a Federal man-of-war, and the fact of the Confederate ownership was proved in an American Court, the crew could be claimed as British subjects, and were not prisoners of war according to usual international law.

We are also honoured with your Lordship's commands signified in Mr. Hammond's letter of the 20th February instant, stating that, with reference to our Reports of the 12th and 13th instant, and to his letter of the 19th, he was directed by your Lordship to transmit to us therewith further despatches from Lord Lyons (Nos. 73, 74, 75, and 85),

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* Lord Lyons, No. 930, December 31, 1863; No. 6, January 4; No. 22, January 12; and No. 56, January 26, 1864.

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in the cases of the "Banshee," and of Mr. Patrick Hamilton; and to request that we would take these papers into our early consideration, and report to your Lordship our opinion as to whether the instructions which your Lordship was about to address to Lord Lyons, in conformity with our Report of the 13th of February, and the answer which you were about to return to Mr. Adams, in conformity with our Report of the 12th of February, should in any degree be influenced by the further reports from Lord Lyons then transmitted to us.

In obedience to your Lordship's commands we have taken these matters into our consideration, and have the honour to report—

That if a vessel belonging to the Confederate Government were captured by the Federal belligerent, and on board of her were found British subjects, not merely passengers, but employed in connection with the vessel and her cargo, in circumstances which rendered it practically impossible that they should be ignorant of the ownership of the vessel, we are of opinion that such persons might be lawfully treated as prisoners of war; and that, *primâ facie*, the Federal belligerent would have a right to consider them as such. But we think Her Majesty's Government would have a just right to remonstrate if British subjects engaged as seamen on board a ship ostensibly British, and which they have had every reason to suppose to be really and *bonâ fide* such, should be treated by the United States' Government as enemies, merely on the ground of the subsequent discovery of a concealed interest of the Confederate Government in such vessel.

With respect to the reports of Lord Lyons in the cases of the "Banshee" and of Patrick Hamilton, we do not think that the letters which your Lordship proposes to address to Lord Lyons and Mr. Adams ought to be influenced by these further reports now transmitted to us. If these reports ought to produce any effect upon the proposed letters, it would be that of strengthening the expressions in which your Lordship would insist that no exigence of the belligerent would warrant him in departing from the observance of his obligations towards the neutral.

In matters of maritime prize, the relations of belligerent and neutral are, for the most part, clearly established; they cannot be disturbed without great danger. Not to speak of other and more serious results, it is obvious that, if one belligerent depart from the course of established usage and right towards the neutral, he cannot complain if the neutral should follow his example, and attempt to restore the just equilibrium properly incident to his position, by making a change in his relations to the other belligerent.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 241.

The Queen's Advocate to Earl Russell.—(Received February 27.)

Doctors' Commons, February 27, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 25th instant, stating that he was directed by your Lordship to transmit to me a Memorial from Mr. John Mirian Wilson, claiming the assistance of Her Majesty's Government to obtain the restitution with competent damages of certain property of which he states that he has been unjustly despoiled in the State of Pennsylvania; and Mr. Hammond was to request that I would take Mr. Wilson's case into consideration, and report to your Lordship my opinion thereon.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That an answer should be sent to Mr. Wilson, to the effect that Her Majesty's Government cannot interfere in a matter relating to landed property in Pennsylvania, and the decisions of the local or other tribunal respecting it. Mr. Wilson must seek his remedy in the Courts of the country in which that property is situated, for any injury that may have been inflicted upon him with regard to it.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 242.

The Law Officers of the Crown to Earl Russell.—(Received February 27.)

Lincoln's Inn, February 27, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 25th February instant, stating that he was directed by your Lordship to transmit to us letters dated the 25th instant from the Admiralty and Colonial Office, inclosing further accounts received from the Cape of Good Hope respecting the case of the "Tuscaloosa," recently seized by the British authorities in Simon's Bay.

Mr. Hammond was also pleased to return to us the draft of the proposed instruction to Lord Lyons which formed the subject of our Report of the 22nd instant, and to request that we would take into our consideration the further accounts now received, and report to your Lordship, at our earliest convenience, whether they contain anything to render necessary an alteration in the proposed instruction to Lord Lyons.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That the further papers now laid before us do not, in our opinion, require any alteration to be made in the proposed instruction to Lord Lyons.

We have, &c.
(In the temporary absence of the Solicitor-General),
(Signed) ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 243.

The Law Officers of the Crown to Earl Russell.—(Received March 2.)

Lincoln's Inn, March 1, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 24th of February ultimo, stating that he was directed by your Lordship to transmit to us a despatch from Lord Lyons (No. 94, February 9), inclosing copies of a further correspondence with Mr. Seward, and of a despatch from Mr. Consul Archibald respecting the case of the "Saxon," and the violent death of Mr. James Gray, and to request that we would take the same into our consideration, and favour your Lordship with our observations thereupon.

Mr. Hammond was also pleased to add that the deposition of Horace Carrew, which formed the subject of our Report of the 20th February, was sent to Lord Lyons by the previous Saturday's mail, and that Carrew himself would sail for New York that evening, and also that your Lordship was anxious to have sent Aitcheson back to America also, but it was doubtful whether this would be possible.

In obedience to your Lordship's commands we have taken this matter into consideratian, and have the honour to report—

That it appears to us that the course pursued by Lord Lyons has been right. It is certainly most desirable that Lord Lyons should in no way recognize the court-martial as a tribunal by whose decision Her Majesty's Government can be bound, though, on the other hand, we think that Her Majesty's Government ought to do whatever is in their power to facilitate the proper conduct of that inquiry by the United States' Government, and to cause all such evidence as they are able to command to be forthcoming for that purpose. The observations of Mr. Consul Archibald on this point appear to us very sensible.

It would seem to us expedient that an early opportunity should be taken by Lord Lyons of stating to Mr. Seward that his (Lord Lyons') instructions are, to represent that Her Majesty's Government, while willing to wait for the answer of the United States' Government such a reasonable time as may enable that Government to inquire into the circumstances of the case in whatever way they think best, with which Her Majesty's Government can have no concern, nevertheless feel, and hope the United States' Government will feel, that the murder of a British subject on board a British vessel is a subject which demands the promptest reparation that can be made.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 244.

The Queen's Advocate to Earl Russell.—(*Received March* 3.)

Doctors' Commons, March 2, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 27th ultimo, stating that he was directed by your Lordship to transmit to me the accompanying correspondence, as marked in the margin,* respecting the complaint of Mr. H. A. Lewers, a British subject resident at Missouri, that certain property belonging to him has been seized by the military authorities of the United States; and Mr. Hammond was to request that I would take these papers into consideration, and furnish your Lordship with my opinion thereupon.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I do not advise Her Majesty's Government to take any further steps in this matter.

Mr. Lewers is domiciled in the United States. He complains that certain portions of his property in Missouri have been unlawfully taken from him by certain soldiers of the United States. He has received every assistance from Her Majesty's Consul that could be rendered to him in the matter; and there appears to have been no indisposition on the part of the United States' authorities to do justice. But there has been, as would probably be the case amid the irregularities and troubles of a civil war, no identification of the individual soldiers, or the companies, whom he charges as having been concerned in the unlawful act.

I entirely agree with the advice offered Mr. Lewers by Mr. Consul Wilkins, namely, that he has no privilege over American citizens, and that he must ascertain and adopt the course which they pursue in claims like his own.

It certainly is not a case which calls for the special intervention of Her Majesty's Government.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 245.

The Law Officers of the Crown to Earl Russell.—(*Received March* 4.)

Lincoln's Inn, March 2, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 20th ultimo, stating that he was directed by your Lordship to transmit to us therewith, with reference to our Report of the 9th February, a further despatch and its inclosures received from Lord Lyons (No. 77, February 1) respecting the case of the "Chesapeake;" and to request that we would take the same into consideration, and report to your Lordship such observations and suggestions as might occur to us on perusing them.

Mr. Hammond was also pleased to state that he was directed by your Lordship at the same time to acquaint us that copies of our previous Reports on the matter had been sent to the Colonial Office for such directions as the Duke of Newcastle might see occasion to give to the British authorities in North America thereupon.

We are also honoured with your Lordship's commands signified in Mr. Hammond's letter of the 26th ultimo, stating that with reference to his letter of the 20th February, he was directed by your Lordship to transmit to us, for our consideration, in connection with the papers then before us, a further letter dated the 26th ultimo from the Colonial Office respecting the case of the "Chesapeake."

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we entirely agree with the observations of Lord Lyons upon the letter of Mr. Seward.

Mr. Seward must be well aware that so far as the extradition of the men (whom he assumes to be pirates) is concerned, it would have been improper, and was in fact impossible, for the Government of Nova Scotia to proceed otherwise than in the course pointed out by law; and he cannot seriously intend to suggest that the Provincial Government charged with the duty of vindicating Her Majesty's territorial rights, when invaded in a manner for which the United States' Government have since found it necessary to apologize, could adopt or ratify the unauthorized exercise of power over the persons found on board the "Chesapeake" (even to the extent of putting and keeping them in irons), by which the invasion of Her Majesty's rights was accompanied and aggravated.

So far as the vessel is concerned, although we have already expressed our opinion that she might have been delivered up without judicial proceedings, we do not think that the United States' Government have any present right to complain, especially as the general practice of the United States themselves is to investigate the title to ships of which restitution is claimed from the persons found in possession of them, through the action of their Courts. Probably the best answer to the concluding part of Mr. Seward's letter would be, that it is unnecessary to discuss by anticipation the question to which it refers; inasmuch as Her Majesty's Government feel confident that any proceedings which may be taken before the Judicial Tribunals of Nova Scotia will result (if they have not already done so) in the restitution of the vessel, unless there should prove to be any legal and valid reason to the contrary.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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[*] Mr. Fortescue, March 4, 1863; to Lord Lyons, No. 126; Mr. Fortescue, December 14; to Lord Lyons, No. 631, 1863; Lord Lyons, Nos. 35 and 92, 1864.

No. 246.

The Law Officers of the Crown to Earl Russell.—(*Received March* 5.)

Lincoln's Inn, March 4, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 1st of March instant, stating that he was directed by your Lordship to transmit to us a letter dated the 25th ultimo from the Colonial Office, inclosing copies of a correspondence which had passed between the Governor of Newfoundland and the Duke of Newcastle in regard to an application made to the Governor by the Consul of the United States in that Colony, that in case the "Alabama" or the "Chesapeake" should proceed to Newfoundland they should respectively be detained, and to request that we would take these papers into consideration, and favour your Lordship with our opinion as to any further instructions which should be addressed to the Governor of Newfoundland on the subject.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That the Governor of Newfoundland should be informed, that though it is competent to the Vice-Admiralty Court to try questions of piracy committed on the high seas; yet, in the event of the alleged pirates being claimed under the Extradition Treaty,* he must deal with the matter in the manner provided by the Statute 6 and 7 Vict., cap. 76. No other instructions appear to be needed. There is clearly no ground on which the "Alabama" can be ordered to be detained.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 247.

The Law Officers of the Crown to Earl Russell.—(*Received March* 3.)

Lincoln's Inn, March 4, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 2nd instant, stating that with reference to our Reports of the 8th, 20th, and 27th ultimo, respecting the case of the "Tuscaloosa," he was directed by your Lordship to transmit to us a letter dated the 2nd instant from the Admiralty, inclosing two drafts of instructions which have been drawn up for the guidance of Her Majesty's naval officers, in regard to belligerent cruizers and their prizes and their treatment in the ports of Her Majesty's

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[*] *i.e.*, as having committed the crime within the jurisdiction of the United States.—R. P.

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dominions, and that as the Board of Admiralty are in some doubt, owing to the difficult nature of the subject, as to the exact purport of the instructions which should be sent, they request to be informed which of the two draft instructions would meet the views of the Law Officers of the Crown.

Mr. Layard was accordingly to request that we would take these two draft instructions into our consideration and furnish your Lordship, at our earliest convenience, with our opinion thereupon.

In obedience to your Lordship's commands we have considered this case, and have the honour to report—

That we do not think that either of the two draft instructions, as sent to us, would meet our views.

We have, therefore, endeavoured to embody our views in a separate paper, marked C, which is sent herewith, and which, if adopted, may be preceded by the two first and followed by the two last paragraphs of the paper A.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 248.

The Law Officers of the Crown to Earl Russell.—(*Received March* 5.)

Lincoln's Inn, March 5, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 23rd of February ultimo, stating that with reference to our Report of the 12th and 13th January, respecting the case of the British ships "Dashing Wave" and "Volant," he was directed by your Lordship to transmit to us, together with the previous papers and the draft of the instruction to Lord Lyons founded on our above-mentioned Reports, the accompanying further papers, as marked in the margin,* which had since been received; and to request that we would take the inclosed correspondence into consideration, and favour your Lordship with any further observations which we might have to offer upon the cases of these vessels.

We are also honoured with your Lordship's commands signified in Mr. Hammond's letter of the 27th of February ultimo, stating that he was directed by your Lordship to transmit to us a letter and its inclosure from Messrs. Gallichan and Co. respecting the case of the "Volant;" and to request that they might be added to the other papers respecting captures in the Rio Grande, on which our opinion was asked in his letter of the 23rd February.

Mr. Hammond was pleased to add that copies of Messrs. Gallichan's letter and its inclosure would be sent to Lord Lyons by the mail of that evening.

Mr. Layard was also pleased, in a note dated the 2nd of March instant, to transmit to us, for our consideration, a further despatch from Lord Lyons respecting the British vessels seized off the Rio Grande.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we think the proposed letter of your Lordship to Lord Lyons should be sent (if not already sent) according to the draft as now written.

The further facts in these papers do not affect the general principles laid down in that letter. And it is, we think, desirable that the instructions respecting the "Sir W. Peel" should not be altered.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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* To Lord Lyons, No. 50; Admiralty, February 1; Messrs. Bennett and Wake, February 13; Lord Lyons, No. 70.

No. 249.

The Law Officers of the Crown to Earl Russell.—(*Received March* 5.)

Lincoln's Inn, March 5, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 4th March instant, stating that he was directed to transmit to us the drafts of a letter to Mr. Adams and Lord Lyons respecting the treatment to which British subjects taken on board vessels captured for breach of blockade are subjected by the United States' authorities. That these drafts are founded upon our Reports of the 12th, 13th, and 26th ultimo; and he was to request that we would take them into consideration, and furnish your Lordship with our opinion as to whether they are right and proper to be sent.

Mr. Hammond was also pleased to add that your Lordship hoped we should be able to furnish your Lordship with our Report in time to admit of the instruction to Lord Lyons being sent off by the mail of this evening.

In obedience to your Lordship's commands we have taken these proposed letters into consideration, and have the honour to report—

That we are of opinion that the proposed letters to Mr. Adams and Lord Lyons are fit and proper to be sent. We have suggested a slight insertion in the letter to Mr. Adams.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 250.

The Law Officers of the Crown to Earl Russell.—(*Received March* 7.)

Lincoln's Inn, March 5, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 23rd ultimo, stating that he was directed by your Lordship to transmit to us the draft of an instruction which, in conformity with our Report of the 18th February, your Lordship proposes to address to Lord Lyons respecting the case of Mr. James McHugh, and respecting Mr. Seward's statement that vessels freighted by Messrs. Fraser, Trenholme, and Co., will henceforth be presumed to be war transports of the Confederate Government until the contrary is shown, and to request that we would take the proposed instruction into our consideration, and report to your Lordship our opinion whether it is right and proper to be sent.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That we are of opinion that the proposed letter of your Lordship to Lord Lyons is, with the slight alterations which we have ventured to make, proper to be sent.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 251.

The Law Officers of the Crown to Earl Russell.—(*Received March* 7.)

Lincoln's Inn, March 7, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 23rd ultimo, stating that, with reference to our Report of the 18th ultimo, and to his other letter of the 23rd ultimo, he was directed by your Lordship to transmit to us a despatch from Her Majesty's Minister at Washington (No. 93, February 9), inclosing a copy of a note from Mr. Seward, setting forth the circumstances under which it has been determined, as a temporary system, that "persons captured on entering the insurgent line with munitions and supplies, under whatever flag, should not be at once discharged as heretofore, upon a superficial examination, on the ground of their claim to

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neutrality, but shall be detained in military custody until a full and thorough investigation of their cases can be made," and to request that we would take this matter into our consideration, and report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That we have in our former Reports expressed at length our opinion as to the unlawfulness of treating British subjects captured on board vessels breaking the blockade as prisoners of war: to that opinion we steadily adhere, and it is not affected by the character of the cargo on board the vessel in which they are captured. The extract from Mr. Seward's letter (contained in the letter of Mr. Hammond to us) is ambiguous and unsatisfactory in its language; and while, on the one hand, it is not unreasonable that in cases of real doubt as to whether a *particular* person be a neutral or an enemy, time should be allowed for necessary investigation, it is, on the other hand, not to be conceded that a *system* shall be adopted by the belligerent towards the neutral which is to have the practical effect, though for a limited period, of placing neutral subjects in the same condition as those of the enemy. That is not the penalty which the law of nations has affixed to the breaking of a blockade, or to the importation of contraband; and Her Majesty's Government must refuse altogether to assent or consent to any alterations of this law. This statement we think cannot be too plainly made, consistently, of course, with proper courtesy. As to the rest of Mr. Seward's letter, it consists of a recapitulation of complaints to which answers have been already addressed; and with respect to the "Chesapeake," the statement is extremely inaccurate, and unaccompanied by any recognition of the lawless acts committed by an officer bearing the commission of the United States.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 252.

The Law Officers of the Crown to Earl Russell.—(*Received March* 7.)

Lincoln's Inn, March 7, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 20th February ultimo, stating that he was directed by your Lordship to transmit to us therewith, with reference to our Report of the 29th of September last, a further despatch from Lord Lyons (No. 65), inclosing correspondence and other papers respecting the case of the "Echo;" and Mr. Hammond was to request that we would take the same into consideration, and report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands we have taken these further papers into consideration, and have the honour to report—

That we are glad to find that the opinion of the Counsel of the "Echo" so entirely agrees with that which we, upon a much more imperfect acquaintance with the facts of the case, had been led to form. We think it is only reasonable to expect that the partial miscarriage of the Judge will be corrected by the Superior Court.

We think, however, that the present case does not present any features which should induce your Lordship to depart from what should be the general rule observed by Her Majesty's Government, namely, that of not interfering officially in these cases until the remedy of the Appeal Courts has been exhausted.

We presume that in this case the right of appeal still exists, and has not been lost through lapse of time, or otherwise. If we should be mistaken in this supposition, we should desire to be informed of the reason why no appeal was made within the time, or in the manner, allowed by the law and practice of the United States' Courts.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 253.

The Law Officers of the Crown to Earl Russell.—(*Received March* 9.)

Lincoln's Inn, March 7, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 11th ultimo, stating that with reference to our Report of the 16th of September last, respecting the case of the steamer "Blanche," otherwise "General Rusk," he was directed by your Lordship to transmit to us, together with the previous papers, a despatch from Lord Lyons (No. 48, January 26), inclosing a copy of the answer returned by the United States' Government to the note which was addressed to that Government, in conformity with our Report; and Mr. Hammond was to request that we would take the same into our consideration, and furnish your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have considered these papers, and have the honour to report—

That we regret to perceive the apparent determination of the United States' Government to refuse the redress due to the Governments of Great Britain and Spain in this important case.

After carefully considering Mr. Seward's last letter to Lord Lyons, we see no reason to recall or qualify any part of the observations made in our two former Reports, of the 7th of July and the 16th of September, 1863, in which the whole facts were reviewed, and to which now we beg leave to refer. We have but little more to add to those observations.

Mr. Seward rests his answer to the demand of Her Majesty's Government mainly on the allegation that the "Blanche," at the time of her destruction on the 7th of October, 1862, was American, and not British-owned. She was, however, then sailing in neutral waters, where the British flag was not liable by the law of nations to aggression, visit, or search, with British papers, and under the British flag. Her registered owner was Mr. George Wigg, a natural-born British subject, residing at Liverpool; his title was by a regular bill of sale, dated 31st July, 1863, and executed at Havana by the duly constituted attorney of W. L. Smith, who appeared as sole owner on the 29th of May preceding, upon the permanent register of the port of Galveston, in Texas. The transfer was expressed to be made for a valuable consideration in money; and no evidence whatever tending to impeach the *bona fides* of the purchase by Mr. Wigg has ever been brought to the knowledge of Her Majesty's Government. The ship, therefore, being regularly documented as a British ship, and sailing as such under the British flag, within neutral protection, has been, and is now, recognized in that character, both by the British and by the Spanish Governments.

What evidence, then, is produced or offered by the United States' Government to show that she was (as they allege) a Confederate or United States' vessel, fraudulently transferred, and navigated under false colours, for the purpose of concealing her real ownership? If such a fact were indeed established, Her Majesty's Government could claim no redress, because no injury would have been done to any British subject. But the burden of displacing the *prima facie* title, shown by the flag and papers, and by the recognition of both the neutral Governments (which, until displaced by contrary evidence, would be sufficient for every legal purpose in every court of justice throughout the world), lies upon the United States' Government; and it appears to us that they have, as yet, neither produced, nor offered to produce, any evidence whatever having the slightest real tendency to displace it.

The only new fact now added by Mr. Seward to the former evidence consists in a copy of the registry of the "General Rusk" (afterwards called the "Blanche"), on the permanent register of New Orleans, dated the 8th April, 1857, by which it appears that she was then registered as belonging to "the Southern Steam-ship Company of New Orleans." We are at a loss to perceive how the fact that five years before the same ship was registered at New Orleans as the property of a different owner can prove that a British title, derived from W. L. Smith, who, on the 29th May, 1862, was the registered owner of the same ship on the permanent registry of Galveston, is fraudulent and void. Upon the history of the vessel between April 1857 and May 1862 no light is thrown.

Mr. Seward does not now revert to the untenable position which he seemed formerly inclined to maintain, as to the necessary invalidity of all Confederate captures from the United States, and of all sentences of condemnation by Confederate Prize Courts; nor does he enable us so much as to conjecture what are the alleged wrongful proceedings on account of which the apparent title of the Confederate owner in 1862, from whom this

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ship was purchased by Mr. Wigg, is considered by the United States' Government to be liable to impeachment.

Our difficulty in following Mr. Seward's argument on this point is not diminished by the fact that for a considerable period after the separation of the Confederate States from the United States (until its capture by the forces of the United States), New Orleans, where this vessel appears to have been registered in April 1857, was itself a principal city of the Confederate States. Still less does he show that the purchase by Mr. Wigg was in any sense colourable or fraudulent.

We can, therefore, only recommend that Her Majesty's Government should firmly maintain the position hitherto assumed by them, at all events until some more satisfactory disproof of the title of the British owner to this vessel shall be given on the part of the United States' Government; and that they should continue, as hitherto, to act in concert with the Spanish Government for this purpose.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 254.

The Law Officers of the Crown to Earl Russell.—(Received March 9.)

Lincoln's Inn, March 9, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 7th instant, stating that he was directed by your Lordship to acquaint us that Her Majesty's confidential servants having fully considered the matters relating to the case of the "Tuscaloosa," on which we reported on the 8th and 21st of February, are disposed to come to the conclusion that it would be more desirable to conform the communication to Lord Lyons, of the original draft of which we signified our approval in our Reports of the 22nd and 27th ultimo, to the terms of the draft which Mr. Hammond was pleased to inclose; but that before any formal decision is taken, your Lordship would be glad to receive our opinion on the draft, which, if concurred in by us, will also form the basis of the Instructions to be addressed to Her Majesty's Colonial and Naval authorities.

In obedience to your Lordship's commands we have considered this draft, and have the honour to report—

That we presume Her Majesty's Government, after considering the nature of the instructions contained in the Duke of Newcastle's despatch to the Governor of the Cape, of the 4th of November last, have come to the conclusion that cases similar to that of the "Tuscaloosa" (except as to the special grounds on which she is now to be released) are to be dealt with, if they should again occur, according to those instructions.

Assuming this, we think that the despatch, as altered, is unobjectionable.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 255.

The Law Officers of the Crown to Earl Russell.—(Received March 15.)

Lincoln's Inn, March 15, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 11th ultimo, stating that he was directed by your Lordship to transmit to us, together with the despatches therein referred to,* a despatch from Her Majesty's Consul at Philadelphia,† inclosing a list of the British vessels brought for adjudication before the United States' District Prize Court which sits in that city, and containing remarks respecting the proceedings of that Court in these cases; and to request that we would take these papers into our consideration, and favour your Lordship with any observations which we may have to offer thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That it does not appear that Her Majesty's Consul at Philadelphia complains of the injustice of any of these decisions. That the practice of not printing or publishing reports of the sentences of this Prize Court is certainly very inconvenient, and may tend to cause much embarrassment and difficulty, in cases where the justice of the sentence is disputed, and it becomes necessary to examine the reasons of the Judge. It is to be remembered that in the case of the "Princess Royal," it would appear that the cause was undefended; and of course the presumption is strong that the vessel and cargo were rightly condemned. There are words in the sentence which might tend to the inference that enemies' goods, found on board neutral vessels, are condemned by this Court. This may, however, very possibly not be the case; but it might be worth while to inquire of Her Majesty's Consul at Philadelphia whether that principle has been acted upon in the condemnation of the cargoes of any of these vessels. It would also be desirable to ascertain whether the vessels of any other nation besides those of Great Britain (some few American cases are adverted to) have been condemned in this Court.

It only remains to remark that the number of vessels brought into this Court tends to rebut the assertion that the blockade is *de facto* inefficient.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 256.

The Law Officers of the Crown to Earl Russell.—(Received March 15.)

Lincoln's Inn, March 14, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 5th instant, stating that he was directed by your Lordship to transmit to us a despatch and its inclosures from Her Majesty's Minister at Washington (No. 99, February 12), respecting the treatment to which British subjects and others are subjected who are confined in Fort Lafayette, and to request that we would take this matter into our consideration and favour your Lordship with our opinion whether Her Majesty's Government would be borne out in remonstrating with the United States' Government against this treatment.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That we are of opinion that it would be proper to instruct Lord Lyons to call the attention of Mr. Seward to the sufferings, mental and bodily, which the condition of the prison, as described by Mr. Consul Archibald, must inflict upon subjects of Her Majesty confined upon charges of political offences. With the single exception of not being in irons, persons accused of the most atrocious crimes would not be differently treated.

It appears, indeed, that Lord Lyons has already taken some steps in this matter, and probably all that it may be necessary to take; but it would be in any case desirable that Her Majesty's Government should express an opinion to Lord Lyons that the matter is one as to which a friendly State is entitled to offer a grave and temperate remonstrance.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 257.

The Law Officers of the Crown to Earl Russell.—(Received March 15.)

Lincoln's Inn, March 14, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 18th ultimo, stating that he was directed by your Lordship to transmit to us a despatch and its inclosures from Lord Lyons (No. 84, February 5), respecting the case of Mr. John Ring, and the conduct of Mr. Butterfield, the British Vice-Consul at Key West, in relation thereto.

We are also honoured with your Lordship's commands signified in Mr. Hammond's

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* Mr. Kortright, No. 11, March 11; No. 21, May 6; No. 25, June 16, 1862.

† Mr. Kortright, No. 8, January 2, 1863.

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letter of the 10th instant, stating that with reference to his letter of the 18th ultimo, inclosing papers respecting the conduct of Mr. Butterfield, the British Vice-Consul at Key West, in the case of John Ring, he was directed by your Lordship to transmit to us a note, dated the 8th instant, and its inclosures from Mr. Adams, complaining of the improper interference of Mr. Butterfield in the case of a native American named Edward T. Rich, and to request that we would take this case into consideration with the case of John Ring, and report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we have the honour to agree in the opinion of Lord Lyons that Mr. Vice-Consul Butterfield's conduct in the case of John Ring has been proper, and has not in any respect merited animadversion. The protection of British seamen is *primâ facie* within the province of the Vice-Consul of the port; and in this case we think there were fully sufficient grounds for his intervention, nor can we discover anything at all unbecoming or disrespectful in the tone or manner of his letters to Admiral Bailey. The explanations, since given, while they show some probable grounds for the belief of the United States' authorities that Ring either was, or had acted as, a naturalized citizen of the United States, are still consistent with the fact that he was by birth a British subject. It is, in our opinion, impossible to admit the position assumed in Mr. Seward's letter of the 28th January last, that the British Consuls are to delay making any representations in favour of prisoners claiming the rights of British subjects, until they are provided with evidence sufficient to establish their title to that character, independent of the declarations of the prisoners themselves. Nor could there well be a less favourable case for such an assumption than that of the master of a captured British vessel, whose right to communicate with the British Vice-Consul for the purpose of his defence in the Prize Court was not denied. With respect to the case of Edward T. Rich, mentioned in Admiral Bailey's letter of the 29th January last, and in the communication made by Mr. Adams to your Lordship upon the 8th instant, we think it will be proper to ask for an explanation from Mr. Butterfield.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 258.

The Law Officers of the Crown to Earl Russell.—(*Received March* 15.)

Lincoln's Inn, March 14, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 23rd ultimo, stating that he was directed by your Lordship to transmit to us the papers of which a list was annexed respecting the claim of Mr. W. H. Ross on the Government of the United States, on account of certain property near Washington belonging to him having been taken possession of for military purposes by their officers.

Mr. Hammond was also pleased to state that we should perceive from the drafts of instructions to Lord Lyons, the view which, after consultation with the late Queen's Advocate,* Her Majesty's Government took of this case, and that we should also perceive from the last letter of Mr. Ross how it now stands; and that he was directed by your Lordship to request that we would take these papers into consideration, and favour your Lordship with our opinion as to the course which it would be proper for Her Majesty's Government to take in the matter.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That we agree with view taken upon this subject by the late Queen's Advocate. The case of Mr. Ross appears to be one of considerable hardship, but it is of importance that the principle upon which we have had the honour to advise your Lordship with respect to this and to similar cases should not be departed from, namely, that British subjects who have purchased landed property in a foreign State must have recourse to the laws of that country for redress on account of injuries done to that property, and must not rely, in this matter, upon the official intervention of Her Majesty's Government. We think, however, that consistently with the observance of this principle, Lord Lyons might be instructed again to use his friendly offices (as he may see opportunity) with the United

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* Reports dated June 17, 1861, and January 27, 1862.

States' Government, in order to obtain the arrears of rent which appear to be clearly due to Mr. Ross for the military occupation of his property and the amount of damages (23,539 dollars 45 cents) certified by Brigadier-General Sherman; and at the same time to mention that as the Indemnity Bill (to which Mr. Seward on a former occasion referred his Lordship) is for the present at least laid aside, Mr. Ross' just claim for general compensation remains unsatisfied. We think an answer to this effect should be sent to the letter of Mr. Ross.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 259.

The Queen's Advocate to Earl Russell.—(*Received March* 15.)

Doctors' Commons, March 15, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 8th instant, stating that with reference to my Report of the 27th ultimo, he was directed by your Lordship to transmit to me, together with the previous papers,* a further letter from Mr. John Mirian Wilson,† requesting that the decision come to by Her Majesty's Government with regard to his claim on account of certain property in Pennsylvania may be reconsidered; and Mr. Hammond was to request that I would furnish your Lordship with my opinion as to the answer to be returned to Mr. Wilson's further application.

In obedience to your Lordship's commands I have considered Mr. Wilson's further letter, and have the honour to report—

That I am of opinion that an answer should be sent to Mr. Wilson to the effect that his case has been again carefully considered, and that your Lordship is again advised that Her Majesty's Government cannot interfere in the matter of his memorial; that he must seek redress for alleged injuries inflicted upon him with respect to his property, from the laws and in the courts of the United States, in which country, according to his own statement, having left England in 1825, he has been "settled" since 1827.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 260.

The Law Officers of the Crown to Earl Russell.—(*Received March* 16.)

Lincoln's Inn, March 16, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's note of the 5th of March instant, stating that with reference to his letter of the 23rd ultimo, he was directed by your Lordship to transmit to us, for our consideration, a further despatch from Lord Lyons relative to the case of J. McHugh (No. 103, February 12, 1864).

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That these further papers do not affect the Report which we have already had the honour to make to your Lordship.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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* Mr. Wilson, February 22 and February 27; to Mr. Wilson, March 3, 1864.

† Mr. Wilson, March 4, 1864.

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No. 261.

The Law Officers of the Crown to Earl Russell.—(*Received March* 18.)

Lincoln's Inn, March 17, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 22nd February ultimo, stating that with reference to our Report of the 27th January last, he was directed to transmit to us a despatch from Her Majesty's Consul at New York (No. 23, February 2), inclosing a certified copy of the evidence on which the "Stephen Hart" was condemned, and to request that we would take this evidence into consideration and furnish your Lordship with any observations we may have to offer thereupon.

Mr. Hammond was also pleased to inclose for our perusal a despatch from Mr. Archibald, inclosing copies of the formal decrees of condemnation in the cases of the "Antona" and "Banshee."

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That the evidence now laid before us confirms the opinion which we had formed on perusing the sentence, that this vessel was rightly condemned.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 262.

The Law Officers of the Crown to Earl Russell.—(*Received March* 18.)

Lincoln's Inn, March 18, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 15th instant, stating that with reference to his letter of the 12th instant he was directed by your Lordship to transmit to us for our consideration the accompanying further despatch from Lord Lyons, respecting the case of the "Saxon" (No. 142, February 29, 1864).

In obedience to your Lordship's commands we have considered this further despatch, and have the honour to report—

That although our Report, in reply to Mr. Hammond's letter of the 12th instant, has not yet been made, we have thought it expedient not to defer, on that account, an answer to the present communication.

That we presume the trial of the United States' officer by a court-martial, for the killing of Her Majesty's subject, Mr. J. Gray, is the mode of trial by which an United States' officer would be tried for the alleged murder of a subject of the United States under similar circumstances; and, if so, we are of opinion that, at present, Her Majesty's Government have reason to be satisfied with the step taken by the Government of the United States.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 263.

The Law Officers of the Crown to Earl Russell.—(*Received March* 18.)

Lincoln's Inn, March 18, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 2nd instant, stating that with reference to our Reports of the 29th of August, 26th of November, and 4th of December last, respecting the case of the "Victor," he was directed by your Lordship to transmit to us, together with the previous papers, and with other correspondence which has since passed on the subject, two despatches from Lord Lyons, the one (No. 47, January 26) inclosing copies of the Reports received by the United States' authorities respecting the cruel treatment which the master, mate, and engineer of

the "Victor" were stated to have undergone at Key West, and the other (No. 95, February 9) transmitting a copy of a note from Mr. Seward declining to release the "Victor," pending the Appeal to the Supreme Court; and Mr. Hammond was to request that we would take these papers into our consideration and furnish your Lordship with our observations thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That with respect to the release of the "Victor," we have nothing further to add to the observations contained in our former Reports;

That, although there is a passage in Colonel Hood's letter which, taken by itself, might lead to the conclusion that the crew of the "Victor" who were detained for examination "were treated as prisoners," yet, on comparing this passage with other portions of the letter, it appears to be distinctly denied that they were treated "as *prisoners of war*," or as "felons," and maintained that they were detained in close confinement for the purpose only of being examined as witnesses, without previous communication with each other, and were released after the lapse of three days; and on this assumption we do not recommend your Lordship to instruct Lord Lyons to prefer any complaint on this head to the United States' Government.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 264.

The Queen's Advocate to Earl Russell.—(*Received March* 21.)

Doctors' Commons, March 19, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 5th March instant, stating that with reference to my Reports of the 20th of August and 16th of November last, respecting the case of Mr. R. Atkin, the master of the "Dennis Hill," he was directed by your Lordship to transmit to me, together with the previous papers, a letter dated the 29th ultimo from Mr. Atkin, in which he requests that his case may be reconsidered; and to request that I would again take Mr. Atkin's case into consideration, and furnish your Lordship with any further observations I may have to offer thereupon.

In obedience to your Lordship's commands I have the honour to report—

That I have carefully re-considered all the facts and circumstances stated in the papers laid before me, relative to the complaint of Captain Atkins. They involve the consideration of two questions:—1. Whether the United States' Courts had jurisdiction in the matter; 2. Whether they so exercised jurisdiction as plainly to defeat the ends of justice. Upon the first question I cannot say that the United States' Court did, in the circumstances of this case, act *ultra vires*. The legal American adviser of the Consulate is of opinion that they did not. The cases cited appear to support this opinion. Mr. Atkins at all events appeared by counsel, with whom he afterwards quarrelled, and an Appeal lay to, and appears to have been entered in, the Supreme Court, but not to have been prosecuted. I should also observe that the authority of the American Admiralty Court in cases of this description was inquired into by your Lordship on the occasion referred to by Lord Lyons, in the case of the "Excelsior."

In that case the Board of Trade, after communication with the authorities of the High Court of Admiralty, informed your Lordship that the English Admiralty Court exercised a similar jurisdiction, and your Lordship thereupon declined to object to the jurisdiction of the United States' Admiralty Court.

Upon the second question, it is to be observed that Mr. Consul Archibald, who certainly bestowed very great pains and care upon this case of Captain Atkins, but with whom the Captain also quarrelled, described in his letter to Lord Lyons (April 28, 1862; Inclosure 4 in No. 757) the character of Captain Atkins in these words:—"Captain Atkins appears to be a very irascible and intractable man, which will account for the trouble he has brought upon himself. His demeanour since he has been here has been by no means discreet. With every disposition to aid him as far as I consistently can, it is, nevertheless, my duty to see justice done to the seaman. Could I have withdrawn the matter from the purview of the local Court, and have myself decided it, I would gladly have done so, in order among other things to avoid the scandal (I am happy to say a rare

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one) of an action in a foreign court of law against a British shipmaster for cruelty to a seaman. But such a proceeding has not been open to me, and the action must now take its course, and Captain Atkins will have to make the best defence in his power, as well on the law as on the merits of the case."

It appears, however, that the Consul did hold a naval Court of Inquiry, which found that Captain Atkins had acted with illegal and most reprehensible violence on board his ship towards the seaman Broom, who afterwards brought his action against him. The most material part of their finding was, "That by the preparations which the master made with deadly weapons for a conflict, and the cruel use of those weapons in the beating of Broom, he incurred the hazard of provoking a revolt on the part of the crew. We are also of opinion that the keeping of Broom in irons for the long period of forty-two days, a part of that time on bread and water, and the rest of it on a half allowance of provisions, as stated by the master himself, was not required for the maintenance of the discipline of the ship, and was in our judgment unnecessarily severe and vindictive."

It appears to me, therefore, that upon the merits of the case, there was no miscarriage of justice in the United States' Court. And I must report to your Lordship that neither upon the question of jurisdiction, nor upon the question of merit, can I advise your Lordship to interfere in the matter in Captain Atkins's complaint.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 265.

The Law Officers of the Crown to Earl Russell.—(Received March 22.)

Lincoln's Inn, March 21, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 12th instant, stating that with reference to our Report of the 16th ultimo, he was directed by your Lordship to transmit to us, together with the previous papers,* two further despatches and their inclosures from Lord Lyons,† respecting the Military Commission to be appointed to investigate the cases of persons under arrest at Fort Lafayette and Fort Warren; and to request that we would take these papers into our consideration, and report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That we do not think the answer of Mr. Seward, or of the War Department, sufficiently explicit to be satisfactory. If New York be under martial law, and the ordinary forms of civil trial be suspended universally, and without exception or distinction of persons, the subjects of Her Majesty who are to be so tried are in the same condition as native subjects, and no adequate ground of complaint upon this particular subject will exist. But then, this should be distinctly stated; for if this be not the case, and if Her Majesty's subjects are to have charges against them investigated by an exceptional tribunal, and not allowed the protection and safeguards of the ordinary civil trial, when such protection and safeguards are still open to the United States' citizen, the fact, if it be so, may give rise to very grave and serious considerations. We are, therefore, of opinion that Lord Lyons should be instructed to apply to Mr. Seward for a more distinct statement upon this matter, and for a plain answer to the questions, whether martial law universally prevails at New York, and whether it suspends, for all persons equally, the right of being tried before the ordinary civil tribunals.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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* Lord Lyons, No. 61, January 26; to Lord Lyons, No. 82, February 20, 1864.
† Lord Lyons, No. 100, February 12; No. 120, February 23, 1864.

No. 266.

The Law Officers of the Crown to Earl Russell.—(Received March 22.)

Lincoln's Inn, March 22, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 7th instant, stating that he was directed by your Lordship to transmit to us a letter dated February 13th, and its inclosures, from the Colonial Office, respecting the proceedings of a steamer of war belonging to the United States, supposed to be the "Vanderbilt," towards a British schooner named the "Dart," the latter being at the time within British jurisdiction in the Bahamas; and to request that we would take this case into consideration, and favour your Lordship with any observations which we might have to offer thereupon.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That we are of opinion that Lord Lyons should be instructed to lay this protest before the United States' Government, and request that an investigation may be made into the averments contained in it.

It appears, at present, that Her Majesty's territorial rights have been intentionally violated, and injury inflicted upon Her Majesty's subjects within Her Majesty's territory, by a cruizer of the United States.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 267.

The Law Officers of the Crown to Earl Russell.—(Receved March 23.)

Lincoln's Inn, March 22, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 9th March instant, stating that he was directed to transmit to us a despatch and its inclosures from Her Majesty's Minister at Washington (No. 114), respecting the case of Mr. James Gray, a person claiming British protection, who was taken in the "Ella and Annie" steamer, captured for endeavouring to violate the blockade of Wilmington, and who has since been tried by court-martial and condemned to imprisonment for two years with hard labour; and to request that we would take this case into consideration and report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands we have the honour to report—

That we have taken into our careful consideration all the facts and circumstances stated in these papers. That we are of opinion that, having regard to the length and character of Mr. Gray's residence in Georgia, to the manner in which he has for so many years incorporated himself with that territory, and latterly identified himself with the Confederate interests, Mr. Gray has been lawfully treated by the United States' Government as an enemy. It is true that he is probably a British-born subject, but we do not advise Her Majesty's Government on this account alone, and in the face of the other facts to which we have adverted, to direct Lord Lyons to interfere officially on Mr. Gray's behalf.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 268.

The Law Officers of the Crown to Earl Russell.—(Received March 23.)

Lincoln's Inn, March 23, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 21st of March instant, stating that he was directed by your Lordship to transmit to us copies received from the Admiralty of communications which have passed between that Department and M. Bravay respecting the proposed sale of the iron-clads at Birkenhead; and to request that we would take the same into our consideration and favour your Lordship with our views upon the subject.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That from the tone of the letters of Messrs. Bravay (which speak of large claims for damages against Her Majesty's Government for the detention of these vessels, and imply that such detention has been, and is, illegal) we are led to doubt whether the overture made by them has been intended for any other purpose than that of prejudicing Her Majesty's Government in the pending litigation. Under these circumstances, we think it is to be regretted that the replies should not have been more carefully guarded against any possible misconstruction. They do not, indeed, commit Her Majesty's Government to any course of action; but, on the other hand, they are replies which might have been given, with equal propriety, to any similar offer from a shipowner whose title to the vessels was undisputed. If any further correspondence should take place on this subject, we think it ought to be upon a distinct understanding, to be embodied in writing on both sides, that the whole correspondence, from the beginning, is to be entirely without prejudice to the claims of either party in the pending litigation, and is not to be used or referred to, for any purpose, in that litigation by either party. The Board of Admiralty, before making any reply to Messrs. Bravay's last letter, ought, in our opinion, to require an assent in writing, on the part of Messrs. Bravay, and (through them) of Messrs. Laird also, to this understanding; and it should, at the same time, be distinctly explained that if Her Majesty's Government should be disposed, after receiving the assent of Messrs. Bravay and Messrs. Laird to that understanding, to enter into any treaty at all upon the subject, it can only be upon the footing of a compromise of the pending litigation, and under the influence of a desire, on their part, to avoid, as far as possible, the infliction of pecuniary loss upon individuals by the enforcement of the extreme rights of the Crown, if the objects of the law can be otherwise sufficiently attained; Her Majesty's Government being (as should be also stated) perfectly prepared to justify, in law, the seizure which they have effected, and denying the existence of any legal title in Messrs. Bravay or Messrs. Laird as against the seizure, and, *a fortiori*, any claim for damages on the part of either of those firms.

We think it would be desirable that any future letters on this subject should be submitted, before they are sent, to the Law Officers or to the Attorney-General.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 269.

The Law Officers of the Crown to Earl Russell.—(*Received March* 23.)

Lincoln's Inn, *March* 23, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 19th March instant, stating that he was directed by your Lordship to transmit to us, for our immediate consideration, a letter and its inclosures from the Colonial Office, respecting some doubt which has been raised in New Brunswick respecting the manner in which the parties concerned in carrying off the "Chesapeake" should be dealt with; and to request that we would take these papers into immediate consideration, and report to your Lordship what instructions should be sent to the Governor of New Brunswick on the subject.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

1. That we think the Lieutenant-Governor of New Brunswick is mistaken in supposing that any allegation or proof of the issue of a warrant *in the United States* for the apprehension of the persons whose extradition is demanded, is either required or contemplated by the Ashburton Treaty (6 Hertslet, 859, 860), or by the Imperial Statute (ibid., 862). In the Xth Article of the Treaty we cannot discover anything to that effect; the delivery is to be "upon *requisition* by the United States, *or their Ministers, officers, or authorities, made;*" within which words the requisition of the Consul, acting under the authority of his Government (whether that authority may be proved antecedently or by their subsequent recognition of his acts), seems to us to be included. It would have been extraordinary if the Statute had introduced, as a necessary condition of the delivery, any act to be done within the United States, which is not stipulated for by the Treaty, and we do not find that it has done so. We presume Mr. Gordon may have interpreted the words "the original warrant," in section 2, as referring to some warrant *issued in the United States;* but it seems to us clear that this means *the warrant of the Secretary of State, &c., or the officer administering the Government of the Colony, mentioned in the first section.*

2. With respect to the points which seem to have been made at the hearing before the Police Magistrate, we apprehend it to be clear (as the Law Officers in this country have uniformly advised) that "piracy" in the Treaty means only *piracy according to the Law of Nations;* and also, that an United States' ship at sea *is* "within United States' jurisdiction," in the sense of those words as used in the Statute and the Treaty. But, until copies of the evidence are sent over, we find it impossible to judge whether the conclusion of the Magistrate, that the acts proved were of a piratical and not a belligerent character, was right or not. We should desire to see copies of the whole evidence, and also of the proceedings on *habeas corpus* (which may possibly have disposed of the case by discharging the prisoners), before we express an opinion upon this point.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 270.

The Law Officers of the Crown to Earl Russell.—(*Received March* 23.)

Lincoln's Inn, *March* 23, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 12th instant, stating that he was directed by your Lordship to transmit to us, together with a copy of the papers which have been laid before Parliament in the case of the "Saxon," two despatches and their inclosures from Lord Lyons,* the last of which contains the answer returned by the United States' Government to his Lordship's inquiry, made under instructions from the Foreign Office, as to the grounds on which the seizure and detention of the "Saxon" was supposed to be justified.

And Mr. Hammond was to request that we would take these papers into consideration, and furnish your Lordship with any observations we may have to offer thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That assuming the statement of Mr. Secretary Welles to be correct, namely, that the "Saxon" had on board a large portion of the cargo belonging to the "Conrad," which had been recently captured by the "Alabama," we think that the question whether or no, in the circnmstances, the "Saxon" had acted so much in concert with the "Alabama" as to have been practically *pro hac vice* a sort of tender to that vessel, might fairly be submitted to the Prize Court.

We are also not prepared to say that the rule as to enemies' property on board a neutral vessel, laid down by the Declaration of Paris, and on which the United States' Government have professed their intention to act, generally, during the present war, might not, consistently with a *bonâ fide* adherence to that rule, in ordinary cases, be held inapplicable to goods taken by a war vessel as prize, and placed, for the captor's convenience, on board a neutral vessel.

On both these grounds, we are of opinion that, at present, Her Majesty's Government ought not to insist on the restoration of the "Saxon," or on compensation for her owners.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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* Lord Lyons, No. 108, February 15; No. 117, February 23, 1864.

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No. 271.

The Law Officers of the Crown to Earl Russell.—(*Received March* 23.)

Lincoln's Inn, March 23, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 1st instant, stating that he was directed by your Lordship to transmit to us a letter dated the 26th ultimo, and its inclosures, from Messrs. Miller and Mosman, representing the hardship of their case as owners of the barque "Hiawatha," which has been condemned in the United States' Prize Courts for breach of blockade.

Mr. Layard was also pleased to state that he was directed by your Lordship also to transmit to us, together with the previous papers, the correspondence which has passed respecting this case since the date of our Report of the 24th July last,* and from which we should observe that the appeal made by Lord Lyons to the equitable consideration of the United States' Government is still before that Government.

And to request that we would take Messrs. Miller and Mosman's letter (which is accompanied by the Judgment of the Supreme Court), into our consideration, and favour your Lordship with such observations as we might have to offer thereupon; and with our opinion as to the answer which should be returned to Messrs. Miller and Mosman.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That this is certainly a case of which the hardship, on the admitted facts, cannot be denied, as is sufficiently proved by the dissent of four Judges of Appeal (including Chief Justice Taney) from the sentence of condemnation. Nevertheless, we are of opinion that Her Majesty's Government can only appeal, as Lord Lyons has done, to the comity of the United States' Government, in order to induce them not to carry the sentence into effect, and, certainly, stronger reasons have seldom existed for expecting the success of such an application.

We think that an answer should be sent to Messrs. Miller and Mosman, to the effect that Her Majesty's Government have instructed Lord Lyons to make as strong an appeal as he can to the United States' Government to take into their equitable consideration the peculiar circumstances of this case, and that they have no other course to adopt; as the case, though involving several difficult and doubtful questions, has been fairly tried, upon principles recognized in our own Prize Courts; and that they will not fail to apprise Messrs. Miller and Mosman, as soon as they receive it, of the result of this application so made by Lord Lyons.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 272.

The Law Officers of the Crown to Earl Russell.—(*Received March* 23.)

Lincoln's Inn, March 23, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 21st instant, stating that he was directed by your Lordship to transmit to us the accompanying papers relative to the "Amphion,"† a frigate sold last year out of Her Majesty's service, which it has been represented to Her Majesty's Government is being fitted out for sea under suspicious circumstances; and to request that we would take this case into consideration, and favour your Lordship, at our earliest possible convenience, with our opinion thereupon.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That no case for interference seems to us to be at present made out, in this instance.

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* Messrs. Barr and Williamson, January 18, 1864; Lord Lyons, No. 363, 1863; Mr. Stuart, No. 37, 1863; Lord Lyons, No. 809, 1863; Lord Lyons, No. 810, 1863; to Messrs. Barr and Co., January 25, 1864; to Lord Lyons, No. 32,

† To Home Office, January 18; Home Office, January 18 and 22; Mr. Adams, March 18; to Mr. Adams, March 18; to Home Office, March 18; Home Office, March 21, 1864.

Whatever may be the nature of the "fitting-out" now going on, there is nothing to show that it is in violation of the Foreign Enlistment Act.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 273.

The Law Officers of the Crown to Earl Russell.—(*Received March* 23.)

Lincoln's Inn, March 23, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 12th instant, stating that he was directed by your Lordship to transmit to us a letter, dated the 7th instant, from Mr. Andrew Scott, Writer to the Signet, putting forward, on behalf of his clients, the beneficiaries under the settlement of the late Mr. John Purvis, a claim against the Government of the United States, on account of the devastation, by Federal troops, of certain property at Oakland, Warren County, Mississippi; and to request that we would take these papers into consideration, and favour your Lordship with our opinion as to the course which it would be proper for Her Majesty's Government to pursue in the matter.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we do not advise Her Majesty's Government to interfere in this matter.

1. The injury complained of is the devastation of real property, and its accessories and produce, in a foreign country, which has become the scene of a civil war. Both belligerents are charged with being at different times the authors of this devastation. In any case, the owners or parties interested in this kind of property should be apprised that they must resort to the legal remedies (if any) which the law of the country in which their estate is situated affords to the native-born residents within it. The utmost length to which Her Majesty's Government could be advised to go, in any case of this description, would be to instruct Lord Lyons to use, unofficially and informally, his good offices on behalf of the Memorialists with the Federal Government.

2. But it further appears that a considerable part of the damage complained of is the taking or driving away of slaves (156 negroes) from the estate, a property which, by British statute law, it is criminal in a natural-born British subject to possess anywhere.

3. It also appears that the executor, Mr. Bruce, has taken the oath of allegiance to the Federal Government of the United States: from them he must claim, on behalf of those whom he represents, in whatever way he is advised, indemnity for the injury done to this property.

For these and other reasons, and upon general principles applicable to all cases *ejusdem generis*, we do not advise Her Majesty's Government officially to interfere in the matter of this claim.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 274.

The Law Officers of the Crown to Earl Russell.—(*Received March* 29.)

Lincoln's Inn, March 29, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 25th March instant, stating that he was directed to transmit to us therewith, with reference to our Report of the 23rd instant, a letter from the Board of Admiralty, stating the substance of a communication they are prepared to make to M. Bravay respecting the iron-clads; and to request that we would take the same into consideration, and report to your Lordship our opinion whether such a letter may properly be sent to M. Bravay.

In obedience to your Lordship's commands we have the honour to report—

That we have taken the liberty of suggesting some slight changes in the letter proposed to be sent by the Board of Admiralty to Messrs. Bravay; and have, for greater

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clearness, noted these proposed changes in red ink in the accompanying copy of Mr. Romaine's letter. Subject to these alterations, we think that the letter may properly be sent.

We have, &c.
(Signed) ROBERT PHILLIMORE.
And for the Attorney and Solicitor-General.

No. 275.

The Law Officers of the Crown to Earl Russell.—(*Received March* 29.)

Lincoln's Inn, March 29, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 12th instant, stating that he was directed by your Lordship to transmit to us a despatch from Lord Lyons (No. 125) inclosing a copy of papers laid before Congress relative to the arrest of the Consul-General for the United States at Montreal, and to the enforcement on the Canadian frontier of the prohibition to export live stock from the United States, and to request that we would take these papers into consideration, and favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That with respect to the arrest of the United States' Consul Giddings, the law is correctly laid down in the letter of Mr. Seward to Mr. Bates (page 3 of printed papers). With respect to the seizure of the hogs of Messrs. West and Davies by the United States' Custom-house officers, on the ground that their exportation to Canada by way of the Niagara suspension-bridge was illegal, we shall be in a better condition to advise your Lordship on this head when we have seen the Reports which Lord Lyons intimates his intention of sending to your Lordship. But in the meantime we would refer to our Report of the 4th August, 1863, in which we expressed our opinion that the Orders prohibiting the exportation of live stock cannot be dated earlier than the Order of the 13th May, 1863, but would take effect from that day.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 276.

The Law Officers of the Crown to Earl Russell.—(*Received March* 31.)

Lincoln's Inn, March 31, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 29th March, stating that with reference to our Report of the 23rd instant, he was directed by your Lordship to transmit to us, together with the previous papers, two further letters, dated the 26th and 29th instant, and their inclosures, from the Home Office, respecting the "Amphion;" and to request that we would take these further papers into consideration, and furnish your Lordship with any observations we may have to offer thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we think there is still a total deficiency of evidence tending to show any actual or contemplated violation of the Foreign Enlistment Act in this case. When ships of war have been sold to private purchasers by a Department of Her Majesty's Government during a war in which Her Majesty is neutral, it is, in our opinion, impossible to treat the subsequent fitting out for sea (with new fittings not distinctly warlike) of the same ships as *primâ facie* illegal in the absence of any evidence that they are being so prepared for sea on the direct account of a belligerent Power with a view to their employment as cruizers, storeships, or transports, in the service of such Power. Upon the prudence or consistency of the practice of selling ships of this kind at such a time, it is not perhaps for us to advise; but we think it clearly estops the Government which made the sale from treating the mere existence of the same warlike character which belonged to the vessel when sold as (in itself) raising any fair presumption against the purchaser or outfitter of an intention to violate the law.

We have, &c.
(Signed) ROBERT PHILLIMORE.
For self and Attorney-General (during temporary absence of Solicitor-General from London.)

P.S.—The further Report of the Thames Division of Police, transmitted to us in Mr. Layard's letter of the 30th instant, does not induce us to make any alteration in this Report.

R. P.

No. 277.

The Law Officers of the Crown to Earl Russell.—(*Received April* 4.)

Lincoln's Inn, April 4, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 1st April instant, stating that he was directed to transmit to us a letter dated the 31st ultimo, from Mr. Adams, requesting that the United States' steamer "Kearsarge" may be permitted to effect some repairs to her boilers in the Victoria Docks, together with the draft of the answer which your Lordship proposes to return to Mr. Adams, stating the grounds on which Her Majesty's Government feel themselves unable to comply with his application; and to request that we would take the inclosed draft into immediate consideration and furnish your Lordship with our opinion whether, under the circumstances of the case, it is such a reply as it is right and proper to address to Mr. Adams.

Mr. Layard was also pleased to transmit to us certain other papers relative to the movements of the "Kearsarge" in the neighbourhood of the United Kingdom, the first two of which, namely, the Admiralty letters of the 10th and 15th of December, formed the subject of our Reports of the 12th and 22nd of that month.

In obedience to your Lordship's commands we have the honour to report—

That the answer proposed to be sent by your Lordship to Mr. Adams appears to us to be right and proper.

We have, &c.
In the absence of the Solicitor-General,
(Signed) ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 278.

The Law Officers of the Crown to Earl Russell.—(*Received April* 4.)

Lincoln's Inn, April 4, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 8th ultimo, stating that adverting to that part of our Report of the 24th April last which deals with the question of the right of a ship of war of a neutral Power to communicate with a port under blockade, and to a correspondence on the subject which passed between the Admiralty and the Foreign Office in the month of August last,* and which was sent therewith, he was directed by your Lordship to transmit to us the accompanying letters from the Admiralty, and a despatch and its inclosures from Lord Lyons,† respecting the refusal of the United States' authorities to permit Her Majesty's men-of-war any longer to communicate with the Southern ports.

Mr. Hammond was also pleased to inclose the draft of an instruction which was addressed to Lord Lyons by the mail of Saturday (then) last, directing him to ask permission for a man-of-war to take Mr. Consul-General Crawford to Charleston or Wilmington, in order that he might proceed to Richmond to remonstrate with the authorities of the so-styled Confederate States, concerning certain grievances affecting British subjects and the Confederate agents in this country; and Mr. Hammond was to request that we would take into our consideration the decision of the United States' Government no longer to permit Her Majesty's cruizers to communicate with the blockaded ports, and report to your Lordship our opinion thereupon.

* Admiralty, August 21; to Admiralty, August 31, 1863.

† Admiralty, March 3, A and C; Lord Lyons, No. 122, February 23, 1864.

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In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That although it is not easy to find any direct and positive expression of opinion in the books on internationl law, or the judgments of International Courts, upon this precise point, namely, the right of the belligerent who has duly instituted a blockade, to deny all access to neutral ships of war, as well as to neutral merchant ships, to the blockaded place, nevertheless we are, after much and careful consideration of the subject, of opinion that this right does, as an abstract proposition of international law, belong to the belligerent who has thus instituted a blockade. This right seems to flow from the reason of the thing, and to be supported by the usage (upon which much of international law is founded) of civilized maritime States.

From the reason of the thing,—because the right of blockade is the right of cutting off, so far as necessary for the objects of the war, all communication whatever with this part of the enemies' dominions, and carries with it, therefore, as in the case of a siege by land, the right, *primâ facie* at least, of interdicting the access of the neutral foreigner, whether he approach with the authority of the State to which he belongs, or merely as an individual, whether the object of his access be official communication or the interchange of private commerce.

The usage of States, as far as we have been able to prosecute our inquiries, also supports this right.

We are informed that, at the last siege of Acre (1840), and the blockade of the adjoining Syrian coast by the British fleet, a French man of war which proposed to pass within the line of circumvallation was interdicted from doing so by the blockading force; and that the French Government of that day fully recognized the exercise of this right on the part of the blockading force. In accordance with, and previously to, this recognition, we find that, in 1838, Count Molé (then Minister for Foreign Affairs), on the occasion of the French blockade of the coast of the Argentine Republic, issued instructions, or put forth a manifesto in the shape of a note, in which was the following passage:—"Un navire se présentant devant un port bloqué avant d'avoir eu connaissance du blocus, doit d'abord en être averti, et la notification doit en être fait par écrit, et sur son rôle d'équipage.

"Mais cet avis ayant été donné et cette formalité ayant été remplie, s'il persiste à entrer dans le port, ou s'il vient à s'y présenter de nouveau, le commandant du blocus a le droit de l'arrêter.

"*Les bâtiments de guerre neutres se présentant doivent aussi être invités à s'éloigner; s'ils persistent, le commandant du blocus a le droit de s'opposer à leur entrée par la force; et la responsabilité de tout ce qui peut s'en suivre pesera sur les violateurs du blocus.*"*

We are therefore of opinion that, so far as the general question is concerned, the neutral man of war is under an obligation to respect the belligerent right of blockade, and not to attempt, without permission, to communicate with the blockaded places; and to this extent we think that the doctrine laid down in the Law Officers' Report of the 24th April, 1863, ought to be modified.

But the expression of this opinion does not free the present question from all embarrassment.

Not merely because the right of blockade by the United States has been carried to an unprecedented extent in this war: 3,000 miles of coast rendered inaccessible to the whole world is a state of things which has never before occurred, and might, perhaps, not unreasonably call for some mitigation of a right so severe in its operation upon the rest of the world.

But apart from this consideration, it is to be remembered that the neutral has an unquestionable general right, which the belligerent ought to respect, of communicating with the other belligerent, upon matters connected with the welfare of the neutral subjects, or generally of the neutral country. No belligerent State (so far as we are aware) has ever yet wholly denied the exercise of this right to the neutral; and we think that the neutral Government will have a just ground of remonstrance and complaint if the right of blockade is carried, in practice, to this extent.

It is not, we think, reasonable or consistent with the comity of nations that the United States' Government should say to the Government of Great Britain, "You cannot approach the Confederate Government by land, and you shall not approach them by sea, even for the purpose of conveying a Consul, or of seeking redress for injuries done to your subjects; or of making representations on the subject of any acts tending to violate your neutrality on the part of the Confederate States."

It would probably be an indisputed proposition, that a neutral Government would have a right to have an Ambassador resident at the Court of the belligerent, if an independent State; and, in this event, it seems almost necessarily to follow that the neutral Government would have a right to communicate with him, and, if necessary for this limited purpose, to pass through a blockade of his entire coast.

"A blockade," Lord Stowell says, "is a uniform universal exclusion of all vessels *not privileged by law*" (the "Rolla," 6 Robinson, 372).

We are of opinion that a ship of war having the exclusive object of bearing communications from the neutral Government to its Minister resident in the belligerent State ought to be regarded as belonging to this privileged class.

In another case, Lord Stowell, when England was at war with France, in 1811, in the course of his Judgment respecting an American ship captured in the prosecution of her voyage from New York to Bordeaux, observed, in answer to a defence (set up, but not sustained by evidence), that the vessel was carrying official despatches from the American President to an American Minister resident in Paris, said, "This country makes no pretension to any right of interrupting the communication of the American Government with its Minister; and I should be extremely tender of interposing any difficulties in the way of such a correspondence" (the "Drummond," 1 Dodson, 104).

There is, as to this particular subject, no sound distinction in principle between the right of a neutral Government to communicate upon questions relating to its own concerns, or those of its subjects, with a belligerent whom it has formally recognized, and one whom it has only recognized as possessing a belligerent status.

If there were any such distinction in principle, it is manifest that the neutral State might be compelled, for its own security, to recognize formally and fully both belligerents as equally in the category of independent States.

The neutral State must exercise this right of limited communication so as not to interfere with the general right of the other belligerent, and in whatever way may be opened to it by the blockading Power; but it cannot be altogether debarred from its exercise.

We are of opinion that these are the principles upon which Her Majesty's Government ought to act in this important matter; and we think it right to add that, if the United States' Government should thus insist on cutting off all means of communication between Her Majesty's Government and the Confederate States, Her Majesty's Government will be entitled to throw upon the United States' Government the whole responsibility of impeding Her Majesty's efforts to repress and prevent any future violations of Her Majesty's neutrality by the Confederate States.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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* Ortolan, 2 Dipl., 334–5.

No. 279.

The Law Officers of the Crown to Earl Russell.—(*Received April* 6.)

Lincoln's Inn, April 6, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 23rd March ultimo, stating that with reference to our Report of the 13th February, 1864, on the general question of the imprisonment by the United States' Government of British subjects captured in blockade-runners, he was directed by your Lordship to transmit to us a further despatch from Lord Lyons (No. 146, February 29) respecting the case of James O'Neill, which formed the subject of one of the despatches, also therewith inclosed, on which our above-mentioned Report was founded; and to request that we would take this case into consideration, and favour your Lordship with such observations as we might have to offer thereupon.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That we think this is a case of great injustice and cruelty, and requires the grave attention of Her Majesty's Government. James O'Neill, a British subject, has been captured on board a British vessel, severely wounded by an United States' officer, imprisoned without, as far as we can see, any reasonable ground, first in a common gaol, in irons as a malefactor, then in Fort Lafayette; at last, after repeated promises, made and broken, released with an intimation that he deserved to be dealt with as a belligerent or pirate.

The excuse for all this is, that he attempted to light a train of gunpowder and

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thereby destroy himself and all on board. We adhere to the opinion expressed in our former Report that the story is, on the face of it, grossly improbable; it is denied on oath, with every appearance of truth, by the man himself. It is supported, as Lord Lyons observes, *solely* by the assertion of the United States' officer who is the person guilty of inflicting the wound, and who has, of course, the strongest motive for exonerating himself from a charge of savage brutality *primâ facie* warranted by his conduct.

We cannot advise Her Majesty's Government that the matter ought to be allowed to rest here. We think that Lord Lyons should be instructed to express the great dissatisfaction felt by Her Majesty's Government at the manner in which this grievous bodily injury inflicted upon one of Her Majesty's subjects has been treated by the authorities of the United States; that they cannot understand upon what principle of reason or justice the unsupported assertion of the person charged with the commission of a great crime is to be accepted, without trial or investigation, as a sufficient exculpation of himself from that crime. That Her Majesty's Government, upon the evidence now laid before them, are satisfied that no Magistrate or Court of Justice could come to the conclusion that O'Neill ever attempted or intended to do the act which it is alleged justified the United States' officer in endeavouring to take away his life; that the case appears to Her Majesty's Government to be one which calls for a full and searching investigation, by a proper tribunal, into all the facts and circumstances; and that Her Majesty's Government feel assured that the United States' Government will be as ready to do justice in the case of an alleged attempt at murder by one of their officers, as Her Majesty's Government would be if the circumstances were reversed; and that if it should turn out that this poor man has been unjustly wounded, unjustly charged, and unjustly imprisoned, the United States' Government will be as anxious as Her Majesty's Government would be, in similar circumstances, to make every reparation in their power.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

P.S.—Since the above Report was copied for signature, we have also received Mr. Layard's further letter dated the 29th ultimo, inclosing two further despatches from Lord Lyons on this subject (Nos. 180 and 192); the consideration of which has only confirmed us in the opinion above expressed.

R. P.
R. P. C.
R. J. P.

No. 280.

The Law Officers of the Crown to Earl Russell.—(*Received April* 6.)

Lincoln's Inn, April 6, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 21st ultimo, stating that he was directed by your Lordship to transmit to us the reply, dated the 15th ultimo, received from Mr. Adams to the letter which, in accordance with the opinion expressed in our Report of the 5th instant, your Lordship addressed to him on the 9th of March, in answer to his communication of the 25th of January, relative to the course intended to be pursued by the Government of the United States towards British subjects taken on board blockade-runners; and Mr. Adams was to request that we would take Mr. Adams' further letter into consideration, and furnish your Lordship with our opinion whether it is necessary or desirable that your Lordship should prolong the correspondence on this subject with Mr. Adams.

Copies of the instructions which have been recently addressed on this subject to Lord Lyons accompanied Mr. Hammond's letter.

In obedience to your Lordship's commands we have taken Mr. Adams' further letter into consideration, and have the honour to report—

That there is only one passage in the letter of Mr. Adams which may render it necessary to continue this correspondence. It is that in which he thus sums up what appears to be his general argument from the circumstances alleged in this and his former letter. The passage is, "For whereas in common cases it is the duty of the captor to presume the parties to be neutrals, by the new element now introduced it becomes his duty to presume them to be guilty until they can show the contrary."

If it be meant by this passage that captured British vessels or their crews, are generally to be treated henceforth on a different footing from that on which by international law all neutrals are placed (that is, if they are to be all presumed, in the first instance, to be engaged in the enemy's service, and to have thrown upon them the burden of proving the contrary), Her Majesty's Government ought, we think, very plainly to say that they will regard this as a violation of international law, to which they will not in any way consent; and that such a course cannot be taken by the United States' Government without placing in serious peril the friendly relations of the two countries.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 281.

The Law Officers of the Crown to Earl Russell.—(*Received April* 6.)

My Lord, *Lincoln's Inn, April* 6, 1864.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 24th ultimo, stating that with reference to our Report of the January (received on the 19th), respecting the case of the late Mr. Hardcastle, he was directed by your Lordship to transmit to us a letter from Lord Lyons dated the 8th ultimo, calling attention to the circumstance that the instruction addressed to him, founded on our above-mentioned Report, appeared to have been drawn up on the supposition that Hardcastle had a written safe-conduct from the military authorities of the United States.

That your Lordship directed Mr. Hammond to state to us that, in transferring in the despatch to Lord Lyons, the passage which stands at the commencement of our remarks, respecting the privilege conferred by a safe-conduct, "It is admitted that Hardcastle arrived within the territory of the United States and within the Federal lines under a flag of truce, and with a safe-conduct pass from the military authorities," the words "of the United States" were inadvertently added at the end of the sentence; and your Lordship also desired Mr. Hammond to point out to us that it appears to be evident from the reports of Judge Advocate Turner (Inclosure No. 10 in Lord Lyons' No. 572 of June 22, 1863), and those of Superintendent Wood and Judge Advocate-General Holt (Inclosures No. 4 and 5 in Lord Lyons' No. 820 of November 17, 1863), that the safe-conduct in question was issued by the Confederate General Winder, and that Hardcastle was not provided with any document of that nature from the Federal authorities.

Mr. Hammond was consequently to request that we would take this instruction to Lord Lyons, which, together with the previous papers, Mr. Hammond was pleased to inclose to us,* into our consideration, and furnish your Lordship with our opinion whether, under the circumstances above stated, any further modification should be made therein besides the omission of the words "of the United States" above referred to.

In obedience to your Lordship's commands we have taken this instruction into our consideration, and have the honour to report—

That the passages referred to by Lord Lyons must be considered as showing that Mr. Hardcastle had not a written safe-conduct from the Federal Government: and of course, therefore, the instructions to Lord Lyons should be corrected as to this assertion.

Nevertheless, the case remains in substance the same after this correction has been made.

The statement of this unfortunate man to Lord Lyons,† namely, that before crossing the Confederate lines he asked whether he should be received by the Federal authorities under a flag of truce, and that at the time of making this inquiry he forwarded all his papers, among them the Confederate pass, and obtained for answer that he would be received in the United States, appears to be uncontroverted.

To all intents and purposes, therefore, he was under all the protection that a flag of truce, and the deliberate permission of the enemy to enter their territory, could confer.

The United States' authorities practically and in substance as much gave him a pass of safe-conduct as if they had delivered to him a written instrument to that effect.

Indeed, the argument of the United States' authorities has been that they have a right to review papers of safe-conduct after they have granted them, on ascertaining certain facts in the previous history of the grantees.

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* To Lord Lyons, No. 37, January 29, 1864; Lord Lyons, Nos. 572, 724, and 820, 1863.

† Lord Lyons, No. 572, Inclosure 7.

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We think, therefore, that the instructions to Lord Lyons should be amended in the manner in which we have ventured to point out in the margin, and in certain parts of the body of the draft; but that in other respects they should remain as before.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 282.

The Law Officers of the Crown to Earl Russell.—(Received April 6.)

Lincoln's Inn, April 6, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 22nd ultimo, stating that he was directed by your Lordship to transmit to us a despatch from Lord Lyons (No. 138, February 29, 1864), inclosing a copy of a despatch from Her Majesty's Consul at Galveston, reporting that, on the occasion of the seizure of a Confederate mail by a party of United States' troops in the town of Brookhaven, Mississippi, in the month of July last, certain despatches and packages, sealed with the official seal of that Consulate, were opened and thrown away; and to request that we would take the accompanying despatch and its inclosure from Lord Lyons into consideration, and favour your Lordship with our opinion as to the course which it would be proper for Her Majesty's Government to pursue in the matter.

In obedience to your Lordship's commands we have taken this matter into our consideration and have the honour to report—

That the conduct of the United States' troops, as represented in these papers, in opening the despatches of a Consul of a neutral and friendly State (some of them addressed to the Ambassador of his Government), and destroying or throwing them into the street, because they were found in the letter bag of a belligerent, is, of course, a subject for just remonstrance on the part of the neutral Government, and we must presume that the United States' Government will not hesitate to visit with censure those who have been guilty of this act, and to express their regret to Her Majesty's Government that it should have occurred. We think that Lord Lyons should be instructed to this effect. His Lordship will, of course, satisfy himself, as far as he is able, as to the truth of the statement, before he makes it the subject of a formal remonstrance.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 283.

The Law Officers of the Crown to Earl Russell.—(Received April 7.)

Lincoln's Inn, April 6, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 12th March ultimo, stating that he was directed by your Lordship to transmit to us a despatch from Lord Lyons (No. 128, February 23), inclosing a copy of a Proclamation issued by the President of the United States, which puts an end to the blockade of Brownsville, in Texas, but placing at the same time certain restrictions on the trade of that port, and imposing penalties in case of their violation, and to request that we would take this matter into consideration, and favour your Lordship with any observations we might have to offer thereupon.

In obedience to your Lordship's commands we have taken this matter into our consideration and have the honour to report—

That we not clearly understand whether the port of Brownsville be, or be not, in the actual possession of the United States. If it be, the blockade of such a port is novel in practice, and appears to us, as at present advised, not easily defensible on principle. It is certain that the belligerent right of blockade cannot be used as a means of enforcing particular regulations with respect to the trade of a port which is not in the hands of the enemy. On the other hand, it is competent to a Power which is duly blockading a port to remit (as the United States' Government professes to do by this Proclamation) a part of its right; for instance, it has been holden that particular licences, granted to individuals, do not vitiate a blockade (the "Fox," 1 Edwards, 320). And there are relaxations of a blockade which do not necessarily vitiate the blockade, provided it be still supported by an adequate and effective *de facto* force. But these observations apply to the case of a place actually blockaded or besieged; and we are of opinion that the peculiar rights which enure to the belligerent from the constitution of a blockade cannot be engrafted, so as to affect a neutral State, upon a different state of things, or be made obligatory on a neutral with respect to a place which, not being in the hands of an enemy, cannot be properly the subject of a blockade.

It is therefore very important that we should be informed whether Brownsville be absolutely within the occupation, and under the control and government, of the United States, as New Orleans, or any other place of the like character, may be.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 284.

The Law Officers of the Crown to Earl Russell.—(Received April 7.)

Lincoln's Inn, April 6, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 23rd of March ultimo, stating that with reference to our Report of the 25th of September last, on the subject of the restrictions placed by the Government of the United States on the trade between New York and the Bahamas, he was directed by your Lordship to transmit to us, together with the papers then considered by us, the accompanying further despatches which have been received since that date from Lord Lyons,* from which we would perceive that these restrictions have been extended to the trade between New York and other British American colonies.

Mr. Hammond was also pleased to transmit to us a letter from the Colonial Office,† respecting a claim put forward by a person named Charles Harris, resident at Nassau, on account of expenses incurred by him in consequence of steps taken by the Acting Consul of the United States in this matter; and to request that we would take the inclosed papers into consideration, and favour your Lordship with such observations as we might have to offer thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That with respect to the individual claim of Mr. Harris, we do not advise your Lordship that it ought to be made the subject *per se*, or, indeed at all, of any formal complaint to the United States' Government, but that upon the general question referred to in these papers, we adhere to the opinion which we have expressed at great length in our former Reports.

These restrictions on the trade between New York and the British colonies, this attempt to enforce bonds having for their object to govern and regulate, not the immediate but the possible future, and contingent disposition of articles of lawful commerce, are a plain violation of the Treaty obligations of the United States to this country. Looked at from another point of view, their object is not less objectionable. They inflict a great hardship on neutral commerce; in fact and truth they are an unjustifiable extension of the belligerent right of blockade, which has been and still is strained to its utmost limits in this war. The letters of Mr. Cunard appear to us very just and sensible upon the whole matter (Inclosures 6 and 13 in Lord Lyons' No. 139).

The injurious and unlawful effect of these measures is not veiled by the attempt of Mr. Seward to describe them as the operations of "the right to suppress contraband trade in our own ports with our own insurgent subjects;" and their practical absurdity and injustice is carried to the highest pitch when the United States' Consul at Nassau refuses to grant the certificate for the cancellation of one of these new bonds (which never ought to have been exacted at all), upon the usual and stipulated terms, on the ground that the amount of "coarse heavy stores" exported from New York to Nassau, as to which the exporter desired to make the prescribed declaration, exceeded (in the Consul's private opinion) the want of the Bahamas for home consumption or any legitimate trade (Letter L in Governor Bailey's despatch No. 13, February 2, 1864).

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* Lord Lyons, Nos. 20, 111, and 139.

† Colonial Office, March 15, 1864.

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The last letter of Mr. Seward to Lord Lyons (January 7, 1864, Inclosure 7 in Lord Lyons' No. 20), in which the writer professes to learn for the first time the existence of any complaint with respect to the new restrictions on trade between New York and Newfoundland, and declares his intention of inquiring into it, seems to be intended to evade a plain demand for satisfaction for palpable injustice by a recriminatory catalogue of complaints against the British Government on the score of offences committed by British subjects, all of which are again traced to the original and fundamental wrong said to have been committed by the British Government in recognizing the Confederates as belligerents.

Into this catalogue it is unnecessary now to enter. We can only repeat that the opinion which we have had the honour to express in our former Reports on this whole subject is unchanged. That we think Lord Lyons should be instructed to continue to press (upon all proper and convenient opportunities) on the attention of the United States' Government the strong opinion which Her Majesty's Government entertain of the injury which has been, and still is being, done by these vexatious and unlawful proceedings.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 285.

The Law Officers of the Crown to Earl Russell.—(Received April 8.)

Lincoln's Inn, April 7, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 29th of March, stating that he was directed by your Lordship to transmit to us a note dated the 21st ultimo, and its inclosures, from Mr. Adams, complaining of the proceedings of the police magistrate at Liverpool in reference to the men accused of piracy on board the "Joseph L. Gerrity," and for whose extradition an application was made by Mr. Adams on the 15th of February, under the Xth Article of the Treaty of Washington of the 9th of August, 1842. Mr. Layard was also pleased to transmit a letter dated the 22nd ultimo, and its inclosures, from the Home Office explaining and justifying the proceedings of the Liverpool police magistrate in this matter; and to request that we would take these papers into consideration and furnish your Lordship with our opinion as to the terms in which Mr. Adams should be answered.

We are also honoured with Mr. Layard's letter of the 30th of March, transmitting the draft of a letter which had been prepared to be sent to Mr. Adams in answer to his note of the 21st of March, respecting this case, but which was suspended, pending the reference of the case to us. That it occurred to Mr. Layard that we might find it convenient to take this proposed answer into consideration, together with the other papers, making such alterations and additions to it as we might think desirable.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we have ventured to suggest certain alterations in the draft proposed to be sent by your Lordship to Mr. Adams, which we think, with these modifications, would be proper to be sent.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 286.

The Law Officers of the Crown to Earl Russell.—(Received April 11.)

Lincoln's Inn, April 9, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 28th ultimo, stating that he was directed by your Lordship to transmit to us a despatch from Lord Lyons (No. 192, March 8), requesting to be furnished with instructions as to the manner in which he should proceed in the event of the imprisonment of the British subjects found on board the Confederate steamer "Antonica" being prolonged, and whether he should insist on the restoration of certain property which appears to have been taken from one of these individuals.

Mr. Layard was also pleased to state that this case formed part of the subject matter of Lord Lyons' despatches Nos. 55 and 93 of this year, on which our Report of the 7th March was founded. And that these despatches together with the answer returned to them, in accordance with our above-mentioned Report, were also inclosed. And that he was directed by your Lordship to request that we would take these papers into consideration, and favour your Lordship with our opinion as to the instructions which should be addressed to Lord Lyons on this subject.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we think Lord Lyons should be instructed to make the necessary application for obtaining restitution of the private property of Barnett and Jones; and that he should also be instructed to endeavour to obtain the release of the British portion of the crew of the "Antonica" from prison; pointing out to the United States' Government the great length of time they have been already detained, and requesting an early answer on their behalf.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 287.

The Law Officers of the Crown to Earl Russell.—(Received April 12.)

Lincoln's Inn, April 11, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 28th ultimo, stating that he was directed by your Lordship to transmit to us two despatches from Lord Lyons (Nos. 170 and 178), with their inclosures, relative to the destruction of the British schooner "Sylvanus" of Nassau, while attempting to run the blockade, and the imprisonment of the master and crew, who would appear to have been treated with considerable harshness; and Mr. Layard was to request that we would take this case into consideration, and furnish your Lordship with such observations as we may have to offer thereupon.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That in the absence of the full communication which Mr. Seward (March 8, 1864, in Lyons' No. 178) promises to make to Lord Lyons upon the subject of these papers, we are not in a condition satisfactorily to advise your Lordship thereupon.

If the "Sylvanus" was fired upon and sunk in the first instance without being properly summoned to lie to, and without any special and extraordinary necessity, the act was illegal, and warrants *per se* a very grave remonstrance.

If, as unfortunately appears clearly to have been the case, the crew were put in irons and imprisoned without being examined, another grave illegality has been committed; and with respect to this last wrongful act, the recurring frequency of it renders it necessary that Lord Lyons should be instructed to address to the United States' Government a very strong remonstrance, in which a hope may be properly expressed that Her Majesty's Government may not again have to complain of this plain and offensive violation of the rights of neutral subjects.

We have, &c,
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 288.

The Law Officers of the Crown to Earl Russell.—(Received April 12.)

Lincoln's Inn, April 11, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 24th ultimo, stating that with reference to our Report of the 11th of last

November, he was directed by your Lordship to transmit to us, together with the previous papers, the further despatches as marked in the margin,* respecting the case of the British schooner "Don José," which was seized and taken into Key West by the United States' cruizer "Juniata," and Mr. Hammond was to request that we would take these papers into consideration, and report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That the answer of Mr. Seward to Lord Lyons (February 12, 1864), is entirely unsatisfactory, if it be intended as final.

There can be, and is, no dispute as to the flagrant illegality of the capture. The United States' Attorney-General could find no ground whatever upon which the vessel could be libelled as prize in the Prize Court. This fact alone is sufficient to found the claim for compensation, which it must be presumed the Court, if the case had come before it, would, in the execution of its duty, have awarded in the form of costs and damages.

We cannot but observe upon the extraordinary character of the justification which seems to be attempted in the Reports of Commander Clitz and Acting Master Stimpson. Those officers allege, in effect, that there was evidence in the ship's papers of an intention to run the blockade. But if so, why was not the ship brought to trial? After releasing her without trial, it is impossible for the United States' Government now to plead, as against the duty of making compensation, that there were good grounds of capture, and that the District Attorney came to a wrong conclusion.

What the proper measure of compensation may be, is of course a matter upon which the United States' Government must form their opinion, after an examination of all the facts; and in our former Report we observed upon the exaggeration with which the claimants had overlaid their case.

We are of opinion that Lord Lyons should be instructed to renew and press his application for proper compensation in this case.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 289.

The Law Officers of the Crown to Earl Russell.—(*Received April* 13.)

My Lord, *Lincoln's Inn, April* 12, 1864.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 30th March ultimo, stating that with reference to our Report of the 26th of last October, upon the proceedings in the United States' Prize Court in the case of the "Peterhoff," he was directed by your Lordship to transmit to us, together with the former papers,† a despatch from Mr. Consul Archibald,‡ inclosing a printed copy of Judge Betts' Judgment in this case.

Mr. Layard was also pleased to state that the pamphlet also contains Judge Marvin's opinions in the case of the "Dolphin" (see Law Officers' Reports of April 22 and 27, May 29, and July 29, 1863), and the "Pearl" (see Queen's Advocate's Report of March 3, 1863); and to request that we would peruse these papers, and favour your Lordship with any observations we might have to offer thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That the decisions of the Prize Courts in the cases of the "Peterhoff" and the "Dolphin," by which those vessels were condemned as lawful prize, do not, in our opinion, call for any intervention on the part of Her Majesty's Government. Without binding ourselves to an adoption of all the reasons assigned in these Judgments (indeed, there are some of them in which we do not concur), we are not prepared to say that the decisions themselves, under all the circumstances of the several cases, are not in harmony with the principles of the Judgments in the English Prize Courts.

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* To Lord Lyons, No. 601, November 28, 1863; Lord Lyons, No. 3, January 24; No. 69, February 1; No. 115, February 23, 1864.

† Mr. Stuart, No. 92; to Lord Lyons, Nos. 566 and 595; to Mr. Hodgson, November 27; to parties arrested, November 28, 1863; 3 Volumes.

‡ Consul Archibald, No. 37, March 11, 1863.

With respect to the "Pearl," the course pursued by the Judge appears to us most fair and equitable.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 290.

The Law Officers of the Crown to Earl Russell.—(*Received April* 13.)

My Lord, *Lincoln's Inn, April* 12, 1864.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 29th of March ultimo, stating that with reference to that part of our Report of the 26th of February, which related to the case of the "Banshee," he was directed by your Lordship to transmit to us a further despatch from Lord Lyons (No. 141), reporting that the master and crew have been released from prison.

Mr. Layard was also pleased to inclose the previous despatches from Lord Lyons respecting this case,* and to request that we would take the inclosed papers into consideration, and favour your Lordship with any observations we might have to offer thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we do not perceive in these papers any attempt to justify the long imprisonment of the crew of the "Banshee," who have been now, at last, released. Upon the general subject we have nothing to add to the opinions contained in our former Reports.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 291.

The Law Officers of the Crown to Earl Russell.—(*Received April* 13.)

My Lord, *Lincoln's Inn, April* 12, 1864.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 22nd of March ultimo, stating that with reference to our Report of the 31st January of last year, he was directed by your Lordship to transmit to us a despatch from Lord Lyons (No. 137, February 29), inclosing a copy of the new Conscription Act passed by the Legislature of the United States.

Mr. Hammond was also pleased to inclose a volume of the United States' Statutes containing the former Act on the subject (pp. 731–7), and to request that we would take these papers into consideration, and favour your Lordship with any observations we might have to offer with regard to those portions of the present law which may affect British subjects.

Mr. Hammond was further pleased to state that the instruction which was addressed to Lord Lyons founded on our above-mentioned Report was therewith annexed (No. 79, February 12, 1863).

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That it does not seem to us that the recent American statute, or the observations of Lord Lyons thereupon, call for any further instructions from your Lordship to Lord Lyons.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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* Lord Lyons, Nos. 54, 73, and 74, 1864; Consul Archibald, No. 209, November 27, 1863.

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No. 292.

The Queen's Advocate to Earl Russell.—(*Received April* 15.)

Doctors' Commons, April 15, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 8th April instant, stating that with reference to my Reports of the 15th January and 19th February, he was directed by your Lordship to transmit to me, together with the previous papers,* a further letter from Mr. Crutchett† relative to his claim on the United States' Government, and to request that I would take the same into consideration and inform your Lordship whether the statements contained in it induce me to alter in any respect the opinion expressed in my above-mentioned Reports with regard to Mr. Crutchett's claim.

In obedience to your Lordship's commands I have taken this case again into consideration, and have the honour to report—

That the statements contained in the last letter of Mr. Crutchett do not induce me to alter in any respect the opinion which I have already had the honour to express to your Lordship in former Reports with regard to this claim.

I have, &c
(Signed) ROBERT PHILLIMORE.

No. 293.

The Lord Advocate to Mr. Layard.—(*Received April* 19.)

1, *New Street, Spring Gardens,*
April 19, 1864.

Sir,

I HAVE the honour to acknowledge your communication of the 18th instant, inclosing copies of letters from the American Consul at Liverpool and the American Minister relative to the vessel "Hawk," now in the course of construction at Renfrew.

My attention was first called to this vessel by a telegram received by the Crown Agent from Mr. Underwood, the American Consul at Glasgow, received on the afternoon of Saturday, the 9th.

The telegram simply expressed Mr. Underwood's belief that the vessel was intended for hostile purposes, and that she was to sail the following day.

In consequence of this telegram I directed the Crown Agent to send the telegraphic messages which were referred to in Mr. Trevor's letter, a copy of which was sent to me by Mr. Hammond last week.

On receipt of Mr. Hammond's communication of the 13th, I directed the Crown Agent to transmit the papers inclosed in it to the Procurator Fiscal at Paisley, with instructions to inquire and report any information he received, but not to act without further instructions. I have received no further information.

From the letters I received from Mr. Trevor, the Collector at Glasgow, and the Procurator Fiscal there, in reply to the Crown Agent's telegrams of the 9th, I infer that this vessel is intended to run the blockade, and not for a cruizer, if she is built for the Confederate States, or for American purposes, and I do not think at present there is ground for detaining her. But I shall probably receive further information in a day or two. Meanwhile, I gather from Mr. Trevor's letter that she has not obtained her certificate, without which she is not entitled to sail.

I have, &c.
(Signed) J. MONCRIEFF.

No. 294.

The Law Officers of the Crown to Earl Russell.—(*Received April* 20.)

Lincoln's Inn, April 19, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 22nd ultimo, stating that he was directed by your Lordship to transmit to us a despatch from Lord Lyons (No. 136, February 29), requesting to be furnished with general instructions with regard to the claim for exemption from military service in the United States put forward by persons born of American parents in British territory, and especially with regard to the case of a person named Charles Cole, the particulars of which are contained in the correspondence inclosed in Lord Lyons' despatch; and to request that we would take this matter into consideration, and favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we are of opinion that in the cases of children of American citizens born in British territory, but being in American territory, and claiming there exemption from military service, of which cases Cole's is one, Her Majesty's Government ought not to interfere.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 295.

The Law Officers of the Crown to Earl Russell.—(*Received April* 21.)

Lincoln's Inn, April 21, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 8th April instant, stating that with reference to our Report of the 23rd ultimo, and our previous Reports respecting the case of the "Saxon," he was directed by your Lordship to transmit to us, together with the former papers, a despatch and its inclosures from Mr. Consul Archibald (No. 41, March 18), reporting that Judge Betts had directed a decree to be entered for the restitution of that vessel and her cargo to their respective owners, and a despatch and its inclosures from Lord Lyons (No. 199, March 22), on the subject of the killing of Mr. James Gray, and also respecting the coal carried off from Angra Pequena; and to request that we would take these papers into our consideration, and report to your Lordship our opinion thereupon, and also favour your Lordship with our opinion as to the instructions to be sent to Lord Lyons respecting the claim for the coal.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That with respect to the restitution of the vessel and cargo, we do not see any reason at present to complain of the sentence, the question of damages and, as we understand, of costs being still open; and we are not prepared to say that if these should be refused there would, in the peculiar circumstances of the case, be any necessity for an official complaint on the part of Her Majesty's Government. With respect to the murder of Mr. James Gray, the conduct of Lord Lyons appears to have been perfectly proper, as far as we can collect from his despatch to Mr. Seward of the 22nd March, 1864.

With respect to the coals, we are unable to assent to the position of Mr. Seward, that if they were sent to Angra Pequena for the purpose of supplying the "Alabama," the owner of them is disentitled to compensation.

It was as lawful to send coals to Angra Pequena for the purpose of supplying the wants of the "Alabama" as it would have been for the purpose of supplying the wants of United States' men-of-war; and at present we do not see upon what principle the position of Mr. Seward is founded, and we think that Lord Lyons should be instructed to this effect.

We think, however, that the owners of the coals should be prepared with proof that they belonged to them at the time when they were taken.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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* Mr. Crutchett, January 5; to Mr. Crutchett, January 21; Mr. Crutchett, February 12; to Mr. Crutchett, February 26, 1864.

† Mr. Crutchett, April 5, 1864.

1864

No. 296.

The Queen's Advocate to Earl Russell.—(*Received April* 23.)

Doctors' Commons, April 22, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 18th April instant, stating that he was directed by your Lordship to transmit to me a letter dated the 14th instant from the Colonial Office inclosing copies of a correspondence between the Governor of the Mauritius and the United States' Consul at that island relative to some goods which were taken out of the Confederate prize "Sea Bride," and brought to Port Louis in the French barque "Sirène;" and to request that I would take these papers into consideration, and report to your Lordship my opinion thereupon.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I am of opinion that the Governor of the Mauritius was rightly advised by the Procureur-Général in this matter, and that it was not competent to the Governor either to take possession of this property, which is alleged to have been a portion of the cargo of the "Sea Bride," or to take any legal steps against Christopher Elmstone.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 297.

The Law Officers of the Crown to Earl Russell.—(*Received April* 23.)

Lincoln's Inn, April 22, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 6th April instant, stating that he was directed by your Lordship to transmit to us, together with the previous papers, the draft of an instruction (founded upon our Report of the 7th ultimo) which it is proposed to address to Her Majesty's Minister at Washington, respecting the refusal of the United States' Government to grant satisfaction in the case of the "Blanche."

Mr. Layard was also pleased to state that this instruction, as we would perceive from the annexed correspondence with Sir J. Crampton,[*] had been submitted to and was concurred in by the Government of Her Catholic Majesty, which would appear to have obtained the reparation which it had demanded of the United States' Government; and to request that we would take the proposed instruction to Lord Lyons into our consideration, and favour your Lordship with our opinion whether it is right and proper to be sent.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That we are of opinion that the proposed instruction is right and proper to be sent.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 298.

The Law Officers of the Crown to Earl Russell.—(*Received April* 27.)

Lincoln's Inn, April 26, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 15th instant, stating that with reference to Mr. Layard's letter of the 8th instant, respecting the case of the "Saxon," he was directed by your Lordship to transmit to us a despatch and its inclosures from Lord Lyons (No. 217, March 24) respecting the court-martial to be held upon Mr. Danenhower, the United States' officer who is charged with having killed Mr. Gray, the first mate of that vessel; and to request that we would take these papers into our consideration, and favour your Lordship with such observations as we might have to offer thereupon.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

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[*] To Sir J. Crampton, No. 32, March 19; Sir J. Crampton, Nos. 94 and 96, 1864.

That the course pursued by Lord Lyons appears to us to have been in every respect perfectly discreet and proper.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

P.S.—Since the above was written we have received Mr. Layard's letter of the 23rd instant, with the documents therein referred to (Lord Lyons' No. 235, April 5), which, however, do not appear to us to require any alteration in or addition to the foregoing Report.

R. P.
R. P. C.
R. J. P.

No. 299.

The Law Officers of the Crown to Earl Russell.—(*Received April* 27.)

Lincoln's Inn, April 26, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 13th of April instant, stating that he was directed by your Lordship to transmit to us the accompanying despatch from Lord Lyons, Her Majesty's Minister at Washington, stating that the United States' Government would be able and willing to employ cruizers on the Coast of Africa, in execution of the Treaty of 1862 between this country and the United States for the suppression of the Slave Trade; but that, if the stringent regulations laid down in the Queen's Neutrality Proclamation of the 31st of January, 1862, are to be literally construed and carried into effect, it will necessarily prevent the employment by the United States' Government of any squadron for that service upon the African Coast.

Mr. Layard was also pleased to state that Her Majesty's Government propose to give directions that the rules laid down for restricting the entry of Federal cruizers into Her Majesty's ports may be relaxed in all British ports on the West Coast of Africa between Sierra Leone and Lagos, including those places, in favour of United States' cruizers *bonâ fide* employed in the suppression of the Slave Trade, and provided with the necessary warrant to that effect.

Mr. Layard was further pleased to state that before, however, taking any steps for giving effect to this decision your Lordship would be glad to be favoured with our opinion whether there is any objection in law to the contemplated proceeding.

Mr. Layard further added, that a correspondence, as marked in the margin,[*] which had passed on this subject between the Foreign Office and the Colonial Office, and the Admiralty, was inclosed, together with drafts of letters which your Lordship proposes to address to those Departments and to Lord Lyons.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That the letters to the Colonial and Admiralty Offices, and to Lord Lyons, seem to us, with the slight addition suggested, proper to be sent; subject, nevertheless, to the following observations:—

It would be desirable to require that these vessels should be not only *bonâ fide*, but also *exclusively* employed in the suppression of the Slave Trade.

If this be deemed an impracticable or an unreasonable condition, we submit to your Lordship's consideration that it should be clearly understood by United States' cruizers, and by the Governors of Her Majesty's territories on the coast of Africa, that the relaxation of Her Majesty's orders will not be granted to United States' cruizers, though duly warranted for the suppression of the Slave Trade, which may attempt to bring into port, together with captured slavers, prizes taken from the other belligerents in this war; and also that it would be a breach of the good faith of this engagement if these cruizers were to use in any way Her Majesty's ports for the purpose of enabling them to carry on hostilities against the ships of the other belligerent.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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[*] Lord Lyons, No. 6, February 23; Admiralty, March 11; Colonial Office, March 15; to Admiralty, April 2; Admiralty, April 5, 1864.

1864

No. 300.

The Law Officers of the Crown to Earl Russell.—(*Received April* 27.)

My Lord,

Lincoln's Inn, April 26, 1864.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 4th instant, stating that with reference to our Reports of the 12th and 30th of January, and 2nd of February, respecting the Matamoros seizure, he was directed by your Lordship to transmit to us, together with the previous papers, a despatch from Lord Lyons, inclosing the explanation given by the United States' Government with regard to the instructions under which the United States' naval officers are acting in the Rio Grande.

And Mr. Layard was also pleased to inclose further despatches from Lord Lyons,* respecting the cases of the "Sir W. Peel," and the other vessels lately captured in these waters; and was to request that we would take these several papers into consideration, and furnish your Lordship with such observations as we have to offer thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration and have the honour to report—

That the explanation given by the United States' Government as to the meaning of the instructions given to their cruizers, is, in terms, satisfactory, and we trust will henceforth be acted upon; but we must observe that Captain Rolando, in the case of the "Sir W. Peel," and other United States' naval officers appear either not to have understood, or not to have acted upon, their instructions as so explained.

It would have been more satisfactory if Mr. Welles' letter had also noticed (in order to disclaim) the extraordinary notion (of which the influence is apparent, both in Captain Rolando's intercepted letter, and in the depositions taken under the order for further proof in the case of the "Sir W. Peel") that the exportation from Matamoros, by neutral vessels, of cotton grown in the Confederate States, and brought from thence for exportation to Matamoros, can constitute a lawful ground of capture.

With respect to the "Sir W. Peel," we have have nothing to add, at present, to the opinions contained in our former Reports; except that the taking of depositions from persons not on board at the time of capture, and giving principally hearsay evidence is a very objectionable innovation on the course of Prize practice hitherto followed in the United States, as well as England; and that if such hearsay evidence were treated by any Prize Court as of any weight for the purpose of condemnation, it would be the duty of Her Majesty's Government to refuse to acquiesce in any sentence founded thereon.

Lord Lyons should, we think, be instructed to continue to press for the release, with proper costs and damages, of this vessel.

We are only informed that the "Matamoros" and her cargo have been restored; on what ground, and whether with or without costs and damages, we have yet to learn.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 301.

The Law Officers of the Crown to Earl Russell.—(*Received April* 27.)

My Lord,

Lincoln's Inn, April 26, 1864.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 6th April instant, stating that with reference to our Report of the 23rd ultimo, and previous Reports relative to the case of the "Chesapeake," he was directed to transmit to us, together with a copy of the papers lately laid before Parliament, three letters from the Colonial Office,† inclosing copies of further correspondence respecting this case, and to request that we would take the accompanying papers into consideration, and furnish your Lordship with any observations we may have to offer thereupon.

We are also honoured with Mr. Layard's letter of the 21st April instant, transmitting a further letter from the Colonial Office, inclosing copies of two despatches from the Lieutenant-Governor of New Brunswick, together with a printed copy of the proceedings in the case of the persons charged with the illegal seizure of the "Chesapeake," and

* Lord Lyons, No. 182, March 11; No. 183, March 11; No. 191, March 14, 1864.

† Colonial Office, March 6, March 29, and April 1, 1864.

also inclosing a private communication relative to this affair which has been placed in your Lordship's hands.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That it appears to us that the conduct of Major-General Doyle in this difficult and novel matter, was, upon the whole, very prudent and proper.

With respect to the observations of Judge Stewart as to the payment of the judicial discharge of his duty by fees, we think that they merit the careful attention of Her Majesty's Government, and that it would be very expedient that this practice should be discontinued, and a permanent salary be substituted for such a remuneration; this is an improvement which has been for many years effected in the High Court of Admiralty in England.

With respect to the proceedings in the extradition case in New Brunswick, we see no reason, practically, to regret the result of the application for *habeas corpus*, as the impression upon our minds has throughout been that the case was not really one of piracy. The grounds, however, of Judge Ritchie's decision are not, in our opinion, sound or satisfactory. The conduct of the Lieutenant-Governor of New Brunswick appears to us to have been, throughout this affair, judicious, vigilant, and proper.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 302.

The Law Officers of the Crown to Earl Russell.—(*Received April* 27.)

My Lord,

Lincoln's Inn, April 26, 1864.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 25th instant, stating that he was directed by your Lordship to transmit to us the papers marked in the margin,* relative to the case of a vessel named the "Hawk," which has been constructed at Renfrew, in the Clyde, and is reported to be now at Greenhithe.

Mr. Layard was also pleased to state that he was directed by your Lordship to point out to us that the circumstances with regard to this vessel are very suspicious; that she has had no measurement and no registry; and that she left the Clyde in the same manner as the "Alabama" left the Mersey, on a trial trip, permitted under promise that she should not go to sea, whereby a penalty of 100*l*. has been incurred: and to request that we would take these papers into immediate consideration, and favour your Lordship at our earliest convenience with our opinion whether there is any ground for detaining or otherwise proceeding against this vessel.

We are also honoured with your Lordship's commands signified in Mr. Layard's further letter of the 25th instant, stating that with reference to his former letter of that day's date, he was directed by your Lordship to transmit to us a further letter dated the 25th instant and its inclosures from the Treasury, relative to the case of the ship "Hawk;" and to request that we would take these papers into our consideration, together with those already before us.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That whatever suspicions may be entertained, it is clear that there is at present no evidence whatever to justify the seizure or detention of this vessel, as having been equipped or fitted out, &c., in violation of the Foreign Enlistment Act. Mr. Begbie, who claims to be the owner, is a person whose name has been connected with some of the ships or cargoes condemned in the United States' Prize Courts for breach of blockade; but this is, obviously, no reason for inferring that he is acting in this matter on behalf of the Government of the Confederate States, or that he intends to employ the "Hawk" as a privateer in their service.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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* Treasury, April 4 and April 12; Mr. Begbie, April 13; to Lord Advocate, April 13; to Treasury, April 13; to Mr. Begbie, April 15; Mr. Adams, April 16; to Lord Advocate, April 18; Treasury and Home Office, to Mr. Adams, April 18; Lord Advocate, April 19; Treasury, April 20, April 22, and April 23

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No. 303.

The Law Officers of the Crown to Earl Russell.—(Received April 28.)

Lincoln's Inn, April 28, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 18th instant, stating that he was directed by your Lordship to transmit to us a note dated the 16th instant from Mr. Adams, covering a copy of a letter from the United States' Consul in London, together with copies of twenty-one depositions of persons, mostly British subjects, who, Mr. Adams states, have been enlisted in the service of the insurgents at various places in this kingdom; and to request that we would take these papers into our consideration, and favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we are of opinion that there is evidence to convict Seymour, Bradshaw, Cunningham, and Buchanan, of offences against the 2nd Section of the Foreign Enlistment Act, and that they ought to be proceeded against.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 304.

The Law Officers of the Crown to Earl Russell.—(Received April 28.)

Lincoln's Inn, April 28, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 23rd instant, stating that he was directed to transmit to us therewith the proof of a Return your Lordship proposes to make to an Address of the House of Lords for Return of claims made by British subjects upon the United States' Government, [for losses] sustained, either in person or property, since the secession of the Southern States; specifying how, and the grounds on which, such claims have been disposed of; and to request our particular attention to this Return, as well as to the memorandum at the foot thereof, and that we would report to your Lordship our opinion as to whether the reserve made in the Memorandum is sufficient to guard from prejudice the cases of any British claimants which may not be included in the Return.

Mr. Layard was also pleased to inclose, on blue paper, another copy of the Return, with an explanatory Memorandum annexed to it, containing a summary of the several categories into which the claims may be divided. That your Lordship does not propose to present this Return to Parliament, but that your Lordship thought it desirable we should see it, as well for our information as in order that we may make any observations which may occur to us.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That the Memorandum at the foot of the Return appears to us sufficient for the purpose of protecting the claims of British subjects which may not be included in that Return; and that the Return itself appears to us proper to be laid before Parliament.

At page 13, No. 329, there is a deficiency to be supplied.

With respect to the Memorandum on the blue paper, it does not occur to us to offer any observations, except upon the passage at the top of page 7 of that Memorandum. It is, perhaps, not quite accurate to say that, "in all the cases of which copies of the proceedings have been sent home, the Law Officers have expressed their concurrence in the Judgments." In several of those Judgments there have been some reasons given and some doctrines propounded with which the Law Officers have not agreed; and, in other cases, they have considered the question whether the evidence warranted the decree to be open to much doubt. But in none of those cases has the Judgment, in its practical result, appeared to them to depend upon any erroneous proposition of law; and their view generally has been that while the facts considered by the Prize Court to have been established would (if established) have warranted the decree, there was evidence before the Court upon which it was at least open to a Judge, without any such miscarriage of justice as ought to be redressed otherwise than by a regular appeal, honestly to come to that conclusion upon the facts which was actually arrived at.

We agree in the opinion expressed by your Lordship that this paper should not be laid before Parliament.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 305.

The Law Officers of the Crown to Earl Russell.—(Received May 7.)

Lincoln's Inn, May 6, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 25th ultimo, stating that with reference to our several Reports respecting the pretension of the United States' Government to treat as prisoners of war British subjects captured in blockade-runners, he was directed by your Lordship to transmit to us two despatches and their inclosures from Lord Lyons (Nos. 232 and 239), respecting the imprisonment of the crews of two British vessels, the "Marianne" and the "Don," and to request that we would take these papers into our consideration and favour your Lordship with our observations thereupon.

Mr. Layard was also pleased to state that a despatch from Lord Lyons (No. 233, April 5), inclosing a copy of a note which he had addressed to Mr. Seward respecting this and other subjects, was annexed for our information.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we understand that the crew of the "Marianne" are not imprisoned, having escaped; and that the crew of the "Don," after having been discharged by the Commissioners of Prize, were detained by orders from Washington, and confined in Fort Warren, but that they have been since released. We are of opinion that this detention, and the order in consequence of which it has been made, are illegal. We must refer to our former Reports, in which we have fully stated our opinion that it is not competent to the belligerent to treat the prize crews of neutral vessels as prisoners of war.

The letter of Lord Lyons to Mr. Seward on this subject appears to be very proper; but we are of opinion that he should be instructed to press Mr. Seward for a revocation of the general order to detain British subjects (whose evidence has been taken or is not required), even temporarily, as prisoners.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 306.

The Queen's Advocate to Mr. Hammond.—(Received May 7.)

5, *Arlington Street, London, May* 7, 1864.

THE Queen's Advocate presents his compliments to Mr. Hammond, and with reference to the claim of Mr. Turner against United States' Government on account of proceedings of Custom-house authorities at Boston, would be glad to see some gentleman from the Board of Trade or Customs in order to obtain exact information as to the practice of the English Custom-house in a similar case. The Queen's Advocate would suggest 2 o'clock on Monday, at 5, Arlington-street, for the interview.

No. 307.

The Law Officers of the Crown to Earl Russell.—(Received May 9.)

Lincoln's Inn, May 7, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 26th ultimo, stating that he was directed by your Lordship to transmit to us a further despatch from Lord Lyons (No. 241, April 8), relative to the case of the "Chesapeake;"

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and to request that we would take the same into our consideration, together with the papers inclosed in his letter of the 21st April.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That the further papers sent to us in this case do not render it necessary to vary the opinion which we have had the honour to express to your Lordship in our recent Report.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 308.

The Law Officers of the Crown to Earl Russell.—(*Received May* 11.)

Lincoln's Inn, May 7, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 16th April ultimo, stating that he was directed to transmit to us a letter dated the 11th ultimo from the Colonial Office, stating that Mr. Secretary Cardwell proposes to communicate to the Governors of the Colonies the correspondence recently printed for Parliament in the case of the "Tuscaloosa," and is desirous to accompany it with instructions, as full and definite as it may be possible to frame with safety, for the Governor's guidance in future cases of this kind.

Mr. Layard was also pleased to transmit some further papers, as marked in the margin,* and to request that we would consider and advise Her Majesty's Government as to what further instructions it would be proper to issue to Colonial Governors.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That the preparation of these instructions unavoidably involves a question of policy, which can only be determined by Her Majesty's Government, viz., whether Her Majesty's Government will, or will not, upon this occasion, recognize and adopt the rule acted upon by the United States since the year 1793, of restoring to the original owners prizes brought into the waters of a neutral Power, if it shall be alleged and found that such prizes have been taken within the waters, or by ships illegally fitted out or equipped within the territory of that Power, which rule was, in our opinion, well founded upon principles of international and public law.

Upon this subject, it seems proper for us to observe that, some practical difficulty might, perhaps, arise in the application of this rule within Her Majesty's dominions, from the circumstance that there are no Courts in any part of those dominions of which it can be affirmed that they have direct jurisdiction (as the Courts of the United States have) to investigate and determine judicially the questions of fact arising in such cases, and to adjudge restitution when it may be found due. On the other hand, it appears from the public transactions of the years 1793-95, between the United States and Great Britain and France, and from the speech of Chief Justice Marshall in the appendix to the 5th volume of Mr. Wheaton's Reports, that this rule has been always considered in the United States to be matter of international obligation, resting on international and not on municipal law, and to be one which, if the constitution of the Courts of the United States had not enabled them to take judicial cognizance of it, would have been competently and properly enforced by the Executive authority under such regulations, as to the mode of conducting inquiries into disputed facts, as the Government of the United States might have thought fit to establish. And we think that this view is, in principle, well founded; the question in such cases being really one between the Government of the neutral State on the one hand, and the Governments to which the capturing and captured vessels respectively belong, on the other.

Under these circumstances we have prepared, in an alternative form, the drafts of two sets of instructions, which we submit for the consideration of Her Majesty's Government; the shorter form being one which it assumes that it may *not* be determined now to adopt and apply the American rule, and the longer form proceeding upon the opposite hypothesis.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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* Parliamentary Paper; Admiralty, March 11; to Admiralty, March 12; Colonial Office, March 11; to Colonial Office, March 23; Memorandum, March 26, 1864.

Inclosure 1 in No. 308.

Form 1.

Rules.

1. IF any prize captured by a ship of war of either of the belligerent Powers shall be brought by the captors within Her Majesty's jurisdiction, notice shall be given to the captors immediately to depart and to remove such prize out of Her Majesty's jurisdiction, except in the cases in which provision is made to the contrary by any of the following Rules:—

2. Every captured merchant-ship remaining in the possession or under the control of the captors, or of a prize crew put on board by them, which has never been condemned by a competent Prize Court nor brought *intra præsidia* of the captors' territory, shall be deemed to be a prize within the meaning of these Rules, unless she has been actually and *bonâ fide* converted into, and armed and used as, a public ship of war.

3. Goods or cargo, captured at sea, remaining in the possession or under the control of the captors, uncondemned by any competent Prize Court, and brought by the captors, either on board the captured vessel or otherwise, within Her Majesty's jurisdiction, shall be deemed to be prize within the meaning of these Rules.

4. If any prize shall be brought within Her Majesty's jurisdiction through mere stress of weather, or other necessity arising from accidental causes, such time as the Governor may think reasonable, under the circumstances, may be allowed to the captors to remove such prize beyond Her Majesty's jurisdiction.

5. If any prize shall not be duly removed beyond Her Majesty's jurisdiction after notice given for that purpose, the Governor may detain such prize until Her Majesty's pleasure shall be made known concerning the same, if, in his discretion, he shall see fit to do so.

6. If any such prize shall have been captured by means of any violation of the territory or territorial waters of the same Colony or Government within which such prize shall be brought, the Governor shall, of his own authority, detain such prize until Her Majesty's pleasure shall be made known concerning the same.

7. These Orders are to be applied and carried into effect, subject to all such proceedings (if any) as may lawfully be taken, and to all such orders (if any) as may be made, in or by any Court of competent jurisdiction, in any of Her Majesty's colonies or other possessions, concerning any prize.

R. P.
R. P. C.
R. J. P.

Inclosure 2 in No. 308.

Form 2.

Rules.

1. IF any prize captured by a ship of war of either of the belligerent Powers shall be brought by the captors within Her Majesty's jurisdiction, notice shall be given to the captors immediately to depart and to remove such prize out of Her Majesty's jurisdiction, except in the cases in which provision is made to the contrary by any of the following Rules:—

2. Every captured merchant-ship remaining in the possession or under the control of the captors, or of a prize crew put on board by them, which has never been condemned by a competent Prize Court, nor brought *intra præsidia* of the captors' territory, shall be deemed to be a prize within the meaning of these Rules, unless she has been actually and *bonâ fide* converted into, and armed and used as, a public ship of war.

3. Goods or cargo, captured at sea, remaining in the possession or under the control of the captors, uncondemned by any competent Prize Court, and brought by the captors, either on board the captured vessel or otherwise, within Her Majesty's jurisdiction, shall be deemed to be prize within the meaning of these Rules.

4. If any prize shall be brought within Her Majesty's jurisdiction through mere stress of weather, or other necessity arising from accidental causes, such time as the Governor may think reasonable, under the circumstances, may be allowed to the captors to remove such prize beyond Her Majesty's jurisdiction.

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5. If any prize shall not be duly removed beyond Her Majesty's jurisdiction after notice given for that purpose, the Governor may detain such prize until Her Majesty's pleasure shall be made known concerning the same, if in his discretion he shall see fit to do so.

6. Any prize brought within Her Majesty's jurisdiction, contrary to Her Majesty's orders, may be reclaimed by the original owners or owner in any of the following cases:—

(1.) If the capture was made within Her Majesty's jurisdiction, or by any lying in wait, attack, or pursuit, from waters subject to Her Majesty's jurisdiction:

(2.) If the vessel which made the capture was equipped, furnished, fitted out, or armed, in any part of Her Majesty's dominions with intent or in order that she should be employed in the service of the belligerent, under whose authority the capture was made, to cruize or commit hostilities against the other belligerent, contrary to the provisions of the Statute 59 George III, cap. 69:

(3.) If the vessel which made the capture has had her warlike force increased or augmented in any part of Her Majesty's dominions by adding to the number of the guns of such vessel, or by the addition of any equipment for war, contrary to the provisions of the same Statute.

7. If any such prize shall be claimed by or on behalf of the original owners or owner thereof, or by any Consul or public agent of the Government of such original owners or owner, on any of the grounds mentioned in the last preceding rule, the grounds alleged for such claim shall be investigated in such manner and by such persons as the Governor shall direct, and in the meantime such prize shall be detained in safe custody under the authority of the Governor; and if it shall appear to the Governor, after investigating such claim, that any of the grounds so alleged for such claim are substantiated, he shall report the facts with the evidence thereof to Her Majesty's Government, and shall further detain such prize until Her Majesty's pleasure shall be made known concerning the same.

8. If any such prize shall have been captured by means of any violation of the territory or territorial waters of the same Colony or Government within which such prize shall be brought, the Governor shall of his own authority detain such prize until Her Majesty's pleasure shall be made known concerning the same, without waiting for any claim to be first made thereto by or on behalf of the original owners.

9. These Orders are to be applied and carried into effect, subject to all such proceedings (if any) as may lawfully be taken, and to all such Orders (if any) as may be made in or by any Court of competent jurisdiction in any of Her Majesty's Colonies or other possessions concerning any prize.

R. P.
R. P. C.
R. J. P.

No. 309.

The Law Officers of the Crown to Earl Russell.—(Received May 10.)

My Lord, *Lincoln's Inn, May* 9, 1864.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 18th ultimo, stating that he was directed to transmit to us a note, dated the 16th ultimo, which has been received from Mr. Adams in reply to the note which was addressed to Mr. Adams in conformity with our Report of the 6th ultimo, and in which he incloses copies of certain papers in confirmation of his position that British subjects captured in blockade runners may properly be treated as enemies of the United States; and Mr. Layard was to request that we would take these papers into consideration, and report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That the despatch of Mr. Adams does not induce us to vary the advice which, upon the general question, we have had the honour to tender to Her Majesty's Government. There is really nothing in the Acts of the Congress of the Confederate States, or in the prospectus of the "Atlantic Trading Company, Limited," which either calls for or tends in any degree to explain or justify the orders of the United States' Government to which Mr. Adams refers. We think that Her Majesty's Government should continue to insist that it is not competent for the United States' Government to treat generally as enemies the subjects of Her Majesty captured in the act of trading with the other belligerent, whatever may be the regulations of the Confederate Government under which that trade is carried on. If the circumstances of any peculiar case should prove that any of Her Majesty's subjects have been taken while actively employed in the military service of the belligerent States, no just cause of complaint would be given if such subjects were treated as enemies. But the subjects of Her Majesty are entitled by international law to carry on the operations of commerce equally with both belligerents, subject to the penalty of the capture of their vessels, and to no other penalty, if they attempt to violate a properly constituted blockade, or to carry contraband of war to the enemy.

This is a proposition which it is incumbent on Her Majesty's Government to state with great precision and firmness to the Government of the United States, as one which they and the Governments of all other neutral States are bound to maintain and uphold; and we are decidedly of opinion that the circumstances under which the trade between the Confederate States and this country is now carried on, are in no respect so exceptional as to entitle the United States' Government to depart in their manner of dealing with it from the ordinary course of procedure.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 310.

The Law Officers of the Crown to Earl Russell.—(Received May 10.)

My Lord, *Lincoln's Inn, May* 9, 1864.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 25th ultimo, stating that he was directed by your Lordship to transmit to us two despatches and their inclosures from Lord Lyons (Nos. 236 and 246), respecting the case of the "Scylla," a vessel which would appear to have been inveigled into American waters and there seized as a prize; and to request that we would take these papers into consideration, and furnish your Lordship with our opinion as to the instructions which should be addressed to Lord Lyons in this case.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we are of opinion that Lord Lyons has taken a most just view of his duty in this matter. That we think his Lordship should be instructed, that Her Majesty's Government have felt much surprise and sorrow that so dishonourable an act of avowed treachery and bad faith on the part of an officer should not have been immediately repudiated by the United States' Government, and that there should have been any delay whatever in the immediate restoration of the vessel which was so disgracefully seized; unless any grounds can be shown for the allegation that the "Scylla" was really not a British vessel.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 311.

The Law Officers of the Crown to Earl Russell.—(Received May 11.)

My Lord, *Lincoln's Inn, May* 10, 1864.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 22nd ultimo, stating that he was directed by your Lordship to transmit to us, with reference to our Report of the 6th instant, relative to the restrictions imposed by the United States' Government on trade between New York and the British Colonies in America, a despatch from Lord Lyons (No. 221) inclosing a copy of a further note from Mr. Seward on this subject; and to request that we would take the same into consideration together with the previous papers, and furnish your Lordship with our opinion whether it would be advisable to address any further instructions to Lord Lyons on this matter, in addition to those contained in the despatch, also inclosed, founded on our above-mentioned Report.

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We are also honoured with Mr. Layard's letters of the 26th ultimo and 5th instant, transmitting a letter, dated the 22nd ultimo, from the Colonial Office, a despatch from Lord Lyons (No. 267), and a letter, dated the 3rd instant, and its inclosure from the Colonial Office, respecting this case.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we are unable to find any answer in the letter of Mr. Seward to Lord Lyons of the 17th March last, to the objections conveyed in your Lordship's despatch founded upon our former Report. It is manifestly no answer to the objections of a neutral and friendly State, that Treaty obligations have been violated by the State which was the other party to the Treaty, to allege that a municipal law of that State has rendered necessary this violation. We retain the opinion which we have had the honour to express in our former Report on this subject. It is to be hoped that Lord Lyons' endeavour to induce the United States' Government to dispense with the exaction of the bonds in question, so far, at all events, as relates to the trade between the United States and the Provinces of New Brunswick and Prince Edward Island, may be successful; and if this should be the case, it may probably not be expedient to prolong, at the present time, the discussion on the general question, as to which the views of Her Majesty's Government have been fully and repeatedly expressed. But if this hope should be disappointed, we think his Lordship should be instructed to apprise Mr. Seward that Her Majesty's Government regret to be obliged to state that his explanations continue to be entirely unsatisfactory, and that Mr. Seward must be aware that no municipal law can justify a departure from the obligations of a Treaty, so far as the other party to that Treaty is concerned.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 312.

The Queen's Advocate to Earl Russell.—(Received May 1.)

My Lord, *Doctors' Commons, May 10, 1864.*

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 2nd of May instant, stating that he was directed by your Lordship to transmit to me a letter dated the 14th December, 1863, from Mr. John Turner, respecting a claim put forward by Mr. James Turner against the Government of the United States on account of certain proceedings on the part of the Custom-house authorities at Boston, in regard to some boxes of artificial flowers shipped by him to that port; also a despatch from Lord Lyons (No. 177) containing the explanation given by the United States' Government of the proceedings complained of by Mr. James Turner: and to request that I would take these papers into consideration, and furnish your Lordship with my opinion as to the course which it would be proper that Her Majesty's Government should pursue in this matter.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I am clearly of opinion that Mr. J. Turner has not made out any case against the Custom-house authorities at Boston, which requires any application by Her Majesty's Government on his behalf to the Government of the United States.

I should have formed this opinion upon the papers submitted to me, but I am fortified in it by a conference which I have had the advantage of having with Mr. Ogilvie (whom the Board of Customs were so obliging as to send to me), as to the old law and practice of the English Custom-house in similar cases. The case of Mr. Turner, shortly stated, is this:—he has imported certain cases of artificial flowers into Boston, and has tended the invoices as proof of the value of these articles upon which the duty was to be paid. The usual appraisers at the Custom-house were of opinion that the real value was understated to the amount of 8 per cent. in the invoices, and that he must pay the duty upon this increased value; he has not done so, and the Custom-house detains the article till he does. An officer called "the General Appraiser" was of opinion that the value was fraudulently understated in the invoices; in which case, according to the law of the United States, they would be liable, I believe, to absolute forfeiture; but the Collector appears to have over-ruled this opinion, and without charging fraud, to have added 8 per cent. to the value.

It is, of course, not a question for Her Majesty's Government whether the law and practice of the United States' Customs be wise or unwise, just or unjust in its practical application, in accordance or not in accordance with the improved law and practice of the Customs in this country. But as Mr. Turner refers to the practice of our Customs as illustrating the wrong which he has suffered, it may be as well to make the following observations:—

The United States persevere in the system of *ad valorem* duties, which we have abandoned. While that system was in force here, the merchant, upon importation, gave to the Customs a document called an "entry," showing the name of the ship, value of cargo, the amount of duty, and other particulars. The duty was received upon this document; it was sent to the Custom-house officer, who opened and examined the goods. If satisfied with the value the superior officer certified approval; if the officers thought the value incorrectly stated, they might detain the goods and pay the merchant the value he had declared upon, with 5 per cent. and repayment of the duty. The goods were then sold for the benefit of the Crown (57th section of 16 and 17 Vict., cap. 107.) But they did not call for, or think themselves bound by the invoice, and were perfectly aware that the invoice prepared for the Custom-house did not, from various causes, always accurately represent the price actually paid for the goods.

The United States' Customs authorities do require the invoice to be presented, but they do not, and never did consider it, as Mr. Turner seems to think they ought, unexaminable or necessarily binding upon them. They submit the goods, as they have done in this case, to the examination of their officers, and are guided by their report. In cases of fraud they confiscate, I believe, the goods. In cases of undervaluing without fraud, they increase the value and detain the goods till the duty on the increased value be paid. This law and practice of the United States' Customs is well known, of course, to all merchants who trade with that country. It is no new law or new practice. It is applied, indiscriminately, I presume, to the merchants of all countries. It may operate to check trade, it may be a bad fiscal measure; but it certainly does not, in my opinion, call for the interference of Her Majesty's Government in this particular case, to which it seems to have been applied without any circumstance of aggravation in the ordinary course of practice.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 313.

The Law Officers of the Crown to Earl Russell.—(Received May 11.)

My Lord, *Lincoln's Inn, May 11, 1864.*

WE are honoured with your Lordship's commands signified in Mr. Murray's letter of the 5th instant, stating that he was directed by your Lordship to transmit to us the papers as marked in the margin,* respecting some goods which had been brought to the Mauritius in the French barque "Sirène," and for the detention of which application was made by the United States' Consul to the Governor of the Colony, on the ground that they had formed part of the cargo of the Confederate prize "Sea Bride;" and Mr. Murray stated that we should observe from the letter from the Colonial Office of the 5th instant, that Mr. Secretary Cardwell is of opinion that as the question of the general instructions to be issued to the Governors of Her Majesty's Colonies was brought under our consideration in Mr. Layard's letter of the 16th ultimo, it is desirable that we should also have before us the papers now sent to us relative to the disposal of the cargoes of prize-vessels brought into a colonial port in British or other neutral vessels; and Mr. Murray was accordingly to request that we would take these papers into consideration, together with those lately before us, and embody in the proposed instructions to the Colonial Governors such directions as we may consider advisable on this particular head.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That, after considering these papers, it does not appear to us to be necessary to make any change in or addition to the draft instructions prepared by us, pursuant to the request conveyed in Mr. Layard's letter of the 16th ultimo.

Questions such as that lately raised at the Mauritius by the United States' Consul with respect to the cargo of the "Sea Bride" must be left, in our opinion, to the Civil

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* Colonial Office, April 14; Queen's Advocate, April 22; to Colonial Office, April 25; Colonial Office, May 5, 1864.

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Tribunals. The Executive Government has no authority to disregard or call in question the *primâ facie* title, evidenced by possession, of a private non-belligerent person, who brings property of this description into a neutral port, whether he be a foreigner or a British subject. And there is no foundation in law for the idea that a valid title cannot be made to property taken in war, by enemy from enemy, without a prior sentence of condemnation.

The absence of such a sentence may be material, when the question is, whether captured goods brought by a belligerent ship of war, exempt from civil jurisdiction, into a neutral port from which prizes are excluded, ought to be regarded by the neutral Government as still having the character of prize; but this is altogether different from a mere question of property in the goods themselves.

We have, &c.
Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 314.

The Law Officers of the Crown to Earl Russell.—(*Received May* 13.)

Lincoln's Inn, May 12, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 25th ultimo, stating that with reference to our Reports of the 5th and 16th of March last, he was directed by your Lordship to transmit to us, together with the previous papers,* a further despatch and its inclosures from Lord Lyons† respecting the case of Mr. James McHugh, a British subject confined as a prisoner in Fort Lafayette; and to request that we would take these papers into our consideration and favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That the British nationality of Mr. McHugh appears now to be clearly established; and, although he is admitted to be interested as a partner in a commercial house in the Confederate States, it seems clear that, as far as residence is concerned, he was never domiciled there. He completely denies the charges of having taken an active or any hostile part against the United States, and of having been the bearer of any political correspondence. The charge against him of carrying photographs of Confederate Generals is frivolous, and we are surprised that any weight should have been attached to it by Mr. Seward. The rest of the accusations on which he is imprisoned, seem to rest on letters written by him while in the United Kingdom, for which he cannot be held responsible to the United States. Under these circumstances, although our original impression, formed on less perfect information, was that his original imprisonment might perhaps be justified, we think that no sufficient ground has been shown to exist for his detention: and that Lord Lyons may properly be instructed to press the case upon the attention of the United States' Government, with a view to Mr. McHugh's release.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 315.

The Law Officers of the Crown to Earl Russell.—(*Received May* 14.)

Lincoln's Inn, May 14, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 10th May instant, stating that he was directed by your Lordship to transmit to us a correspondence with the Treasury, and a letter from the Admiralty,‡ respecting the arrival in the port of Liverpool of the Confederate steamer "Georgia," the vessel which formed the subject of our Reports of the 30th April and 10th August, 1863. Also a note from Mr. Adams dated the 9th instant, making a representation respecting this vessel; and to request that we would take these papers into our consideration and furnish your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we think that it would be proper to ascertain that the ship "Georgia" is continuing, and about to continue in Liverpool for the purposes and only for the purposes sanctioned by Her Majesty's rules, which extends to repairs, but do not allow delay in the execution of such repairs or after their completion. If the rumour should prove to be correct that it is intended permanently to dismantle and sell her at Liverpool, it will be entirely for Her Majesty's Government to determine how far they will suffer her continuance in port for this purpose, which is certainly not within the scope of Her Majesty's rules. We would only suggest that if it should be thought fit to permit her continuance for such a purpose, it would probably be right to require good and substantial security against her future employment for belligerent purposes.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 316.

The Law Officers of the Crown to Earl Russell.—(*Received May* 17.)

Lincoln's Inn, May 16, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 21st April ultimo, stating that with reference to our Report of the 19th February last, upon the Judgment of condemnation pronounced by Judge Betts in the case of the "Springbok," he was directed by your Lordship to transmit to us a paper, accompanied by an English translation, which has been published in the "Mémorial Diplomatique," in which exception is taken to that Judgment.

Mr. Layard was also pleased to state that this paper was sent to us for our perusal, but your Lordship would be glad to be favoured with any observations which we might think it necessary to offer thereupon.

Mr. Layard was also pleased to inclose the printed copy of Judge Betts' Judgment.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That a careful perusal of the article in the "Mémorial Diplomatique" does not induce us to alter the opinion which we have already had the honour to express in our Report on the decision of Judge Betts in the case of the "Springbok."

That article condemns the Judgment upon the law applied to the facts of the case, and upon the inferences drawn from the facts of the case by the learned Judge.

We are of opinion that, upon both these points, the argument of the reviewer is unsound.

The main ground upon which the reviewer impugns the law of the sentence is, that it has laid down "that every transport of a contraband article between neutral ports is illegal, if these articles are destined to be *ulteriorly* forwarded to the enemy of the belligerent making the seizure." But that statement conveys an incorrect impression of the legal proposition which is the foundation of the sentence.

It has not been maintained by Judge Betts in this case that the *bonâ fide* transport of contraband from one neutral port to another is illegal; or that there can be contraband in articles carried *bonâ fide*, as articles of commerce, between one neutral State and another.

The legal propositions of Judge Betts are:—

1. That articles contraband of war, destined for the aid and use of the enemy, and on transportation by sea to the enemy's country, are liable to capture as lawful prize of war, if seized while being so transported.*

2. That if a cargo be despatched from a neutral port, with an intention on the part of the person despatching it, that, in violation of a blockade known to exist, it shall enter a port of the enemy, it may be captured as lawful prize.

3. That contraband articles destined, on their departure from a neutral port, to be delivered to the enemy, either by being carried directly into a port of the enemy in the vessel in which they leave the neutral port, or by being transhipped at another neutral port into another vessel, are the subject of capture.

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* Lord Lyons, Nos. 57, 103, and 111.

† Lord Lyons, No. 234, April 5, 1864.

‡ Treasury, May 2; to Treasury, May 3; Treasury, May 3; Admiralty, May 9, 1864.

* Judgment of Judge Betts in the case of the "Springbok," p. 20.

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4. That if the contraband articles are really intended to be delivered to the enemy at some other place than the neutral port named in the papers of the vessel as the destination of the cargo, and that neutral port is to be used merely as a port of call or of transhipment, and the goods are not to be delivered there for discharge and general consumption or sale there, and if, in that way, the representations contained in the papers of the vessel are false and fraudulent as to the real destination of the goods, they are liable to capture.

5. That, if the owner of a vessel places it under the control of a master who permits it to carry under false papers contraband goods, ostensibly destined for a neutral port, but in reality going to a port of the enemy, he must sustain the consequence of such misconduct on the part of his agent.*

6. That where contraband goods destined for the use of the enemy are found on board of a vessel, all other goods on board of that vessel belonging to the owner of the contraband articles, even those goods which are innocent, must share the fate of the contraband goods.

These are legal propositions which are, in our opinion, well founded upon principles of maritime international law; at all events, they are in accordance with the decisions of our own Prize Courts.

Lord Stowell applied the same rule to vessels sailing with contraband, with a *real* destination to an enemy's port, as to vessels sailing with the intention of breaking a blockade, namely, that both classes of vessels were liable to be taken *in delicto*, while in the actual prosecution of their voyage (the "Imina," 3 Rob., 167; the "Trende Sostré," 6 Rob., 390). And in considering what was the real destination of a cargo, Lord Stowell certainly did hold that the mere transhipment of a cargo at an intermediate port would not break the continuity of a voyage, which could only be effected by an actual importation of the cargo into the common stock of the country where the transhipment took place. He even held that where a cargo was sold at a port, whilst water-borne, and then immediately transhipped, there had been no legal importation at all. Such sale and transhipment were only stages towards the real port of destination: to use his own words, "they lengthen the chain, but do not alter its direction" (the "Thornyris," Edward's Admiralty Reports, page 20).

Lord Stowell also certainly held that a false destination, with contraband on board, subjected both ship and cargo to condemnation (the "Franklin," 3 Rob., 217); and that the penalty of contraband extended to all property of the same owner involved in the same unlawful transaction (the "Neptunas," 6 Rob., 409; the "Sarah Christina," 1 Rob., 242).

As to the facts of this case, and the inference drawn from them by the Judge, that learned person says:—"I am entirely satisfied, from all the evidence in the case, that the cargo of the 'Springbok' was intended to be delivered in the enemy's country, by transhipment, at Nassau, into a vessel in which it should be carried through the blockade, and that such was the intended destination of the cargo on its departure from England. The papers found on board the vessel, so far as they represent Nassau as the ultimate destination of the cargo, were false and simulated." (Judgment of Judge Betts, page 25.)

Now there can be no doubt that a large portion of this cargo, assuming that its real destination was to an enemy's port, was unquestionably contraband; and the evidence invoked, according to the usage of Prize Courts, from the cases of the "Stephen Hart" and the "Gertrude," in which the same claimants for cargo appeared as in the case of the "Springbok" (to which evidence no reference is made in the "Mémorial Diplomatique"), did, in conjunction with other facts, warrant the inferences which the learned Judge drew from all the circumstances of the case, that the real destination of the vessel was concealed by her papers.

These are the principal observations which it has occurred to us to make, in obedience to your Lordship's wishes, upon the criticism of the "Mémorial Diplomatique," upon the Judgment in the case of the "Springbok."

It is proper also to observe, that the authority principally relied on by the writer, namely, M. Hautefeuille, contradicts in his work most of the principles of maritime international law which have been maintained by the Prize Courts of England and America; and that the citations from English authorities are so applied as to misrepresent, in our judgment, the meaning of the passages quoted.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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* Judgment of Judge Betts, p. 25.

No. 317.

The Law Officers of the Crown to Earl Russell.—(*Received May* 21.)

My Lord,
Lincoln's Inn, May 21, 1864.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 4th instant, stating that he was directed to transmit to us a correspondence,* partly in print, and partly in manuscript, respecting the enlistment at Portland and Boston of a number of Irishmen who were induced to proceed to America in consequence of the expectations held out to them by a person named Finney or Pheeney, as stated in the papers lately laid before Parliament, of which a copy was inclosed; and to request that we would take these papers into our consideration, and furnish your Lordship with any observations which we may have to offer upon the proceedings and Report of the Court of Inquiry at Portland, which are given in Lord Lyons' despatch No. 269 of the 19th ultimo.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we entertain no doubt that the enlistment of these Irishmen was the result of a fraudulent scheme, contrived and executed in disregard of the laws and neutral rights of Great Britain.

Having been induced, in evident bad faith, and under false pretences to leave their own country for the purpose of an employment which was not really ready for them on their arrival in the United States, the men enlisted at Portland were designedly plied with drink, and then dealt with in a manner which (although it might be the legal consequence of their disordered condition) made it natural, and almost inevitable, that they should easily yield to the persuasions of the recruiting officers, who were on the look-out for them, and who obtained access to them while in confinement, by the aid of the police authorities.

Notwithstanding the Report made by the Provost Marshal and Board of Enrolment at Portland, we think that the facts are sufficient to warrant Lord Lyons in pressing his application to the United States' Government for the discharge of these men.

As between one Government and another, the testimony of Berwick and Bradley, annexed to the Report, and very properly referred to by Mr. Consul Murray, ought to suffice for this application. The latter proves that some one (name unknown) carried a large quantity of whiskey to the wharf, where the ship lay with the emigrants. It is clear that this man must have been concerned for the recruiting officers, whether they directly sanctioned the particular act or not. The former proves that at the liquor store there were "well-dressed men," who were "liberal with their money," not drinking themselves, but supplying drink to these unfortunate men, and requesting the police to aid them in enlisting the men, and giving them drink.

It seems to us, that upon this evidence, and upon the general circumstances of the case, Lord Lyons might reasonably expect to obtain the release of these men.

The case of the men landed from the "Nova Scotian" at Boston, although not similar in its particular circumstances, ought, in our opinion, to be dealt with on the same principles.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 318.

The Queen's Advocate to Earl Russell.—(*Received May* 21.)

My Lord,
Doctors' Commons, May 21, 1864.

I AM honoured with your Lordship's commands signified in Mr. Murray's letter of the 16th instant, stating that, with reference to my Report of the 8th of February last, he was directed to transmit to me, together with the previous papers,* a further despatch and its inclosures from Lord Lyons,† respecting Mr. Nicol's claim against the United States' Government for losses said to have been sustained by him at the time of the

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* Lord Lyons, Nos. 189 and 269.

† Lord Lyons, No. 277, April 25, 1864.

‡ Lord Lyons, No. 9, January 12, 1864.

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occupation of the town of Kingston by the Federal troops; and to request that I would take the same into consideration, and furnish your Lordship with my opinion thereupon.

In obedience to your Lordship's commands I have taken this case again into consideration, and have the honour to report—

That the further evidence now submitted to me in this case does not, in my opinion, render it necessary that any instructions should be given to Lord Lyons to interfere further officially on behalf of Mr. Nicol. Mr. Nicol must seek the same remedies as are competent to an American subject for the injuries alleged to have been inflicted upon real property in Kingston by soldiers in this time of civil war.

It might, I think, be left entirely to the unfettered discretion of Lord Lyons whether he can or cannot use informally any good offices on behalf of Mr. Nicol with the United States' Government; and if he thinks fit, in furtherance of that object, to submit to Mr. Seward's attention these affidavits. But I am of opinion that Lord Lyons ought not to be instructed to make any further formal application to the United States' Government in this matter.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 319.

The Law Officers of the Crown to Earl Russell.—(Received May 25.)

Lincoln's Inn, May 24, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 2nd instant, stating that he was directed by your Lordship to transmit to us a despatch and its inclosures from Lord Lyons (No. 253), together with a despatch dated the 1st ultimo and its inclosure from Consul Wilkins, respecting a claim put forward by Mr. George T. Jones, a British subject resident at St. Louis, to be compensated on account of his imprisonment by the United States' authorities in that city; and to request that we would take this case into consideration, and report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That a careful perusal of the papers submitted to us in this case leads us to the opinion that Her Majesty's Government are not required by the circumstances to support the claim of Mr. Jones for compensation. St. Louis, we presume, is under martial law, which is exercised equally over the native and the domiciled citizen. Mr. Jones puts in the form of a handbill, and sells in large quantities, an extract from a London newspaper, containing a severe and offensive censure of the United States' Government. For this he is arrested, and, after a short period of detention, released without trial. He is again twice arrested for acts connected with the distribution and circulation of papers deemed by the Provost Marshal to be seditious. Of these two latter arrests, the first was little more than nominal, as he was almost immediately released on his parol; the second was accompanied by an order to close his store, and was followed by his trial before a Military Court. In the result he was acquitted of all the charges against him, except that for which, after his original arrest, he had been released; and, on this point, the finding of the Court Martial against him was (for that reason only) not confirmed.

Looking to all the circumstances of the case, we cannot avoid coming to the conclusion that the losses and inconveniences which his temporary arrest inflicted upon him were in great measure the consequences of his own indiscretion in word and deed.

He is a domiciled inhabitant of the United States engaged in the trade of selling newspapers in a place under martial law, at the period of a furious and bitter civil war.

He cannot reasonably maintain that the country of his birth and native allegiance is bound to demand compensation for him, when his conduct in the management of his trade at this period has led to his arrest and trial, though that trial has ended in his acquittal and release, certainly not to the discredit of the United States' authorities.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 320.

The Law Officers of the Crown to Earl Russell.—(Received May 26.)

Lincoln's Inn, May 24, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Murray's letter of the 16th instant, stating that he was directed by your Lordship to transmit to us the accompanying despatch from the Acting British Consul at New Orleans (No. 6), inclosing a copy of the proceedings in the case of the "Excelsior" recently tried in the District Court of Louisiana, and to request that we would take the same into our consideration, and favour your Lordship with any observations we might have to offer thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we understand this vessel to have been condemned for a breach of blockade, and on the ground of her being enemy's property. That we are not prepared, upon the present evidence, to advise your Lordship that she has been unlawfully condemned.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 321.

The Law Officers of the Crown to Earl Russell.—(Received May 26.)

Lincoln's Inn, May 25, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 4th of May instant, stating that with reference to our Report of the 26th ultimo, he was directed by your Lordship to transmit to us a further despatch from Lord Lyons[*] respecting the British vessels seized in the Rio Grande, together with a despatch from the Acting British Consul at New Orleans,[†] respecting the case of the schooner "Matamoras."

Mr. Layard was also pleased to transmit to us letters which had lately been received from Messrs. Bischoff and Co. and Mr. Horsfall[‡] respecting these cases, and to request that we would take these papers into consideration, together with the previous correspondence which was also inclosed, and favour your Lordship with such observations as we might have to offer thereupon.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That with respect to the "Matamoras," we are apprised of her acquittal by the Prize Court, but not as to the decision (which had probably been delayed for consideration) as to costs and damages. We are still clearly of opinion that these ought to be awarded, for although there is considerable force in the observations of the Judge upon the peculiar position of Matamoras, and the neighbourhood of Matamoras to Brownsville on the opposite bank of the same boundary river, and though the decision of the "Twee Gebroeders" (3 Rob., 162) might be cited in favour of a refusal, it must be remembered that in this case the vessel had been twice visited, and twice released by United States' cruizers; that she was actually discharging her cargo in neutral waters and to a neutral port at the time, and that she was really seized, as appears from the depositions, because the seizor believed that cotton, cards, and boots and shoes were (which they certainly were not) contraband.

With respect to the opinion of Mr. Briggs that it is not competent to a neutral friend, any more than to a belligerent, to insist in a Prize Court that the capture of his vessel was illegal on account of its having been made in neutral waters (and which opinion he founds upon references to two writers), we think he has mistaken the sense of the passages to which he refers. It is clear that these writers are speaking of the enemy's and not of the neutral's position in the Prize Court. "This rule," says Wheaton, one of the writers cited (ed. Lawrence, p. 722, vol. i), "is founded upon the principle that the neutral State alone has been injured by the capture, and that the *hostile claimant* has no right to appear for the purpose of suggesting the invalidity of the capture."

The right of one belligerent to capture the ship of the other belligerent is, so far as he is concerned, unlimited by place; but the right of the belligerent to visit and search

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[*] Lord Lyons, No. 263, April 19, 1863.

[†] Mr. Coppell, No. 7, March 18, 1864.

[‡] Messrs. Bischoff, April 16; to Messrs. Bischoff, April 22; Mr. Horsfall, April 20, 1864.

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the neutral is limited by place; it can only be put in force upon the high seas, or in the waters of one or other of the belligerents. The neutral, therefore, is entitled to claim restitution of his vessel on the ground that the captor had no right to visit, much less capture him, in the particular place of his capture.

With respect to the "Sir William Peel," "Dashing Wave," "Science," and "Volant," as no Judgment has yet been given in any of these cases, we are not in a condition to offer any opinion. But we must not pass by without comment the expressions ascribed to the Judge of the Prize Court by Mr. Briggs in his letter to Mr. Coppell (Inclosure 1 in No. 263 of Lord Lyons), as to the danger incurred by a vessel bound to a neutral port which "is tempted to approach interdicted waters." We do not clearly understand the meaning of these expressions. The only waters which are legally "interdicted" to neutrals are the waters of blockaded ports, an approach to which may or may not, in particular circumstances, lead to the conclusion that the vessel was intending to break the blockade.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 322.

The Law Officers of the Crown to Earl Russell.—(Received May 27.)

My Lord, *Lincoln's Inn, May* 25, 1864.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 6th of May instant, stating that, with reference to our Report of the 27th December, 1862, he was directed by your Lordship to transmit to us, together with the previous papers, the correspondence with respect to the case of the "York," which had passed since that date between the Foreign Office and Lord Lyons,* and with Messrs. Martin and Son, and to request that we would take the same into consideration, and favour your Lordship with our opinion as to the course which, under the present circumstances of the case, it would be proper for Her Majesty's Government to pursue in this matter.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we are compelled to arrive at the conclusion that the United States' authorities are determined to find excuses, which may ultimately enable them to evade the fulfilment of a plain duty, namely, that of making just compensation for the illegal and causeless destruction of this unfortunate ship.

We think that Lord Lyons should be instructed to express, on behalf of Her Majesty's Government, deep regret at the course which the United States' Government have thought proper to pursue in this case. The case is that of the ship of a neutral and friendly State (which all the evidence conspires to prove was bound on a lawful voyage, and which met with a disastrous accident), fired upon and destroyed by the cruizers of a friendly State. This outrage is committed, and afterwards defended, upon the mere suggestions and allegations of supposed circumstances of suspicion, all of which are satisfactorily refuted by positive evidence of a character beyond suspicion.

It might have been reasonably supposed that a friendly State would have hastened to repair this grave and palpable injury, but a directly opposite course has been pursued. First, the papers were mislaid or put aside, and the claim forgotten. Then, when recalled to remembrance, a promise was given that it should be inquired into. Then it is said that the evidence as to the value of the property comes from "disloyal" persons, and cannot be believed; and that if the innocence of the vessel be proved (as it certainly is) *aliunde*, the question of value is still to be disputed, and that an inquiry by a Court or Commission may be necessary. Thus, for a gross outrage, whereby an innocent merchant's property was destroyed in January 1862, not a single practical step has been taken down to May 1864 to redress the wrong.

These are the observations which it occurs to us to make upon the present state of this case.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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* Lord Lyons, No. 262, April 19, 1864.

No. 323.

The Law Officers of the Crown to Earl Russell.—(Received May 27.)

My Lord, *Lincoln's Inn, May* 25, 1864.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 4th May instant, stating that, with reference to our Reports of the 16th of July and 19th of September last, respecting the case of the schooner "Clyde," he was directed by your Lordship to transmit to us, together with the former papers, a despatch from Lord Lyons, inclosing a copy of the judicial proceedings with regard to that vessel, and to request that we would take the same into consideration, and favour your Lordship with such observations as we might have to offer thereupon.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we are unable to form a satisfactory opinion with respect to the merits of this case without a perusal of the Judgment *in extenso*, a copy of which does not accompany these papers; nor have we the opinion of the Counsel for the claimants, as to the ruling of the Court, that there were "probable grounds for the seizure" of both ship and cargo, and as to his consequent refusal of costs to the claimants. We do not understand that costs were given to the captors.

As the vessel was restored to an English owner, and the cargo of cotton partly to him, and partly to a Mexican claimant, the question, which the earlier stage of the case seemed to have raised, as to enemy's goods in a neutral bottom, does not appear to have been discussed. This, however, in the absence of the Judgment itself, can only be a conjecture on our part.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 324.

The Law Officers of the Crown to Earl Russell.—(Received May 28.)

My Lord, *Lincoln's Inn, May* 27, 1864.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 3rd instant, stating that with reference to the Report of the Law Officers of the 2nd of August, 1862, and the Report of the Queen's Advocate of the 20th of December, 1862, relative to the case of the "Lilla," he was directed by your Lordship to transmit to us a despatch from Lord Lyons (No. 255, April 11), inclosing a copy of the Judgment of the Circuit Court of the United States with regard to this vessel; and that we should perceive from a previous despatch from Lord Lyons (No. 143, February 29), which, together with the former correspondence, Mr. Layard was pleased to transmit to us, that the British claimants have abandoned the appeal in this case; but that your Lordship is, nevertheless, desirous of receiving our opinion thereupon: and Mr. Layard was accordingly to request that we would take the inclosed papers into consideration, and furnish your Lordship with such observations as we may have to offer in the matter.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That the peculiar feature of this case, which in the first instance requires attention, is the circumstance that the "Lilla" was a United States' vessel which had been captured by a Confederate cruizer and taken into a Confederate port, and there condemned (as we must presume) by a Prize Court of the Confederate States.

That it is not clear whether a regular sentence of condemnation in a Confederate Prize Court was, or was not, produced at the hearing of this case before the District or First Court of the United States. It is said that the "dates of the pretended condemnation and sale do not appear."

We do not, however, understand that the sentence of either Court proceeded at all upon the supposition that such a sentence, regularly proved, would have been ineffectual to change the title if it had been established that there was a subsequent *bonâ fide* transfer to a neutral purchaser: and we think the case must be considered upon the assumption (of the correctness of which we entertain no doubt, whatever doubts the authorities of the United States may affect to throw upon it), that such a neutral title would have been perfectly valid and unimpeachable.

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The Judgment seems to have proceeded on the ground that there was no real transfer of the property to the British owner, but that the beneficial interest in it still remained in the enemy, whose officer continued on board and navigated the vessel as the actual master, though there was another master appearing as such upon the papers and ready to act in the case of her being overhauled by a Federal cruizer. There was also great doubt whether, if the owner were British at all, the claimant, Mr. Bushby, was that owner, or whether she was not in fact owned by Fraser, Trenholme, and Co., who have a firm at Charleston as well as at Liverpool.

There seems further to have been evidence warranting the conclusion that part of the cargo belonged to a person domiciled in the enemy's counntry, and that other portions had been fraudulently covered under a neutral claim.

There was great reason to believe that the whole cargo was really destined to be delivered in the Confederate States, either by the "Lilla" herself or by transhipment at Nassau into another vessel; but we do not dwell upon this point, because the real ground of condemnation seems to have been that the ship and cargo were (subject to the claim of the original owners of the ship in the United States to restitution on payment of salvage) enemy's property.

Upon the whole, we think that there was adequate ground for the condemnation, and for the refusal of further proof; and we do not advise Her Majesty's Government to instruct Lord Lyons to make any application on behalf of the vessel or cargo to the United States' Government.

The claimants of both appear to have been aided by very efficient Counsel before the Courts.

It is for the executors to act on their advice with respect to the prosecution of the Appeal.

As we understand that Lord Lyons has already expressed the surprise of Her Majesty's Government that any doubt should have been thrown by the Judge upon the validity of a title resting on a regular decree of condemnation in a Confederate Prize Court, we will only observe that (as long as there appears to be any disposition on the part of the Courts or Government of the United States to call such a title in question), it would be well that Lord Lyons should avail himself of every opportunity to state that Her Majesty's Government consider a title so acquired to be as unquestionable as the belligerent right of the United States to maintain and enforce the blockade.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 325.

The Law Officers of the Crown to Earl Russell.—(*Received June* 2.)

My Lord,
Lincoln's Inn, May 31, 1864.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 25th instant, stating that he was directed by your Lordship to transmit to us a despatch from Lord Lyons (No. 304, May 9), inclosing copies of a Bill which has been introduced into the United States' Senate to provide for the adjustment of claims of aliens on account of injury to their persons, or on account of the use, injury, or destruction of their property by civil, military, and naval authorities of the United States; and to request that we would take the provisions of this Bill into our consideration and favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That the Bill does not appear to us to call for any observation from Her Majesty's Government. It seems to be a very proper measure, and the omissions suggested by Lord Lyons to be judicious.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 326.

The Law Officers of the Crown to Earl Russell.—(*Received June* 1.)

My Lord,
Lincoln's Inn, June 1, 1864.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of this day's date, stating that he was directed by your Lordship to transmit to us therewith a letter dated the 28th ultimo from the Board of Admiralty, inclosing a despatch from Vice-Admiral Sir James Hope, reporting certain directions which he has given in regard to the Confederate steamer "Florida," and also a letter of the same date from the Colonial Office on the same subject.

Mr. Hammond was also pleased to state that Mr. Secretary Cardwell would much wish to be enabled to send instructions to the Colonial Governor by the mail which is made up to-day for the West Indies; and that he was accordingly to request that we would take the matter into our immediate consideration, and, if possible in the course of the day, report to your Lordship our opinion as to any communication which should be made by your Lordship either to the Board of Admiralty or to the Colonial Office, in regard to the course adopted by Sir James Hope.

In obedience to your Lordship's commands we have taken this matter into our immediate consideration, and have the honour to report—

That although the propositions of law relied upon by Admiral Hope in his confidential communication to the Commander of the "Florida" are perfectly accurate, and though it would be necessary for Her Majesty's Government to treat as unlawful the destruction of any British vessel by a Confederate cruizer in the circumstances supposed by him (if such a case were to occur), we are nevertheless of opinion that the Admiral has fallen into error, both in requiring any engagement from the Confederate captain on this subject, and also in proposing to cause the exclusion of the "Florida" from British colonial ports if such an engagement is declined. A neutral is not entitled to assume, *a priori*, that a belligerent will act contrary to international law, and still less to require security in the shape of an engagement against such a contingency. The circumstances as to the "Martaban" do not appear to us sufficient to introduce any exception in the present case to the general rule. Again, if there were any conduct of the Confederate captain which might require an exceptional course of action on the part of Her Majesty's Government, we conceive that it would not be within the province of the Admiral on the station, or of any Colonial Governor, to determine in what manner that conduct ought to be resented or met. We therefore think that it would have been a grave error if, in the event of the actual destruction at sea by a Confederate cruizer, of a merchant-ship bearing British colours or papers, the Admiral had (as he seems to have contemplated doing) treated the capturing vessel as an enemy, and taken her with a view to condemnation into a British port. It would be for the British and the Confederate Governments, in such a case, to discuss between them the question, and to decide, first, whether the ship destroyed was, under the actual circumstances, entitled to British protection (false colours and papers being not unfrequently assumed); and secondly, what the nature and amount of the proper reparation ought to be.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 327.

The Law Officers of the Crown to Earl Russell.—(*Received June* 6.)

My Lord,
Lincoln's Inn, June 4, 1864.

WE are honoured with your Lordship's commands signified in Mr. Murray's letter of the 16th May ultimo, stating that with reference to that portion of our Report of the 12th April which relates to the case of the steamer "Pearl," he was directed by your Lordship to transmit to us, together with the previous papers, two further despatches and their inclosures from Mr. Consul Archibald respecting this case (Nos. 30 and 47), and a letter dated the 13th ultimo and its inclosures from Mr. Wigg, the owner of the "Pearl," complaining of the proceedings adopted, and urging Her Majesty's Government to interfere on his behalf; and to request that we would take this case into our consideration,

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and favour your Lordship with any further observations which we might have to offer thereupon, and also with our opinion as to the answer to be made to Mr. Wigg.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That when this case was last before us, the Judge of the District Court of the United States (Mr. Marvin) expressed an opinion that though the state of facts raised a strong presumption against the "Pearl," he would allow the claimant to produce testimony, founded upon his own oath, and that of others connected with the vessel, to rebut that presumption; and we were of opinion that the Judge had acted fairly in so doing.

We presume that this further evidence (though we have no copy of it before us) was produced, for we find that the Judge released the vessel on the condition that the claimants paid the costs incident to the judicial investigation of the case.

Such a sentence has not been uncommon in the English Prize Courts; and indeed the general rule has been to decree to the captors, in cases of restitution of property, their costs and expenses, either where there has been probable cause of capture, or where, from the imperfect evidence adduced by the claimants, further proof has been required.

With respect to the appeal, prosecuted by the Attorney-General of the United States, from the sentence releasing the "Pearl," it was certainly competent to him to take this course, though it is not a very usual one, and though it appears to us to be a harsh proceeding in the circumstances of this case, and we think that Lord Lyons should be instructed to represent to Mr. Seward the hardship which such a proceeding inflicts upon the owner of the "Pearl," and to endeavour to obtain an abandonment of the appeal.

We think that your Lordship might properly apprize Mr. Wigg that such instructions have been given to Lord Lyons, but, nevertheless, that the application has not been made as a demand of strict right, but has been a request made in a friendly spirit to the Government of the United States.

With respect to the sale, or order for sale, of the "Pearl," referred to in Mr. Wigg's letter of the 13th May, we are not informed as to the circumstances which might or might not justify this act, and we therefore reserve our opinion with respect to it.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 328.

The Law Officers of the Crown to Earl Russell.—(Received June 6.)

Lincoln's Inn, June 6, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Murray's letter of the 18th ultimo, stating that with reference to our Report of the 26th April, he was directed by your Lordship to transmit to us the accompanying despatches from Lord Lyons* and their inclosures, respecting the trial by court-martial of Acting Master Danenhower, on the charge of having murdered Mr. James Gray, the chief mate of the "Saxon;" and Mr. Murray was to request that we would take these papers into consideration, and furnish your Lordship with any observations we may have to offer thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That a careful perusal of the papers in this distressing and important case leaves upon our minds the impression that the trial was conducted in a spirit of perfect fairness and impartiality.

It is difficult to form a certain opinion in a case of this nature, without an opportunity of observing the manner and demeanour of the witnesses, as to the finding at which the Court ought to arrive. We must also observe that we have not any portion of the documentary evidence laid before us, but a list of the instruments which were put in forms part of the papers.

One fact of grave importance is clear, from the acknowledgment of the accused himself, namely, that shortly before the firing of the pistol he had himself drawn it from his breast and *cocked* it, not, as he says, at Gray, but at the master, Sheppard.

According to the testimony of the witness for the accused, Belden, he drew it cocked from his coat and pointed it at Gray; but this witness is clearly uncertain in this part of his evidence. The witness Keith (also produced for the accused) deposes to having seen the pistol elevated towards Gray, and that when it went off and Gray fell, the accused said to him (Keith), "It was an accident; I did not know my pistol was cocked;" and that the accused did then utter words to this effect is proved by the evidence for the prosecution.

It seems clear that he did say so, and equally clear that he had cocked the pistol shortly before. The contradiction is not explained by the accused in his statement.

It is certainly possible that in the hurry and excitement of the moment he may have forgotten that he had only just before cocked his pistol; though in the case of a naval officer, this would hardly seem, *a priori*, probable.

The evidence, however, of what passed in conversation after the act had been committed, does, on the whole, tend to show that the impression generally made upon those who were present was that the killing of Gray was unintentional.

The result of the general evidence seems to be that, on the one hand, the United States' officers and men had no reason to suspect, and did not in fact suspect, that any rescue was possible, or was about to be attempted by the crew of the "Saxon," and they contributed (to say the least) to excite ill feeling and opposition on the part of the crew of that vessel by the display of arms, and by other ill-judged and menacing demonstrations, which were, under the circumstances, unnecessary and uncalled for; on the other hand, it is clear that the language and conduct of Captain Sheppard was indiscreet and unjustifiable; and that his resistance, by brandishing cutlasses and pistols and by other demonstrations of force, to the authority of the prize officer in command, together with the conduct of the men from the shore-boat, and of some of the "Saxon's" crew, would have justified measures of repression if any moderation had been used. The result was a state of confusion and excitement, by which Mr. Gray's life (whether he did or did not himself contribute to it, which, upon the evidence, seems uncertain) was unhappily sacrificed.

Upon the whole case, we think that if the finding of the Court should be that the accused was guilty only of manslaughter, there would be, as far as we are at present advised, no ground upon this point for remonstrance on the part of Her Majesty's Government.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 329.

The Queen's Advocate to Earl Russell.—(Received June 6.)

Doctors' Commons, June 6, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 3rd instant, stating that he was directed by your Lordship to transmit to me a letter dated the 31st ultimo from the War Office, requesting that Her Majesty's Minister at Washington may be instructed to take the necessary steps for causing certain legal notices, therein inclosed, to be served on a Major Hoffman, who, it is stated, is now serving in the United States' army; and Mr. Hammond was to request that I would take these papers into consideration, and furnish your Lordship with my opinion as to the course which it would be proper for your Lordship to pursue in this matter.

The previous correspondence referred to in the War Office letter Mr. Hammond was also pleased to inclose.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I am of opinion that your Lordship may properly comply with the request contained in the letter from the War Office, and instruct Her Majesty's Minister at Washington to cause the necessary steps to be taken for serving the legal notices in question on Major Hoffman.

I have, &c.
(Signed) ROBERT PHILLIMORE.

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* Lord Lyons, No. 245, April 8; No. 250, April 11; No. 264, April 19; No. 280, April 25; and No. 296, May 3, 1864.

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No. 330.

The Law Officers of the Crown to Earl Russell.—(*Received June* 7.)

My Lord,

Lincoln's Inn, June 7, 1864.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 25th ultimo, stating that with reference to our Report of the 14th May he was directed by your Lordship to transmit to us the further papers, as stated in the margin,* respecting the Confederate steamer "Georgia;" and to request that we would take the same into our consideration, and favour your Lordship with any observations we might have to offer thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we think that it will not be incumbent on Her Majesty's Government to take any further steps at present with respect to this vessel. It appears to us that the evidence credibly shows that she has been dismantled, and her crew paid off, with a *bonâ fide* view to the abandonment of her warlike character; and that she is now offered *bonâ fide* for sale for the purpose of being converted into a mercantile vessel. At the same time notice should be given to the owner that Her Majesty's Government understand that the belligerent character of the vessel has altogether ceased, and, therefore, that the owner must not consider that she will be permitted to leave Her Majesty's ports in that character.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 331.

The Law Officers of the Crown to Earl Russell.—(*Received June* 9.)

My Lord,

Lincoln's Inn, June 9, 1864.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 8th instant, stating that he was directed by your Lordship to transmit to us a letter from the Admiralty, inclosing the copy of a letter from Vice-Admiral Sir James Hope, with a copy of a revised code of instructions issued by him for the guidance of commanding officers of Her Majesty's ships under his orders, in the present state of affairs between the Northern and Southern States of America. That we should observe that the Board of Admiralty have not thought it right to approve of this code of instructions, but that they have gone carefully over the instructions issued by Admiral Milne, and have made such annotations in the margin, and such omissions and additions, as have been rendered necessary by later events; and that the Admiralty propose to forward to Sir James Hope, by the mail of the 11th instant, the instructions which accompany their letter, if your Lordship should see no objection thereto. And Mr. Hammond was pleased to request that we would take these instructions into consideration, and furnish your Lordship with our opinion thereupon at our earliest convenience, at all events in time to allow of Admiral Hope being instructed in this matter by the mail of Saturday next.

In obedience to your Lordship's commands, we have the honour to report—

That the instructions proposed to be sent out by the Board of Admiralty to Admiral Hope appear to us to be proper and unobjectionable.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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* To Treasury, May 6; to Home Office, May 16; Home Office, May 20; Treasury, May 23; Admiralty, May 23; to Treasury, May 25, 1864.

No. 332.

The Law Officers of the Crown to Earl Russell.—(*Received June* 14.)

My Lord,

Lincoln's Inn, June 13, 1864.

WE are honoured with your Lordship's commands signified in Mr. Murray's letter of the 19th ultimo, stating that with reference to our several Reports respecting the imprisonment of British subjects captured on board blockade-runners, he was directed by your Lordship to transmit to us a despatch from Lord Lyons (No. 290, May 3) inclosing copies of correspondence in which he has been engaged respecting British subjects who have been so imprisoned.

Mr. Murray also transmitted to us a despatch (No. 256, April 11), inclosing a copy of the answer returned by Mr. Seward to the note which was addressed to him by Lord Lyons in conformity with our Report of the 7th March; and was to request that we would take these papers into consideration, and furnish your Lordship with any observations which we may have to offer thereupon.

We are also honoured with Mr. Hammond's letters of the 25th ultimo and the 7th instant, inclosing further despatches and papers on this subject for our consideration.*

In obedience to your Lordship's commands we have considered these papers, and have the honour to report—

That though the justice of the demand of Her Majesty's Government, that persons captured on board vessels seized for violation of blockade shall not be treated as prisoners of war, is not quite explicitly acknowledged by Mr. Seward (in his letter of the 6th April to Lord Lyons), it does appear to be acknowledged in terms: but it also unfortunately appears to be practically disregarded; and the objectionable practice arises, not out of any endeavours to discriminate between persons of doubtful nationality, and those whose British character is undisputed, upon grounds applicable to individual cases, but out of a former general order issued by the United States' Government for the express purpose of altering their former practice, and applied generally to all persons found on board ships captured for violating the blockade.

We are of opinion that Lord Lyons should be instructed with reference to Mr. Seward's letter of the 6th April (in Lord Lyons' No. 256) as to the "Cuba" and "Patrick Hamilton," to apprise Mr. Seward that Her Majesty's Government do not admit the right of the United States' Government to treat any of Her Majesty's subjects taken from vessels belonging to them as enemies, in the mere presumption that, if the circumstances of the case had been investigated, the ship, which was destroyed in order that it might not be seized for a violation of blockade, might have turned out to be the vessel of a belligerent.

With respect to the general subject, and the cases referred to in the several despatches of Lord Lyons now before us, we are of opinion that the practical question between Her Majesty's Government and the Government of the United States is (properly stated by Lord Lyons in his despatch No. 330 to be) whether, "on the plea of investigating the validity of the claims of the crews of captured British vessels to be British subjects," the United States' Government can justify the continuance of a practice by which they "do, in fact, virtually inflict a long imprisonment on them, as a penalty to deter them from again engaging in attempts to violate the blockade." Her Majesty's Government hold this practice to be totally unjustifiable, and irreconcilable with the well-established position of international law, that persons taken on board what are called blockade-runners are not to be treated as prisoners of war, but as the subjects of a neutral State, liable only to the penalty of forfeiting their vessel or goods, if the offence of breaking or attempting to break the blockade, be duly substantiated.

This question ought, we think, be brought to some decisive issue; and it appears to us that Lord Lyons should be instructed to press for its settlement in such a way as effectually to prevent the recurrence of cases like those which have led to the correspondence before us. It might, in our opinion, be properly stated that Her Majesty's Government, holding the proposition of international law on which they rely to be incontrovertible, and observing with satisfaction that it is not in terms controverted by the United States' Government, are entitled to expect, and do expect, that for the future it may be more consistently adhered to in practice, and that British subjects so taken be not imprisoned like criminals in a common gaol; that those who are already so confined be forthwith liberated; and, in fine, that this is a question in which Her Majesty's Government feel the honour and interest of this country, and the rights of all maritime

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* Lord Lyons, No. 302, May 9; No. 329, No. 330, No. 331, No. 332, May 23, 1864.

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neutral nations, to be very nearly concerned, and in which it is neither convenient nor safe to prolong discussion; and that Her Majesty's Government therefore wait anxiously the final and definite answer of the United States' Government upon this matter.

With respect to your Lordship's request that we would consider whether this violation of international law would not justify remonstrance to the Government of the United States on the part of the maritime Powers generally, we have to state that we think it would be most desirable that such a common action should be taken, and a joint representation should, if possible, be made by all the principal maritime States to the United States' Government on this subject; which is, indeed, one of common interest to them all: but we do not advise that the necessary instructions to Lord Lyons should be delayed until the result of an application to other maritime States upon the subject can be ascertained.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 333.

The Law Officers of the Crown to Earl Russell.—(*Received June* 15.)

My Lord, *Lincoln's Inn, June* 14, 1864.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 13th instant, stating that he was directed by your Lordship to transmit to us a letter dated the 11th instant and its inclosures from the Treasury respecting a steamer called the "Dantzig," formerly a Prussian man-of-war, but now the property of Messrs. Dorset and Blyth, of London.

Mr. Hammond was also pleased to state that this vessel is reported by the Assistant Surveyor to the Board of Customs to be lying in the Victoria (London) Dock, and to be fully equipped as a ship of war with the exception of guns, and ammunition, and crew, and that he states his impression that she is intended for some service which the owners are anxious to conceal.

Mr. Hammond was further pleased to state that he was directed by your Lordship to request that we would take the case of this vessel into our consideration, and report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That on the present state of the evidence we can only recommend that the Comptroller at the Victoria Docks should be directed to continue to watch the proceedings of the steamer "Dantzig," and to make instant telegraphic report of any circumstance tending to confirm his present suspicions.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 334.

The Law Officers of the Crown to Earl Russell.—(*Received June* 18.)

My Lord, *Lincoln's Inn, June* 17, 1864.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 26th ultimo, stating that with reference to our Report of the 28th of April he was directed by your Lordship to transmit to us the accompanying letter dated the 23rd ultimo from Mr. Adams, inclosing further depositions respecting the engagement of seamen for service on board the "Rappahannock," and to request that we would take the same into our consideration, and favour your Lordship with our opinion as to any steps which should be taken in the matter.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That we are of opinion that Campbell, the boarding-house keeper, as well as the

persons mentioned in our last Report, is liable to be proceeded against for contravening the provisions of the second section of the Foreign Enlistment Act.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 335.

The Law Officers of the Crown to Earl Russell.—(*Received June* 18.)

My Lord, *Lincoln's Inn, June* 17, 1864.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 1st instant, stating that he was directed by your Lordship to transmit to us a despatch and its inclosure from the Acting British Consul at New Orleans (No. 11, May 6) relative to the case of the schooner "Betsey," a prize to the United States' gunboat "Antona;" and to request that we would take this case into our consideration and report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That this vessel appears to us to have been condemned on very slender evidence. At the same time we do not learn, upon the proceedings, that it was contended on behalf of the claimants that the vessel had not been built in the enemy's country, or that the British ownership was strongly asserted; the defence seems to have been founded upon a different and (we agree with the Judges) untenable point. At all events, no application seems to have been made to produce further proof upon this point, and upon the present state of facts we are not disposed to advise your Lordship to interfere in this matter.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 336.

The Law Officers of the Crown to Earl Russell.—(*Received June* 18.)

My Lord, *Lincoln's Inn, June* 17, 1864.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 1st instant, stating that he was directed by your Lordship to transmit to us a despatch from the Acting British Consul at New Orleans (No. 10, May 3), inclosing a transcript of proceedings in prize, in the case of the United States versus the Spanish barque "Teresita" and her cargo; and Mr. Hammond was to request that we would take these proceedings into consideration, and furnish your Lordship with any observations we may have to offer thereupon.

In obedience to your Lordship's commands we have taken these proceedings into consideration, and have the honour to report—

That the Judgment, so far as it goes, appears to us perfectly just and satisfactory. We do not know whether the sentence was accompanied by a condemnation of the captor in costs, without which complete justice would not, we think, be done. But as the ship is a Spanish, and not an English vessel, this does not seem to be a matter with which Her Majesty's Government is concerned.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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No. 337.

The Law Officers of the Crown to Earl Russell.—(Received June 18.)

My Lord,

Lincoln's Inn, June 18, 1864.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 23rd ultimo, stating that he was directed by your Lordship to transmit to us a despatch and its inclosures from Lord Lyons (No. 300, May 6), respecting the case of Mr. G. A. Mason, a British subject then imprisoned at Fort Warren, near Boston; and containing remarks respecting the treatment of British subjects by the Government of the United States; and to request that we would take the inclosed papers into consideration, and furnish your Lordship with such observations as we may have to offer thereupon.

We are also honoured with Mr. Hammond's letter of the 14th instant, transmitting the accompanying further despatch and its inclosures from Lord Lyons (No. 348) relative to the case of Mr. Mason.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That, with respect to the case of Mr. Mason, there appears good reason to hope, from the tenour of the last letter in this voluminous correspondence, that he may now be at liberty. As to the general subject, those cases of imprisonment of British subjects in the United States of which Mr. Mason's is an example, we think it impossible to read Lord Lyons' despatch of the 6th of May to your Lordship without being struck by the force and perspicuity, and by the perfect justice of his Lordship's observations. There can be no doubt that the great mass of British subjects who have settled and become domiciled in the United States, and who constitute, in the aggregate, no inconsiderable proportion of the population of those States, must submit, together with the citizens of the country in which they live, to those restraints upon personal liberty which have arisen in that country out of the present unhappy state of civil war; and that such persons are are not entitled (whether they have or have not become naturalized, or exercised political franchises) to invoke the power of the British Crown for the purpose of placing them in a position of greater safety and security than that of the general body of the residents in their adopted country.

With respect to the particular case of Mr. Mason, we desire to express our clear opinion, that a British subject, imprisoned at a time when the Habeas Corpus Act is, on account of State necessities, universally suspended, and not without *primâ facie* cause (as Mr. Mason was), and who deliberately refuses to accept his release from prison on the condition that he either leave the country or do not pass beyond a certain boundary in it, does thereby deprive himself of the right to insist upon the active intervention of Her Majesty's Minister on his behalf; and, at all events, has no just title to complain if such intervention has been unsuccessful. By his own confession, Mr. Mason, after voluntarily going to witness the operations of the Confederate army at Gettysburg, took service with them (though, as he says, under some degree of moral duress); and he has conducted himself, while in confinement, with almost insane violence and intemperance, both of demeanour and of language. Under such circumstances (even without taking into account the fact that he was twice released after being arrested, through Lord Lyons' intervention, and nevertheless again conducted himself so as to give the United States' authorities further cause of offence), we feel bound to say that he appears to us to be a person whose misfortunes are mainly due to himself. We have read with attention the ninety-eight letters which form the correspondence before us, and we think it right to express our decided opinion that Lord Lyons has done everything which it was possible to do on Mr. Mason's behalf, and much more than he was, in strictness, bound to do, under all the circumstances of the case.

We have, &c.

(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

P.S.—Our Report had been prepared before the additional papers (inclosed in Mr. Hammond's letter of the 14th instant), containing the intelligence of Mr. Mason's release, had reached us. These papers do not, however, affect in other respects our Report.

R. P.
R. P. C.
R. J. P.

No. 338.

The Law Officers of the Crown to Earl Russell.—(Received June 21.)

My Lord,

Lincoln's Inn, June 20, 1864.

WE are honoured with your Lordship's commands signified in Mr. Murray's letter of the 19th ultimo, stating that he was directed by your Lordship to transmit to us a further despatch and its inclosures from Lord Lyons (No. 285, April 25), from which it will be seen that the United States' Government refuses to discharge from its service Thomas Tulley and the other Irish immigrants enlisted at Portland. Also a despatch and its inclosures from Lord Lyons (No. 289, May 3), respecting the practices by which a considerable number of British subjects have been induced to enlist in the United States' army and navy; and to request that we would take these papers into consideration, and furnish your Lordship with our observations thereupon. That the draft of an instruction to Lord Lyons, which was to be sent to Washington on Saturday (then) next, was also annexed for our information.

We are also honoured with Mr. Hammond's letters of the 25th ultimo and 7th instant, transmitting further despatches and their inclosures respecting this matter, for our consideration (No. 303, May 9, and No. 333, May 23).

In obedience to your Lordship's commands we have the honour to report—

That the perusal of these papers not only confirms our former impression that the practice of seducing and kidnapping Her Majesty's subjects into the United States' army has been carried to an extent requiring decided remonstrance from Her Majesty's Government, but also satisfies us that due attention has not hitherto been paid to the remonstrance so properly made by Lord Lyons, and that the United States' Government cannot be acquitted of tolerating and taking advantage of this unjustifiable system of recruiting their army, notwithstanding the wrong so done to the subjects of a neutral and friendly Power. It seems to us that the Report made (to his great honour) by Major-General Dix places the fact of these outrages having been habitually practised beyond all doubt, and certainly beyond the possibility of contradiction by Mr. Seward, to whom it ought also to furnish an irrefragable proof how little the statements of exculpation by recruiting officers can be relied upon.

This observation naturally brings us to the consideration of the enlistment of the seven men from the "Nova Scotia" emigrant ship. With respect to them we have already expressed our opinion in our former Report on this subject; and we participate in the deep regret and dissatisfaction expressed by Lord Lyons, that notwithstanding his Lordship's urgent and repeated requests, and even after an inquiry had been directed by the United States' Government into the conduct of "a prominent officer" concerned in these malpractices, several of those unfortunate men should have been compelled to serve in the field, where at least two of them have since been wounded, and at least one appears to have lost his life. In what mode the sense of this now irremediable wrong, which Her Majesty's Government must entertain, ought to be manifested, it is not for us to determine. But we cannot abstain from observing that, as the United States' Government has been at all times prompt and loud in its complaints when any violation of the Foreign Enlistment Act of their country was supposed to have taken place, or to be likely to take place, on the part of the other belligerent, it might have been expected, in mere consistency (if not from regard to the just rights of Great Britain), that a very different course would have been taken with respect to these enlistments.

We have, &c.

(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 339.

The Law Officers of the Crown to Earl Russell.—(Received June 21.)

My Lord,

Lincoln's Inn, June 20, 1864.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 1st instant, stating that with reference to his letter of the 12th of March, transmitting to us a despatch from Lord Lyons, inclosing a copy of a Proclamation issued by the President of the United States, putting an end to the blockade of Brownsville in Texas, but placing at the same time certain restrictions on the trade of that port, he was directed by your Lordship to transmit to us, together with the above-mentioned despatch, a further despatch from Lord Lyons (No. 320, May 17), containing the additional information respecting the occupation of Brownsville by the United States' forces which was asked for in our Report of the 6th of April, and to request that we would take these papers into our consideration and favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we think it necessary to repeat to your Lordship our opinion that the belligerent right of blockade cannot be lawfully enforced against neutrals by a belligerent who is in actual possession of the port alleged to be blockaded; and we think that Lord Lyons should be instructed to intimate this opinion distinctly to the Government of the United States. It appears that the alleged blockade of Brownsville is at an end, but that certain commercial restrictions, stated to be required by the exigencies of the Government, are still in force. We are not disposed to deny the competency of the United States' Government to impose these restrictions, and to enforce them within the limits of their own territory, impartially against all persons, but we think that they should be placed upon their right footing, namely, as an act of State necessity, and not as an incident to the right of blockade.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 340.

The Law Officers of the Crown to Earl Russell.—(*Received June* 25.)

My Lord, *Lincoln's Inn, June* 24, 1864.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 7th instant, stating that he was directed by your Lordship to transmit to us a letter dated the 3rd instant from the Colonial Office, inclosing copies of a correspondence between the Governor of Canada and Lord Lyons, with other papers respecting the alleged abduction of a man named Peter Needham from the Canadian soil, and his subsequent trial and condemnation in the United States; and to request that we would take this case into our consideration and report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we are clearly of opinion that his Excellency the Governor of Canada has taken a correct view of this case, namely, that there has been no violation of Her Majesty's territorial rights by the United States' authorities. We are of opinion that the Canadian Mayor of Clifton, and the constable, have behaved with great irregularity and carelessness in this matter; but that whatever rights of action Peter Needham may have against them, or however censurable they may be by Her Majesty's Government, there is no ground for stating that the United States' officers were any parties to the illegal proceedings by which Peter Needham was brought within the territory of the United States. The suggestion contained in the last paragraph of Lord Monck's letter to Lord Lyons (7th May, 1864), seems to us well worthy of the attention of Her Majesty's Government.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 341.

The Law Officers of the Crown to Earl Russell.—(*Received June* 28.)

My Lord, *Lincoln's Inn, June* 27, 1864.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 21st instant, stating that with reference to our Report of the 16th of February, respecting the cases of Mr. Eneas and Mr. Rahming, British subjects imprisoned in Fort Lafayette, he was directed by your Lordship to transmit to us, together with the papers on which we then reported, the correspondence which has passed since that date between your Lordship and Lord Lyons with respect to these cases,* and to request that we would take the papers inclosed into our consideration, and favour your Lordship with any observations that we might have to offer thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That at present the principal grievance relative to the cases of Mr. Eneas and Mr. Rahming appears to us to be the length of time during which they have been imprisoned on suspicion without being brought to trial. We consider the conduct of the United States' Government in this particular to be very objectionable. We do not think, however, that the right to try these persons before a court-martial for alleged military offences against the United States can be denied, without more information than we at present possess as to the manner in which military law is at present in force and administered in the State where these prisoners are confined, and where their alleged offences are said to have been committed. According to Mr. Seward's letter to Lord Lyons of the 9th May (in Lord Lyons' No. 349 of 1864), the military authorities are of opinion that Mr. Eneas, at all events, has been guilty of active participation in Confederate hostilities. It appears (Inclosure 13 in Lord Lyons' No. 349 of 1864) that on the 24th of May an order was given to convene immediately a Military Commission to try both these gentlemen; and, until we are apprized of the result of that trial, we are not in a condition to offer further advice to your Lordship on this subject.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 342.

The Law Officers of the Crown to Earl Russell.—(*Received June* 28.)

My Lord, *Lincoln's Inn, June* 28, 1864.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 23rd instant, stating that with reference to our Report of the 17th instant, relative to the case of the "Betsey," he was directed by your Lordship to transmit to us, together with the papers before referred to us, a despatch from Lord Lyons (No. 363, June 6), inclosing a copy of a despatch addressed to him by the Acting British Consul at New Orleans, calling attention to the Judgment of the United States' Prize Court in this case, and soliciting instructions, if that Judgment is held to be correct, as to any warning which he should give to British subjects with regard to the risk attending the purchase of vessels from citizens of the belligerent States; and Mr. Hammond was to request that we would take these papers into consideration and furnish your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we should not recommend the Acting British Consul at New Orleans to issue such a general warning to British subjects as he proposes. It would tend rather to mislead than to instruct them.

It is not very easy to say from the terms of the Judgment whether the Judge meant to decide the case of the "Betsey" on the broad ground that the property in a merchant ship is incapable of being transferred by an enemy to a neutral in time of war, so as to exclude the right of capture, or on the narrower ground (which would be more accurate) that an enemy not *bonâ fide* divesting himself of all interest cannot protect his ship from capture by a mere formal and ostensible transfer to a neutral. The former doctrine, though not admitted in the Prize Courts of this country, has been maintained by the French Prize Courts; it is not, however, one in which we should be disposed to acquiesce. But if the latter was the real ground of the decision, it is consistent with many decisions in the English and American Prize Courts, to the effect that a belligerent may not temporarily and collusively transfer his vessel to a neutral for the purpose of protecting her from seizure by the other belligerent; and that all transfers of this kind in time of war (especially by a belligerent unable to keep the seas against his adversary) are justly liable to be examined with much jealousy and suspicion, and are not entitled to have faith accorded to them without the production of a regular bill of sale, or other satisfactory evidence of the reality of the transaction. In the present case, it appears to us to be

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* Lord Lyons, Nos. 59 and 60; to Lord Lyons, No. 204; Lord Lyons, No. 83; to Lord Lyons, No. 164; Lord Lyons, No. 349.

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consistent with the facts (so far as they appear) to suppose that the Judge may have intended to proceed upon the latter ground. We have already said that the evidence appears to us very slender; but we must also repeat that neither does it appear that any defence was seriously and effectively taken on the ground that the property of the original owner had been really and *bonâ fide* divested, nor was further proof asked for on this important point. A wholly different and untenable line of defence was adopted.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 343.

The Law Officers of the Crown to Earl Russell.—(*Received June* 28.)

Lincoln's Inn, June 28, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 17th instant, stating that he was directed by your Lordship to transmit to us a despatch and its inclosures from Lord Lyons (No. 360), respecting the case of Mr. Richard Hall, a British subject, accused of having passed the military lines of the United States without permission. Mr. Hammond was pleased to observe that it is in connection with this case that Her Majesty's Consul at Baltimore has been summoned to appear as a witness before a military Court in that city, a matter which formed the subject of his (Mr. Hammond's) letter of the 16th instant; and to request that we would take the inclosed papers into consideration, and furnish your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we are afraid there is no ground for remonstrance as to that part of Mr. Hall's case which relates to his crossing the military line, contrary to express prohibition; whatever can be done by way of amicable interposition will no doubt be effected by Lord Lyons. If, indeed, the charges specified in Colonel Wolley's letter (Inclosure 17 in Lord Lyons' No. 360), of "running the blockade" and "engaging in contraband trade with the South" should be persisted in, and form any part of the grounds of his sentence, and if it should appear that the acts relied upon in proof of these charges were not done within the territory of the United States (as distinguished from neutral territory, or the high seas, or the territory of the Confederate States), there would be occasion for remonstrance on the part of Lord Lyons.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 344.

The Law Officers of the Crown to Earl Russell.—(*Received June* 28.)

Lincoln's Inn, June 28, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 16th instant, stating that he was directed by your Lordship to transmit to us a despatch and its inclosures from Her Majesty's Minister at Washington (No. 359, June 3), relative to a summons addressed by the military authority at Baltimore to Her Majesty's Consul at that place, to appear as a witness on the trial, before a Military Commission, of Mr. Richard Hall, a British subject, and to request that we would take this matter into consideration, and report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That so far as this question depends on general principles of public and international law, we are clearly of opinion that Her Majesty's Consul, in the absence of any special Treaty provision, does not possess the privilege of refusing to attend as a witness when duly summoned by a duly constituted Court. It is another question whether he could be compelled to bring with him papers from the Consular archives, which, as this demand has been abandoned, it is unnecessary to decide.

In the present case, however, it appears to us that, if the form of Mr. Bernal's exequatur from the United States' Government purports to grant him the same rights and privileges as are accorded to the Consuls of the most-favoured nations, and if, by the Consular Convention between the United States and France, the French Consul "cannot be compelled, but must be invited," to appear before the United States' tribunals, Mr. Bernal was well-founded in his protest, and that the course adopted by the Military Court to compel him to give testimony was contrary to the terms of his exequatur. It is probable that the discourteous tone and manner adopted by the military authorities towards the Consul may require, or at least justify, remonstrance from Lord Lyons, but we think this is a matter which may fairly be left to be dealt with according to his discretion by Lord Lyons.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 345.

The Law Officers of the Crown to Earl Russell.—(*Received June* 30.)

Lincoln's Inn, June 29, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 21st June instant, stating that he was directed by your Lordship to transmit to us a letter dated the 16th instant from the Colonial Office, together with a despatch from the Governor of Hong Kong, inclosing a copy of an Ordinance passed by the Legislative Council of that Colony, "to give effect to Her Majesty's Regulations for the observance of neutrality during the existing hostilities between the United States and the States calling themselves the Confederate States of America;" and to request that we would take these papers into consideration, and favour your Lordship with our opinion with regard to the Ordinance in question.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That this Ordinance appears to us, with an exception presently to be mentioned, proper for the object of carrying into effect the regulations of Her Majesty for the observance of neutrality.

We are of opinion, however, that it was not competent to the Governor to extend the effect of this Ordinance beyond three miles from the shore of Hong Kong, especially as there does not appear, in the terms of the first section, to be any such qualification or definition of the offences thereby created as to make it necessary that they should even have their commencement within the limits of the Colony. The 6th and 7th Vict., cap. 80, vests a large jurisdiction, extending to 100 miles, in the hands of the Superintendent of the Trade of British subjects in China, when he is also Governor of Hong Kong; but these offices are now, and have been for some time, separated; and the present Governor is not also the Superintendent of Trade.

We think, therefore, that the Governor should be apprized that the jurisdiction of the Colonial Legislature is confined to the marine league from the shore, and that a new Ordinance should be issued with this limitation.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 346.

The Law Officers of the Crown to Earl Russell.— (*Received June* 30.)

Lincoln's Inn, June 29, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 16th instant, stating that with reference to our Report of the 22nd March respecting the case of the Bahama wrecking-schooner "Dart," he was directed by your

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Lordship to transmit to us, together with the papers already referred to us, the correspondence, as marked in the margin,* which has since taken place on the subject; and Mr. Hammond was to request that we would take these papers into our consideration, and furnish your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we think the facts to which the law is to be applied, may fairly be taken to be these:—

The "Dart," a neutral vessel, is duly summoned by the belligerent on the high seas to lie to, and to submit to lawful visitation and search; the "Dart" refuses to obey the lawful summons, takes refuge in flight, and reaches neutral waters, throwing overboard, in order to secure her flight, portions of her cargo, a great part of which is picked up by the belligerent while floating on the high seas. We think, too, we may discard from our consideration, after reading Captain Baldwin's letter, the charges brought against him of ill-treatment of British salvors who came out for the purpose of securing for themselves portions of the floating cargo.

Upon this state of facts we are of opinion that Her Majesty's Government ought not to interfere in any way on behalf of the owners of the bales of cotton so thrown overboard.

Having regard to the principles of and authorities upon international law, it may be questioned whether the "Dart," by her unlawful disregard of the obligations of the neutral to submit, on the high seas, to the right of visitation and search incident to a belligerent, did not place herself, *pro hâc vice,* in the condition of an enemy, and whether *primâ facie,* the character of enemy's property did not attach to the portions of the cargo picked up by the belligerent; in which case, Captain Baldwin would not have exceeded the limits of his belligerent rights in possessing himself of these portions of the cargo, so thrown overboard on the high seas.

If, however, the owner of the portions of the cargo, so seized, considers himself to be aggrieved, legal redress is open to him; he may apply for a monition in the proper American Court against the seizor, and demand restitution of his property.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 347.

The Law Officers of the Crown to Earl Russell.—(Received July 5.)

My Lord,

Lincoln's Inn, July 5, 1864.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 29th of June ultimo, stating that he was directed by your Lordship to transmit to us a note dated the 25th of that month, which had been addressed to your Lordship by the United States' Minister at this Court, complaining of the course pursued by the owner of the yacht "Deerhound" in aiding the escape of a portion of the crew of the "Alabama," who, it is alleged, had surrendered themselves prisoners of war to the United States' ship "Kearsarge."

Mr. Hammond was also pleased to inclose the draft of the answer which your Lordship returned to Mr. Adams; and to request that we would peruse these papers, and favour your Lordship with our opinion on this matter.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That it might be expedient that we should be apprised of any answer which the owner of the "Deerhound" may make to the statement of the captain of the "Kearsarge" upon the subject of alleged previous concert with Captain Semmes. In the mean time we are of opinion that the reply of your Lordship to Mr. Adams was well founded on the principles of international law; and that Her Majesty's Government have no power to take any steps whatever against the owner of the "Deerhound" for saving the lives of the captain and certain of the crew of the "Alabama."

It is moreover to be observed, that probably Captain Semmes (who if any inquiry were to be made in this matter, would be entitled to be heard), would not admit the accuracy of the statement made by the captain of the "Kearsarge."

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* Colonial Office, February 13; to Lord Lyons, No. 150, March 31; Lord Lyons, No. 281, April 25; Lord Lyons, No. 311, May 13; to Colonial Office, June 1; Colonial Office, June 14, 1864.

It is hardly necessary to add, that the suggestion of Mr. Adams that a deliberate selection of particular American officers was made by the owner of the "Deerhound" out of the men swimming for their lives upon the sea after a naval action, is quite incredible.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 348.

The Law Officers of the Crown to Earl Russell.—(Received July 5.)

My Lord,

Lincoln's Inn, July 5, 1864.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 22nd of June ultimo, stating that he was directed by your Lordship to transmit to us a despatch from Lord Lyons (No. 371, June 6), asking for instructions as to the course which he is to pursue in the case of British subjects captured on board Confederate vessels; and to request that we would take this matter into consideration, and favour your Lordship with our opinion as to the steps which Lord Lyons should take in regard to the several cases specified by him, of British subjects captured on board vessels belonging, or suspected of belonging, to the Confederate States.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That we think it will conduce to clearness of statement, if we express our opinion in the first place as to certain categories of cases as to which (as it appears to us) no doubt or difficulty arises. First, with regard to British subjects captured on board British vessels seized for breach of blockade. Such persons, as we have already had the honour to report, are not liable to imprisonment. Secondly, with respect to British subjects found on board Confederate men-of-war. As to such persons, we are of opinion that Her Majesty's Government ought not officially to interfere on behalf of these persons, or to claim their release as a matter of right; though, of course, Her Majesty's Representative might use on their behalf, according to his discretion, whatever good offices might lie within his power. Thirdly, with regard to British subjects found on board Confederate merchant-vessels being passengers, or persons unconnected with the navigation or management of the vessels, we are of opinion that such persons are not lawfully subject to imprisonment, and are entitled to the protection of Her Majesty's Representative.

We turn from these categories of cases, which appear to us in principle free from doubt or difficulty, to others of a more embarrassed and perplexing character:—

1st. As to persons found on board Confederate merchant-vessels, wholly or partly connected with the Confederate Government itself; and

2ndly. With respect to persons found on board Confederate merchant-vessels of the ordinary character, but who were engaged and acting as part of the crew, or were concerned in the management and navigation of the vessels.

With respect to both these classes, we are of opinion that, in the first instance, and until their nationality is proved, the onus lies upon them to take themselves out of the category to which they presumptively belong, of Confederate subjects: in both cases they have identified themselves, more or less, acccording to the circumstances, with the commercial marine of the belligerent: the difficulty does not arise with respect to them, until they have established their British national character affirmatively, and have shown negatively that they have not become American citizens, or done other acts inconsistent with their claim to British protection. As to such cases, while on the one hand we think that it would be, on the part of the United States' Government, a very severe and very extreme exercise, and indeed abuse, of their belligerent rights to treat such persons as enemy's subjects, and to imprison them after they have established their British character, we cannot, on the other hand, say that Her Majesty's Representative ought to be instructed to place his demand for their release upon the same footing of strict legal right as his demand on behalf of the other classes of British subjects whom we have mentioned. Without troubling your Lordship with a statement in detail of the various difficulties which, in our judgment, beset this question, we are, on the whole, of opinion, that Lord Lyons should be instructed to exert his good offices according to the circumstances of each case on behalf of such persons, and endeavour to obtain their release from imprisonment; but without using expressions which would convey the impression that Her Majesty's Govern-

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ment considered that, as a matter of strict legal right, they could demand their release in the same manner as if they had been unconnected with the navigation and management of the enemy's merchant ships.

We wish it to be understood that we assume, with regard to all these cases, that the persons on board the vessels in question are there with knowledge, and not in ignorance, of the true character of these vessels.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 349.

The Law Officers of the Crown to Earl Russell.—(Received July 12.)

Lincoln's Inn, July 11, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 23rd ultimo stating that with reference to our Report of the 2nd of December last he was directed by your Lordship to transmit to us, together with the previous papers, a further despatch from Her Majesty's Consul at Rio de Janeiro (No. 41, May 20), containing a report of the legal proceedings in the case of the three vessels purchased by Mr. Allen, and which have been detained at that port; and to request that we would take these papers into consideration, and favour your Lordship with our opinion as to the steps which Her Majesty's Government should now take in this matter.

We are also honoured with your Lordship's commands signified in Mr. Hammond's letters of the 4th and 6th instant, transmitting further papers on the above matter.*

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That all the three vessels in question appear now to be free from the risk of capture by any United States' cruizer within Brazilian waters at Rio. There can be no doubt that the pretensions advanced by the United States' Consul and General Webb as to these vessels were wholly untenable in law. The doctrine of the United States' Prize Courts, as well as our own, is that it is competent to a belligerent to purchase *bonâ fide* the ship of a belligerent in a port which is not blockaded, and it is of course idle to contend now that the Confederates are not belligerents. And a judicial sale, such as that in the present case, operates *in rem*, and must necessarily give a good title to a *bonâ fide* neutral purchaser. The difficulty is a practical one, namely, how to avoid a collision with the Federal cruizers, and yet protect the British subject's ship. We have before expressed our opinion that the protection of the British man-of-war cannot be continued after the merchant-vessel is on the high seas; that there the belligerent's right of search cannot be lawfully prevented by convoy; and to that opinion we must, even in this case, adhere. It does not appear from the papers before us that Lord Lyons has addressed any remonstrance to Mr. Seward on the subject of the conduct of the United States' Consul and naval officer as to these vessels. This is the course which we formerly had the honour to recommend, though we thought it might be expedient first to await the termination of the legal proceedings at Rio. And it still seems to us the only course which we ought to recommend.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 350.

The Law Officers of the Crown to Earl Russell.—(Received July 13.)

Lincoln's Inn, July 12, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 22nd ultimo, stating that, with reference to our Report of the 10th of May, he was directed by your Lordship to transmit to us, together with the previous papers, two further despatches from Lord Lyons (Nos. 364 and 365, June 6), respecting restrictions on trade between New York and the British Colonies in America; and Mr. Hammond was to

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* Consul Morgan, No. 43, June 4; Admiralty, July 4, 1864.

request that we would peruse these papers, and favour your Lordship with such observations, if any, as we may have to offer thereupon, and that we would also inform your Lordship whether we see any objection to copies of the despatches which have been addressed to Lord Lyons on this subject being communicated to Mr. Seward for Mr. Chase's use; that these despatches, the numbers and dates of which were marked in the margin,* we should find among the previous papers which accompanied Mr. Hammond's letter.

We are also honoured with Mr. Hammond's further letters of the 27th and 29th ultimo, and of the 5th instant, transmitting to us other despatches and papers relative to this matter for our consideration.†

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we see no objection to copies of the despatches from your Lordship to Mr. Stuart, No. 540, October 6, 1863, and to Lord Lyons, No. 173, April 14, 1864 (as well as those included in the Parliamentary Papers), being communicated to Mr. Seward for the use of Mr. Chase.

It appears that the bonds exacted for Prince Edward's Island have been discontinued (Lieutenant-Governor Dundas to Mr. Cardwell, June 6, 1864).

The extension of this novel system of restrictive bonds to Jamaica is, of course, an additional practical grievance, a consequence of the unjust and untenable principle upon which the system is founded.

The case of Messrs. A. Wolf and Co., as stated in the printed memorandum referred to in Mr. Hammond's letter of the 29th June, seems to us to be one of great (and apparently groundless) oppression, to which the attention of Lord Lyons (if it has not already been redressed) ought to be particularly directed.

The letter of the Collector of Customs at New York (25th May, 1864, Inclosure 4 in Lord Lyons' No. 418), of which the United States' Secretary of the Treasury expresses his approbation, seems to place beyond all doubt the justice of our opinion in former Reports, that this system is resorted to as a means of giving efficacy to a blockade which is *per se* inadequate. "*The reason*" expressly assigned by him "for this exaction" is, that (what he calls) "*an illegal traffic*" in articles of food, &c., is carried on between the principal ports of Nova Scotia, New Brunswick, and the West Indies, "and ports and places under the control of persons in rebellion against the authority of the United States;" and that it is believed that "such illegal trade would be carried on to a large amount," if these bonds were not exacted.

We think it deserves the very serious consideration of Her Majesty's Government whether Lord Lyons should not be instructed to represent to Mr. Seward that such a system, if persisted in contrary to the express Treaty subsisting between the United States' Government and Great Britain, for the now manifest purpose of being a supplement to the belligerent right of blockade, must compel Her Majesty's Government to consider what course it may be in their power, and consistent with their duty, to take, in order to protect British subjects from the injury thus inflicted upon their legitimate trade.

If the blockade of the southern coasts cannot be rendered efficient by the naval power of the United States without recourse to these irregular and unprecedented methods of harassing and intercepting within the United States the ordinary trade of neutral Powers, those Powers may well be justified, on their part, in treating this as a virtual admission that the blockade is not adequately or legally maintained; and in declining, under such circumstances, any longer to recognize its legality. Or, the same course might be adopted by other neutral Powers in their own defence, which is stated (in Mr. Hering's letter to Mr. Levy of the 28th May last) to have been actually taken with success, by Spain, through the Captain-General of Cuba; namely, to give notice that unless these arbitrary restrictions are put an end to, all or some of the ports of the injured nation will be closed to the commerce and ships of the United States.

It is, of course, for Her Majesty's Government only to determine when, if at all, a situation of sufficient gravity may have arisen for the adoption, or the threat, of any such decided measures; but we cannot relinquish the hope that, if the total or virtual exemption of the Havana trade from these fetters has really been obtained (as Mr. Hering appears to state) by the intimation of the Captain-General of Cuba that retaliatory measures might follow from its refusal, the United States' Government will yet see the justice and wisdom of pursuing the same equitable course towards Her Majesty's subjects,

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* To Mr. Stuart, No. 540, October 6, 1863; to Lord Lyons, No. 173, April 14, 1864; Previous Instructions in Parliamentary Papers, see Index.

† Letter from Colonial Office; Case of Messrs. de Wolf; Mr. Hering to Mr. Levy: Lord Lyons, No. 418, June 20, 1864.

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without obliging Her Majesty's Government also to rely on those means of redress which may be within their own power.

Upon the general subject, we desire to add, that the observation of Mr. Chase in his letter to Mr. Seward of the 30th May, 1864, that the same bonds would be exacted "from American citizens trading to any ports, foreign or domestic, from which supplies can be sent to the enemy," is wholly inapplicable to the question between Great Britain and the United States. All citizens of the United States are, of course, by virtue of their allegiance, subject in all parts of the world, whether foreign or domestic, and in all their dealings, of whatever nature, to the legislation of their own country. But the citizens and subjects of Great Britain trading with the United States owe no obedience to the legislation of the United States, except while they happen to be within the limits of the United States' territory. The attempt by legislation in the United States to make the freedom of trade between British subjects and the United States dependent upon conditions applicable, not to their dealings or conduct while within United States' territory, but to their dealings and conduct in their own country, or in other foreign countries and places to which the jurisdiction of the United States does not extend, is (as was pointed out in our former Reports) a departure from Treaty engagements, and an encroachment upon the rightful sovereignty of the Queen of Great Britain.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 351.

The Law Officers of the Crown to Earl Russell.—(Received July 15.)

Lincoln's Inn, July 15, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 24th June, stating that he was directed by your Lordship to transmit to us a despatch from Her Majesty's Consul at San Francisco (No. 13, April 8), reporting the arrest of seven British Canadian subjects, on suspicion of being implicated in a plot to seize one of the vessels of the Panama line of steamers.

Mr. Hammond was also to transmit to us a letter dated the 18th ultimo from the Colonial Office, inclosing a copy of a memorial addressed by the persons in question to the Governor of Vancouver's Island; and to request that we would take these papers into consideration, and favour your Lordship with our opinion with regard to this case.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we are, on the whole, of opinion that it would not be expedient that Her Majesty's Government should interfere officially in this matter.

The suspicion which led to the detention of these seven persons appears to have been *bonâ fide* entertained by the authorities at San Francisco; and one of the parties, Mr. Mc Cullock, seems to have given some slight colour to the suspicion by his careless language. After the affair of the "Chesapeake," and the attempt made upon another ship by the persons whose liability to extradition from this country was lately the subject of question in the Court of Queen's Bench, extraordinary precautions against the seizure of United States' packet-ships, by persons coming on board as passengers, are certainly justifiable. Considerable allowance must also generally be made for the conduct of the police authorities during this civil war, and these men do not appear to have suffered any real hardship.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 352.

The Law Officers of the Crown to Earl Russell.—(Received July 15.)

Lincoln's Inn, July 15, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 28th ultimo, stating that he was directed by your Lordship to transmit to us two despatches from the Acting British Consul at New Orleans (No. 13, May 23, and No. 14, May 25), inclosing copies of the proceedings in the United States' Prize Court in that city, in the cases of the British schooners "Flying Scud," "Cosmopolite," and "Amelia Ann," and to request that we would take these papers into consideration, and favour your Lordship with such observations as we might have to offer thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we are of opinion that the "Cosmopolite" was rightfully restored to the owners. We do not, however, discover from the papers what the circumstances were which warranted the Judge in certifying that there was "reasonable cause of seizure;" the effect of which is to give the costs to the captor.

The "Amelia Ann" and her cargo we are very glad to see have been restored to their owners, with costs and damages.

With respect to the "Flying Scud," the circumstances are not such as to induce us to advise Her Majesty's Government to interfere on behalf of the owners of the vessel or cargo, who have not, it appears, appealed from the sentence of condemnation; but we do not desire to be considered as expressing our assent to all the reasoning of the Judge who passed the sentence.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 353.

The Law Officers of the Crown to Earl Russell.—(Received July 16.)

Lincoln's Inn, July 15, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 27th June ultimo, stating that with reference his letter of the 16th of that month, respecting the summons issued to Her Majesty's Consul at Baltimore, to appear as a witness before a Military Commission in that city, and also to his letter of the following day respecting the case of Mr. Richard Hall, he was directed by your Lordship to transmit to us the accompanying further despatches from Lord Lyons, relative to these two subjects.*

Mr. Hammond was also pleased to inclose the previous correspondence referred to by Lord Lyons, and to request that we would take these papers into consideration, together with those then before us, and favour your Lordship with our opinion thereupon, and also as to the privileges which Her Majesty's Government could properly claim for Her Majesty's Consular Officers in the United States.

We are also honoured with Mr. Hammond's note of the 3rd instant, stating that he was directed by your Lordship to transmit to us two further despatches from Lord Lyons (Nos. 395 and 396, June 17), and to request that we would take the same into consideration, together with the papers inclosed in his letter of the 27th ultimo, on the subject of the privileges to which Her Majesty's Consuls in the United States are entitled.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That under the existing form of exequatur issued by the President of the United States to Her Majesty's Consuls, they are clearly entitled to whatever personal privileges the most favoured nation enjoys, whether those privileges be or be not the result of specific Convention.

It is, however, impossible to deny that it is competent to the United States' authorities to alter this form of exequatur, and to determine that the privileges accorded to the foreign Consul in the United States shall be identical with those conceded to the United States' Consul in the foreign State; and although it might have been more courteous, and perhaps more judicious, on the part of Mr. Seward to have attended to the suggestions of Lord Lyons, we cannot say that the passing of the recent Act as to Consuls was any breach of international comity towards Great Britain. It is manifest, as laid down in your Lordship's despatch of the 4th August, 1859, to Lord Lyons, that it would be inexpedient, and practically impossible, to ask or obtain from Parliament, in favour of foreign Consuls in this country, such privileges as subsist by Convention between France

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* Lord Lyons, Nos. 386, 387, 388, and 389, June 14, 1865.

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and the United States. It is therefore impracticable that all foreign Consuls should be placed in the United States (as they are, in the absence of any concession of special privileges to any of them, in England), upon the same footing in respect of jurisdiction.

There seems to be no reason, however, why they should not, by mutual agreement, enjoy similar privileges as to their personal and individual status; or why (since the obstacle mentioned in your Lordship's above-mentioned despatch is now removed by the formal abolition of slavery in the United States, and the repeal of the Slave Extradition Act), arrangements should not be made under 15 Vict., cap. 26 (the Foreign Deserters Act), with the authorities of the United States, for the mutual surrender of deserters from the merchant service; and we think that such arrangements, if they can be made, would be very expedient.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 354.

The Law Officers of the Crown to Earl Russell.—(Received July 19.)

My Lord, *Lincoln's Inn, July* 19, 1864.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 7th of July instant, stating that with reference to our Report of the 14th of March, he was directed by your Lordship to transmit to us a despatch from Lord Lyons (No. 415, June 20, 1864), inclosing a Report from Mr. Consul Kortright respecting the proceedings of the Philadelphia Prize Court; and to request that we would peruse these papers, and favour your Lordship with such observations, if any, as we might have to offer thereupon. Mr. Kortright's previous despatch was therewith inclosed (No. 8, January 20, 1864).

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That it does not occur to us that the present papers call for any observations from us in addition to those which we made upon the subject in our former Report.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 355.

The Law Officers of the Crown to Earl Russell.—(Received July 22.)

My Lord, *Lincoln's Inn, July* 20, 1864.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 29th ultimo, stating that with reference to our Report of the 12th April he was directed by your Lordship to transmit to us a further despatch from Lord Lyons (No. 380, June 14, 1864), respecting the case of the "Pearl;" and to request that we would peruse the same, and furnish your Lordship with such observations as we may have to offer thereupon.

The previous papers relative to this case were also inclosed to us.

In obedience to your Lordship's commands we have considered the further papers in this matter, and have the honour to report—

That the "Pearl" having been released on the terms of paying costs by the Prize Court of First Instance, the United States' District Attorney appears to have entered an appeal from this sentence, to which the owner of the "Pearl" has (as it is technically termed) partially "adhered," appealing from that part of the sentence which awarded costs to the captor.

The result of this appeal, on both sides, remains to be seen; in the meanwhile we see no reason whatever for any official interference on the part of Her Majesty's Government on behalf of the "Pearl."

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 356.

The Law Officers of the Crown to Earl Russell.—(Received July 22.)

My Lord, *Lincoln's Inn, July* 20, 1864.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 7th of July instant, stating that he was directed by your Lordship to transmit to us a despatch and its inclosures from Lord Lyons (No. 419, June 20, 1864), respecting an order issued by the Military Authorities at Memphis, in Tennessee, prohibiting foreigners who are not enrolled in the militia of that place from carrying on business there; and to request that we would take this matter into consideration, and favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That this appears to be one of those inhospitable measures to which military rule during a civil war has recourse, and to which it appears that the Civil Government of the United States intends to offer no resistance.

It is of course at variance with all the usages of civilized nations in time of peace, as well as with the spirit, if not the letter, of the Treaty obligations subsisting between this country and the United States. At the same time, if Memphis is really to be considered as a "beleaguered city," as Mr. Seward characterizes it, it is not difficult to understand that the presence within its walls of a considerable body of men exempt from the military duties pressing severely upon others, and suspected (as it would seem) of trade and intercourse with the enemy, may be irritating both to the native subjects and to the military authorities under whose government the city is placed.

We think, under these circumstances, that if Her Majesty's subjects who are domiciled or resident in this city have a fair option of leaving it, or of remaining in it without the privilege of carrying on trade or commerce, and if the military authorities really consider it necessary for military reasons that such an election should be made, Her Majesty's Government cannot insist upon their being relieved from it, however serious the hardship may be. Her Majesty's Government cannot undertake to secure to British subjects who voluntarily reside in a foreign city in the time of civil war, the same rights which are incident to their natural status in time of peace in their own country. Such a demand is unreasonable in theory and impossible in practice. The state of affairs in America points out the necessary differences, so far as the duties of Governments are concerned, between the foreign but domiciled or settled residents, and the foreigner who is merely a traveller or a sojourner. His Government is bound effectually to protect and aid the latter; he relies exclusively in any difficulty upon that aid and protection. The former has, to a great extent (not indeed in a political or strict legal sense, but practically), become a citizen of the State in which he has been residing, perhaps without any definite intention of quitting it.

We therefore advise your Lordship that Lord Lyons should be instructed to continue his good offices according to his discretion on behalf of British subjects resident at Memphis: but, at the same time, should apprize them that, if they wish to put themselves effectually under British protection they must discontinue their residence in that place which is governed by martial law during the present troubles of the United States; the operation of which law a foreign State like Great Britain cannot interfere with.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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No. 357.

The Law Officers of the Crown to Earl Russell.—(Received July 22.)

My Lord, *Lincoln's Inn, July* 20, 1864.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 23rd ultimo, stating that with reference to the Queen's Advocate's Report of the 8th of May, 1863, respecting the imprisonment of Dr. Booth at New Orleans, he was directed by your Lordship to transmit to us, together with the previous papers, a further despatch from Lord Lyons (No. 366, June 6) with its inclosures, respecting a claim for compensation now put forward by Dr. Booth; and to request that we would take these papers into consideration, and favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That the demand of Dr. Booth for compensation divides itself into two heads:—1. Compensation for imprisonment; 2. Compensation for injuries inflicted on his landed property, &c., by soldiers of the United States.

With regard to the first head, we must observe that after a careful perusal of all these papers, we see no reason to conclude that the United States' authorities originally acted with any malicious intention towards Dr. Booth. The suspicions which they entertained appear to have been indeed unfounded, but such is often the case during the time of civil war. It appears to be an uncontroverted fact, that very soon after the imprisonment had taken place, application was made to the United States' General, who ordered Dr. Booth to be immediately released, on giving his parole "not to do anything inimical to the United States." This appears to us (all the circumstances and the state of the country considered) not to have been an unreasonable condition. Indeed, we adopt entirely, upon this point, the language of Lord Lyons in his despatch to your Lordship (April 13, 1863, No. 306):—"When it is considered that New Orleans is occupied as a captured city, that it is under martial law, that the mass of the population are notoriously disaffected to the United States, and that the military force which held it when Dr. Booth was arrested was but small, I do not think it was altogether unreasonable to ask Dr. Booth, who, although a British subject, had been established there for more than twelve years, to give a parole that he would not commit any act of hostility to the United States." Dr. Booth refused to give such parole, and preferred to remain in prison; the consequence was, that General Banks referred the matter to a Military Commission. The sittings of that Commission, owing to the pressure of war and the demand for military officers, were delayed from time to time, and Dr. Booth's imprisonment continued for nearly a twelvemonth. In the meantime, Lord Lyons communicated with Her Majesty's Government, who, under the advice of the Queen's Advocate, agreed in opinion with Lord Lyons that the parole might be given. This opinion was communicated to Dr. Booth, who did not even then give his parole; but at length, through the efforts of Lord Lyons on his behalf, he was unconditionally released.

We pass by the violent and unreasonable language of Dr. Booth and his brother, though they did not lessen the difficulties of the case; but looking as dispassionately as we are able at all the circumstances, we do not advise Her Majesty's Government to claim pecuniary compensation for Dr. Booth from the United States' Government on account of his imprisonment.

As to the second head, we are of opinion that Her Majesty's Government ought not to demand compensation for injuries alleged to have been inflicted by the soldiers of the United States upon the landed property of Dr. Booth. That gentleman must seek redress in the same manner, and by the same means, as any other landed proprietor in the country in which he had established himself.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 358.

The Law Officers of the Crown to Earl Russell.—(Received July 22.)

My Lord, *Lincoln's Inn, July* 21, 1864.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 15th July instant, stating that with reference to the concluding paragraph

of our Report of the 21st of April respecting the case of the "Saxon," in which we stated that we thought that the owners of the coals taken from Angra Pequena should be prepared with proof that they belonged to them at the time when they were taken, he was directed by your Lordship to transmit to us a correspondence with Messrs. Sinclair, Hamilton, and Co., and the despatches to and from Lord Lyons, as stated in the margin,* from it will be seen that the United States' Government held that the bill of lading furnished by Messrs. Sinclair, Hamilton, and Co., does not sufficiently show that at the time the coals were taken they were, in point of fact, the property of Messrs. Anderson and Co., and that that Government consider it material to have information as to the purpose for which the coals were sent to Angra Pequena, before admitting the claim of Messrs. Anderson and Co. to be paid for them; and Mr. Hammond was to request that we would take this matter into consideration and report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That with respect to the proof of the ownership, the bill of lading would appear to us sufficient in the circumstances, and for the purpose for which it is wanted. We should advise, however, Messrs. Coggill to produce any other proof which may be within their power, and (if no other proof is possible) we think an affidavit or statutory declaration by the claimants, that at the time of the seizure all the coals mentioned in the bill of lading continued to be their own absolute property, and that no part thereof had been sold or disposed of to any other person, might be made and ought to preclude any further question on that subject. With respect to the destination of the coals, we desire to repeat deliberately our former opinion, namely, that the coals might just as lawfully be sent to Angra Pequena for the purpose of supplying the wants of a Confederate as of a United States' ship of war; and that for an United States' ship of war to take without payment British property on a neutral shore, merely because it was intended to be sold by its owners to a ship of war of the other belligerent, would be an act of simple trespass, utterly without justification from the law of nations. We think that Lord Lyons should press this point of maritime international law strongly upon the United States' Government, and we do not believe that any American jurist would or could be found to maintain, either upon principle or authority, a contrary opinion.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 359.

The Law Officers of the Crown to Earl Russell.—(Received July 22.)

My Lord, *Lincoln's Inn, July* 21, 1864.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 11th of July instant, stating that with reference to his letter of the 28th ultimo, he was directed by your Lordship to transmit to us, for our consideration, the accompanying further despatches from Lord Lyons† respecting the case of the "Greyhound."

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we learn with great satisfaction the success of Lord Lyons' application to the United States' Government, and the consequent release of the officers and crew of the "Greyhound." Two of the three passengers, who have been detained on the ground of their being American subjects, appear to have been rightly considered as such in the opinion of Lord Lyons, and probably the third passenger will also be found to belong to the same category.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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* To Messrs. Hamilton and Co., April 23; to Lord Lyons, No. 195, April 23; Messrs. Hamilton and Co., May 5; to Lord Lyons, No. 210, May 6; Lord Lyons, No. 437, June 21; No. 445, June 28, 1864.

† Lord Lyons, No. 438, June 24; No. 450, June 28, 1864.

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No. 360.

The Law Officers of the Crown to Earl Russell.—(*Received July* 22.)

Lincoln's Inn, July 21, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 29th ultimo, stating that he was directed to transmit to us a despatch and its inclosures from Lord Lyons (No. 384, June 14) respecting the case of Clarke King, a British subject who has been enlisted into the naval service of the United States; and to request that we would take these papers into consideration, and furnish your Lordship with such observations as we may have to offer thereupon.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That we are of opinion that Mr. Consul Archibald was warranted in concluding that this person was induced to enlist in the service of the United States' navy when so much under the influence of drink as not to be a voluntary agent. Many circumstances point to this conclusion; among them, the very striking fact that the man was earning larger wages at home with his wife than he was to receive when enlisted as a sailor for service on board a man-of-war in time of war. The evidence of his landlady and his wife as to his state of intoxication on his return home, and that of Captain Laird as to his condition at an earlier period of the day, appear to be altogether credible. We agree, too, in the justice of the Consul's remarks on the intervention of the representative of the shipping agent's firm, called "a security." And it is to be remembered that the unquestionable authority of General Dix proves the reality and the frequency of this detestable practice of fraudulent enlistment. On the other hand, it can hardly be matter of surprise that the Government of the United States should, in such a case as this, be more disposed to give credit to the sworn statements of the surgeon (Mr. Abernethy) and Lieutenant Murphy than to the averments of King himself. The surgeon's evidence, however, would have been much more satisfactory if it had not been given in the form of a dry certificate; and we do not find that Lieutenant Murphy's important statement (see his certificate of 24th May, 1864), that King "was examined in practical seamanship *by Acting Master Mackintosh*," is clearly borne out by Mr. Mackintosh's own statement of the 1st March; where (professing to state all that he knew about the matter) he spoke of himself only as attesting King's signature, and of the examination in seamanship as *passed before* Lieutenant Murphy: not saying that he (Acting Master Mackintosh) had himself conducted that examination.

We think, upon the whole, that Lord Lyons should express the regret of Her Majesty's Government at the conclusion which the United States' authorities adopted in this case, and should request that it may, if possible, still be reconsidered, and the man restored to his home. We do not, however, recommend that any further proceedings should be taken, if these should prove unsuccessful.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. CORRIER.
ROBERT PHILLIMORE.

No. 361.

The Law Officers of the Crown to Earl Russell.—(*Received July* 26.)

Lincoln's Inn, July 26, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 20th instant, stating that with reference to our Report of the 5th instant, relative to Mr. Adams' representation respecting the conduct of Mr. Lancaster on the occasion of the sinking of the "Alabama,"* he was directed by your Lordship to transmit a letter dated the 16th instant which has been received from Mr. Clarke, of which a copy has already been forwarded to Mr. Adams, and a letter from Mr. Lancaster, a copy of which your Lordship proposes to send Mr. Adams, in a note of which the draft was therewith transmitted to us; and to request that we would take this proposed note into our consideration, and favour your Lordship with our opinion whether it is right and proper to be sent.

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* Letter from Mr. Lancaster to the "Daily News," forwarded by Mr. Clarke, July 4, 1864.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That we are of opinion that the proposed letter is fit and proper to be sent.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 362.

The Law Officers of the Crown to Earl Russell.—(*Received July* 27.)

Lincoln's Inn, July 26, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 14th instant, stating that with reference to our Report of the 12th January, and to our subsequent Reports respecting the vessels seized by United States' cruizers in the Rio Grande, he was directed by your Lordship to transmit to us the accompanying despatches, as stated in the margin,* from which it will be seen that while certain of these vessels have been released, the brig "Volant," belonging to Messrs. Marsh, Gallichan, and Co., of Jersey, has been condemned. Mr. Hammond was also pleased to inclose a letter dated the 11th instant from Messrs. Marsh, Gallichan, and Co., complaining of the sentence pronounced against their vessel, and urging Her Majesty's Government to interfere on their behalf; and Mr. Hammond was to request that we would take these papers into consideration, and furnish your Lordship with our opinion as to the course which should be pursued by Her Majesty's Government with regard to the "Volant."

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we learn with satisfaction that the other vessels seized at the same time as the "Volant" have been released, though it does not yet appear whether costs and damages (to which we think them clearly entitled) have been awarded to them or not.

With respect to the "Volant," we cannot collect from the papers that there was any sufficient legal justification for the condemnation of that vessel. If we were left merely to speculate upon the reasons for the sentence (unfortunately the reasoned Judgment is not among the papers sent to us), we should rather suppose that it might have proceeded on the ground that part of the cargo was proved to have consisted of military clothing, and that from the position in which the ship lay that clothing may have been intended for importation direct into the Confederate States, although ostensibly consigned to merchants in the neutral port of Matamoros. But there seems to us to be no sufficient evidence to warrant such a conclusion; and we collect that the only ground really assigned by the Judge for the sentence was, that the "vessel was anchored in interdicted or American waters." We are wholly at a loss to understand the meaning of the term "interdicted," as applied to any anchorage whatever where there was no blockade. The American Advocate appears to feel the same difficulty.

We think that although an appeal is open to the owners of the "Volant" (and they ought not to omit to place themselves in a situation to prosecute it with effect), Lord Lyons should be instructed to express the surprise of Her Majesty's Government at the declared ground of this sentence, and their confident expectation that unless it can be shown either that Her Majesty's Government have been misinformed as to the reasons for the sentence, or that such a ground is warranted by the principles and precedents of maritime international law, the United States' Government will at once interpose to prevent the execution of a sentence which on the face of it is so unjust. While this course is taken, we think the owners should at the same time be informed that if the Government of the United States should insist (as they very probably may) that the case must be carried by the owners before the Court of Appeal in the ordinary way, Her Majesty's Government may feel themselves obliged to acquiesce, at least for the present, in such an answer; and that it may reasonably be hoped that the decision of a Court of

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* Lord Lyons, No. 410, June 20; No. 449, June 28; Mr. Coppell, No. 15, June 16, 1864.

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Appeal would be more consonant with law and justice than the present sentence now appears to be.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P COLLIER.
ROBERT PHILLIMORE.

No. 363.

The Law Officers of the Crown to Earl Russell.—(Received July 27.)

Lincoln's Inn, July 26, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 18th ultimo, stating that he was directed by your Lordship to transmit to us a despatch from Lord Lyons (No. 352, May 31), inclosing a copy of a Bill "To increase Duties on Imports, and for other Purposes," introduced into the United States' House of Representatives; also a letter dated the 16th ultimo from Messrs. de Wolff and Co., of Liverpool, calling the attention of Her Majesty's Government to the discriminating duty proposed to be levied under the 17th section of the Bill on goods imported into the United States in foreign vessels; and Mr. Hammond was to request that we would take the inclosed papers into consideration, and furnish your Lordship with our opinion with regard to the bearing of the Bill in question on the Treaties existing between this country and the United States.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That the effect of this proposed Act of Congress, if passed, will, in our opinion, be to impose a differential duty of 10 per cent. *ad valorem*, in addition to the other duties imposed by law upon all goods imported in British vessels into the United States, except so far as it may be capable of being shown that by Treaty, or under some prior Act of Congress, the goods imported in such vessels are entitled to be entered in the ports of the United States on payment of the same duties as are payable on goods imported in ships of the United States. But, as to any goods imported in British vessels, which can be shown to be placed by Treaty or by any prior Act of Congress on the same footing, as to duties, with goods imported in United States' vessels, no differential duty will be imposed.

The only *Treaty* between Great Britain and the United States affecting this question is (we believe) that of the 3rd of July, 1815,* which (as we understand) has been from time to time continued, and is still in force. By this Treaty all articles "the growth, produce, or manufacture of any British territory in Europe," are entitled to be imported into the United States in British ships on payment of the same duties as if they were imported in ships of the United States. To this limited class of articles, therefore, when imported into the United States in British ships, the proposed differential duty will clearly not be applicable.

The only *Acts of Congress* by which any privileges against the differential duties appear to be secured to goods imported in the United States in British vessels are the Act of 29th May, 1830† (brought into operation by the subsequent Proclamation of the President, dated 5th October, 1830‡), and the Act of 7th January, 1824,§ under which the notification published by the Treasury Department of the United States on the 15th October, 1849,‖ may, perhaps, be deemed to have been issued.

The Act of Congress of 29th May, 1830, opened the ports of the United States (on certain conditions of reciprocity, which were duly fulfilled) to all British vessels coming into those ports from the Colonial possessions of Great Britain *in the West Indies, the Bahamas, the Caicos, and the Bermudas, and on the Continent of South America*, on terms of perfect equality as to duty with vessels of the United States, without reference to the place or origin of any of their cargoes. So far, therefore, as relates to any goods whatever imported by British vessels coming from any of these Colonial possessions of Great Britain into ports of the United States, the proposed new differential duty will also not be applicable.

The Act of Congress of the 7th January, 1824, authorized the President, by Proclamation, to declare that "the foreign discriminating duties of tonnage and import within the United States" should be "suspended and discontinued" in favour of "*the vessels of any foreign nation and the merchandize of its produce or manufacture imported into the United States in the same*, on proof, to the satisfaction of the President by the Government of such nation, that no discriminating duties of tonnage or import were imposed or levied within the ports of the said nation upon vessels wholly belonging to citizens of the United States or upon merchandize the produce or manufacture thereof imported in the same." We are unable to discover any other Law of the United States than this to which the notification issued by the Treasury Department of the United States upon the repeal of the British Navigation Laws in 1849, can be referred. This notification, which is dated the 15th October, 1849, purports to be made by virtue of "the existing laws" of the United States; and although not in the ordinary form of a Proclamation, we are disposed to think that, as it must have been issued by the authority of the President, it may be regarded as intended to have the effect of a Proclamation by the President, under the Act of 7th of January, 1824. Its effect (if referable to and warranted by that Act of Congress) is to admit all British vessels whatsoever coming either from British or from foreign ports, into the ports of the United States, with cargoes of the growth, manufacture, or production of any part of the world, upon the same terms as to duties, imposts, and charges, as vessels of the United States and their cargoes. Whether so large a concession was within the strict terms of the Act of the 7th January, 1824, which authorized (as has been seen) the discontinuance of discriminating duties "as respects *the vessels*" (of any foreign nation complying with its terms) "*and the merchandize of its produce or manufacture imported into the United States in the same*," seems to us questionable. If not, we could not deny that a privilege voluntarily given to British shipping by this notification would be liable to be recalled and annulled by any subsequent legislation of the United States, nor could we affirm that it would be saved by the proviso at the end of the 17th section of the now proposed Act of Congress. Upon the whole, we incline to think that if the Government of the United States should insist that this notification did not rest on the authority of any Treaty, and was not warranted by any Act of Congress (the consequence of which would be, that it would cease to be in force after the passing of the proposed new Act), Her Majesty's Government could not oppose any decisive argument to such a contention, unless there be some other Treaty or Act of Congress bearing upon that question of which we are not at present aware. Inasmuch, however, as the notification is itself evidence that a more extensive and liberal construction has been hitherto placed by the Government of the United States either upon the Act of Congress of the 7th of January, 1824, or upon some other Law of the United States (which can only be an Act of Congress), we think it may be proper, and will be expedient, for Her Majesty's Government to assume, until controversy arises upon the subject, that this construction will still be adhered to, in which case all British shipping will still be wholly exempt, as to all goods whatsoever imported in such shipping into any ports of the United States, from the new differential duty proposed to be imposed by the 17th section of the proposed Act.

There remains one topic more to which it seems to be our duty to direct the attention of Her Majesty's Government. By the IIIrd Article of the last Convention of Commerce between Great Britain and the United States, signed at Washington on the 5th June, 1854, the United States are bound to admit certain articles, the produce of the British North American Colonies therein mentioned, into the United States *free of duty*. Among these articles are several (*e.g.*, cotton wool, hides, metallic ores, coals, &c.) on which duties are proposed to be levied by the new Act of Congress. The proviso in the 17th section excepts, *from differential duties only*, goods imported by the shipping of countries entitled to such exemption by virtue of any Treaty or prior Act of Congress. It does not exempt from *all duty* any importations whatever from the British North American Colonies, or from any other quarter, of any kind of article which by the other sections is made subject to duty; and, according to the letter of the Act (if it should pass in its present form), the importations from the British North American Colonies of certain articles made duty free by the Convention of 1854 will, we think, be rendered liable to duty, notwithstanding that Convention. We feel assured that this cannot have been the intention of the Government of the United States; and we do not imagine that any duties on such importations will actually be levied. It may, however, be proper and expedient that the attention of the United States' Government should be invited by Lord Lyons to the defective wording, in this respect, of the proposed Act.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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* Hertslet, vol. ii, p. 387.
† Ibid., vol. iv, p. 512.
‡ Ibid., vol. iv, p. 514.
§ Ibid., vol. iv, p. 498.
‖ Ibid., vol. viii, p. 968.

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No. 364.

The Law Officers of the Crown to Earl Russell.—(*Received July* 27.)

Lincoln's Inn, July 26, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 12th of July instant, stating that he was directed by your Lordship to transmit to us a letter dated the 4th July from the Colonial Office, inclosing copies of papers received from the Governor of the Hudson's Bay Company, in which, among other matters, a question is raised relative to the propriety of applying the Extradition Treaty between this country and the United States to offenders within the Company's territory; and Mr. Cardwell observed that although the Red River Settlement is not subject to the authority of the Crown, as ordinarily exercised through the Secretary of State, he would readily communicate to the Government of the Hudson's Bay Company such instructions as it might be thought desirable that the Company should address to the Governor of the Red River Settlement on the subject.

Mr. Hammond was pleased to request that we would take this matter into consideration, and favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we think the Hudson's Bay Settlement is a British Possession to which the Extradition Treaty is applicable; and that the request for the extradition of the offender was made by an officer of the United States whose competency to make such request, on behalf of his own Government, ought *primâ facie* to be assumed.

But we are of opinion that Governor Dallas was right in his opinion that the offence for which the extradition of the offender was demanded was "theft" or "larceny," and not the offence of "robbery," which alone is mentioned in the Treaty, and in the Statute which gives effect to it; and therefore that the request of the United States' officer was rightly refused.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 365.

The Law Officers of the Crown to Earl Russell.—(*Received July* 28.)

Lincoln's Inn, July 28, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 16th instant, stating that he was directed by your Lordship to transmit to us, together with the papers which formed the subject of our Report of the 11th April,* two further despatches from Lord Lyons,† inclosing copies of the representation which he had addressed to Mr. Seward respecting the sinking of the British schooner "Sylvanus," and the imprisonment of her crew, and of two notes which he had received from Mr. Seward in reply; and to request that we would take this case into consideration, and report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That we are unable to consider the Report of the United States' Secretary of the Navy as entirely satisfactory. Upon the first question, indeed, the sinking of the "Sylvanus," an adequate excuse appears to be offered for that act; for, according to the papers now before us, the "Sylvanus" refused to obey the summons of the belligerent, and took her chance of escape. Her fate was the consequence of an unlawful disobedience to a lawfnl command. But the belligerent had no right to fire shell in the first instance, even though he fired it wide of the vessel. It is very important that the acknowledged rule of firing in blank, in the first instance, should not be deviated from.

With respect to the placing the men in irons the practice is, we are glad to see, not justified, and is said to be contrary to order; but we think the excuse for it, on this occasion, inadequate. It should be firmly represented to the United States' Government that the neutral will not consent to the attempts continually being made by the

belligerent, during this war, to extend, in various ways, the severe right of blockade, and to treat captured neutrals as enemies. The reference to the decisions of the Court of New Brunswick, and of the Queen's Bench, in the extradition question, appears to us wholly irrelevant. These decisions, which were lawfully given, by lawful Courts, upon a different matter, have no connection whatever with the blockade, and still less with the obligations of the belligerent towards the neutral as to the means of enforcing the blockade. And the United States' Government should be distinctly apprised that Her Majesty's Government will not permit the crews of captured British vessels, composed of Her Majesty's subjects, to be punished by penal treatment which does not belong, according to the recognized principles and precedents of international law, to the offence of breaking the blockade. In this respect the present case raises the question of principle more broadly, perhaps, than any other, as it appears that the crew of the "Sylvanus" were detained and imprisoned, when no proceedings whatever, before any Prize Court, on the part of the captors, were taken or contemplated.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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* Lord Lyons, Nos. 170 and 178; to Lord Lyons, No. 208.

† Lord Lyons, Nos. 329 and 414.

No. 366.

The Law Officers of the Crown to Earl Russell.—(*Received July* 28.)

My Lord, *Lincoln's Inn, July* 28, 1864.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 7th instant, stating that he was directed by your Lordship to transmit to us a despatch and its inclosures from Lord Lyons (No. 422, June 20), respecting the case of certain British subjects captured on board the "Grey Jacket," a vessel which apparently belonged to the Confederate States; and to request that we would take these papers into consideration and furnish your Lordship with our opinion thereupon; and to add that Lord Lyons' despatch No. 371, to which he refers in the despatch now transmitted, formed the subject of our Report of the 3rd instant.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That with respect to the vessel herself, the "Grey Jacket," we are of opinion that the presumption that she is Confederate property, arising from her having been a merchant-steamer, newly built at Mobile, and sailing under the Confederate flag only, appears not to be rebutted by any other evidence; and that the United States' authorities are therefore warranted in so considering and treating her.

That with respect to the seven men who claim, apparently with truth, to be British subjects, they were all employed in the actual navigation of the ship, of which they constituted probably the greater portion of the crew. In our former Report (dated the 5th instant) we considered carefully the principles of international law applicable to this class of cases.

We retain the opinion which we then formed, and we therefore think that the release of these persons cannot be demanded as a matter of strict right by Lord Lyons. At the same time we venture to suggest that his Lordship might be instructed to represent to the United States' authorities the great difficulty in which Her Majesty's subjects resident in the Confederate States are placed if they really desire to remain neutral, in obedience to Her Majesty's Proclamation, in this war. Their safest course is certainly to quit the country; and, practically, their only means of escape appear to be by sea, and necessarily from a blockaded port.

The story of these men is that they have always endeavoured to avoid the conscription for the Confederate service; that they were, when they agreed to serve on board the "Grey Jacket," taking the only available means of leaving the country, and that they intended never to return; and that the effect of such severity as that practised upon them may be to leave British subjects in the Confederate States no alternative but that of the conscription. This may or may not be true, but it certainly is not improbable.

In these circumstances if Lord Lyons were authorized to undertake that they should be forthwith sent to England, or one of Her Majesty's territories remote from the Confederate States, the refusal of the United States' Government to release them from prison would appear to us to be a very harsh not to say an unfriendly act.

(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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No. 367.

The Law Officers of the Crown to Earl Russell.—(*Received August* 2.)

My Lord, *Lincoln's Inn, July* 30, 1864.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 22nd instant, stating that with reference to our Report of the 6th of April last, respecting the case of James O'Neill, he was directed by your Lordship to transmit to us, together with the previous papers,* the despatches as noted in the margin,† from which we should see that the United States' Government have decided that the officer accused of having wounded O'Neill shall be brought to trial; and that Lord Lyons states that O'Neill has designated as an important witness a seaman named Michael Murphy, who resides in Liverpool, and Lord Lyons observes that it is desirable to ascertain, as soon as possible, whether this man can be found and sent over to attend the trial. That Lord Lyons also states that he has been invited by Mr. Seward to give an opinion on the form of charge proper to be adopted in this case; and that he requests to be instructed as to whether it would be proper for him to take the responsibility of doing so.

Mr. Hammond was also pleased to state that he was directed by your Lordship to request that we would take these papers into our consideration, and favour your Lordship, at our earliest convenience, with our opinion as to the course which Her Majesty's Government should pursue, and more particularly as to whether Her Majesty's Government ought to search for and send over witnesses.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we are of opinion that the advice of the United States' Counsel, Mr. J. McKeon, should be acted upon (Inclosure 3 in Lord Lyons' No. 472), and that the necessary witness Michael Murphy should be sent to Washington from Liverpool, if he is now there, or from any other place in this country where he may be found. We think that, without assuming the responsibility of the form of charge proper to be preferred against Lieutenant Everson, Lord Lyons might properly suggest, for the consideration of the United States' authorities, whether the charge ought not to be framed in accordance with Article IX of the Act of Congress of 23rd April, 1800, referred to by Mr. McKeon.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 368.

The Law Officers of the Crown to Earl Russell.—(*Received August* 2.)

My Lord, *Lincoln's Inn, August* 1, 1864.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 19th ultimo, stating that with reference to his letter of the 14th of July, relative to the British vessels seized in the Rio Grande, he was directed by your Lordship to transmit to us a despatch from the Acting British Consul at New Orleans (No. 16, June 20), inclosing copies of the proceedings in the District Court of that city in the case of steamer "Sir W. Peel;" and to request that we would take the same into our consideration, and report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration and have the honour to report—

That we are at a loss to conceive upon what principles of recognized prize law a reasonable ground of capture can have been asserted, or costs and damages to the owners can have been refused by the Court in this case. We have not, indeed, before us the reasons for the sentence of the Judge; but we have the evidence on both sides, and the perusal of it satisfies us that the Court ought, in the execution of its duty, to have decreed restitution with costs and damages, and to have severely censured the attempt to impugn, by hearsay gossip of the loosest kind, the positive testimony of the proper witnesses, on which the Prize Courts of the United States and of Great Britain have always been in the habit, hitherto, of forming their judgment.

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* Lord Lyons, No. 52; to Lord Lyons, No. 107, March 9; Lord Lyons, No. 140, February 29; No. 180, March 11; No. 192, March 14; to Lord Lyons, No. 175, April 15; Lord Lyons, No. 233, April 5, 1864.

† Lord Lyons, No. 383, June 14; No. 440, June 28; No. 472, July 8, 1864.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 369.

The Law Officers of the Crown to Earl Russell.—(*Received August* 2.)

My Lord, *Lincoln's Inn, August* 1, 1864.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 28th of July ultimo, stating that he was directed by your Lordship to transmit to us a letter dated the 27th ultimo from the United States' Minister at this Court, again calling attention to the case of the vessel "Georgia," which formed the subject of our Report of the 14th of May, and inclosing a copy of a letter from the United States' Vice-Consul at Liverpool, in which he states his reasons for thinking that the recorded sale of that vessel was a sham, and that there is no intention of converting her into a merchant-vessel; and to request that we would take the inclosed representation into our consideration, and favour your Lordship with our opinion as to the measures, if any, which Her Majesty's Government ought to take in the matter.

The previous papers were sent therewith for reference if required.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we do not at present see any sufficient grounds for coming to the conclusion that the "Georgia" is about to be again used for belligerent purposes. It would, however, be desirable that inquiries should be made of the authorities at the Queen's dock at Liverpool, and proper directions given to watch the vessel.

We think the proper authorities at Liverpool ought also to be instructed that no ship of war of either belligerent is for the future to be permitted to be brought into and kept in that port for the purpose of being dismantled or sold, this being contrary to Her Majesty's orders, and affording an opening for fraud and abuse, such as that suspected by Mr. Adams in the present case.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 370.

The Law Officers of the Crown to Earl Russell.—(*Received August* 5.)

My Lord, *Lincoln's August* 4, 1864.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 15th instant, stating that with reference to our Report of the 6th June, he was directed by your Lordship to transmit to us a despatch from Lord Lyons (No. 444, June 28, 1864), inclosing copies of a note from Mr. Seward, and of the proceedings of the court-martial held at Philadelphia in the case of Mr. Charles Danenhower, who killed Mr. James Gray on board the "Saxon," at Angra Pequena; and Mr. Hammond was to request that we would take the proceedings and Judgment of the Court into consideration, and report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands we have taken the proceedings and Judgment in this case into consideration, and have the honour to report—

That, as far as we are able to judge, the trial before the naval court-martial appears to have been fairly and impartially conducted.

The acquittal of Lieutenant Danenhower on the charge of *murder*, we think perfectly just. We entertain much doubt as to the propriety of his acquittal on the charge of *manslaughter*.

Upon the whole, we are of opinion that Mr. Seward is justified in maintaining the position that the finding of the court-martial must be accepted as conclusive by the United States' Government; and although it might have been hoped that the United

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States' Government might deem it not inconsistent with this position, voluntarily to make some compensation to the relations of the unfortunate man whose life has been so needlessly sacrificed by the impetuosity and carelessness of one of their officers, we are not prepared to say that such compensation can be insisted on by Her Majesty's Government.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 371.

The Law Officers of the Crown to Earl Russell.—(Received August 13.)

My Lord, *Lincoln's Inn, August* 11, 1864.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 15th of July ultimo, stating that with reference to our Report of the 10th of February respecting the case of the "Margaret and Jessie," he was directed by your Lordship to transmit to us, together with the former papers, a despatch from Lord Lyons (No. 446, June 28, 1864), forwarding a copy of a note from Mr. Seward, together with a copy of the proceedings of a Naval Court of Inquiry which had been held in this case, and which had come to the conclusion that no violation of the territorial jurisdiction of Great Britain was committed, and to request that we would take these papers into our consideration and favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That, as far as the finding of the Naval Court of Inquiry is concerned, we think that upon the evidence adduced before them, they were justified in coming to the conclusion at which they arrived, namely, that the territorial rights of Her Majesty had not been violated, and that there had been no intention of violating them. At the same time, we must observe, that while the evidence as to the distance of the "Rhode Island" from the shore is satisfactory (proving that she never fired at a less distance than four miles from the shore), that as to the distance of the "Margaret and Jessie" when the last shots were fired is much less distinct; and we are by no means satisfied that she may not have been then within three miles of the shore. Captain Trenchard seems to us to have been much more alive to the necessity of keeping his own ship at a proper distance from the shore, than to that of observing the precise distance from the shore of the "Margaret and Jessie," and the statement of the Court that he "cautioned the pilot to apprize him, if the chase should get within three miles of the land," does not appear to us to be borne out by the evidence.

The former evidence contained in the statements of passengers, the protest, &c., gave a different representation of the distance from the shore within which the pursuing vessel fired the last shot or shots. It is to be observed that the Parrot gun is said to carry a distance of five miles, which might account for pieces of shot being found on shore or in the trees, although the pursuing vessel did not approach within three or even four miles of the shores. There appears to be good reason for enlarging the distance to which territorial waters now extend; for, certainly, shot from a belligerent cruizer ought not to be permitted to endanger lives or property on a neutral territory, or even to reach the shore. Nevertheless, the three-mile distance has been the limit for the observance of which, throughout this war, we have alone contended, without reference to the longer range of newly invented or modern ordnance.

It must be remembered that the "Margaret and Jessie" was an escaping belligerent vessel, lawfully fired at till she reached neutral waters; according to the evidence, it certainly was the intention of the chasing vessel scrupulously to observe the usual limit of territorial jurisdiction: it was, moreover, sworn, that this intention was executed so far, at all events, as those on board the "Rhode Island" were, at the time, able to judge of the distances of the two vessels from the shore. The absence of counter testimony is, we presume, partly to be accounted for by the fact that the crew of the "Margaret and Jessie" being enemies could not be produced as witnesses. No evidence was tendered by the neutral Government.

We think that Lord Lyons should be instructed to call the attention of the United States' Government to that view of the state of the evidence which we have mentioned as occurring to us, and also to the fact that the shot fired from the United States' ship did unquestionably injure the trees and endanger the lives of those on shore; and to suggest that it will be obvious to the United States' Government that the neutral shore ought not to be exposed to these dangers, from whatever distance shot may be fired; and that although Her Majesty's Government now believe that there was no intention of violating the jurisdiction of Her Majesty, and that it was done (if at all) inadvertently and under an erroneous impression of the distance of the "Margaret and Jessie" from the shore, they must request that orders may be given which may be calculated to prevent for the future any similar occurrence.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 372.

The Law Officers of the Crown to Earl Russell.—(Received August 13.)

My Lord, *Lincoln's Inn, August* 12, 1864.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 26th of July ultimo, stating that with reference to Mr. Hammond's letter of the 14th of that month, he was directed by your Lordship to transmit to us a letter dated the 23rd July, from Messrs. Gallichan and Co., inclosing a letter received from Mr. Briggs, who defended their interests at New Orleans, in the case of the "Volant;" and to request that we would take these further papers into our consideration, together with those then before us, and favour your Lordship with any observations we might have to offer thereupon.

We are also honoured with your Lordship's commands signified in Mr. Layard's note of the 6th of August instant, stating that he was directed by your Lordship to request that you might be favoured with the return of Messrs. Gallichan's letter and its inclosure respecting the case of the "Volant," which was transmitted to us in his letter of the 26th ultimo.

Mr. Layard was also pleased to state that we would doubtless accompany these papers with our observations, should we have any to offer in addition to those contained in our Report of the 26th ultimo.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we have only to add to our former Report on this case the expression of our satisfaction at the opinion of Mr. Briggs, which is in accordance with our own, both as to the law which ought to govern the case of the "Volant," and as to the necessity of appealing from the adverse decision. We are also glad to learn that he confidently anticipates the success of such an appeal.

We think it of much importance that the owners and agents in this country of the "Volant" should be distinctly apprised (as we advised in our last Report), that they must not neglect to prosecute this appeal in the hope that the intervention of Her Majesty's Government may render such a measure on their part unnecessary.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 373.

The Law Officers of the Crown to Earl Russell.—(Received August 13.)

My Lord, *Lincoln's Inn, August* 12, 1864.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 27th of July ultimo, stating that, with reference to our Reports of the 1st and 9th of June, he was directed by your Lordship to transmit to us two Admiralty letters dated the 19th July, the one inclosing papers received from Vice-Admiral Sir James Hope, on the subject of his communications with the Confederate steamer "Florida," respecting interference with British vessels, and the other inclosing a copy of a letter from Vice-Admiral Hope, stating that the revised instructions issued by him would be recalled; and to

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request that we would take these papers into our consideration, and favour your Lordship with any observations we might have to offer thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we are not prepared to express our approval of papers A and B (Sub-Inclosure 3 in No. 1, and Inclosure in No. 120 of 1864), but that, after the declaration of the commanding officer of the "Florida," it seems unnecessary to enter further into the questions which the course of action originally proposed by Admiral Hope may have been calculated to raise. Upon this part of the subject we think it sufficient to refer to our former Reports. The course, however, taken by Admiral Hope with respect to the repairs and coaling of the "Florida" appears to have been proper, and in accordance with Her Majesty's orders on this subject.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 374.

The Law Officers of the Crown to Earl Russell.—(*Received August* 13.)

Lincoln's Inn, August 12, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 27th of July ultimo, stating that, with reference to our Report of the 24th ultimo, respecting the alleged abduction of a man named Peter Needham from Canadian soil, he was directed by your Lordship to transmit to us, for our perusal, a despatch and its inclosures on this case, which had been received from Her Majesty's Minister at Washington.*

Mr. Layard was also pleased to state that the previous papers† were also annexed for reference, if required.

Mr. Layard was further pleased to transmit to us for perusal the papers, as marked in the margin,‡ respecting the case of Ira Lee and George Cooper, two American citizens abducted by a Canadian constable from United States' territory; and to request that your Lordship might be favoured with any observations which we might have to offer upon the papers then transmitted.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That with respect to the case of Peter Needham, we have to observe, in addition to the remarks which we had the honour to offer in our former Report, that we think no further application should be made to the United States' Government respecting him, and that, regard being had to all the circumstances of the case, no remonstrance need be offered as to the mode by which the United States' Government propose to try him.

With respect to the two United States' citizens improperly taken on American soil, and tried and sentenced in Canada, the course adopted by Lord Monck appears to us very proper, and we are glad to see that it was so considered by Mr. Seward. Lord Monck and Mr. Seward agree that more stringent regulations with respect to these arrests on the frontier of the British and American territories are necessary; and we trust that such measures will be taken, without delay, as may for the future prevent the recurrence of these cases, which lead to delicate questions of international law, and tend greatly to embarrass the Governments of both countries.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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[*] Lord Lyons, No. 454, July 1, 1864.

[†] Colonial Office, June 3; to Colonial Office, June 28; Colonial Office, July 9, 1864.

[‡] Colonial Office, July 12; to Colonial Office, July 15; Lord Lyons, No. 453, July 1, 1864.

No. 375.

The Law Officers of the Crown to Earl Russell.—(*Received August* 23.)

Lincoln's Inn, August 22, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 27th July ultimo, stating that with reference to our Report of the 9th of February last respecting the case of the "H. G. Berry," he was directed by your Lordship to transmit to us, together with the previous papers,* a despatch from Lord Lyons,† inclosing copies of his subsequent correspondence with the attorney of the owner of that vessel, who desired that the case should be again submitted to the consideration of Her Majesty's Government; and to request that we would again take this case into our consideration, and report whether we see any reason to modify or alter the opinion heretofore expressed by us on this case.

In obedience to your Lordship's commands we have the honour to report—

That we have taken the further papers into our consideration, and are still of opinion that a *bonâ fide* military necessity caused the detention of this vessel, and therefore that Her Majesty's Government ought not to press upon the United States' Government the claim of the owner of the "H. G. Berry" for demurrage or damages. The vessel appears to have been released from detention on the 3rd of November, on the change of her destination from Matamoros to Havana, and it is not made out, to our satisfaction, that this change of destination was compulsory in any other sense than this, that if it had not taken place, her detention would have been liable to be indefinitely prolonged until the operations against Texas should have been so far advanced as to make it safe, in the opinion of the military authorities, to allow vessels bound from New Orleans to Matamoros to proceed on their course in the ordinary way.

I have, &c.
(For the Attorney-General, the Queen's Advocate, and myself),
(Signed) R. P. COLLIER.

No. 376.

The Law Officers of the Crown to Earl Russell.—(*Received August* 25.)

Lincoln's Inn, August 25, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 7th instant, stating that he was directed by your Lordship to transmit to us, for our perusal, and for such observations, if any, as we may have to offer thereupon, a despatch from Lord Lyons (No. 416, June 20, 1864), inclosing a copy of papers laid before Congress, respecting certain complaints of improper practices in the disposition of prize cases at New York.

In obedience to your Lordship's commands we have considered the papers submitted to us, and have the honour to report—

That the Report, and the evidence upon which it is founded, though very interesting, appears to us principally to concern the Government of the United States. It relates mainly to the loss and injury alleged to be suffered by the American captors before they receive the proceeds of captured property, by reason of various malpractices arising out of the carelessness or corruption, or both, of United States' officers.

In the main, Mr. Jordan (the Special Commissioner and Solicitor of the Treasury) thinks that these charges are not proved.

Of course any misconduct with respect to the custody, valuation, or sale of a captured ship or cargo, during the pendency of proceedings in the Prize Courts, affects British interests in cases where the property, or the value of it, may ultimately be restored by the Decree of the Primary or the Appellate Court.

But, on the whole, having regard to our own practice when we were belligerents, and to all the circumstances of the particular cases mentioned (and bearing in mind that the interest of the captors to expose and correct abuses of this kind is the same as that of the claimants of the captured property), we do not advise your Lordship to address any complaint to the United States' Government on this subject.

There is one topic, however, which we think Lord Lyons should be instructed (if

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[*] Lord Lyons, No. 918, December 29, 1863; No. 44, January 26; to Lord Lyons, No. 70, February 12, 1864.

[†] Lord Lyons, No. 452, 1864.

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necessary) to press upon the attention of the United States' Government, namely, the great evil of the delay in deciding causes in the Appellate Courts. The language of Mr. Upton, the standing counsel for the captors, upon this point (which will be found at page 41 of the printed volume), is well worthy of attention, though it was not intended to be used in favour of neutral claimants. Speaking in the summer of 1863, he openly states that the delays down to that time of the intermediate or Circuit Court "constitute the *causa causans* of all the enormous expenses which, more than all else combined, have occasioned the outcry against the New York adjudications." And, after referring to the evidence (which is also mentioned in Mr. Jordan's Report, to the effect that "causes in which property to the value of millions has been condemned by Decree of the District Court, and withheld from sale by appeal to the Circuit, were argued in the Circuit Court in the month of November 1861, and are *yet undecided*," he "submits that to pass in silence, and without direct and emphatic reproof, such conduct on the part of the Judge of the Circuit Court, is carrying regard for the dignity and independence of the judiciary to an excess which he deems not only unjustifiable in itself, but extremely unjust towards those who are made the sufferers by such lenity." Some of these arrears have been since (as we know) disposed of: and it is possible that all of them may have been so, and that this practice may now have been corrected. But if such unreasonable delays of judgment should still continue, they might properly be made the subject of remonstrance on the part of Her Majesty's Government.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 377.

The Law Officers of the Crown to Earl Russell.—(*Received August* 27.)

My Lord,
Lincoln's Inn, August 26, 1864.

WE are honoured with your Lordship's commands signified in Mr. Murray's letter of the 9th instant, stating that with reference to our Report of the 23rd of February, respecting the question of the Island of Sombrero, he was directed by your Lordship to transmit to us, together with the previous papers, a letter dated the 2nd instant, and its inclosures, from the Colonial Office, from which we should see that Mr. R. W. Wood has applied for a document showing that the island belongs to Great Britain, and that Mr. Secretary Cardwell proposes to authorize the Governor of St. Kitts to inform the applicant that Sombrero is one of Her Majesty's Leeward Islands, and is occupied by Mr. F. K. Dumas, under a licence of occupation granted on behalf of Her Majesty; and to request that we would take these papers into consideration and report to your Lordship our opinion whether there is anything in the proposed answer to Mr. Wood which would be inconsistent with the understanding come to with Mr. Adams on this subject.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we think the Governor of St. Kitts might properly be authorized to inform the applicant that Her Majesty considers the Island of Sombrero as one of the possessions of Her Majesty's Crown, and that it is occupied by Mr. F. K. Dumas, under a license of occupation granted by Her Majesty. We think there will not be any inconsistency between such a declaration and the understanding established with the United States, on the occasion of granting the lease to Mr. Dumas; for that understanding itself was founded upon the fact that Her Majesty did, as against any pretention of the United States, or of any other Power, lay claim to the sovereignty of Sombrero; and all that was then agreed upon was, that the United States' Government were not to be held as precluded, by acquiescence in the grant of that lease by Her Majesty to Mr. Dumas, from calling in question (if they should hereafter think fit to do so) Her Majesty's title to the sovereignty of the island.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 378.

The Law Officers of the Crown to Earl Russell.—(*Received August* 27.)

My Lord,
Lincoln's Inn, August 26, 1864.

WE are honoured with your Lordship's commands signified in Mr. Murray's letter of the 9th instant, stating that he was directed to transmit to us the acompanying papers,* respecting the case of Mr. S. G. Levey, a British subject, who claims from the United States' Government the sum of 5,000*l.* as compensation on account of his arrest at Boston, and subsequent imprisonment at New York; and to request that we would take this case into consideration, and report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That this appears to us to be a very serious case, and one requiring the prompt interference of Her Majesty's Government. The arrest and imprisonment of Mr. Levey was a very gross and unwarrantable invasion of the liberty of one of Her Majesty's subjects. It is admitted that there was no foundation whatever for it, except information received from the United States' Consul at Montreal that Mr. Levey, a resident inhabitant of Lower Canada, was "a notorious blockade-runner." This is the first instance in which we have heard of a pretension, on the part of the United States' authorities, to treat the participation of a foreigner, resident within neutral territory, in blockade-running adventures, as an offence punishable by municipal or military law in the United States, upon that foreigner afterwards coming into United States' territory, not in the alleged prosecution of any such adventure, but as an ordinary passenger on board a vessel engaged in a perfectly lawful voyage. It has been the duty of Her Majesty's Government, on several recent occasions, to recall to the recollection of the United States' Government the rule of international law, that mariners and others found on board neutral ships, captured for breach of blockade, are not liable to be treated as criminals or as prisoners of war; and this rule itself has never been disputed by the United States' Government, though it has been sought to be evaded by arguments founded on the alleged difficulty of distinguishing neutral from hostile adventures. The present arrest of Mr. Levey, to whose case none of the arguments can possibly apply, may, perhaps, assist Her Majesty's Government to judge of the degree of credit due to the professions made by the Government of the United States on this subject. If, therefore, the information given by the United States' Consul at Montreal about Mr. Levey had been as true as it has been proved to be false, the conduct of the United States' authorities would be scarcely less reprehensible.

We think that, upon the general subject, Lord Lyons should be instructed to repeat, in the strongest manner, the determination of Her Majesty's Government not to allow the blockade established by the United States' Government to be supported by acts which involve so plain a departure from undoubted principles of international law. And with regard to this particular case of the arrest and imprisonment of Mr. Levey, which (if he had been concerned in blockade running, would have brought the question of principle to an unmistakable test, and which is not less unjustifiable because even that pretext fails) we think it is the duty of Her Majesty's Government to support the claim of that gentleman to substantial compensation; though the mode of ascertaining the proper amount of such compensation (if the principle is agreed upon) may be the subject for future consideration, and, perhaps, may wisely be left to the discretion of Lord Lyons.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 379.

The Law Officers of the Crown to Earl Russell.—(*Received August* 29.)

My Lord,
Lincoln's Inn, August 29, 1864.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 27th ultimo, stating that, with reference to the Report of Her Majesty's Advocate-General of the 13th of June, 1863, respecting the case of Mr. John Tovell, he was

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* Lord Derby, June 21; to Lord Lyons, No. 289; Mr. Manmey (2), July 29; Lord Lyons, No. 490, 1864.

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directed to transmit to us, together with the previous papers, a letter dated the 7th ultimo from Mr. Tovell, stating the circumstances under which he was taken from his place of confinement and banished to the south of the Federal lines, and that Mr. Tovell now claims the sum of 10,000*l.* from the United States' Government in requital of the wrongs which he has undergone; and Mr. Layard was pleased to request that we would take this claim into consideration, and furnish your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That we think the treatment of Mr. Tovell, both during his prolonged imprisonment without trial, and afterwards in his banishment beyond the Confederate lines (particularly having regard to the manner in which that banishment was carried into effect), has been excessively harsh, and such as to make us regret that we cannot see our way to any effectual intercession of Her Majesty's Government on his behalf.

Mr. Tovell is a person who, although born in Great Britain, and never naturalized in the United States, was a settled resident in the State of Tennessee for seven years; he was the editor of a Confederate newspaper there after the secession of Tennessee from the Union; and while the city of Nashville was held under martial law, subsequently to its capture by the forces of the United States, he continued to reside there, and to act during that time as the "Confederate States' Correspondent" of a Canadian newspaper. Such a person was not, in our opinion, entitled to invoke the protection of Her Majesty's Government for the purpose of securing to himself any immunity from the powers of military government, which would not at the same time equally have been secured, by the laws of the United States, to citizens of that country; and although it was proper that the good offices of Her Majesty's Representative should not be refused when the object was to obtain, if possible, his legal trial or release, it becomes a different question when a demand is proposed to be made for compensation on account of severities, of which he has been the subject. It does not appear to us that any part of the treatment of which Mr. Tovell complains has been connected in any way with his character of a British subject. If, on the one hand, it was natural, and morally justifiable, that distress and indignation should be felt and expressed by the inhabitants of a captured city, when life or property was wantonly sacrificed by an undisciplined soldiery, who held it in their possession; on the other hand, we cannot look upon it as surprising that the military authorities should think it necessary to put down, by the strong hand, any such public expression of those feelings, as a funeral oration, pronounced before a large and excited assemblage of citizens, over the grave of an inoffensive citizen whose life had been so sacrificed. If the office of spokesman upon such an occasion was assumed by one who was an alien born, and not a naturalized citizen, we think he could not call for the intervention of his own Government to enable him to plead alienage as a defence against any exercise of military power, however arbitrary, to which a natural-born citizen, under the same circumstances, would have been subject without remedy. We therefore regret to say that we cannot advise Her Majesty's Government to interfere any further in this case.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 380.

The Law Officers of the Crown to Earl Russell.—(Received August 29.)

My Lord, *Lincoln's Inn, August* 29, 1864.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 13th of August instant, stating that, with reference to our Report of the previous day's date, relative to the proceedings of Vice-Admiral Sir James Hope at Bermuda, in regard to the Confederate steamer "Florida," he was directed by your Lordship to transmit to us a letter from the Colonial Office, inclosing a copy of a Report from the Governor of Bermnda of the course adopted by him on the occasion in question, and more especially with reference to the "Florida" having remained off the island, and having endeavoured to obtain a further supply of coal; and to request that we would take the Governor's proceedings into our consideration, and favour Lordship with our opinion as to their propriety.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we think the conduct of the Governor of Bermuda was, in the circumstances, perfectly proper.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 381.

The Law Officers of the Crown to Earl Russell.—(Received August 29.)

My Lord, *Lincoln's Inn, August* 29, 1864.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 22nd instant, stating that with reference to Mr. Layard's letter of the 13th instant, inclosing papers received from the Colonial Office relative to the "Florida" at Bermuda, he was directed by your Lordship to transmit to us a note, dated the 19th instant, and its inclosure, from Mr. Adams, in which he represents that the reception of the "Florida" at Bermuda, and her subsequent proceedings there, appear to be directly in violation of Her Majesty's Regulations.

And Mr. Hammond was to request that we would take the same into consideration, and furnish your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That we have already reported separately on the reference made to us in Mr. Layard's letter of the 18th instant. That we think it may be proper to inform Mr. Adams that Her Majesty's Government have received advices from the Governor of Bermuda on the subject to which his letter refers; from which it appears that although some disposition was manifested by the Commander of the "Florida" to evade the stringency of Her Majesty's Regulations, the most commendable strictness and diligence in enforcing those Regulations was observed on the part of the authorities, and that no substantial deviation, either from the letter or from the spirit of those Regulations, was permitted to, or did, take place.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 382.

The Law Officers of the Crown to Earl Russell.—(Received August 30.)

Lincoln's Inn, August 29, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 11th of August instant, stating that he was directed by your Lordship to transmit to us three despatches and their inclosures from Lord Lyons (Nos. 513, 514, 523), respecting the case of Adolphus Russell, a seaman captured on board the sloop "Racer," and detained by the United States' Government as a prisoner, on the ground of his being an American citizen; and to request that we would take this man's case into our consideration, and favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we are of opinion that Lord Lyons has been rightly advised by Mr. Carlisle in this matter, and that his Lordship ought not to be instructed to claim the liberation of Adolphus Russell.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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No. 383.

The Law Officers of the Crown to Earl Russell.—(Received August 30.)

Lincoln's Inn, August 29, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Murray's letter of the 10th instant, stating, that with reference to our Report of the 6th of April, he was directed by your Lordship to transmit to us, together with the previous papers, a despatch from Lord Lyons (No. 509), inclosing a copy of the rejoinder of the United States' Government in the case of Mr. Hardcastle, the British subject, who was shot by a sentry in the Old Capitol Prison, and to request that we would take the same into our consideration, and favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That we learn with equal regret and surprise the refusal of the United States' Government to offer compensation to the relatives of this unfortunate person, whose life was sacrificed to the carelessness and bad regulation of the prison in which he was improperly confined. As to the circumstances of his imprisonment and death, we see no reason to retract or modify any part of the views which we have formerly expressed. But for the determination (of which we have unfortunately had too many proofs) of the United States' Government to support and justify everything which is done by their subordinate officers, it might have been reasonably expected that they would have prevented any application on the part of Her Majesty's Government by offering, from motives of humanity, as well as from a sense of justice, whatever reparation was in their power. We do not think that any advantage would result from repeating the arguments which we had the honour to advance in our former Reports upon this subject.

We cannot, however, leave the observations of the Judge Advocate-General to the Secretary of War wholly without reply. If the construction which that officer places upon the meaning and effect of a safe-conduct under a flag of truce is to prevail, it should be widely and generally known; for in substance it amounts to this, that the United States regard a flag of truce, when used for the purpose of soliciting and obtaining permission for a particular individual to pass and remain within their lines, as imparting no protection whatever to the person who may come under it into their territory. It will, indeed, practically operate (at least until this construction be known) rather as a decoy than as a protection: it means merely that persons who bring it are not to be fired upon while they pass the space which intervenes between the lines of the enemies, and while the flag itself is exhibited; but that as soon as they are within the lines of the United States, they may be treated in exactly the same manner as if they had been made prisoners of war;—a doctrine which we venture to affirm to be utterly at variance with international law, with the usages of all civilized States, and with the reason and justice upon which both are founded. Good faith in matters of this kind is a question of substance, and not (as international authorities seem to be interpreted by the Judge Advocate-General of the United States) one of form. Whether the form be a written safe-conduct, or a permission given (without writing) for the safe passage of an individual within the lines a belligerent, the promise of safety is in substance the same: and the effect of such promise must continue (unless a limit was originally fixed to its duration), until it is revoked, after such a notice as may at least give the person relying upon it the opportunity of returning, without molestation from the same belligerent, to the place from which he came, or some other place of security. The necessary use of a flag of truce to obtain such a permission does not imply that the permission itself is to be nugatory, as soon as that flag is withdrawn.

The passage cited from Vattel, cap. 17, appears to us in no way to support the doctrine for the confirmation of which it is cited. That author, in the passage extracted, is not speaking of the protection afforded by a flag of truce to a person who is admitted under it to enter the enemy's lines, and to remain there; but of a general suspension of hostilities for a limited period, after the lapse of which period, he rightly says, in the absence of any special condition, the enemy found in the territories of either belligerent is subject to the laws of war.

It cannot, indeed, be disputed that if Mr. Hardcastle had misconducted himself after he had been so received into the territory of the United States, he was liable to be arrested or imprisoned; but to arrest and imprison him upon no ground whatever, except vague suspicions as to his previous acts and history, derived from the very fact of his coming from the enemy's lines, and from the papers produced at the time of his admission under promise of safe conduct (for it is admitted that this expression was used, and it is vainly attempted to explain away its force), was, in our opinion, a plain violation of the good faith pledged to him; for which violation we see no justification in any alleged necessities of the belligerent. It seems only too clear, in fact, that this subtle distinction between a safe conduct *per se*, and a safe conduct under a flag of truce, is invented and put forward to avoid the necessity of making pecuniary reparation for a great and flagrant wrong.

It will, of course, be for Her Majesty's Government to decide how far it is expedient to press any claim for compensation to Mr. Hardcastle's relatives at the present time, or to reserve it, as one of those claims of which Her Majesty's Government are willing to postpone the settlement, but upon which they may be obliged eventually to insist. But we think that (if such compensation be sought by the parties concerned), the claim ought not to be relinquished, and that it should be treated as one to which no answer satisfactory to Her Majesty's Government has been given on the part of the United States.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 384.

The Law Officers of the Crown to Earl Russell.—(Received August 30.)

Lincoln's Inn, August 29, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Murray's letter of the 8th of August instant, stating that he was directed by your Lordship to transmit to us a despatch from the Acting-British Consul at New Orleans (No. 19), inclosing a copy of the proceedings in the case of the British barque "Science," one of the vessels seized by United States' cruizers in the Rio Grande; and to request that we would take these proceedings into our consideration, and favour your Lordship with any observations we might have to offer thereupon.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That in the absence of any statement of the reasons on which the decision of the Court was founded we have only to observe, that the ship appears to us to have been properly released. The captor's right of appeal, however, cannot be disputed, although upon the evidence (as it appears to us) there is not the least colour of the justification for the seizure. It would have been satisfactory to know what order the Court made as to costs and damages.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 385.

The Law Officers of the Crown to Earl Russell.—(Received August 30.)

Lincoln's Inn, August 29, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Murray's letter of the 10th of August instant, stating that he was directed by your Lordship to transmit to us, with reference to our Report of the 18th of June, a despatch from Lord Lyons, inclosing a statement drawn up by Mr. G. A. Mason, in which he claims a sum of 30,000 dollars on account of his imprisonment by the United States' Government; and to request that we would take this statement into our consideration, and favour your Lordship with any observations which we might have to offer thereupon.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That this last intemperate and offensive statement of Mr. Mason does not induce us to alter in any respect the opinion which, both upon the general question and upon the particular claim of this person, we have had the honour to offer in our last Report.

With respect to the present claim for 30,000 dollars preferred by Mr. Mason, we are clearly of opinion that Lord Lyons should be instructed to apprize Mr. Mason that Her

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Majesty's Government decline to invite the attention of the United States' Government to it, or to any claim for compensation on his behalf.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 386.

The Law Officers of the Crown to Earl Russell.—(*Received August* 30.)

Lincoln's Inn, August 29, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 15th of July ultimo, stating that with reference to our Reports of the 29th of August, 26th of November, 4th of December, and 18th of March last respecting the case of the "Victor," he was directed by your Lordship to transmit to us a despatch from Lord Lyons (No. 435), inclosing copies of a letter from Mr. Ardill, the chief engineer on board the "Victor," and of the answer which Lord Lyons had returned thereto, respecting Mr. Ardill's claim to be compensated for the loss of his situation and the expenses entailed upon him by the seizure of that vessel; and to request that we would take Mr. Ardill's claim into our consideration, and report to your Lordship our opinion thereupon.

Mr. Hammond was also pleased to send the previous papers for reference if required.

In obedience to your Lordship's commands we have taken the papers into consideration, and have the honour to report—

That we see no reason to alter the opinion which we have had the honour to express in our former Reports on this subject.

We did not think that the detention of the "Victor's" officers and the engineer for three days, for the purpose of obtaining their examination (though the place of confinement was uncomfortable, and the restraint perhaps unnecessary) was sufficient to warrant an application for pecuniary compensation on behalf of Her Majesty's Government to the United States' Government, and we continue to be of this opinion. If Mr. Ardill's claim is grounded, not on the detention and imprisonment, but on the loss of employment which he has sustained by reason of the capture of the vessel, it would be premature (to say the least) to advance any such claim before the termination of the proceedings in the Prize Courts.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 387.

The Law Officers of the Crown to Earl Russell.—(*Received August* 30.)

Lincoln's Inn, August 29, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Murray's letter of the 10th of August instant, stating that with reference to our Report of the 20th of June he was directed by your Lordship to transmit to us, together with the previous papers,* despatches from Her Majesty's Minister at Washington,† inclosing copies of his correspondence with the United States' Government with regard to the restrictions imposed by the United States' Government on trade with the port of Brownsville, in Texas; and to request that we would take the same into our consideration, and favour your Lordship with any observations we might have to offer thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we adhere to the opinion expressed in our former Report. The answer of the United States' Government is couched in, perhaps, rather ambiguous language. We observe, however, that it does not profess to controvert our proposition that a place in the possession of the belligerent ceases to be in a state of blockade by him; nor to deny that the regulations as to the trade with Brownsville, on which it was then our duty to report, are to be enforced (if at all) on the footing, not of the blockade, but of the military occupation and possession of that port. On the other hand, we see nothing open to exception in Mr. Seward's claim on the part of the Government of the United States "to enforce the blockade *as to all the regions lying adjacent to that port, without the lines of military occupation.*"

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 388.

The Law Officers of the Crown to Earl Russell.—(*Received August* 30.)

Lincoln's Inn, August 29, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Murray's letter of the 9th of August instant, stating that he was directed by your Lordship to transmit to us for perusal a despatch from Her Majesty's Minister at Washington (No. 503), inclosing copies of an Act of Congress, entitled "An Act to regulate Prize Proceedings and the distribution of Prize-money, and for other purposes."

In obedience to your Lordship's commands we have taken this Act into our consideration, and have the honour to report—

That the greater portion of this Act of Congress relates to matter of domestic legislation, and does not appear to call for any observation from us.

Those portions of the Act which relate to the international obligations of the United States are principally contained in sections 1, 8, 26, 27, 28. Sections 1, 8, and 26 appear to us proper and in accordance with our own practice; except that section 8 not merely empowers but renders it obligatory upon the Court to order a sale in every case of condemnation, though an appeal may be pending, which is, we think, objectionable, though it cannot be said to be *ultra vires*. Sections 27 and 28 deserve, we think, the attention of Her Majesty's Government, and of the Governments of other neutral States. They enact, in substance (or, perhaps, it would be more correct to say that they recognize and virtually repeat the provisions of former Acts of Congress, which enact), that the United States' Government may, previously even to the bringing into Court of any neutral vessel seized as prize, appropriate such vessel to their own use, subject, of course, to compensation to the owners if the vessel should be afterwards released and the capture pronounced illegal by the Court. We have expressed our opinion in former Reports adversely to the assumption of this power by the belligerent, and have stated the reasons why we think it ought not to be acquiesced in by neutral Governments: and we think that Lord Lyons should be instructed to repeat, on this occasion, to the United States' Government that Her Majesty's Government cannot assent to any interference, by virtue of the domestic legislation of the United States, with the unquestionable right of the neutral to have his vessel brought in and adjudicated upon by the Prize Court before it can be appropriated by the belligerent; and that they would be compelled to regard as an invasion of the neutral rights of Her Majesty any attempt to enforce these provisions of the Act of Congress against British shipping. Amongst other reasons against such an innovation, which we have urged before, one is so important that it cannot be too frequently or too prominently noticed, viz., that the introduction of such a practice would at once supply a motive for groundless and irregular captures of ships capable of being made serviceable by the United States' Government, and go far to destroy the confidence of neutrals in decisions of their Prize Courts, which, under such circumstances, must either support the validity of the captures or leave their own Government under the imputation of a violent and unjustifiable invasion of neutral rights.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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* Lord Lyons, Nos. 128 and 320; to Lord Lyons, Nos. 171 and 287.

† Lord Lyons, Nos. 482 and 519.

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No. 389.

The Law Officers of the Crown to Earl Russell.—(Received September 1.)

My Lord, *Lincoln's Inn, September* 1, 1864.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 26th of August ultimo, stating that he was directed by your Lordship to transmit to us therewith a letter from the Treasury dated the 25th ultimo, with inclosures, reporting that a number of persons comprising the crew of the "Georgia" had been landed at Dover by the United States' steamer "Niagara," which had captured the "Georgia."

Mr. Hammond was also pleased to state that further particulars respecting this transaction are contained in the daily papers of the previous day, which he inclosed.

Mr. Hammond was further pleased to inclose the correspondence which had taken place respecting the sale of the "Georgia" at Liverpool, and respecting the sale of the "Sumter" at Gibraltar; and to request that we would take the case as regards the present capture of the "Georgia" into our immediate consideration, and report to your Lordship our opinion thereupon, and as to any steps which in the present state of the matter it is competent or advisable for Her Majesty's Government to take.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we are of opinion that this is a proper case for adjudication in the Prize Courts of the United States; and that the only step which Her Majesty's Government ought at present to take, is to signify to Mr. Adams that Her Majesty's Government of course expect that a vessel seized under the British flag and claimed by British owners, will be brought with as little delay as possible for adjudication into the proper Prize Court, in which the claim of one of Her Majesty's subjects will be tried according to the recognized principles of international law, which govern the relations of the belligerent toward the neutral.

We do not think it necessary to enter, at present, into the somewhat nice questions of prize law which may arise in this case: and as to which it may be sufficient now to refer to our former Reports in the case of the "Sumter."

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 390.

The Law Officers of the Crown to Earl Russell.—(Received September 6.)

My Lord, *Lincoln's Inn, September* 5, 1864.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 17th ultimo, stating that with reference to our Report of the 1st August, stating that we were of opinion that the proper authorities at Liverpool should be instructed that no ship of war of either belligerent should for the future be permitted to be brought into and kept in that port for the purpose of being dismantled or sold; he was directed by your Lordship to transmit to us a draft of the letter which was addressed to the Treasury and other offices on the 8th instant, requesting that instructions to the effect suggested in our Report should be addressed to the authorities at all Her Majesty's ports, both at home and abroad, and a letter which has been received from the Colonial Office in reply, stating that Mr. Secretary Cardwell is anxious to have our opinion as to the steps which it will be proper for the Governors of Colonies to take in order to give effect to this prohibition; and Mr. Hammond was pleased to request that we would take this matter into consideration, and furnish your Lordship with our opinion upon the above point; and further to state to us that it appears to your Lordship desirable, that the decision of Her Majesty's Government on this subject should in some form be inserted in the "London Gazette," and that your Lordship requested that we would draw up a form of notification for this purpose.

We are also honoured with Mr. Hammond's letter of the 22nd ultimo, transmitting a copy of a notification issued by the Board of Customs, that vessels belonging to the North American belligerents are not to be allowed to be brought into British ports for the purpose of being dismantled or sold.

In obedience to your Lordship's commands we have the honour to report—

That we think the Governors of Her Majesty's Colonies should be instructed to publish by due official Proclamation, according to the form and usage of their respective Colonies, the prohibition in question.

Their Proclamation should recite the terms of the Order published in the "Gazette," for which we have prepared a form according to your Lordship's directions, and appended it to this Report. In the event of any infraction of the terms of this Order, it should be enforced by the executive power of any Colony, aided (if necessary) by Her Majesty's naval authorities: notice being given to the offending vessel to depart before any forcible means are used. In this respect there will be no difference between the present Order and the Regulations of January 1862, of which this Order is only the supplement.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

Inclosure in No. 390.

Notification for "Gazette."

IT is hereby notified that Her Majesty has been pleased to order that, for the future, no ship of war belonging to either of the belligerent Powers of North America shall be allowed to enter, or to remain, or be in any of Her Majesty's ports for the purpose of being dismantled or sold; and Her Majesty has been pleased to give directions to the Commissioners of Her Majesty's Customs, and to the Governors of Her Majesty's Colonies and Foreign Possessions, to see that this order is properly carried into effect.

R. P.
R. P. C.
R. J. P.

No. 391.

The Law Officers of the Crown to Earl Russell.—(Received September 6.)

My Lord, *Lincoln's Inn, September* 5, 1864.

WE are honoured with your Lordship's commands signified in Mr. Murray's letter of the 13th ultimo, stating that with reference to our Report of the 21st July, respecting the case of the "Greyhound," he was directed by your Lordship to transmit to us two despatches and their inclosures from Lord Lyons (Nos. 511 and 543, July 18 and 29) respecting the claims asserted by Mr. Pollard, an American citizen, who was taken on board that vessel, to the intervention of Her Majesty's Government on his behalf; and Mr. Murray was to request that we would take these papers into consideration, and furnish your Lordship with our opinion as to the right of Mr. Pollard, and his fellow-passenger Mr. Seawell, to claim British protection.

We are also honoured with Mr. Hammond's letter of the 24th ultimo, transmitting to us a further despatch and its inclosures from Lord Lyons (No. 570) respecting the case of the passengers on board the "Greyhound."

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That it is admitted that Mr. Pollard and Mr. Seawell are either Confederate or United States' citizens (we infer the former), and that the vessel on board of which they were passengers was captured by a belligerent cruizer of the United States, and brought in for adjudication before the Prize Court, on the ground of her having violated, or intended to violate, the blockade. If these persons had been engaged in any way in furthering or aiding this act or design, they would unquestionably have been enemies, or citizens guilty of assisting the enemy of the United States, and would have been brought within the jurisdiction of that country by the belligerent in the lawful exercise of his right; and in this case we have not been able to see, and we do not see, any valid ground upon which Her Majesty's Government could claim their exemption from that jurisdiction. If they had been cognizant of the illegal act or object of the vessel, and with a knowledge of it had embarked on board her as passengers, we think the same observations would apply; and even if they were themselves altogether ignorant of the illegality, still if the vessel were lawfully captured and condemned as prize of war, the means by which they

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were brought within the jurisdiction of the United States' Government would be legal; the neutral flag, unable under such circumstances to protect even the vessel which carried it, could not exempt from capture any enemies or subjects of the United States who might be on board, and Her Majesty's Government would be without any right to interfere on their behalf.

It remains to be considered whether if the vessel were acquitted by the Prize Court of any actual or intended breach of blockade, and restored to her owners, this circumstance would make a difference in the right of Her Majesty's Government, and the corresponding obligation of the United States' Government with respect to these persons. This consideration raises a question of serious difficulty, and certainly of great importance. We are not aware that it is ruled by any authority, but, on principle, we think that, inasmuch as in such a case the vessel would have been improperly brought within the jurisdiction of the United States, and inasmuch as these persons could not lawfully have been taken out of her by any authority of the United States while she was upon the high seas, Her Majesty's Government would have a right to expect that the vessel and all persons who were on board of her should be replaced, as far as possible, in the condition in which she was at the time of her seizure. One of the incidents of that condition was, that she afforded protection to these persons (whether enemies or citizens of the United States) who were passengers on board of her. We are led by these considerations to the conclusion that Her Majesty's Government would be warranted in asking for the release of these persons, if the "Greyhound" should be, or should have been, acquitted by the Prize Court, of any actual or intended breach of blockade, or other offence against the laws of war justifying her capture. Whether this has actually happened does not appear, although we see that in Mr. Seawell's letter of the 23rd July last, a report is mentioned "that the District Court at Boston had failed to condemn the 'Greyhound' and cargo." If this be true (*i. e.*, if the ship and cargo have been finally released and exonerated from every offence against the laws of war), we think Lord Lyons may properly be instructed to interpose his good offices on behalf of Messrs. Pollard and Seawell. Such a course would (we think) be entirely consistent with the principle on which his Lordship has been hitherto instructed to abstain generally from requiring the release of Confederate or United States' citizens found on board captured British vessels, inasmuch as such captures when the vessels are properly brought into the ports of the United States for adjudication cannot be presumed to be illegal, as between the British and United States' Government, until they have been so pronounced by a competent Court.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

P.S.—Since writing this Report we have received Mr. Hammond's letter of the 2nd instant, transmitting a further despatch from Lord Lyons (No. 598), which despatch does not induce us to alter our opinion on this case.

R. P.
R. P. C.
R. J. P.

No. 392.

The Law Officers of the Crown to Earl Russell.—(*Received September* 7.)

Lincoln's Inn, September 5, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 17th ultimo stating that with reference to our Reports of the 26th July and 1st and 12th of August, relative to the vessels captured in the Rio Grande, he was directed by your Lordship to transmit to us the following papers, viz:—

1. A copy of the letter, dated the 17th ultimo, which has been addressed to Messrs. Gallichan and Co., recommending that the parties interested in the case of the "Volant" should not omit to place themselves in a situation to prosecute the appeal with effect.

2. The draft of a proposed instruction to Lord Lyons founded upon our above-mentioned reports; and

3. A despatch from Lord Lyons and letters from Messrs. Bischoff and Sons, and Messrs. Lizardi and Co.,* from which it appears that the District Attorney at New Orleans has given notice of an intention to appeal against the decree of restitution in the cases of the vessels "Sir W. Peel" and "Dashing Wave."

And to request that we would take these papers into our consideration and favour your Lordship with our opinion as to any additions, alterations, or modifications which it might be proper to introduce into the instruction to Lord Lyons, in consequence of the notice of appeal given by the United States' District Attorney, and also as to the answer which should be returned to Messrs. Bischoff and Sons, and Messrs. Lizardi and Co.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we are of opinion that the letter to Messrs. Gallichan and Co. is proper to be sent.

With respect to the draft letter to Lord Lyons it appears to us that in consequence of the subsequent despatch from his Lordship, and of the information which Her Majesty's Government have received of the threatened appeals in the several cases of the "Sir W. Peel," the "Dashing Wave," and the "Science" (as to which latter vessel we beg leave to refer to our Report of the 29th August last), it will be desirable to make some additions to the original draft to the effect noted by us in the margin thereof.

That with respect to the answer which it would be proper to send to Messrs. Bischoff and Sons, and to Messrs. Lizardi and Co, we recommend that to the former gentlemen the answer should be that instructions have been sent to Lord Lyons to endeavour, as far as he may be able, to induce the Government of the United States to forego the Appeal instituted on the part of the captor in the case of the "Dashing Wave;" and that with respect to the "Volant," Her Majesty's Government have requested an explanation of the ground of condemnation of this vessel, and have represented that they are unable to understand the meaning of the phrase "interdicted waters," as distinguished from waters legally blockaded. That as to the latter gentlemen the answer should be that Her Majesty's Government have issued instructions to Lord Lyons to endeavour to obtain an abandonment of the Appeal.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 393.

The Law Officers of the Crown to Earl Russell.—(*Received September* 8.)

Lincoln's Inn, September 6, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Murray's letter of the 13th ultimo, stating that he was directed by your Lordship to transmit to us the despatches, as marked in the margin,* respecting the cases of Mr. J. W. Binney and Mr. John J. Crawford, two British subjects who have been arrested by the United States' authorities, and who were to be tried by a military tribunal; and to request that we would take these cases into our consideration and favour your Lordship with any observations we might have to offer thereupon.

We are also honoured with your Lordship's commands signified in Mr. Hammond's letter of the 22nd ultimo, stating that with reference to Mr. Murray's letter of the 13th of August he was directed by your Lordship to transmit to us the accompanying further papers,† respecting the cases of Messrs. Binney and Crawford.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That as it appears from the further papers submitted to us in these cases that the Judge of the United States' District Court has on re-consideration holden that Mr. Binney ought not to be tried by the Military Commission Court, and has ordered him to be unconditionally released, and that Mr. Crawford has also been released, we have only to observe that the notes of the argument on behalf of Mr. Crawford appear to us such as to have rendered these releases just and proper.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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* Lord Lyons, No. 489; Messrs. Bischoff, August 8; Messrs. Lizardi, August 12, 1864.

* Lord Lyons, No. 526, July 26; No. 541, July 29; No. 522, July 22; No. 542, July 29; and No. 292, May 3, 1864.

† Lord Lyons, Nos. 559 and 560.

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No. 394.

The Law Officers of the Crown to Earl Russell.—(Received September 9.)

Lincoln's Inn, September 8, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 19th ultimo, stating that with reference to our Report of the 20th of July, he was directed to transmit to us, together with the previous papers, and with a copy of the instruction which was addressed to Lord Lyons on the 5th ultimo,[*] founded on our Report, a further despatch and its inclosures respecting the order prohibiting foreigners enrolled in the militia at Memphis from carrying on business at that place;[†] and to request that we would take these further papers into consideration, and furnish your Lordship with any observations we may have to offer thereupon.

In obedience to your Lordship's commands we have taken these papers again into consideration, and have the honour to report—

That we adhere to the opinion upon this important subject, which, after very grave and careful consideration, we had the honour of submitting to your Lordship in our former Report. We think the option of serving in defence of the place in which they are domiciled, *and have their home*, or of leaving that place, is as large a concession as Her Majesty's Government are entitled to require from the United States' Government in the present circumstances, on behalf of British subjects domiciled in or commorant at Memphis, to which place our present observations are confined. With respect to the complaint, often repeated in the individual cases contained in these papers (namely, that British subjects ought to be protected by Her Majesty's Government from violating Her Majesty's Proclamation of neutrality), it is obvious to remark that the permission to leave the place altogether enables British subjects to obey the Proclamation; and although it will probably happen in most cases that those who avail themselves of this permission will be greatly injured in their property or business, this is an unavoidable consequence of having fixed a domicile in a foreign country, which afterwards becomes the theatre of civil war, and from such an evil as this no Government can undertake to protect its subjects who have left its territories, and sought a domicil in a foreign land.

With regard to the particular cases submitted to Lord Lyons, we have only to observe that his treatment of them appears to have been perfectly proper.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 395.

The Law Officers of the Crown to Earl Russell.—(Received September 12.)

Lincoln's Inn, September 9, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 24th of August ultimo, stating that he was directed by your Lordship to transmit to us a despatch and its inclosures from Lord Lyons (No. 566, August 9), respecting an order requiring all shipments of gold to the port of New Orleans to be deposited with the Assistant Treasurer of the United States at that place, to be delivered to consignees and claimants only on assurance that it will not be used in contravention of the regulations of the Treasury and War Departments, or the laws of the United States; and to request that we would take this matter into our consideration, and report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That though we do not find in the letter of Mr. Whiting (No. 7 in Lord Lyons' No. 566), any reasons which we can understand for this extraordinary and, as it seems to us, oppressive interference with the importation and commercial use of the article of gold at New Orleans, we nevertheless do not advise your Lordship that Her Majesty's Government ought at present to interfere further by way of remonstrance against General Bank's order. We do not know what are the particular "regulations of the Treasury and War Departments," or "laws of the United States," against the violation of which, by the use of gold, this order is intended to guard. The Government of the United States are, of course, entitled to enforce in any reasonable way, within their own territory, their own laws and regulations; and no order for that purpose, restrictive of dealings in a specified commodity, which is not partial in its operation against British subjects, can be deemed to be a violation of the Treaty by which they are residents and carry on business in that country. The detention of gold belonging to private persons, until "*satisfactory* assurances" are given to the local treasurer of the United States that it will not be used in contravention of those laws and regulations, does indeed appear to place in the hands of the Treasurer a power of a very anomalous and arbitrary nature; though, perhaps, not more so than the general system under which the internal government of the United States, and particularly of those parts of the United States which are immediately affected by the civil war, has been carried on ever since that war commenced.

It would seem from Mr. Coppell's letter of the 23rd of June last, that this power is practically exercised to prevent the use of gold for any commercial or monetary purpose whatever (except payment of duties), not only in those parts of the Confederate States which are not occupied by the forces of the United States, but also in New Orleans itself. The Order, however, presses in its terms upon all persons, natives and foreigners, with equal weight. It is said to be a measure necessary for self-defence in a time of civil war; and we are not told that it has been put in force against British subjects in such a way as to show it to be, in truth, partially directed against them. It may not improbably inflict a greater injury upon the United States than upon foreigners; and if so, it may be expected to be only of temporary duration. At all events, we do not think it is a measure of which, upon international grounds, Her Majesty's Government can complain, unless to be enforced against British subjects in a different way from that in which it is enforced against other foreigners, or against citizens of the United States.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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[*] Lord Lyons, No. 419; to Lord Lyons, No. 363.

[†] Lord Lyons, No. 549.

No. 396.

The Law Officers of the Crown to Earl Russell.—(Received September 12.)

Lincoln's Inn, September 9, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 25th ultimo, stating that he was directed by your Lordship to transmit to us a despatch and its inclosures from Her Majesty's Minister at Washington (No. 567), respecting an oath exacted from foreigners by the military authorities at New Orleans, and to request that we would take the same into consideration, and report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we are of opinion that the remonstrance of Lord Lyons to Mr. Seward was well founded as to the latter part of the new oath imposed upon foreigners at New Orleans.

We are clearly of opinion that the United States' Government is not entitled to exact the taking of such oath from foreigners who are about to leave the city and to pass without the jurisdiction of the United States; and this seems in effect to be admitted by Mr. Seward, who, in his letter of the 3rd August last to Lord Lyons has promised that any foreigners to whom this oath may be unacceptable "will be allowed due time to depart beyond the limits of the United States." The case of Miss Burrowes, mentioned by Mr. Consul Coppell, strongly illustrates the tyrannical character of this novel proceeding.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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No. 397.

The Law Officers of the Crown to Earl Russell.—(Received September 12.)

Lincoln's Inn, September 9, 1864.

My Lord,

WE were honoured with your Lordship's commands signified in Mr. Hammond's letter of the 25th August ultimo, in which he stated that he was directed by you to transmit to us, for perusal, the accompanying papers respecting the case of Mr. W. Pratt Hopkins and others, who were taken by the United States' cruizer "Newbern" on board a vessel called the "Pevensey," and were for some time detained in confinement by the United States' Government.

Mr. Hammond also transmitted to us a despatch from Lord Lyons, inclosing copies of papers from Mr. Seward, in which it is asserted that a great number of the men who engage in running the blockade are Americans from the Northern States.

Mr. Hammond likewise transmitted to us a despatch and its inclosures from Lord Lyons, respecting Mr. A. J. Kennedy, a gentleman whose case formed the subject of our Report of the 11th of January last; and

Mr. Hammond was pleased to say that these several papers were sent to us for our information, although, should it occur to us to offer any observations thereupon, your Lordship would be glad to be favoured with them.

In obedience to your Lordship's commands we have taken the several papers submitted to us into our consideration, and have the honour to report—

That with respect to the individual cases of Mr. Pratt Hopkins and others taken on board the "Pevensey," imprisoned, and subsequently released, it does not occur to us to offer any observation to your Lordship.

Upon the general question we desire to state that all these cases confirm our conviction that the attempts of the United States' Government, which will doubtless increase with their increasing difficulties, to extend the rights incident to the belligerent from a blockade, and to curtail his obligations towards the neutral, should continue to be, as certainly they have hitherto been, most carefully watched and checked by Lord Lyons.

The task is certainly by no means an easy one, because it would be uncandid to deny that the observations of Mr. Seward, as to the difficulty of distinguishing between the persons taken on board the blockade-runners who really are, and those who only pretend to be, British subjects, is, from the identity of language, the general similarity of habits, and the absence of the usual circumstances which enable and facilitate a discrimination between the subjects of two countries, often very great.

The course, however, which Lord Lyons pursues appears to us to be perfectly proper, and as well calculated as any that can be suggested to remedy the existing and increasing evils of this continued blockade.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 398.

The Law Officers of the Crown to Earl Russell.—(Received September 16.)

Lincoln's Inn, September 14, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 3rd September instant, stating that he was directed by your Lordship to transmit to us two further despatches from Lord Lyons (Nos. 605 and 606, August 19) respecting the cases of Mr. J. W. Binney and Mr. J. J. Crawford, and to request that we would take the same into consideration together with the papers inclosed in his letter of the 22nd ultimo.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That our Report upon the papers inclosed in Mr. Hammond's letter of the 22nd ultimo had been prepared, and copied for signature, before we received these further papers.

We agree with Lord Lyons that it is very unsatisfactory not to have any report of the reason for Judge Betts' final decision in Mr. Binney's case, which would enable his Lordship or Her Majesty's Government to judge how far that decision was founded upon principles which may be expected also to govern other similar cases.

We had supposed from the former papers, that both the cases of Mr. Binney and Mr. Crawford depended on the same question, viz., whether civilians, wholly unconnected with the military service of the United States, were amenable to martial law in the State of New York; or whether, when charged with any offence in that State, they had not a right to claim a trial by jury in the ordinary way. It now, however, appears, that while Mr. Binney has been released by the order of a civil Judge, Mr. Crawford has been tried by a court-martial, and has only been released after giving a bond as required by the sentence of that Court.

In these circumstances, we must necessarily wait for further information before we can estimate the value as a precedent of what has taken place in either of these cases.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 399.

The Law Officers of the Crown to Earl Russell.—(Received September 16.)

Lincoln's Inn, September 15, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 9th instant, stating that he was directed to transmit to us, for our consideration, the draft of a letter which your Lordship proposes to address to Mr. Adams in reply to a further letter dated the 6th instant, also inclosed, which has been received from him respecting the case of the "Alabama," and the course pursued by the owner of the "Deerhound" in rescuing the commander and a portion of the crew of the "Alabama" on the occasion of the sinking of that vessel; and to request that we would furnish your Lordship with such observations on the inclosed papers as we may have to offer.

The correspondence which has recently passed between Mr. Adams and the Foreign Office, together with Mr. Lancaster's explanation, was also transmitted for convenience of reference.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we think the answer which your Lordship proposes to send Mr. Adams is altogether proper, and it hardly seems to us necessary to offer any further observations upon these papers.

Even if the owner of the "Deerhound" had interfered unwarrantably, and without that request or permission which (according to Captain Winslow's statement, as well as his own) he actually received from Captain Winslow, his interference in rescuing from destruction or captivity these drowning men was no offence against British municipal law; and there is no law in force in this country under which the men, so rescued, could be delivered up as prisoners to the Government of the United States. The remedy of a belligerent vessel against any improper interference of a neutral vessel during or after a naval action would be, to use the force at its disposal to prevent or frustrate such interference. But when, after such an action, the lives of drowning men have been saved by a private person owning and navigating a neutral vessel at the request of the belligerent himself, and without any stipulation or promise on either side as to what should afterwards be done with them, there is manifestly no "act of hostility" (to use Mr. Adams' language) and no ground of complaint, even though the consequence may be that the men who might otherwise have been destroyed or taken prisoners obtain the protection of the neutral flag, and ultimately find an asylum on neutral territory. We do not enter into the inquiry whether Mr. Lancaster would have done right in taking these men to Southampton, if he had been informed that they had surrendered themselves as prisoners; because it is clear that if they did, in fact, so surrender themselves, that fact was not intimated to Mr. Lancaster, either by the men themselves or by Captain Winslow.

The imputations thrown in Mr. Adams' last letter on Mr. Lancaster (who went, in the first instance, to the "Kearsarge" under the impression that she might also have received serious injury, to tender her any requisite assistance) of having "interposed in a struggle between combatants to save those only of one side," and of having "made great efforts to select the chief enemies of the United States," and to carry them to a place where they might be safe from pursuit by the conquerors, "paying no further regard to the larger number of his own countrymen still left struggling with the waves," are so extravagant as to be unworthy of notice, did they not unfortunately illustrate the way in which it seems to be considered a duty in the United States to look at all facts connected with this ship "Alabama."

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 400.

The Law Officers of the Crown to Earl Russell.—(*Received September* 16.)

Lincoln's Inn, September 15, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 5th instant, stating that with reference to our Report of the 1st instant, respecting the capture of the steamer "Georgia" by the United States' steamer "Niagara," he was directed by your Lordship to transmit to us a letter dated the 27th ultimo from Mr. Edward Bates of Liverpool, representing the circumstances under which he purchased the "Georgia," and applying to Her Majesty's Government to take steps to procure a restitution of the ship and compensation for the injury he has sustained; and to request that we would take Mr. Bates' letter into consideration, and furnish your Lordship with our opinion as to the answer which should be returned thereto.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That we advise your Lordship to return an answer to Mr. Bates to the following purport and effect:—That the "Niagara" in capturing the "Georgia" and taking her into a Prize Court for adjudication, which it is to be assumed will be the course she will pursue, has not exceeded the limits of her belligerent rights. If the "Georgia" had belonged to the mercantile marine of the Confederate States, and been the property of a private subject of the Confederate States, the United States' cruizer would have been justified in seizing her upon the high seas, and in taking her into a Prize Court for the purpose of submitting to proper judicial investigation the question whether the transfer of an enemy's vessel to a neutral *flagrante bello* had been *bonâ fide*, and executed in the manner and in the circumstances which international law requires. But that the "Georgia" had formed till a very recent period an important part of the Confederate navy, is a fact beyond the reach of controversy or denial. The belligerent therefore had *a fortiori* the right to seize her, and endeavour to obtain her condemnation in a Prize Court. That Court will have to determine not only the question whether the transfer of the "Georgia" to a neutral owner was real, accompanied by an entire extinction of all the interests and rights of the former hostile owner, but the much graver preliminary question whether (as against the right of capture of the other belligerent) a ship of war can be lawfully transferred by a belligerent *flagrante bello*, in a neutral port, to a neutral, with whatever publicity and however completely the transfer may have been actually made, and whatever alterations the structure, equipment, or employment of the vessel so *de facto* transferred may have undergone while in the possession of the neutral.

Mr. Bates ought, we think, further to be informed that the officers of the Custom-house at Liverpool, in granting to this vessel, upon the production of proper documents, a British register, merely acted in conformity with the municipal law of this country, which neither undertakes to assist and facilitate, nor pretends upon the high seas to over-rule or supersede, the right of maritime capture belonging to a belligerent under the law of nations as administered in Prize Courts; and that it was certainly no part of the duty of Her Majesty's Government to inform a private individual, who might entertain the idea of purchasing this vessel, of any risk which he might incur by so doing. Nor are we aware of any obligation imposed by international law and comity upon the Representatives or Agents of the United States in this country, or upon the officers of the "Niagara" when at Liverpool, to give any notice or intimation whatever that the "Niagara," or any other cruizer of the United States, might still consider this vessel a proper subject of capture, whether transferred or not to a neutral, and under whatever register or flag she might sail.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 401.

The Law Officers of the Crown to Earl Russell.—(*Received September* 16.)

My Lord, *Lincoln's Inn, September* 15, 1864.

WE were honoured with your Lordship's commands signified in Mr. Hammond's letter of the 30th August ultimo, in which he stated that, with reference to our Report of the 29th of August last, respecting the claim of Mr. Tovell upon the United States' Government, he was directed by your Lordship to transmit to us a despatch and its inclosures which had just been received from Lord Lyons respecting this case; and that your Lordship proposed in reply to instruct Her Majesty's Minister to inform Mr. Tovell that he cannot be effectually protected at Nashville against proceedings by martial law; but that your Lordship requested that we would take these further papers into our consideration, and favour you with our opinion thereupon.

In obedience to your Lordship's commands we have taken these further papers into consideration, and have the honour to report—

That we entirely concur in the propriety of the instructions which your Lordship proposes to send to Lord Lyons in the matter of Mr. Tovell.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 402.

The Law Officers of the Crown to Earl Russell.—(*Received September* 24.)

My Lord, *Lincoln's Inn, September* 22, 1864.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 8th of September instant, stating that he was directed by your Lordship to transmit to us a despatch from Lord Lyons (No. 595, August 15), inclosing a copy of Rules and Regulations published by the United States' Government on the subject of "commercial intercourse with the States in insurrection," and other matters connected therewith; and to request that we would take the same into consideration and favour your Lordship with any observations which we might have to offer thereupon.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That it does not occur to us to offer to your Lordship upon these "Rules and Regulations" any observations in addition to those which in our several Reports upon the subjects of refusals of clearance (XXXV) and bonds for clearance (XXXVI) we have already had the honour to present to your Lordship. The other subjects to which these Rules and Regulations apply seem to us to require no comment. The application of such Rules and Regulations to those subjects may fairly be justified by the exigencies of the civil war in which the United States are engaged; and we understand and assume that they are equally and impartially applicable to all citizens and all foreigners.

We have, &c.
(For the Attorney-General, Queen's Advocate, and myself),
(Signed) R. P. COLLIER.

No. 403.

The Law Officers of the Crown to Earl Russell.—(*Received September* 23.)

My Lord, *Lincoln's Inn, September* 23, 1864.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 8th of September instant, stating that with reference to our Reports of the 9th of April, 20th of June, and 29th of August, relative to the regulations under which the Government of the United States permitted trade to be carried on at Brownsville, Texas, during the occupation of that town by their military forces, he was directed by your Lordship to transmit to us a further despatch from Lord Lyons, inclosing an extract from the "National Intelligencer" newspaper, announcing that the military forces of the United

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States have been temporarily withdrawn from Brownsville, and that the blockade would be resumed.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That the United States' Government in withdrawing their troops from the occupation of Brownsville and declaring that port to be again under blockade, have exercised lawfully their rights as belligerents. We assume, of course, that the blockade is now, and will be, maintained by a sufficient naval force.

We have, &c.
(For the Attorney-General, Queen's Advocate, and myself),
(Signed) R. P. COLLIER.

No. 404.

The Law Officers of the Crown to Earl Russell.—(*Received September* 24.)

My Lord, *Lincoln's Inn, September* 23, 1864.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 8th of September instant, stating that with reference to our Report of the 26th of July, he was directed by your Lordship to transmit to us for perusal a despatch from Lord Lyons (No. 620, August 23), on the subject of the new Customs Act lately passed by the United States' Congress, being in reply to the despatch, the draft of which was also therewith inclosed (No. 360, August 4), which was addressed to him on the receipt of our above-mentioned Report.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That we are glad to learn that the view which we took with respect to the expediency of assuming that British shipping will be exempt from the new differential duty imposed by the United States' Government is in accordance with that taken by Lord Lyons, and we conceive that the best course will be to leave his Lordship at liberty to act, in all respects, upon his own sound judgment as to the manner in which it will be prudent and expedient to deal with this important subject.

We have, &c.
(For the Attorney-General, Queen's Advocate, and myself),
(Signed) R. P. COLLIER.

No. 405.

The Law Officers of the Crown to Earl Russell.—(*Received September* 26.)

My Lord, *Lincoln's Inn, September* 23, 1864.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 9th September instant, in which he stated that with reference to the Report of the Law Officers of September 1861, he was directed by your Lordship to transmit to us a despatch and its inclosures from Lord Lyons (No. 614), respecting the enrolment of foreigners at New Orleans for police purposes, and he was to request that we would take the inclosed papers into consideration, and favour your Lordship with any observations which we might have to offer thereupon.

In obedience to your Lordship's commands we have taken the papers submitted to us into consideration, and have the honour to report—

That we are of opinion that the General Order, dated New Orleans, July 30, 1864, by the first Article of which it is provided that "neutral foreigners, not being subject to compulsory military service, will be enrolled as a separate class to be employed, whenever necessary, as a local police or constabulary force," is in accordance with the principles of international law applicable to the subject.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 406.

The Law Officers of the Crown to Earl Russell.—(*Received September* 26.)

My Lord, *Lincoln's Inn, September* 26, 1864.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 12th September instant, stating that with reference to his letter of the 5th instant, he was directed by your Lordship to transmit to us a further letter from Mr. Bates requesting to be furnished with copies of the official correspondence respecting the case of the "Georgia," for the purpose of proving that at the time when a British register was granted to him, Her Majesty's Government had a full knowledge of the antecedents of the "Georgia."

Mr. Hammond was also pleased to transmit, together with the previous papers, the drafts of letters recently addressed to Mr. Adams and Mr. Bates, of a despatch to Mr. Burnley, Her Majesty's Chargé d'Affaires at Washington, respecting this case,* and to request that we would take Mr. Bates' letter into our consideration; and, if we should think that his request should be complied with, that we would favour your Lordship with our opinion as to which of the inclosed papers might be communicated to him.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That though we are of opinion that applications of this character ought very rarely to be acceded to, having regard to the peculiar circumstances of this case, and to the consideration that evidence of the kind required may affect the legal bearings of the very important questions of international law which the Prize Court of the United States will be called upon to decide in the case of the "Georgia," we think that Mr. Bates may be allowed to have official copies of the following documents, viz., the Report from the Custom-house, 4th June, 1864 (No. 368 in Treasury letter of that date), announcing the sale of the "Georgia" to Mr. Bates, and copies of the letter of Mr. Stewart (the Assistant Collector), Custom-house, Liverpool (12th August, 1864), to the Commissioners of Customs, and of the letter of Mr. Morgan, Surveyor, Liverpool (12th August, 1864), to the Collector of Customs at Liverpool on the subject of the dismantling of the warlike stores and provisions of the "Georgia." These letters are numbered 2 and 3 in Treasury letter of August 15, 1854.

With reference to the following passages in the letter of Mr. Bates to your Lordship, "I take for granted that Her Majesty's Government will instruct Lord Lyons to represent them in the proceedings which may be taken in the United States, and I have therefore to request that your Lordship will be good enough to instruct Lord Lyons to render my agents in the United States all the assistance in his power,"—we think it would be right to apprise Mr. Bates that he will obtain from Lord Lyons, if any circumstances should render it necessary, the same assistance as any other British subject would be entitled to in the prosecution of his claim in an American Court of Justice; but that he must rely entirely, like any other private suitor, for the successful conduct of his case upon his own energy, and upon the legal advice and assistance which he may think it proper to employ upon his own behalf.

We think it may also be proper, in order to prevent any future misconception, to inform Mr. Bates that Her Majesty's Government do not in any case warrant, as against any claims which may be advanced by foreigners or foreign Governments (whether arising, or not, out of the exercise of belligerent rights during the state of war), the validity of any title acquired by means of the registration, as a British ship, of a vessel purchased by a British subject (in this country or elsewhere) from a foreigner, and that the registration of such a title is a mere ministerial act, which it is the duty of the proper Custom-house officers to perform, under the Mercantile Marine Acts, upon the mere production of proper documents, without any interference or responsibility whatever on the part of Her Majesty's Government.

We have, &c.
(For the Attorney-General and myself),
(Signed) R. P. COLLIER.
ROBERT PHILLIMORE.

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* To Mr. Adams, September 6; to Mr. Bates, September 9; to Mr. Burnley, No. 425; Mr. Adams, September 5, 1864.

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No. 407.

The Law Officers of the Crown to Earl Russell.—(*Received October* 1.)

Lincoln's Inn, September 29, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 22nd instant, stating that he was directed by your Lordship to transmit to us the accompanying papers* respecting the case of Mr. John Jackson, a British subject, who with his wife and family was removed some time since from Knoxsville, Tennessee, by order of the United States' military authorities; and to request that we would take this case into our consideration, and report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we advise your Lordship to return an answer to Mr. Jackson, to the following effect: That inasmuch as his son appears to have been domiciled in the United States, and to have carried on trade there for a considerable period, and even in the month of September last year to have undertaken a new business in Knoxsville, after that town had been taken military possession of by the United States' forces; and inasmuch as in the year 1859, he made a formal declaration of his intention to become a citizen of the United States, Her Majesty's Government are afraid that they cannot hold out any hopes of being able to claim redress for the injuries which he alleges himself to have suffered at the hands of the United States' authorities, who have treated him as a partisan of the Confederate Government; but that Lord Lyons will be instructed to use any good offices that may be in his power, on behalf of Mr. Jackson and his family.

We have, &c.

(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 408.

The Law Officers of the Crown to Earl Russell.—(*Received October* 3.)

Lincoln's Inn, September 30, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 21st of September instant, stating that he was directed by your Lordship to transmit to us a letter dated the 16th instant from Mr. Adams, respecting the desertion at Dover of three seamen belonging to the United States' ship "Iroquois."

Mr. Hammond was also pleased to inclose a letter dated the 17th instant from Mr. Romaine, and a memorandum relative to this subject; and to state that your Lordship proposes to inform Mr. Adams in reply, that there is no law in force in this country by which these deserters could be delivered up; but that before doing so, your Lordship wished to be favoured with our opinion whether that would be a proper answer to return to Mr. Adams' representation.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That the answer which your Lordship proposes to send to Mr. Adams is right and proper to be sent.

We have, &c.

(For the Attorney-General, the Queen's Advocate, and myself),
(Signed) R. P. COLLIER.

No. 409.

The Law Officers of the Crown to Earl Russell.—(*Received October* 5.)

Lincoln's Inn, October 4, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 30th September ultimo, stating that he was directed by your Lordship to transmit to us the draft of an answer which your Lordship proposed to return to a letter dated the 26th ultimo from the Admiralty, relative to the instructions which should be addressed to Commodore Cockburn with regard to the disposal of the "Tuscaloosa."

Mr. Hammond was also pleased to inclose the previous papers relative to this case, and to state that we should perceive that the Lords of the Admiralty were desirous of sending instructions on this matter to the Cape by the mail of the 5th of October, and to request that we would take your Lordship's proposed answer into immediate consideration, and favour your Lordship with our opinion whether it is such as is proper to be returned to the letter from the Board of Admiralty.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we are of opinion that your Lordship's proposed answer is proper to be returned to the letter from the Board of Admiralty.

We have, &c.

(For the Solicitor-General and myself, in his absence),
(Signed) ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 410.

The Law Officers of the Crown to Earl Russell.—(*Received October* 6.)

Lincoln's Inn, October 6, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 27th August, stating that the difficulties which have arisen in the United States respecting the privileges of British Consuls, which formed the subject of our Report of the 15th July, together with a communication which your Lordship has recently received from the French Embassy, render it, in your Lordship's opinion, desirable that the question should be carefully considered, whether it may be possible to enter with the United States and with France into Conventions regulating the rights and privileges of Consuls.

That he, Mr. Hammond, was accordingly to transmit to us a collection of papers,* giving an account of what passed with the United States on the subject in the year 1859; the recent correspondence with Lord Lyons and with the United States' Minister in this country;* and a letter from the French Chargé d'Affaires, with a memorandum on the proposal contained in it;† and to request that we would take this matter into consideration, and report to your Lordship our opinion as to how far the existing law of this country would admit of Her Majesty's entering with France and the United States into reciprocal engagements on the subject of Consular privileges, and where the existing law is insufficient, what engagements might be contracted with a reasonable expectation that Parliament would enable Her Majesty to carry them into effect.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That it must be for Her Majesty's Government to consider whether the advantages to be obtained from an alteration of the existing law and usage, having for their object to extend the privileges of foreign Consuls in this country, and to procure reciprocal concessions from foreign States with respect to British Consuls, would be sufficient to render it expedient that the difficulties incident to any new legislation on this subject should be encountered. Assuming, however, that Her Majesty's Government should determine to introduce into Parliament a Bill (which would be necessary for the accomplishment of this object), we are of opinion that the provisions contained in it should not go beyond those which we are about to specify.

1. That Consuls shall not be compellable to give evidence before Courts of Justice as to any measure of which they have any knowledge, or as to which they have acted or interfered only in their official character, or in the discharge of their official duty as Consuls.

2. That when a Consul is duly summoned to give evidence before any Court, he may, if he shall think fit, decline to answer any question put to him if he states that he has no knowledge of the subject except such as he may have acquired in his official character, or in the course of the discharge of his official duty.

3. That in no case shall a Consul be compellable to produce in any Court of Justice,

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* Mr. Jackson, May 10; Alderman Copeland, May 11; to Lord Lyons, No. 228; Lord Lyons, No. 378; Mr. Burnley, No. 23, 1864.

* Lord Lyons, Nos. 389, 443, and 547; Mr. Adams, July 30; to Mr. Adams, August 6; Mr. Adams, August 18, 1864.

† Prince de la Tour d'Auvergne, July 17, 1864; Memorandum on ditto.

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if he shall object to do so, any document which he shall state to be part of the archives of his Consulate, or official documents or papers which are in his custody as Consul.

4. That if the Consul be not a citizen of, or a landed proprietor, or engaged in commerce in the country where he is acting as Consul, he shall be exempted from all military billetings, military service, and direct or personal taxation, but that he shall not have any of these privileges or exemptions if he be a citizen, or a landed proprietor, or engaged in commerce in the country where he acts as Consul. The mere hiring and occupation of an official residence not to be regarded as making him a landed proprietor.

5. The Consular offices and dwellings, if denoted as such by placing on the outer door the arms of the Consul's nation, with an inscription (as in Article II of the Convention between the United States and France), shall not be forcibly entered or searched, nor shall the person of the Consul be liable to apprehension or arrest on any pretence whatever, by any magistrate or officer of justice, except under a special warrant in writing under the hand of some Justice of the Peace, or other person duly authorized by law to grant the same; which warrant shall only be granted for some lawful cause, shown upon oath to the satisfaction of the Justice, &c., whereby it shall appear that such cause does not in any way relate to any matter concerning the official character, or acts or duty of such Consul. The privileges granted by this Article not to apply if the Consul be a citizen of, or a landed proprietor, or engaged in commerce in the country where he acts as Consul.

We think, too, that the substance of Articles IV, V, VI, X, and XII of the Convention between France and the United States might well be adopted with such modifications only as are suggested in the Memorandum. We think it probable that Parliament would not refuse a measure which conferred these additional but limited privileges on Consular officers.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 411.

The Law Officers of the Crown to Earl Russell.—(*Received October* 10.)

Lincoln's Inn, October 8, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 22nd of September ultimo, stating that with reference to our Report of the 9th of May respecting the case of the "Scylla," he was directed by your Lordship to transmit to us, together with the previous papers, the accompanying despatches from Lord Lyons,* containing the correspondence which had since passed between him and Mr. Seward respecting the circumstances under which that vessel was decoyed into an United States' port, and there seized as a prize.

Mr. Hammond was also pleased to transmit to us a letter and its inclosures from the Board of Trade, whom your Lordship, on the receipt of Lord Lyons' despatch No. 590 of the 15th of August, requested to make inquiry as to the ownership of the "Scylla;" and to request that we would take these papers into our consideration, and favour your Lordship with our opinion as to the reply which Lord Lyons proposes to make to Mr. Seward, and of which the draft was inclosed in his above-mentioned despatch.

Mr. Hammond was further pleased to add that Mr. C. W. Adams, the person referred to by Lord Lyons, had not been in communication with the Foreign Office respecting the case of the "Scylla."

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That the reply which Lord Lyons proposes to send to Mr. Adams appears to us right and proper to be sent.

We have, &c.
(For the Attorney-General, the Queen's Advocate, and myself),
(Signed) R. P. COLLIER.

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* Lord Lyons, No. 236 and 246; to Lord Lyons, No. 276; Lord Lyons, Nos. 436, 520, and 590.

No. 412.

The Law Officers of the Crown to Earl Russell.—(*Received October* 10.)

Lincoln's Inn, October 8, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 30th of September ultimo, stating that he was directed by your Lordship to transmit to us a letter dated 22nd ultimo, from the Colonial Office, inclosing a copy of a Proclamation issued by the Lieutenant-Governor of Nova Scotia, relative to the place of anchorage at Halifax of vessels of war belonging to the belligerent States of North America, together with a despatch from Sir R. Macdonnell, in which he gives the reasons which have induced him to issue the Proclamation; and to request that we would take these papers into consideration, and favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That the Proclamation does not appear to us to exceed the authority of a neutral State, and the reasons assigned by the Lieutenant-Governor of Nova Scotia for the promulgation of it are satisfactory.

We have, &c.
(For the Attorney-General, the Queen's Advocate, and myself),
(Signed) R. P. COLLIER.

No. 413.

The Law Officers of the Crown to Earl Russell.—(*Received October* 11.)

Lincoln's Inn, October 10, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 17th instant, stating that with reference to our Reports of the 6th and 14th instant, he was directed by your Lordship to transmit to us, together with the previous papers,* a despatch from Mr. Burnley,† inclosing further papers respecting the case of Mr. J. J. Crawford; and to request that we would take these papers into consideration and furnish your Lordship with such observations as we may have to offer thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That the further papers now submitted for our consideration in this case do not appear to us to call for any observations in addition to those which we have already had the honour to offer to your Lordship respecting it.

We think that Mr. Burnley acted properly in refusing to give Mr. Crawford any official advice as to signing or refusing to sign the bond in question.

A sentence of a court-martial that a person charged with and found guilty of certain alleged offences shall give a bond of this nature, or in default of so doing be imprisoned with hard labour during the continuance of the war, certainly seems extraordinary. But upon the whole matter as to the amenability of persons in the condition of Mr. Crawford to military jurisdiction as actually exercised in the United States, we have already more than once expressed our opinion, and we receive no further information from the papers that are now before us calculated to affect our opinion on that point.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 414.

The Law Officers of the Crown to Earl Russell.—(*Received October* 20.)

Lincoln's Inn, October 18, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 30th ultimo, stating that with reference to our Report of the 5th September, and to our previous Reports respecting the vessels seized by the United States' authorities

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* Lord Lyons, No. 292, No. 522 No. 542, No. 560, No. 606.
† Mr. Burnley, No. 16, August 29, 1864.

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in the Rio Grande, he was directed by your Lordship to transmit to us, together with the previous papers, a despatch from the Acting British Consul at New Orleans (No. 22, August 27), inclosing a transcript of the proceedings in the United States' Prize Court at that place in the case of the brig "Dashing Wave;" and to request that we would take these papers into consideration, and favour your Lordship with such observations as we might have to offer thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That a perusal of the evidence tendered in the Prize Court in the case of the "Dashing Wave" does not appear to us to require any observations in addition to those which we have already had the honour to offer to your Lordship upon the case. We may, however, remark that the evidence seems to have fully warranted the decision of the Prize Court, which released the vessel on the ground of its having been captured in neutral waters.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 415.

The Law Officers of the Crown to Earl Russell.—(*Received October* 20.)

Lincoln's Inn, October 20, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 3rd instant, stating that with reference to our Report of the 14th ultimo, he was directed by your Lordship to transmit to us a despatch from Mr. Burnley (No. 48), relative to the reasons which induced Judge Betts to come to his second decision in the case of Mr. Binney, by which that gentleman was released from imprisonment.

Mr. Hammond was also pleased to state that the previous papers in this case were also inclosed,[*] with the exception of those bearing on the case of Mr. J. J. Crawford, which were transmitted to us in his letter of the 17th ultimo; and that he was directed by your Lordship to request that we would take Mr. Burnley's despatch into consideration and favour your Lordship with any observations which we might have to offer thereupon.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That we think it would be inexpedient now to prosecute any further inquiry into this case. Mr. Binney has been released, to whatever cause that release was due; to a certain extent, at least, his release may have some practical value as a precedent, and may perhaps be useful on other occasions. Be this however as it may, after the explanation contained in Mr. Edward's letter we see no advantage likely to be derived from any further inquiry into the motives of the second decision given by Judge Betts.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 416.

The Law Officers of the Crown to Earl Russell.—(*Received October* 20.)

Lincoln's Inn, October 20, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 3rd instant, stating that he was directed by your Lordship to transmit to us a despatch and its inclosures from Mr. Burnley (No. 47), from which it appears that the British Vice-Consul at Key West has been unable to obtain the documents relating to the case of the "Clyde," with which, in our Report of the 25th of May, we requested to be furnished.

Mr. Hammond was also to transmit to us the previous papers in this case, and to request that we would favour your Lordship with any further observations which we might have to offer thereupon.

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[*] Lord Lyons, No. 526, No. 541, No. 559, No. 605; to Mr. Burnley, No. 434.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That, as there appears to have been a restitution of the vessel by express consent of the captor and claimant, and of her cargo without opposition, and as it does not appear that any application was made at the time for costs or damages, we do not (in the absence of the documents to which we adverted in our former Report) advise your Lordship to take any further steps in this matter.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 417.

The Law Officers of the Crown to Earl Russell.—(*Received October* 20.)

Lincoln's Inn, October 20, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 7th instant, stating that with reference to our Report of the 21st June, and to our previous Reports respecting the case of Thomas Tulley and the other Irishmen enlisted into the United States' army at Portland, he was directed by your Lordship to transmit to us a despatch from Mr. Burnley (No. 57, September 20, 1864) respecting the investigation which has taken place with regard to these enlistments, and to request that we would take the same into consideration, and furnish your Lordship with any observations which we may have to offer thereupon. The previous papers were also inclosed to us.[*]

In obedience to your Lordship's commands we have taken this case further into consideration, and have the honour to report—

That, although it is of course impossible to form as accurate and just an opinion upon the perusal of the written evidence as that which it was competent to the Judges, who heard and saw the witnesses, to form, it nevertheless appears to us impossible to doubt that Her Majesty's Consul Murray has, in his very clear and able report, arrived at a just conclusion as to the main result of the evidence.

It is obvious that the plying these unfortunate persons with ardent spirits, in direct contravention of the local law of the State, until they had lost their understandings, their subsequent imprisonment for riot, the false stories told about the amount of punishment to which they were amenable, the inducements to enlist, the release of those who did nominally enlist without punishment, were all portions of a scheme for procuring soldiers for the United States' army, to which the persons who supplied the liquor, the policeman who arrested the drunken man, and the recruiting officer who enlisted the half sober man, were all parties.

Taking this view of the facts, it is unnecessary for us to do more than refer to our Report of the 21st of June last, as expressing our deliberate opinion of the conduct pursued by the United States' authorities in this matter.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 418.

The Law Officers of the Crown to Earl Russell.—(*Received October* 21.)

Lincoln's Inn, October 20, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 7th instant, stating that, with reference to our Report of the 21st July he was directed by your Lordship to transmit to us a despatch from Mr. Burnley (No. 58), inclosing a copy of the reply of Mr. Seward to the representation which Lord Lyons was instructed to make to the United States' Government, in support of the claim of Messrs. William Anderson and Co. for payment for the coals seized by the Commander of the United States' steamer "Vanderbilt" at Angra Pequena; that the instruction to Lord Lyons, and the previous papers,[†] were inclosed to us; and he (Mr. Hammond) was

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[*] Lord Lyons, Nos. 531 and 608.

[†] Three volumes; Lord Lyons, No. 261; Mr. Burnley, No. 2.

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to request that we would again take this matter into consideration, and furnish your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken this matter again into consideration, and have the honour to report—

That we have read with great regret, though with little surprise, the answer of Mr. Seward to the just demand of Her Majesty's Government on behalf of the owner of the coals seized at Angra Pequena.

It appears to us, in the first place, that there is no justification at present shown for the assumption, on the part of Mr. Seward, that the coals in question were, in fact, deposited at the place from whence they were taken, for the use of the navigators of the "Alabama."

Her Majesty's Government have (with very good reason), denied that any intention on the part of the British owners of those goods to sell them to the navigators of the "Alabama" could, if it were established, constitute a legal ground for the seizure of those goods, while remaining British property, by an United States' vessel, at Angra Pequena. Mr. Seward says that, by this denial, his Government is "left to infer that the claimants placed their coal on the Island of Angra Pequena for the use of the navigators of the 'Alabama.'"

We can only reply that such an inference is in every sense gratuitous and unwarranted, and that if the thing inferred is that the deposit of this coal was, in effect, a delivery, in pursuance of a contract with the navigators of the "Alabama," this is not only not implied in, but is distinctly opposed to, the very hypothesis of fact, in which Her Majesty's Government have expressed their view of the law, while neither knowing, nor admitting, for what purpose the coals in question were actually deposited.

It appears also to us a proposition directly at variance with the principles and practice of international law to maintain that the "Alabama" (however those who originally fitted her out may have been guilty of violating the municipal law of Great Britain), could, on that or on any other account, be treated or considered as a pirate; and we venture humbly to think that the United States' Government should be reminded that they cannot claim the rights of a belligerent from neutral States, and at the same time disregard their own obligations towards those States; that they have no right to seize the merchant-vessels of neutral States, upon the high seas, on the ground of their intention to violate a blockade, without, at the same time, religiously respecting the property of the neutral in territories or in dominions over which they have no legitimate authority, and that Her Majesty's Government are not disposed, in spite of the great forbearance which they have shown, to allow the property of Her Majesty's subjects, placed on a territory not subject to American jurisdiction, to be forcibly taken possession of by either of the belligerents in this civil war.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 419.

The Law Officers of the Crown to Earl Russell.—(*Received October* 21.)

Lincoln's Inn, October 21, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 5th of October instant, stating that he was directed by your Lordship to transmit to us a correspondence which had passed between the Foreign Office and the Board of Treasury* with respect to the shipment of certain provisions and stores on board the United States' ship "Iroquois" at Dover, and to request that we would take these papers into consideration, and favour your Lordship with our opinion as to the answer which should be returned to the inquiry made by the Commissioners of Customs relative to the notice which should be given to the Collectors at the different ports on the subject of such shipment. A copy of the letter from the Foreign Office of the 31st of January, 1862, referred to by the Commissioners of Customs, was also inclosed.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That we think an answer should be sent to the Commissioners of Customs to the effect that notice should be given to the Collectors at the different ports of all shipments of provisions and stores on board belligerent vessels as well as of shipments of coal; the effect of HerMajesty's Orders of 31st January, 1862, being to prohibit any such vessels, while in Britsh waters, to take in any supplies beyond what are necessary for their immediate use; which prohibition might easily be evaded if such vessels could go from one British port to another, and take in provisions and stores (other than coal), without check or inquiry.

We have, &c.
(For the Attorney-General, Queen's Advocate, and myself),
(Signed) R. P. COLLIER.

No. 420.

The Law Officers of the Crown to Earl Russell.—(*Received November* 3.)

Lincoln's Inn, October 29, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 12th October instant, stating that, with reference to that part of our Report of the 11th August last respecting the case of the "Margaret and Jessie" which related to the question of the distance at which vessels of war should be permitted to fire in the direction of neutral territory, he was directed by your Lordship to transmit to us the draft of the instruction which you addressed to Lord Lyons on the subject, together with a despatch from Mr. Burnley (No. 63), inclosing a copy of a note which he had received from Mr. Seward in reply; and to request that we would take the inclosed papers into consideration, and favour your Lordship with such suggestions as we might have to offer on this subject.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That the true principle appears to us to be that every neutral territory, in which term are included what are termed territorial waters, should be exempt from the injury accruing from the action of the belligerent. If, therefore, a new agreement, the necessity for which has been obvious for some time, be about to be made by maritime States, we think that such a distance from the shore should be fixed upon as will probably protect the neutral territorial waters and shore from the shot of the belligerent. It seems desirable that a definite distance should be named, and it would seem to us that this distance should be eight miles from the shore.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 421.

The Law Officers of the Crown to Earl Russell.—(*Received November* 3.)

Lincoln's Inn, October 31, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 18th instant, stating that he was directed by your Lordship to transmit to us the accompanying papers* relative to the imprisonment of a British subject, named William Croft Heslop, by the United States' authorities; and Mr. Layard was to request that we would take the same into consideration, and furnish your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That an attentive perusal of the voluminous papers in this case leads us to the conclusion that although Mr. Heslop may have been harshly treated by the authorities of the United States, particularly in his long detention without trial, and in his being removed from Baltimore Jail to Fort Warren, yet this is not a case in which Her Majesty's Government can properly interfere to claim any relief or compensation for him upon the footing of international right, whatever may have been the result of his recent

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* Treasury, September 13; to Treasury, September 17; Treasury, September 26, 1864.

* Lord Zetland, September 5; Mr. Burnley, No. 77, September 30, 1864.

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trial, as to which the papers would not lead us to feel quite so much confidence as seems to have been entertained by his Advocate, Mr. Thomas.

Mr. Heslop was clearly domiciled in Western Virginia, and had acquired (even during the pendency of this civil war) landed property in the neighbourhood of Richmond, within the territory now subject to the Confederate Government. He belongs, therefore, to that class of British subjects as to whom we have frequently advised that they are not entitled to invoke the protection of the country of their birth for the purpose of placing themselves in a privileged position, as compared with native-born Americans, under the circumstances of the present civil war.

Whatever may have been the result of Mr. Heslop's trial, it seems to us impossible to deny that the United States' authorities had considerable grounds for his original arrest, not merely in the direct statements of a Confederate deserter concerning him, but in the discovery, upon his person, of ten certificates for shares in a Confederate Volunteer Navy Company, and of a paper containing (or supposed to contain) a key to some secret correspondence in cypher. The explanation of these facts (for the facts themselves are undisputed) contained in his letter of the 24th May last, appears to us eminently improbable and unsatisfactory.

With respect to the narrative of his previous active services in the Union cause, and even with the Federal army, and his arrest on that account by the Confederate Government, contained in Mr. Thomas' Report of the 9th September, it is very remarkable (if his subsequent conduct was consistent with the Federal sympathies so ascribed to him) that he should have been entirely silent as to any such services and as to any claims which he may have had upon that account on the favour and consideration of the United States' Government, throughout the whole of his correspondence with Lord Lyons; and that he should even have taken upon himself credit, both in the correspondence and in his letter to Lord Zetland, for a strict and impartial observance of the neutrality enjoined upon British subjects by Her Majesty's Proclamation.

It is an obvious remark that the same individual may possibly be found taking different sides at different periods during the progress of a civil contest like the present; and that, residing and owning landed property (as Mr. Heslop did) within the Confederate lines and territory, he might have strong motives for desiring to recommend himself to the favour of the Confederate Government after he had been made sensible of their displeasure for his former proceedings in defence of the Union.

The papers before us furnish abundant evidence of the activity and zeal displayed on Mr. Heslop's behalf by Her Majesty's Representative at Washington, and of the egregious error into which Mr. Heslop seems to have fallen upon that point, which error would appear to have led to his writing to Lord Zetland.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 422.

The Law Officers of the Crown to Earl Russell.—(*Received November* 3.)

Lincoln's Inn, November 1, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 15th ultimo, stating that he was directed by your Lordship to transmit to us the accompanying correspondence* respecting the case of Miss Hill, a British subject who has been imprisoned by the United States' authorities at New Orleans; and to request that we would take the papers inclosed into consideration and favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we are clearly of opinion that the United States' authorities were warranted in treating Miss Hill as an enemy actively engaged on behalf of the Confederate States; and therefore that her imprisonment and the sentence passed upon her cannot be made the subject of complaint. We are further of opinion that all that could be properly done in her behalf was done by Lord Lyons and Mr. Acting Consul Coppell; and that if the latter gentleman should succeed, as there seems to be good reason to hope, in obtaining

for this lady the mitigation of the sentence which he has proposed to the United States' authorities, he will have rendered a considerable service to her.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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* Miss Hill, August 6; to Miss Hill, September 7; to Lord Lyons, No. 422; Mr. Burnley, No. 73, 1864.

No. 423.

The Law Officers of the Crown to Earl Russell.—(*Received November* 3.)

My Lord, *Lincoln's Inn, November* 1, 1864.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 18th ultimo, stating that he was directed by your Lordship to transmit to us a despatch and its inclosures from Mr. Burnley (No. 78, September 30) relative to the imprisonment, by the United States' authorities, of a British subject named David Boyle; and to request that we would take this case into consideration, and favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That it appears that David or Daniel Boyle, being a labourer seeking employment, was arrested in the company of one Robert Boyle, whom we assume to be justly described as a rebel, who had recently escaped from the proper custody of the civil authorities of the United States.

It appears also (No. 46 in Mr. Burnley's No. 78) that "from his own statement he (D. Boyle) was much mixed up in Southern matters." Bearing in mind the peculiar and exceptional state of things now prevalent in the United States, we see no just cause for remonstrance at the seizure and imprisonment of a person arrested in such circumstances and in such company; but we think that the continuance of this imprisonment for nine months, without any trial and in spite of frequent applications from Lord Lyons and Mr. Burnley to Mr. Seward for his trial or his release, certainly affords just grounds for grave complaint, more especially if, upon investigation, it should turn out to be true that he was examined before a Commission on the 12th of April (that is, about four months after his arrest), which reported that there were no charges against him (see David Boyle's letter to Lord Lyons, Inclosure 13 in Mr. Burnley's No. 78); and if it also should turn out to be true that the United States' Colonel Ingraham offered to release him if he would take the oath of allegiance to the United States (David Boyle to Lord Lyons, Inclosure 22 in Mr. Burnley's No. 78). This latter averment ought, we think, to be the subject of a special inquiry.

The former statement of Boyle, it is to be observed, is directly at variance with that of the Judge Advocate to Mr. Seward (Inclosure 18 in Mr. Burnley's No. 78), who says that "he (D. Boyle) knew that Robert Boyle had escaped, but refused to answer any questions as to where he had been where he was going, or what he had been doing."

Upon the best consideration of the facts of this case, we are not disposed to advise your Lordship that any demand for pecuniary compensation should at present be made on behalf of this person; but if, upon further inquiry, it should appear that his averments with respect to what took place before the Commission in April, and the offer of Colonel Ingraham, were strictly true, we should desire to have an opportunity of reconsidering this case.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLILER.
ROBERT PHILLIMORE.

No. 424.

The Law Officers of the Crown to Earl Russell.—(*Received November* 5.)

Lincoln's Inn, November 5, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 25th of October ultimo, stating that with reference to our Report of the 28th of July he was directed by your Lordship to transmit to us two despatches from Mr. Burnley (No. 12, August 29, and No. 93, October 7), inclosing copies of a note founded on our

Report which he had addressed to Mr. Seward respecting the case of the "Sylvanus," and of Mr. Seward's reply; and to request that we would take these papers into our consideration, and favour your Lordship with any observations that we might have to offer thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That the answer of Mr. Seward with respect to the firing shot by the American cruizer upon the "Sylvanus" is satisfactory; but with this exception it appears to us very unsatisfactory, both in its general tone and in its particular statements.

The answer practically asserts that this practice of placing neutrals in irons and treating them *primâ facie* as belligerents will be continued: the justification of this practice being grounded on the assumed right of the United States' Government to treat all blockade-runners as *primâ facie* enemies, and not as neutrals, until their neutral character is ascertained by subsequent inquiry. It is obvious, that this assumption may in all cases result (as it has, in many cases, actually resulted) in the confinement of neutral crews for indefinite periods of time, as prisoners of war; although it is admitted that, in principle, neutrals are not liable to any such penalty for breach of blockade.

We have more than once had the honour to express our opinion that this conduct is a plain and clear violation of neutral rights.

We regret to see that the old argument of the war being a civil war is again put forward; as if that could be a justification for acts which the argument tacitly admits would be unjustifiable in a war which was not civil. The proposition, so far as the obligations of the belligerent towards the neutral are concerned, is, as we have often had the honour to state, wholly unwarrantable by international law or precedent.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 425.

The Law Officers of the Crown to Earl Russell.—(*Received November* 11.)

My Lord, *Lincoln's Inn, November* 10, 1864.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 24th ultimo, stating that with reference to our Report of the 20th October he was directed by your Lordship to transmit to us the draft of a despatch founded on that Report, which your Lordship proposes to address to Mr. Burnley (No. 58, September 20), in reply to Mr. Seward's note of the 24th of August, also inclosed therewith, relative to the coals seized at Angra Pequena by the Commander of the United States' steamer "Vanderbilt;" and to request that we would take these papers into consideration and favour your Lordship with our opinion whether the proposed answer is right and proper to be sent.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we have ventured to suggest a few alterations and additions in the latter part of the draft letter proposed to be sent to Mr. Burnley; and with these variations we think it may properly be sent.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 426.

The Law Officers of the Crown to Earl Russell.—(*Received November* 15.)

My Lord, *Lincoln's Inn, November* 14, 1864.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 28th of October ultimo, stating that with reference to our Report of the 12th of April respecting the case of the "Peterhoff," he was directed by your Lordship to transmit to us, together with the correspondence which took place on the subject between Messrs. Wilson and the Foreign Office in the month of August last, a letter dated the 21st ultimo from those gentlemen, complaining of the delay which had taken place in dealing with this case, in the Supreme Court of the United States.

Mr. Layard was also pleased to transmit to us a volume containing the most recent correspondence with regard to this case, and to request that we would take Messrs. Wilson's letter into consideration, and favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we think an answer should be sent to Mr. Wilson to the following effect.

That Her Majesty's Government are advised by the Law Officers of the Crown, that this case does not call for the direct intervention of Her Majesty's Government. They will, however, instruct Lord Lyons to use his good offices to expedite, if possible, the hearing of this cause before the Appellate tribunal.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 427.

The Law Officers of the Crown to Earl Russell.—(*Received November* 15.)

My Lord, *Lincoln's Inn, November* 14, 1864.

WE are honoured with your Lordship's commands signified in Mr. Murray's letter of the 2nd of November instant, stating that he was directed by your Lordship to transmit to us a letter dated the 27th ultimo, and its inclosures, from the Treasury, respecting the claim for damages put forward by the owner of the "Alexandra," and to request that we would take this claim into our consideration, and report to your Lordship our opinion as to the course which should be pursued by Her Majesty's Government with reference thereto.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That we advise your Lordship that the proposition contained in Mr. Hamel's letter of effecting a compromise within the limit of 4,000*l.* is, all the circumstances duly considered, one which it would be expedient to adopt.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 428.

The Law Officers of the Crown to Earl Russell.—(*Received November* 15.)

My Lord, *Lincoln's Inn, November* 14, 1864.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 12th instant, stating that he was directed by your Lordship to transmit to us a copy of a despatch, received on the 12th instant from Her Majesty's Consul at Teneriffe, reporting the circumstance under which a number of men had been landed at that port from the British steamer "Laurel," and the part taken by that vessel in the equipment at sea of the British steamer "Sea King," as a vessel of war of the Government of the so-called Confederate States. That Mr. Consul Grattan states that he had taken the depositions on oath of four of the seamen of the "Sea King," who were landed from the "Laurel," and that he had deemed it proper to send Captain Corbett to England in safe custody to answer a charge of having infringed the Foreign Enlistment Act.

That your Lordship had ascertained that the depositions had not yet reached the Board of Trade, and that your Lordship was unable, therefore, at present to submit them for our consideration, and Mr. Layard was directed, however, to send us, at once, the Consul's despatch, as well as a copy of a telegram received at the Board of Trade announcing the arrival of twenty-two of the men at Liverpool; and to request that we would take the papers into consideration, and furnish your Lordship with our advice as to the course which should be adopted by Her Majesty's Government in this matter.

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We are also honoured with Mr. Layard's letter of this day's date forwarding the depositions in the case of the "Sea King."

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we think the depositions taken at Teneriffe, and forwarded to Her Majesty's Government by Mr. Consul Grattan, do not support the conclusion arrived at by the Consul, that Captain Corbett (whom we understand to have been in command of the "Sea King" until she was handed over to certain agents of the Confederate States off Desertas), is chargeable with any offence against the Foreign Enlistment Act. To constitute an offence under the 7th (the Equipment) clause of that Act, there must have been an equipment, &c., with a view to employment in the belligerent service of a foreign Power, *within some part of the United Kingdom, or of Her Majesty's dominions beyond the seas.* In like manner, to constitute an offence (by a person not himself enlisting, &c.) under the 2nd section, such person must have been concerned, *within the United Kingdom, or in some part of Her Majesty's dominions elsewhere*, in inducing or procuring others to enlist, &c., or to go, or agree to go, or embark, *from some part of Her Majesty's dominions*, for the purpose, or with intent, to be enlisted &c.; and to constitute an offence under the 6th section, the master, or other person in command of a ship or vessel *in some part of the United Kingdom, or of Her Majesty's dominions beyond the seas*, must knowingly and willingly have taken, or engaged to take, on board persons who had enlisted, or had agreed, &c., to enlist, &c., or who were *departing from Her Majesty's dominions*, for the purpose and with the intent of enlisting, &c.

In every one of these cases the criminal act must have been committed within some part of "Her Majesty's dominions;" a word which, as here used, does not (in our opinion) include a British ship on the high seas. But all the facts mentioned in these depositions appear to have taken place upon the high seas, beyond the limits of Her Majesty's territory. It is, indeed, not improbable that in the preparation of the "Sea King" for her voyage (if she went to sea under Captain Corbett's command from any port in this country), an offence against the 7th section of the Act may have been committed. It is also possible, that the officers and men, or some of them, may have been hired and taken on board in this country, with a view to employment in the Confederate service, so as to constitute offences against the 2nd and 6th sections, or one of them. But there is no evidence to support either of these conclusions in the depositions taken at Teneriffe by Consul Grattan.

All, therefore, that we can now advise your Lordship to do, is to direct the twenty-two men, or some of them who have just landed at Liverpool, be immediately examined by the Solicitor to the Treasury or some person deputed by him, and their evidence reported to us; and that the Solicitor be directed to obtain such other information as may be accessible in this country with respect to the previous history of the "Sea King," the nature and circumstances of her equipment, the engagements of her crew, and the persons concerned therein, if there should be reason to believe that she sailed from this country with the view of being employed as a ship of war in the Confederate service.

We have, &c.

(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 429.

The Law Officers of the Crown to Earl Russell.—(Received November 15.)

My Lord, *Lincoln's Inn, November* 15, 1864.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 31st ultimo, stating that with reference to our Report of the 20th ultimo, he was directed by your Lordship to transmit to us a further despatch from Mr. Burnley (No. 100, October 10th), inclosing a copy of a note from Mr. Seward stating the decisions come to by the United States' Government in the case of Thomas Tulley and the other Irishmen, passengers in the ship "Nova Scotian," who were enlisted into the United States' army at Portland.

A draft of a despatch, founded upon our above-mentioned Report, which has been addressed to Mr. Burnley, together with the despatch to which it was in answer, was also inclosed, and Mr. Layard was pleased to request that we would take these papers into consideration, and furnish your Lordship with our opinion on this matter as it now stands.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That the additional papers in this case do not induce us to change in any degree the opinion which we have already had the honour to report to your Lordship.

The United States' authorities have though proper to believe the testimony of their own officials, and to disbelieve that of the enlisted men; but it is not controverted by them that these men were locked up in a state of drunkenness in prison, and released from it without the payment of any fine or undergoing any punishment, and that their enlistment took place almost immediately on their becoming sober and being released.

It would seem to us proper to point out to the United States' Government, that the difference between the view of these transactions which has been taken by that Government, and the opinion of them which Her Majesty's Government has been compelled to form, seems to your Lordship the more to be regretted, because, if a different course had been taken by the United States' Government, it might perhaps have strengthened the hands of Her Majesty's Government in their endeavours to prevent Her Majesty's subjects from taking part with either of the contending parties in the present war.

We have, &c.

(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 430.

The Law Officers of the Crown to Earl Russell.—(Received November 15.)

My Lord, *Lincoln's Inn, November* 15, 1864.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 3rd instant, stating that with reference to our letter of the 21st ultimo, stating that we were of opinion that notice should be given to the Collector of Customs at the different ports, of all shipments of provisions and stores on board belligerent vessels as well as of shipments of coal, he was directed by your Lordship to transmit to us a letter dated the 1st instant, and its inclosure, from the Treasury, requesting to be informed whether the Commissioners of Customs should be instructed that no provisions or other supplies of any kind are to be permitted to be shipped on board a belligerent vessel until after the expiration of three months from the time when provisions or other supplies had been last shipped within British waters by the same vessel; and Mr. Layard was pleased to request that we would take this further letter into consideration, and furnish your Lordship with our opinion as to the answer which ought to be returned thereto, in view of the letter from the Foreign Office of the 31st January, 1862, of which a copy is inclosed.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we think no such instruction as that suggested ought to be given to the Commissioners of Customs. The period of three months mentioned in the 4th Rule laid down by the letter from the Foreign Office of the 31st January, 1862, clearly relates to supplies of coal only. There is no limit of time fixed with reference to the other supplies which are permitted; although it is, in our opinion, desirable that it should be known what supplies have been actually taken in from time to time by belligerent vessels, in order to check any violation or evasion of the Rules which restrict these supplies to things "requisite for the subsistence of the crew" (Rule 4), or (as the same meaning is expressed in Rule 3) "necessary for the immediate use" of the vessel.

We have, &c.

(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

P.S.—Mr. Layard's letter of the 14th instant, inclosing a further letter from the Treasury, which has been received by us since the above Report was copied for signature, does not appear to us to call for any further remark.

R. P.
R. P. C.
R. J. P,

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No. 431.

The Law Officers of the Crown to Earl Russell.—(*Received November* 16.)

My Lord,
Lincoln's Inn, November 16, 1864.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 1st of November instant, stating that, with reference to our Report of the 30th of July, he was directed by your Lordship to transmit to us, together with the previous papers, a despatch from Mr. Burnley (No. 109, October 18), inclosing a copy of a note from Mr. Seward, stating the result of the trial of Acting Master Everson, of the United States' Navy, for shooting James O'Neill; and to request that we would take these papers into consideration, and favour your Lordship with any observations we might have to offer thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That the result of the Court-martial on Acting Master Alfred Everson, of the United States' Navy, proves it to have been fairly and impartially conducted; and (although the proceedings themselves, which Mr. Seward promises to send, are not yet before us) we see no reason to doubt that the sentence was proper and sufficient. We observe that no reference is made in the letter of Mr. Seward to the subject of pecuniary compensation to the unfortunate man who was wounded; but it would appear to us that this is a question worthy of the consideration of Her Majesty's Government.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 432.

The Law Officers of the Crown to Earl Russell.—(*Received November* 19.)

My Lord,
Lincoln's Inn, November 18, 1864.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 8th of November instant, stating that he was directed by your Lordship to transmit to us a letter dated the 3rd instant, and its inclosures, from the Colonial Office, respecting a fine levied by the Collector of Customs at Port Angelos, Washington Territory (United States), upon the master of the British steamer "Alexandra," for an alleged violation of an Act passed on the 7th of July, 1838, called the Steam-Boat Act, and with respect to which your Lordship had been requested to communicate with Her Majesty's Minister at Washington.

Mr. Layard was pleased to request that we would take this matter into our consideration, and report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we have referred to the American Acts of Congress of July 7, 1838 (25th Congress, session 2, chap. 191), and August 30, 1852 (32nd Congress, session 1, chap. 106); after perusing which, we are clearly of opinion that they do not extend to British vessels in United States' waters, or to any vessels whatever, except those of the United States. This is evident, at once, from the whole nature and scope of their provisions, and from the express words of the 42nd section of the Act of 1852.

We therefore think there has been a manifest error and miscarriage on the part of the Collector of Customs at Puget's Sound; and that the fines paid by Mr. Moore, under protest, have been improperly and unlawfully imposed. The matter is of great importance, not only to Mr. Moore individually, but to British trade generally; for the construction placed by the Collector upon the 2nd section of the Act of 1838 (see also the 1st section of the Act of 1852), would operate to the entire exclusion of all British steamers from all "the bays, lakes, rivers, and other navigable waters" of the United States. We advise, therefore, that Lord Lyons should be instructed to represent the circumstances of this case without delay to the United States' Government; and we cannot doubt that the effect of such representation will be to procure the immediate return of the fines exacted from Mr. Moore, and to prevent the recurrence of any similar obstruction to the trade of Great Britain and her Colonies with the ports on Puget's Sound.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 433.

The Law Officers of the Crown to Earl Russell.—(*Received November* 24.)

My Lord,
Lincoln's Inn, November 24, 1864.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 12th November instant, stating that with reference to our Report of the 29th August last, respecting the case of the "Science," he was directed by your Lordship to transmit to us a despatch from Her Majesty's Chargé d'Affairs at Washington (No. 94), inclosing a copy of a despatch from Mr. Acting Consul Coppell, conveying further information relative to the principle on which the several vessels seized in the Rio Grande were either released or condemned, and stating the course pursued in other particulars by the Prize Court in these cases; and to request that we would take Mr. Coppell's statement into our consideration, and report to your Lordship our opinion thereupon.

Mr. Layard was also pleased to state that, in connection with the subject, he was to transmit to us two other despatches and their inclosures from Her Majesty's Chargé d'Affaires (Nos. 114 and 116), from which we should see that Mr. Seward has stated that the representation which, in conformity with our Report of the 5th September, had been addressed to him respecting the Matamoros seizures should receive attentive consideration.

We are also honoured with your Lordship's commands signified in Mr. Hammond's letter of the 16th November instant, stating that with reference to Mr. Layard's letter of the 12th instant respecting the vessels seized in the Rio Grande, he was directed by your Lordship to transmit to us a letter dated the 14th instant from Messrs. P. H. Dean and Co., the owners of the "Dashing Wave," one of the vessels in question, applying for information as to the steps which would be taken by Her Majesty's Government in regard to their vessel; and to request that we would take Messrs. Dean's letter into our consideration, and favour your Lordship with our opinion as to the answer which should be returned thereto.

We are also favoured with Mr. Hammond's note of the 19th instant, stating that with reference to his letter of the 16th instant, he was directed by your Lordship to transmit to us a despatch from Lord Lyons (No. 636) inclosing the answer of the United States' Government to the representation which he was instructed to make with respect to the proceedings in the cases of the several vessels seized in the Rio Grande.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we think it would be expedient to wait until the Judge of the Prize Court has, after consultation with his brother Judges, delivered in writing the reasons and principles upon which his Judgments are founded. Until we have had an opportunity of examining the Judgments *in extenso*, we cannot prudently advise your Lordship as to the course which Her Majesty's Government ought to pursue. In the meantime, we think that an answer should be sent to Messrs. Dean and Co., to the effect that they must principally rely upon their own exertions, and those of their agents and counsel in America, to obtain by legal means in the proper Prize Courts the redress which they seek; but that, in the peculiar circumstances of these cases, Her Majesty's Government will instruct Lord Lyons to afford them such assistance as may be in his power.

With reference to Mr. Seward's answer to Mr. Burnley, of the 25th October last, it seems to us necessary to observe that in this country it is at all times competent for the Executive Government, in cases of prize, to control the proceedings in the Prize Courts, so far as to withdraw any case from them, if it should be considered improper or unadvisable to prosecute it with a view to condemnation; and, *a fortiori*, it is competent for the Executive Government to direct that an appeal against any Judgment of one of these Courts releasing a ship or cargo should not be presented, or if presented, should not be prosecuted. This power of the Crown has in Great Britain always been deemed to be of great public importance, as affording the means of doing prompt justice to neutrals in cases of manifestly unjust capture; and we have hitherto supposed the same power to be undoubtedly possessed by the Government of the United States of that country. The decision of the Prize Court in the case of the mail-bags on board the "Peterhoff" (affirming the absolute right of the District Attorney to withdraw these bags from the Court, notwithstanding the opposition of the captors), and the course pursued by the United States' Government with respect to those cases in which some of their Prize Courts had acted upon the old rule as to enemies' goods in neutral bottoms (notwithstanding the adhesion of the United States in the present war to the Declaration of Paris), seem to us to be clear examples of the recent exercise of such a power; and

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therefore we cannot but feel some doubt whether the concluding sentence in Mr. Seward's letter of the 25th October may not have been written without sufficient regard to the important and necessary distinction between this class of cases and proceedings in the ordinary Courts of Law.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 434.

The Law Officers of the Crown to Earl Russell,—(*Received November* 24.)

Lincoln's Inn, November 23, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 11th November instant, stating that with reference to that part of our Report of the 4th of August, which related to the proceedings of the United States' troops on the Rio Grande, and the case of Captain Paulson, he was directed by your Lordship to transmit to us a despatch from Mr. Burnley (No. 119, October 24th), inclosing the explanation of the United States' Government with respect to these matters; and to request that we would take the same into consideration, and favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That the course pursued by the United States' Government, as to the complaint with respect to the proceedings of their troops on the Rio Grande, appears to us quite satisfactory. But the claim to arrest a British subject on land for having been engaged in running the blockade, is one which we think contrary to international law. We have often had occasion to report to your Lordship that the offence of breaking the blockade, so far as neutrals are concerned, is not punishable by the arrest or imprisonment of the neutral subject. The seizure of the ship and cargo is the penalty affixed by international law, and to that neutral States ought to submit; but this obligation which in practice presses hard upon the commerce of the neutral, is met by a corresponding obligation on the part of the belligerent to confine himself strictly to this mode of maintaining his blockade.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 435.

The Law Officers of the Crown to Earl Russell.—(*Received November* 25.)

Lincoln's Inn, November 25, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 23rd of November instant, stating that he was directed by your Lordship to state to us, that it appears a party of twenty-five men lately undertook an expedition from Canadian territory against the town of St. Albans, Vermont, United States, and that after levying contributions from the inhabitants and committing various damages, they recrossed the frontier taking a portion of their spoils with them; and your Lordship understands that the United States' Government has addressed to the Canadian Government a demand for the extradition of these men, under the Treaty of Washington of August 9, 1842.

Mr. Hammond was also pleased to state that, under these circumstances, your Lordship requested that we would have the goodness to favour you with our opinion upon the following points, viz.:—

1st. Whether if the Judges in Canada, notwithstanding the allegation of these men that they were acting under the orders of the Confederate Government, should decide in favour of their extradition, any further measures will be necessary to prevent future raids;

2ndly. Whether, if evident preparations were being made on British territory for future raids, the existing law is strong enough to suppress these preparations;

3rdly. Whether it is necessary for the maintenance of our just relations with the United States, that we should add to our statutes such a law as that passed by the United States in 1838 (see State Papers, vol. xxvi, pages 1234 and 1349);

4thly. Whether, if such a law be necessary, it is more consistent with constitutional usage that it should be proposed to the Imperial or to the Canadian Legislature.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That with regard to the first question, assuming that these persons should allege that they were acting under the orders of the Confederate Government, we think it is impossible to say that the liability of individuals, when they shall have been apprehended, to extradition does constitute a sufficient security (regard being had to the conterminous relations and the existing state of things in Canada and the United States) against the recurrence of such acts of violence as have been committed in the present instance.

With regard to the second question, in the case supposed, if sufficient information of facts capable of proof should reach the Government in time for taking measures of prevention, we think that the existing law would be adequate for the purpose.

With regard to the third question, we are not prepared to say that the enactment of a law in Canada, containing provisions similar to those which are to be found in the United States' Act of 1838, is a measure of necessity for the maintenance of our just relations with the United States; but we do think that the Government of the United States have a clear right to expect that the Canadian law shall be found in practice generally sufficient, not merely for the punishment, but also for the suppression and prevention of these border raids; and it would appear to us desirable (if practicable) that the Canadian Government should be armed, during the period of civil war in the United States, with powers of prevention similar to, or equally prompt and efficacious with, those which, during the civil war in Canada, were conferred by the Legislature of the United States upon the executive of that country, in order to prevent invasions by their subjects of the Canadian frontier.

With regard to the fourth question, we think that if the passing of such a statute should be deemed expedient, it ought to be passed by the Canadian Legislature, and should in its duration be strictly limited (as the United States' Act of 1838 was) to the period during which those exigencies which have rendered it necessary may be likely to continue.

We have &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 436.

The Law Officers of the Crown to Earl Russell.—(*Received November* 29.)

Lincoln's Inn, November 28, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 12th of November instant, stating that he was directed by your Lordship to transmit to us, together with the previous papers, a despatch from Her Majesty's Chargé d'Affaires at Washington (No. 121, October 24), inclosing a copy of a despatch from Mr. Acting Consul Coppell, containing the further information respecting the case of the schooner "Betsy," which he was directed to obtain on the receipt of our Reports of the 17th and 28th of June last; and to request that we would take the same into our consideration, and favour your Lordship with any observations which we might have to offer thereupon.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That the further information, supplied by Mr. Consul Coppel, satisfies us that Her Majesty's Government ought not to interfere officially on the part of the owners of the "Betsy," but that they should be left to the remedy of an appeal (if they think fit to make one) from the sentence of which they complain.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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No. 437.

The Law Officers of the Crown to Earl Russell.—(Received December 1.)

Lincoln's Inn, November 30, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 22nd November instant, stating that with reference to our Report of the 18th instant respecting the fines imposed on the British steamer "Alexandra," at Port Angelos, Washington territory, he was directed by your Lordship to transmit to us, together with the previous papers,* a letter from the Colonial Office, dated the 21st instant, inclosing copies of further papers received from the Governor of Vancouver's Island on this subject; and to request that we would take the same into consideration, and state to your Lordship whether they induce us in any degree to alter or modify the opinion contained in our Report above referred to.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That we should desire, of course, to have the advantage of perusing the Judgment of the American Court, referred to in Mr. Collector Gunn's letter (Inclosure 2 in Colonial Office letter of the 21st November), which is stated to be at variance with the opinion which we had the honour to express in our former Report.

We collect, from the present information, that the fine is considered to have been imposed, not simply for a violation of the particular American statutes to which we referred, but because the ship "Alexandra" had touched at other places besides her *port of entry;* and that it is held to be illegal for any foreign ship to touch at any port or place of the United States which is not a port of entry. In the particular Acts of Congress mentioned in our former Report we have failed to discover any provisions bearing upon this point, and if there should be any other statutes of the United States necessary to be considered, it is desirable that our attention should be directed to them. On the whole, it occurs to us that it might perhaps be the most prudent course for Lord Lyons to obtain the advice, upon this subject, of the legal adviser of Her Majesty's Legation at Washington, before making any representation to the United States' Government in conformity with our former opinion.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 438.

The Law Officers of the Crown to Earl Russell.—(Received December 1.)

Lincoln's Inn, December 1, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 19th ultimo, stating that with reference to our Report of the 15th November, he was directed by your Lordship to transmit to us a letter dated the 18th ultimo from Mr. Adams, inclosing copies of the depositions of two men who lately formed part of the crew of the "Sea King;" and to request that we would take these papers into our consideration, and favour your Lordship with such observations as we might have to offer thereupon.

Mr. Hammond was also pleased to state that we should observe from the accompanying draft of a letter to the Treasury dated the 15th ultimo, that the Lords Commissioners have been requested to instruct their Solicitor to take the depositions, and to proceed in this case in other respects in the manner recommended in our Report; and that a despatch of Mr. Consul Grattan (No. 39, October 30) was also inclosed.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That, in our opinion, the depositions now forwarded by Mr. Adams are sufficient to prove that Captain Corbett did, *in this country*, engage and procure the deponents to serve as sailors on board the "Sea King," which ship, from the whole of the evidence in the case, we infer to have been then a vessel intended by him to be used (after she should have been taken to the Azores) in the Confederate service. These facts raise questions similar to those which were involved in the cases of the seamen on board the "Georgia" and "Rappahannock," except that none of these particular deponents accepted the Confederate service when the true object of the voyage was disclosed to them. Those questions, upon the construction of the Act, are not free from difficulty, but in some of the other cases convictions have been obtained and submitted to; and we think that even if there were no other point arising upon his acts when he handed over the ship to her Confederate commander, it would be proper upon this evidence that Captain Corbett should be prosecuted for a violation of the 2nd section of the Act, by procuring, or attempting to procure, these men and others unknown to serve and be employed, &c., or to go and embark from Liverpool for the purpose or with intent to serve or be employed, &c., contrary to that section.

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* Colonial Office, November 3, 1864.

We further think, on more deliberate consideration, that if the "Sea King" ought to be deemed (as *primâ facie* we think she may be) to have been still a British ship when Captain Corbett endeavoured to induce the men on board her to accept the Confederate service, the question whether her deck was not then "*a place belonging or subject to Her Majesty*" is a serious one, which ought also to be raised by the indictment. In our former Report we stated that we did not think a British merchant-ship at sea was included within Her Majesty's "dominions" in the sense of the Act; but in the 2nd clause there are also the other and larger words above noticed, to which we did not then advert, and which might perhaps receive a more extensive construction.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 439.

The Queen's Advocate to Earl Russell.—(Received December 5.)

Doctor's Commons, December 3, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 1st instant, stating that with reference to my Report of the 28th July, 1863, respecting the proceedings of the United States' steamer "Wyoming" at Hong Kong, he was directed by your Lordship to transmit to me a letter dated the 11th May last, from the Colonial Office, inclosing copies of a despatch from the Governor of that Colony, and other papers relative to a further visit paid by the "Wyoming" to the waters of that Colony.

That Mr. Secretary Cardwell being anxious to be informed whether the acts of the Governor in this matter should be approved, Mr. Hammond was to request that I would take these papers into consideration, and report to your Lordship my opinion thereupon.

In obedience to your Lordship's commands I have the honour to report—

That I am of opinion that the course pursued by the Governor of Hong Kong has been very proper and expedient.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 440.

The Law Officers of the Crown to Earl Russell.—(Received December 5.)

Lincoln's Inn, December 5, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 22nd ultimo, stating that with reference to our Report of the 8th October, he was directed by your Lordship to transmit to us, together with the previous papers, and the correspondence which has since taken place on the subject,* a letter from the Colonial Office dated the 16th ultimo, inclosing a copy of an amended Order of the Governor of Nova Scotia relative to the place of anchorage at Halifax of vessels of war belonging to the belligerent States of North America, and the manner in which such vessels shall communicate with the shore.

Mr. Hammond was also pleased to state that your Lordship is disposed to consider

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* Colonial Office, September 22; Admiralty, October 10; to Admiralty, October 14; to Colonial Office, October 14; to Mr. Burnley, No. 476; Admiralty, October 27 and November 8, 1864.

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that the mode of proceeding indicated in the amended Order is proper, but that before returning an answer to that effect to the Colonial Office your Lordship wishes to receive our opinion thereupon; and that he was therefore to request that we would take the papers inclosed into consideration, and favour your Lordship with such observations as we might have to offer in regard to their contents.

We are also honoured with your Lordship's commands signified in Mr. Hammond's letter of the 26th ultimo, stating that with reference to his letter of the 22nd November he was directed by your Lordship to transmit for our consideration a further despatch from Lord Lyons (No. 646, November 7) on the subject of the place of anchorage at Halifax of vessels of war belonging to the belligerent States of North America.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we are of opinion that the mode of proceeding indicated in the amended Order is proper, and that an answer to that effect may safely be returned by your Lordship to the Colonial Office.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 441.

The Law Officers of the Crown to Earl Russell.—(Received December 7.)

Lincoln's Inn, December 6, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 29th ultimo, stating that he was directed by your Lordship to transmit to us a letter from the Colonial Office dated the 23rd ultimo, and its inclosures, consisting of three despatches from the Governor-in-chief of the Windward Islands, and a letter addressed to your Lordship by Mr. Roach, dated the 22nd October, a resident of Barbadoes, in which he claims the interposition of Her Majesty's Government in procuring compensation for the loss he has sustained by his vessel, the brigantine "Madeira," being run down by the United States' steamer "Clyde" in October 1863.

Mr. Hammond was, therefore, to request that we would take Mr. Roach's application into our consideration, and favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That according to the statements of the master and mate, it would appear that the United States' steamer "Clyde" was, according to the rules of the sea, solely to blame for this collision; but in all probability the "Clyde" has a different story to tell; and the matter is one which can only properly be decided by a judicial investigation. The proper course for Mr. Roach to pursue would be to proceed against the "Clyde" in a Court in the United States which exercises Admiralty jurisdiction. If, indeed, the United States' Government were to refuse to allow process of Court to issue at the suit of a private individual against a ship belonging to the State, there might be some ground for the interference of Her Majesty's Government on behalf of Mr. Roach; but at present we are of opinion that Mr. Roach should be apprised that he must endeavour to obtain legal redress in the manner which we have the honour to point out to your Lordship.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 442.

The Law Officers of the Crown to Earl Russell.—(Received December 6.)

Lincoln's Inn, December 6, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 22nd ultimo, stating that he was directed to transmit to us a letter from Mr. Cecil Jenkins, dated the 7th ultimo, containing inquiries as to the position of himself and brother, British subjects resident in the State of Texas, in regard to military service

which the authorities of that State require them to perform; and to request that we would take Mr. Jenkins' letter into consideration, and furnish your Lordship with our opinion as to the answer which should be returned thereto.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That although obstacles appear (from the letter of Consul Lynn) to be now thrown in the way of British subjects desirous of leaving Texas, we do not understand that Mr. Jenkins' object is to obtain for himself, or for his brother, liberty to decline military service on the terms of leaving the Confederate States. On the contrary, as he is himself in England, and nevertheless writes on his own behalf as well as on behalf of his brother, we assume his object to be to return to and remain in the Confederate States, and while there to enjoy as of right (for himself and for his brother) a permanent exemption from evey kind of compulsory military service.

We do not think it would be proper under such circumstances for Her Majesty's Government to interfere in his favour. Our advice to your Lordship has always been that British subjects (who were not naturalized and had not exercised the privileges of citizens in the United or Confederate States, and who came to reside there when there were no laws in force rendering them liable to military service) were entitled, when such laws were first enacted, to leave the country (if they should elect so to do) rather than submit to compulsory military service, and that they were also entitled to have a reasonable time and reasonable opportunities allowed them for that purpose. But we have never thought that Her Majesty's Government could claim as of right, that British subjects should be permitted to continue permanent inhabitants of the territory of either belligerent upon terms of exemption from the local laws as to military service, especially if such service is of a defensive character. To this advice we still adhere, and we think that an answer in this sense ought to be returned to Mr. Jenkins' letter.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 443.

The Law Officers of the Crown to Earl Russell.—(Received December 7.)

Lincoln's Inn, December 6, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 24th ultimo, stating that with reference to our Report of the 27th of November, 1863, respecting the case of the schooner "Etta," he was directed by your Lordship to transmit to us, together with the previous papers,* a despatch from Lord Lyons (No. 637) inclosing a copy of the decision of the Judge of the United States' District Court of New Jersey in this case; and to request that we would take these papers into consideration, and favour your Lordship with such observations as we might have to offer thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we have perused, with the care and attention which so important a matter demands, the Judgment of the District Court at New Jersey.

The case of a belligerent ship of war, sold *bonâ fide* to a neutral in a neutral port, is almost one *primæ impressionis;* but the decision of Lord Stowell in the "Minerva," and the concurring opinion of Judge Story, are properly cited by the Judge who tried the case of the "Etta," as furnishing much authority in favour of the principle of his decision.

Upon the whole, we are of opinion that the "Etta" was, upon sound principles of international law and usage, rightly condemned; and certainly we do not advise Her Majesty's Government to take any further steps, or to address any remonstrance to the United States' Government on behalf of her owners.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
RORERT PHILLIMORE.

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* Lord Lyons, No. 779; to Lord Lyons, No. 633; Lord Lyons, No. 48; Mr. Burnley, No. 101.

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No. 444.

The Queen's Advocate to Earl Russell.—(Received December 8.)

My Lord, *Doctors' Commons, December* 8, 1864.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 7th instant, stating that he was directed by your Lordship to transmit to me a despatch from Lord Lyons, inclosing a printed copy of a Proclamation issued by the President of the United States, notifying that the blockade of the port of Norfolk, in Virginia, and of the ports of Fernandina and Pensacola, in Florida, was to cease from and after the 1st instant; and Mr. Hammond was to request that I would take the same into consideration, and furnish your Lordship with my opinion whether it would be right to publish this notice in the "London Gazette," though not officially communicated to Lord Lyons.

In obedience to your Lordship's commands I have taken the notice referred to into consideration, and have the honour to report—

That I should not have inferred from the letter of Lord Lyons that the notification of the raising of the blockade in question had not been officially imparted to him; but as I understand that this is the case, and as I believe it has never been usual for Her Majesty's Government to cause to be inserted in the "Gazette" a notification of this kind, of which they have not been officially apprised, I see no reason why the usual course should be departed from in the present instance, and I therefore do not recommend the insertion of this notice in the "Gazette" until it shall have been communicated to Her Majesty's Government in the proper and accustomed manner.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 445.

The Law Officers of the Crown to Earl Russell.—(Received December 13.)

My Lord, *Lincoln's Inn, December* 13, 1864.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 5th instant, stating that with reference to our Report of the 25th ultimo, he was directed by your Lordship to transmit to us a letter dated the 5th instant, and its inclosures, from the Colonial Office, relative to the recent attack on the town of St. Alban's, Vermont, by certain persons alleging themselves to be acting under the Confederate Government. That we should perceive that Mr. Secretary Cardwell requests to be favoured with our opinion as to what instructions should be given to Lord Monck, when the Supreme Court shall have delivered its Judgment on this case, and especially as to what course should be taken in the Colony if the Judges should determine against the extradition of the accused persons, on the ground that they were acting as officers of the Confederate Government. Previous papers were also inclosed, and Mr. Hammond was to request that we would take this matter into consideration, and furnish your Lordship, at our earliest convenience, with our opinion thereupon.

We are also honoured with Mr. Hammond's letter of the 8th instant, transmitting two further despatches from Lord Lyons (No. 680, November 21, and No. 693, November 25) relative to this case.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That if the proper legal authority in Canada should decide that these persons ought to be delivered up under the Treaty of Extradition, and the Statute 6 and 7 Vict., cap. 76, to the proper United States' authority, that decision ought, in our opinion, to be acted upon; and, in that case, no further immediate difficulty will be likely to arise.

Upon the evidence as it now stands, it would appear that these persons went privately, in plain clothes, without any military demonstration, to the town of St. Alban's; and while there, took possession of horses belonging to one of the inhabitants of that town, and having obtained admission into several of the banks, seized money and other property there, and afterwards fired pistols upon unarmed citizens, killing one, and wounding others.

It is for the legal authorities in Canada to determine how far (if at all) the character of these acts may be affected, in point of law, by evidence (if such evidence should be produced) that in so doing the perpetrators acted under orders from some military or other authority in the Confederate States. But, upon the information now before us, we are not prepared to say that a decision holding such acts to be robbery and murder, under the circumstances above described, and not acts of war, would be erroneous.

If, however, the Supreme Court should decide that these persons are, by reason of any commissions granted to them by the Confederate authorities or otherwise, to be regarded as belligerents, and not as criminals, a great difficulty may, and probably will, arise.

It appears to us that, in this case, Lord Monck should be instructed to take the opinion of his legal advisers whether, upon the evidence and other information in possession of the Canadian Government, these persons may not properly be put upon their trial on a charge of misprision and violation of the Royal Prerogative, by levying war from Her Majesty's dominions against a friendly Power; and (unless the Canadian Law Officers should see reason to the contrary) we think that they ought (in the case supposed) to be retained in custody, and brought to trial for that offence. It is evident that any proofs which may be offered of their having concerted and executed this expedition under the direct authority and instructions of any persons exercising military authority or powers of government in the Confederate States, may constitute important evidence in support of such a charge. We need hardly add that so flagrant a violation of Her Majesty's neutrality by the Confederate authorities, as would be involved in the organization and execution of such a design under their immediate orders, would require the very serious attention of Her Majesty's Government.

We think, also, that such a decision of the Supreme Court would furnish a strong argument for the expediency of arming the Canadian Government, as promptly as possible, with such additional legal powers of prevention as were recommended in our last Report on this subject.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 446.

The Law Officers of the Crown to Earl Russell.—(Received December 15.)

My Lord, *Lincoln's Inn, December* 15, 1864.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 1st instant, stating that he was directed by your Lordship to transmit to us two despatches from Lord Lyons (Nos. 663 and 672) and a letter from the Colonial Office, dated the 24th ultimo, relative to the capture and destruction of the United States' mail-packet "Roanoke," by a party of men who embarked in her at Havana as passengers; and Mr. Hammond was to request that we would take these papers into consideration, and furnish your Lordship with such observations as we may have to offer thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we are of opinion that (subject to the question which seems to have existed as to the Magistrate's jurisdiction) Captain Brain, and the men under his orders, were not improperly arrested upon the charge of piracy, but that the Attorney-General of Bermuda properly withdrew the charge, on the production of the commission to Captain Brain from the Confederate Government.

We are also of opinion that these persons could not have been delivered up under the Extradition Treaty to the Consul of the United States, even if his application had been made in proper form.

The authorities at Bermuda seem to be perfectly apprised of the necessity of enforcing the provisions of the Foreign Enlistment Act; and, therefore, we offer no observations upon the evasions and infringements of that Act, which there seems to be reason to believe are, in spite of the exertions of the authorites, practised in Bermuda.

The manifest disregard of Her Majesty's orders against the entrance of prizes taken by either belligerent within the territorial waters of Her Majesty which has taken place in this instance on the part of the captors of the "Roanoke," will doubtless receive due attention from Her Majesty's Government. In the case of a capture of this novel kind, by persons who obtain access to the captured ship as passengers, and who are not

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supported by any ship of their own, the strict enforcement of those orders seems to be peculiarly necessary.

We have &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 447.

The Law Officers of the Crown to Earl Russell.—(*Received December* 15.)

Lincoln's Inn, December 15, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 8th instant, stating that he was directed to transmit to us the accompanying paper containing the substance of a despatch from M. Drouyn de Lhuys to the Prince de la Tour d'Auvergne, requesting to be informed of the opinion of Her Majesty's Government with regard to certain propositions set forth in the annexed Memorandum as to the course which the Government of the Confederate States wish to pursue with respect to neutral property found on board vessels captured by their cruizers; and Mr. Hammond was to request that we would take these papers into early consideration, and furnish your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That the "Minute of Instructions" to their cruizers put forth in the aforesaid Memorandum of the Confederate Government, deals with four categories of cases, A, B, C, D, and we propose to address some observations upon each of these to your Lordship.

Category A relates to "a vessel under enemy's flag without cargo, or with cargo belonging exclusively to the enemy." Passing by (as unnecessary for the consideration of the general question raised in this category) the incidental remarks as to the power of the belligerent to convert his prizes into ships of war, and as to the case of the "Tuscaloosa," we are of opinion that the rules of international law upon this subject (with which neutrals have no direct concern) are correctly stated in the Minute. The same rules are, of course, applicable to all vessels acknowledged to belong (with their cargoes) to the enemy only, whether falsely assuming the colours and papers of a neutral nation, or sailing under their own.

The other three categories all relate to cargoes or ships in which neutrals are interested; and as to all these, the Confederate "Minute of Instructions" contemplates a systematic departure from one of the most fundamental rules of international maritime law, viz., the rule that the seizure of neutral ships or property by a belligerent on the high seas is illegal, unless followed by a regular adjudication in a competent Prize Court. It is a cardinal principle of maritime international law, that a State, which claims to exercise the belligerent rights of visitation, search, and detention of neutral vessels, is bound to possess or constitute proper Courts capable of administering international justice to neutral claimants. It is also a settled principle, that the property of a neutral on board an enemy's merchant-ship (except in cases of contraband) is not good prize, and that neutrals ought always to have the means of reclaiming any such property, if captured, in a Prize Court; also, that if any property of a neutral is alleged to be contraband, it cannot be legally treated as such, or confiscated, without a proper sentence of condemnation. The right and the duty of the belligerent in these matters, are correlative and inseparable. He cannot lawfully exercise the former without performing the latter. If, in his judgment, insuperable difficulties prevent him from giving to neutrals the benefit of this administration of justice, he cannot call upon them to accept any substitute of his own invention which may happen to be more convenient to himself; certainly he cannot require any neutral Power to accept such a substitute at the cost of breaking down any of the rules which it has lawfully established for the purpose of maintaining its own neutrality; the belligerent cannot say to the neutral, "either you must allow within your neutral territory certain facilities to my belligerent operations, or I will not restore to you your goods, which I admit I have no right to keep."

We proceed to apply these observations to the propositions contained in Category B, which relates to "a vessel under enemy's flag, with cargo wholly or in part belonging to neutrals."

The Confederate Government claims the right either to enter British ports with

prizes in order to restore captured British property, or to destroy that property at sea. We are of opinion that the Confederate Government has no such right. It is competent to Her Majesty's Government, on the one hand, to forbid the bringing prizes of either belligerent into her ports, and, on the other hand, also to claim the restitution of all goods of Her Majesty's subjects taken by any of the belligerent cruizers which have not been lawfully condemned as prize of war.

If the necessities of either belligerent constrain him to destroy these goods, he destroys them wrongfully, *suo periculo*, and he is responsible for their value to the neutral owner.

Category C relates to enemy's goods in neutral ships, and Category D to ships sailing under neutral colours, or with neutral papers, as to which the Confederate cruizers may conceive that grounds of seizure (applicable either to the ships themselves, or to goods on board of them supposed to be contraband) exist.

Laying aside as irrelevant to the questions of public law with which neutrals are concerned, all that is said in this paper as to the Declaration of Paris (by which the Confederate States might, no doubt, decline to be bound if they thought fit to do so), and also whatever relates only to enemy's ships (admitted to be such) sailing under false colours or papers, we may conveniently consider both these categories together.

What the "Minute of Instructions" in substance proposes is, to take all articles considered by the belligerent cruizers to be contraband and to have a hostile destination, out of neutral vessels at sea, and to transship or destroy them, leaving the ship to pursue her voyage, unless such articles are deemed to have been knowingly put on board by her owners; in which case it is further proposed to treat the vessel herself as an enemy's vessel, *i. e.*, to detain or destroy her.

It is also proposed in all cases in which it shall be the conclusion of the captor that the enemy has any kind of interest in a merchant-ship sailing under neutral colours and papers (although not admitted by her captain and crew to be enemy's property), to detain and destroy that vessel; all which is proposed to be done without any adjudication at the time or afterwards by any Prize Court, by virtue only of some novel kind of inquiry or investigation to be conducted by the captor himself on board his own or the captured vessel. That propositions so extraordinary as these should be gravely made to any neutral Powers would be strange under any circumstances; and it is not a little singular that, while the ground on which these propositions are now made is the confessed inability of the Confederate cruizers to bring prizes into their own ports by reason of the blockade, Great Britain and France are, in the same document, reproached for recognizing the blockade, as if it were a paper blockade condemned by the Treaty of Paris.

Our conclusion upon the whole matter is that the right of neutral nations to have their ships and property left unmolested at sea, unless the belligerent who interferes with them proceeds to carry them in for adjudication before a regular Prize Court, is incontestable; and that a belligerent who, from the maritime superiority of his adversary, is unable to comply with that obligation must accept the other branch of the alternative, and is bound to leave neutral ships and property unmolested; and that he is not entitled on that or on any other account to call upon neutral Powers to assist in relieving him from his difficulty, either by allowing him to hold Prize Courts, or to dispose of his prizes within their territories, or by waiving any portion of the rights of their own subjects.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 448.

The Law Officers of the Crown to Earl Russell.—(*Received December* 19.)

Lincoln's Inn, December 19, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 9th instant, stating that he was directed by your Lordship to transmit to us the accompanying papers* relative to the case of the "Night Hawk," a British vessel, which having run ashore while attempting to run the blockade, was subsequently set on fire by a party sent from the United States' vessel of war, and the crew, or a portion of them, made prisoners; and to request that we would take these papers into consideration, and furnish your Lordship with our opinion thereupon.

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* Messrs. Lawrence, November 14; to Lord Lyons, No. 527; Lord Lyons, No. 686; Messrs. Lawrence, December 8, 1864.

We are also honoured with Mr. Hammond's letter of the 12th instant, transmitting a further despatch and its inclosures from Her Majesty's Minister at Washington (No. 698), on the subject of the capture of the "Night Hawk."

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we think this matter is very properly treated in Lord Lyons' letter to Mr. Seward of the 26th November last. It does not appear to us that any ground whatever has been shown by Mr. Seward for ascribing to the "Night Hawk" the character of an enemy's ship, and having regard to the circumstance that she was destroyed by the boarding officer without so much as examining her papers, we think that the proofs which have already been given of her British ownership are amply sufficient. The ship was, indeed, destroyed in the act of violating the blockade; and as she must necessarily have been condemned if brought in for adjudication, the mere act of her destruction may possibly not have involved any substantial injury to British interests. But the conduct of the boarding officer, and the subsequent imprisonment of the British crew, seems to us to be wholly without justification or excuse. The captor had no right to fire upon the unresisting crew; and the whole circumstances of the case, instead of affording any exceptional reasons (as Mr. Seward affects to consider) for applying to these unfortunate men a different treatment from that admitted to be the right of "the class of neutral subjects in neutral vessels engaged in violating the blockade," appear to us to give to the treatment, actually inflicted upon them, the character of an aggravated breach of international law.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 449.

The Law Officers of the Crown to Earl Russell.—(Received December 20.)

Lincoln's Inn, December 20, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 12th instant, stating that he was directed by your Lordship to transmit to us a despatch from Lord Lyons (No. 687, November 25), respecting the case of the "Matagorda," a vessel whose nationality appears to be doubtful, which had been captured for breach of blockade, and the crew imprisoned; and to request that we would take the inclosed papers into our consideration, and favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That in the present circumstances of this case, we are of opinion that the release of these men from prison cannot be insisted upon as a matter of right. They were taken on board of a vessel which appears either to have had no flag or papers, or to have been sailing under a Confederate flag. The presumption is that she was an enemy's vessel.

If further investigation should prove that she is a neutral vessel, we should desire to have an opportunity of reconsidering the case.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 450.

The Law Officers of the Crown to Earl Russell.—(Received December 20.)

Lincoln's Inn, December 20, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 5th instant, stating that with reference to our Report of the 29th August last, respecting the case of Mr. Hardcastle, who was shot by a sentry in the old Capitol prison, he was directed by your Lordship to transmit to us, together with the previous papers, a despatch from Lord Lyons (No. 647, November 7) inclosing a copy of a further note, and its inclosures, from Mr. Seward respecting this case; and Mr. Hammond was pleased to request that we would take the same into consideration, and furnish your Lordship with our observations thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That the answer of the United States' Government, and of their Judge Advocate-General, does not in the slightest degree alter the opinion which in our two former Reports upon this subject we have had the honour to express to your Lordship. In those Reports we set forth at some length the principles of international law applicable to the facts of this case. We think that no advantage would result from a recapitulation of our former argument. The pretence that the word "safe conduct" was used "in a popular sense" in the first instance, and the attempt to maintain that the safe conduct extended only to the passage *between* the lines of the enemy, indicates the determination of the United States' Government to avoid granting that compensation which it appears to us international justice, as well as comity, demand at their hands to the relatives of this much injured man, whom, without the slightest suggestion of evidence, except the allegations of his gaoler as to conversations with him in prison (which the dead man cannot contradict), the Judge Advocate-General of the United States persists in calling "a most active and dangerous enemy," an "avowed enemy to the United States," and a "person whose hostility and treachery had caused him to forfeit all claim to the privileges of neutrality."

We cannot forbear pointing out to your Lordship the practical commentary upon some of the circumstances of this case, which is contained in a publication recently issued and circulated by authority in the United States, with reference to the treatment of United States' prisoners by the Confederates. In this publication (which is entitled, "Narrative of Privations and Sufferings of United States' Officers and Soldiers while Prisoners of War in the hands of the Rebel Authorities: Being the Report of a Commission of Inquiry appointed by the United States' Sanitary Commission. With an Appendix, containing the testimony"), among other alleged cruel practices, that of shooting United States' prisoners for appearing at the windows of their prisons is mentioned. At pages 83 and 84 the following passages occur: "The cruel and unusual rule by which an approach to the windows from inadvertence, or for the most innocent purpose, is made an offence punishable with death in the Confederate prisons, is, it need hardly be said, unknown in Fort Delaware." . . . . "It is hardly worth while to notice the question whether any were shot (*i.e.*, in Delaware) for looking out of the windows. No such order was ever given in this or any other United States' station."

And, at page 197, there is a letter from Quartermaster-General Meigs, of the United States' army, dated 6th July, 1864, which contains the following passage: "The Commissary-General of Prisons informs me that he has heard of no orders to shoot prisoners for being at the windows or near them; and he does not believe that orders of that character have anywhere been given. He has heard of no prisoners being shot under such circumstances."

It is sufficient to bring into mere juxta-position with these passages the concluding sentence of Captain Mix's Report (25th May, 1863) to General Martingdale of the circumstances of Mr. Hardcastle's death, on the very day of its occurrence, which took place (it will be remembered) in the Capitol prison at Washington, the capital of the United States. "The instructions," he says, "to the sentinels guarding the outer walls of the prison are that they shall warn all prisoners to keep their heads within the windows, and if they persist in disobeying, to fire their pieces." These, in the last Report of the Judge Advocate-General of the United States upon the case, dated 28th October, 1864, are called "the salutary regulations of the prison."

We can at present only repeat our advice that this claim should not be abandoned, but reserved by Her Majesty's Government, who, we think, should express themselves as entirely dissatisfied with the last reply of the United States' Government, which they consider to contain no substantial answer whatever to the reasons upon which the claim for compensation was founded.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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No. 451.

The Law Officers of the Crown to Earl Russell.—(Received December 21.)

My Lord, *Lincoln's Inn, December* 20, 1864.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 13th of December instant, stating that with reference to our Report of the 26th ultimo, and to our previous Reports relative to the cases of the "Sir William Peel" and other vessels seized in the Rio Grande, he was directed by your Lordship to transmit, for our information, a despatch from Lord Lyons (No. 690, November 25) respecting the appeals lodged by the United States' Attorney-General for Louisiana in the cases of these vessels.

In obedience to your Lordship's commands we have taken this despatch into consideration, and have the honour to report—

That the papers now submitted to us do not enable us to add any remarks to those which we have had the honour to offer in our former Reports upon this subject. We should be glad to see the opinion which the Judge of the Prize Court entertains as to the subject of these appeals when Lord Lyons shall have been enabled to transmit the same to your Lordship.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 452.

The Law Officers of the Crown to Earl Russell.—(Received December 22.)

My Lord, *Lincoln's Inn, December* 22, 1864.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 12th of December instant, stating that with reference to our Report of the 23rd of September, he was directed by your Lordship to transmit to us a further despatch from Lord Lyons (No. 689, November 25) respecting the new Customs Act lately passed by the United States' Congress.

Mr. Hammond was also pleased to inclose the previous papers,* and to request that we would again take this matter into consideration, and favour your Lordship with any observations that we might have to offer thereupon.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we are glad to find that by the 1st section of the United States' Statute of May 24, 1828, and the subsequent effect given to it by the Order of the Secretary to the Treasury of the United States, dated October 15, 1849, the apprehension which we entertained as to the possible effect of the recent Act of Congress upon goods imported in British vessels is obviated. Our attention, as Lord Lyons observes, had not been drawn to the Act of May 24, 1828, which is not in Mr. Hertslet's collection of Commercial Treaties, &c.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 453.

The Law Officers of the Crown to Earl Russell.—(Received December 22.)

My Lord, *Lincoln's Inn, December* 22, 1864.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 19th instant, stating that with reference to our Report of the 13th instant, he was directed by your Lordship to transmit to us therewith a letter from the Colonial Office, dated the 16th instant, inclosing copies of the instructions which Mr. Secretary Cardwell has addressed to the Governor-General of Canada respecting the prisoners charged with being concerned in what is commonly called the "St. Alban's raid," whose extradition has been demanded by the Government of the United States.

Mr. Hammond was also pleased to transmit a letter from the Colonial Office, dated the 19th instant, containing a further Report from the Governor-General of Canada on the same subject, on which, as we should see, Mr. Cardwell desires to be enabled to send instructions to Lord Monck by the mail of Saturday next the 24th instant; and to request that we would take these papers into consideration, and furnish your Lordship with such observations and suggestions as may occur to us thereupon. The previous papers were also inclosed for convenience of reference.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we are of opinion that the instructions of Mr. Secretary Cardwell to his Excellency the Governor of Canada were right and proper to be sent. With respect to the further Reports from the Governor-General of Canada upon the same subject, they do not appear to us to call for any further expression of opinion upon our part, or to embrace any matter which is not within the scope of the aforesaid instructions of Mr. Secretary Cardwell.

We ought, however, to say that in our judgment the Governor-General exercised a sound discretion in refusing the application of the prisoners for a special messenger to the Confederate States. The proper course, we think, would be for the Magistrate to grant such an enlargement of time as would give the prisoners a reasonable opportunity of obtaining the required evidence, through any means of communication which are practically open. The Canadian Government could not have acted in the matter, without asking the permission of the United States' Government to communicate with Richmond for the purpose; which request would certainly have been refused.

We have &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 454.

The Law Officers of the Crown to Earl Russell.—(Received December 27.)

My Lord, *Lincoln's Inn, December* 27, 1864.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 3rd instant, stating that with reference to our Report of the 16th ultimo he was directed by your Lordship to transmit to us a despatch from Lord Lyons (No. 654), inclosing a "record of proceedings" of the trial of Acting Master Everson for wounding James O'Neill; and to request that we would take the same into consideration and favour your Lordship with such observations as we might have to offer thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That a perusal of these proceedings before the court martial confirms the opinion which we expressed in our former Report, that the trial of Acting Master Everson was conducted in a manner honourable to the Government of the United States, and satisfactory to the ends of justice; and that the sentence was proper and sufficient. They do not seem to us to call for any observations on our part in addition to those contained in our former Report on this subject.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 455.

The Law Officers of the Crown to Earl Russell.—(Received December 29.)

My Lord, *Lincoln's Inn, December* 29, 1864.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 24th instant, stating that he was directed by your Lordship to transmit to us

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* Lord Lyons, No. 352; Messrs. de Wolff and Co., June 16; to Lord Lyons, No. 360; Lord Lyons, No. 920; to Mr. Burnley, No. 462; Board of Trade, October 18; to Mr. Burnley, No. 485, 1864.

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therewith a despatch from the Acting British Consul at Bahia, reporting the capture of the American ship "Kate Prince," by the "Shenandoah," a vessel now stated to belong to the Government of the so-called Confederate States, and also a draft which your Lordship proposes to address to the London, Bombay, and Calcutta Steam-Ship Company in consequence of the statement, which we should perceive is made in the above-mentioned despatch, to the effect that the "Shenandoah" once belonged to that company, at which time she bore the name of the "Sea King;" and Mr. Hammond was pleased to request that we would take these papers into consideration, and furnish your Lordship with our opinion upon the draft therewith inclosed.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we have taken the liberty of suggesting a slight verbal alteration in the draft which will be found in the margin, and, subject thereto, we think the proposed letter may properly be sent.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 456.

The Law Officers of the Crown to Earl Russell.—(Received December 31.)

Lincoln's Inn, December 31, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 22nd instant, stating that with reference to our Report of the 20th instant he was directed by your Lordship to transmit to us the accompanying despatch from the Acting British Consul at New Orleans (No. 27), inclosing a copy of the second part of the printed Report of the proceedings in the case of the "Sir William Peel."

Mr. Hammond was also pleased to state that the first part was forwarded in the despatch from Mr. Coppell, No. 16 of the 20th of June last, and was reported on by us on the 1st of August; and that he was directed by your Lordship to request that we would take the matter again into our consideration, and favour your Lordship with any observations we might have to offer upon the papers now submitted to us.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That the printed papers now submitted to us are merely formal, and do not throw any light upon the grounds of the appeal prosecuted by the Attorney of the United States from the Decree of restitution pronounced by the Court below. We have therefore at present no further observations to offer to your Lordship on this case.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 457.

The Law Officers of the Crown to Earl Russell.—(Received December 31.)

Lincoln's Inn, December 31, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 22nd instant, stating that with reference to our Report of the 15th instant, he was directed by your Lordship to transmit to us together with the previous papers,[*] a note from Mr. Adams, dated the 21st instant, and its inclosures, protesting against the proceedings of Her Majesty's Colonial authorities in the case of the steamer "Roanoke." Mr. Hammond also inclosed a draft of the answer which your Lordship proposes to return to Mr. Adams, and was pleased to request that we would take the same into consideration, and furnish your Lordship with our opinion whether it is right and proper to be sent.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

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[*] Lord Lyons, Nos. 663, and 672; Colonial Office, November 24; to Colonial Office, December 17; to Lord Lyons, No. 562, 1864.

That we think the proposed answer by your Lordship to Mr. Adams is right and proper to be sent. We venture, however, to suggest the addition of a few words which we have written in the margin of the third page of the draft, after the word "Commission."

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

Venezuela.

No. 458.

The Queen's Advocate to Earl Russell.—(Received August 18.)

Doctors' Commons, August 17, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Murray's letter of the 9th instant, stating that he was directed by your Lordship to transmit to me a letter dated the 7th April last, and its inclosures, from Mr. Miguel Ellul, respecting his claim against the Government of Venezuela for the loss he has sustained from the seizure of his cattle and horses by the Government troops, as well as by the insurgents, in 1849. Mr. Murray was also pleased to transmit further papers[*] relating to this case, and to request that I would take them into consideration, and furnish your Lordship with my opinion whether or not Her Majesty's Government should support the claim, and if so, to what extent.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That it appears to me that Her Majesty's Government has, ever since the year 1853, acknowledged the justice of Mr. Ellul's claim, and the title of that person to the intervention of Her Majesty's Government on his behalf with the Venezuelan Government.

I see no reason to doubt the propriety of the conclusion at which Her Majesty's Government arrived so many years ago, and I am of opinion that Her Majesty's Representative should be instructed to press the Venezuelan Government for the immediate satisfaction of the claim in question. It must be admitted that the delay has considerably increased the original injury which the loss of his cattle inflicted upon Mr. Ellul, and that this must be taken into account in the final adjustment of the claim. It is obvious, however, that the effect of this delay is very greatly exaggerated by Mr. Ellul, and that his hypothetical calculation of the damages which he has sustained from losing the "births and afterbirths" of his cattle is inadmissible. I think the most expedient course which Her Majesty's Government can pursue will be to give general directions to Mr. Mathison to procure the speedy settlement of the affair, but to exercise a sound discretion, taking what advice may seem to him necessary on the spot, as to the amount at which the whole claim shall be fixed; making some, but not extravagant, allowance for the additional injury which Mr. Ellul has sustained by the delay.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 459.

The Queen's Advocate to Earl Russell.—(Received October 22.)

Doctors' Commons, October 21, 1864.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 19th instant, stating that he was directed by your Lordship to transmit to me a

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[*] Mr. Riddell, No. 88, August 23; to Mr. Riddell, No. 36, September 27, 1853; to Mr. Mathison, No. 7, May 19, 1854; Mr. Mathison, No. 16, June 27, 1864.

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despatch and its inclosures from the Acting British Chargé d'Affaires at Caracas,* reporting that the Central Government of Venezuela have employed force to coerce the State of Ciudad Bolivar to be in a state of blockade; and Mr. Hammond was to request that I would take these papers into consideration, and furnish your Lordship with my opinion as to the validity of the blockade, and whether or not Her Majesty's Government should recognize it.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That as far as I can judge from the papers laid before me, the Government of Caracas does not appear to have exceeded its power in notifying the existence of a blockade of the coasts of the country during a period of insurrection. I observe that the IIIrd Article of the Proclamation provides that no vessel is to be seized unless it persist in approaching the coast, after due notice not to do so has been given to it on the spot by the blockading force. Such a provision of course renders necessary the actual presence of a blockading force off the coast, which Mr. Mathison seems to think did not exist at the time when he wrote his despatch to your Lordship. Upon the whole, I think that the blockade must be recognized by the Government of this country.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 460.

The Queen's Advocate to Earl Russell.—(Received October 28.)

My Lord, *Doctors' Commons, October 28, 1864.*

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 25th instant, stating that, with reference to my Report of the 21st instant (therewith returned to me, together with the despatch upon which it was founded*), he was directed by your Lordship to request that I would prepare for insertion in the "London Gazette" a notification of the blockade of the coast of Guayana by the forces of the Government of Venezuela.

In obedience to your Lordship's commands I have prepared, and herewith transmit, a form of notification of such blockade for insertion in the "London Gazette."

I have, &c.
(Signed) ROBERT PHILLIMORE.

Inclosure in No. 460.

Notification of Blockade.

Foreign Office, .

IT is hereby notified that Earl Russell, K.G., Her Majesty's Principal Secretary of State for Foreign Affairs, has received from Her Majesty's Acting Chargé d'Affaires at Caracas a despatch, inclosing a copy of a Decree dated the 13th of September, 1864, issued by the head of the Venezuelan Government, declaring that, an insurrection having occurred in the State of Guayana, the part of coast extending from the mouth of Vagres to that of Navios, all the canals formed by the Delta of the Orinoco, and the margins of that river, including Ciudad Bolivar, are closed; and the ports, coasts, and villages of the same to be blockaded by the Venezuelan Government.

The following is a copy of the Decree (and a translation thereof) above referred to:—

(Here insert verbatim a copy of the Decree and translation, dated 13th September, 1864.)

R. P.

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* Mr. Mathison, No. 28, September 20, 1864.

No. 461.

The Law Officers of the Crown to Earl Russell.—(Received November 19.)

My Lord, *Lincoln's Inn, November 19, 1864.*

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 1st of November instant, stating that he was directed by your Lordship to transmit to us a letter dated the 25th ultimo, and its inclosures, from the Colonial Office, reporting the circumstances under which the British ship "Albion" has been seized by the authorities at Ciudad Bolivar, after having been chartered by the Venezuelan Government to convey the troops to be employed by them against the insurgents in that State.

Mr. Layard was also pleased to transmit to us a despatch from the Acting British Chargé d'Affaires at Caracas (No. 28), reporting the measures which the Central Government of Venezuela intended to take against the insurgents (in the execution of which it is presumed that the "Albion" was employed at the time of her seizure), together with the Reports of the Queen's Advocate which have led Her Majesty's Government to recognize the blockade of Ciudad Bolivar by the forces of the Venezuelan Government; and to request that we would take these papers into our consideration, and favour your Lordship with our opinion whether, having regard to the duty upon which the "Albion" was apparently employed when she was seized, Her Majesty's Government would be justified in supporting the claim of her owners to redress and compensation; and if so, to what extent.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That as far as we can form any opinion as to the facts, from the papers before us, we think that at present no cause is shown for the interference of Her Majesty's Government on behalf of the owners of the "Albion."

It appears that the Venezuelan Government is engaged in suppressing an insurrection in the State of Guayana, and has placed under blockade, for this purpose, certain portions of its coast which include Ciudad Bolivar. The "Albion" seems to have been employed in carrying troops for the Venezuelan Government to Ciudad Bolivar, and to have been seized there by the insurrectionary authorities. The owner of the "Albion" must apply to his employers, the Venezuelan Government, for compensation and redress.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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APPENDIX.

Prussia.

No. 123*.

The Queen's Advocate to Earl Russell.—(*Received June* 21.)

My Lord, *Doctors' Commons, June* 21, 1864.

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 20th instant, stating that he was directed by your Lordship to transmit to me, with reference to my Report of the 31st March, and to the Law Officers' Reports of the 7th of April and 14th instant, respecting the complaints made by the Prussian Ambassador of the insufficiency of the blockade of certain German ports declared by the Danish Government to have been established, an extract of a declaration made by the Prussian Plenipotentiaries in Conference on the 18th instant.

That I should perceive that the Prussian Plenipotentiaries declare that, in the event of the blockade being re-established by Denmark, and not maintained according to the Declaration of Paris annexed to the 23rd Protocol of the Conferences of 1856, sent therewith, and in the event of such laxity being acquiesced in by the other Powers, parties to that declaration, the Prussian Government would consider itself no longer bound to observe, as regards Denmark, any of the provisions of that Declaration.

That it is understood, although not expressly stated in the Declaration, that in the case supposed, Prussia is prepared to commission privateers to act against Danish commerce.

That the questions which, in this state of things, are to be considered, are:—

1st. Supposing (in which view, however, I do not seem to concur) the Danish blockade is really as inefficient as the Prussian Government alleges it to be, would the Prussian Government be entitled to hold itself released, as regards Denmark, who, though not a signing party, acceded on the invitation of the signing parties to the Declaration, from all the provisions of the Declaration, while a means of remedying any non-observance of the Declaration in regard to the efficiency of the blockade was available to neutrals by pleading it in the Prize Court?

2nd. Whether, in point of fact, the complaint of disregard of the Declaration is not one which falls within the province of neutral Powers to make, rather than within that of the belligerent, the vessels of the neutrals being those which are directly affected by the incorrect notification of the blockade.

3rd. Whether, supposing Prussia were to commission privateers, those privateers, in the face of the declaration still remaining valid between Prussia and other Powers, would be entitled to interfere with the commercial marine of such other Powers by visiting and searching neutral vessels on the high seas, and, if not, whether any such interference on the part of a Prussian privateer would not be of so offensive and hostile a character as to entitle any of the neutral Powers to resist the practice, and to capture or destroy at sea any privateer under the Prussian flag which might interfere with a merchant-vessel sailing under the flag of such neutral Power; and that your Lordship would be glad to receive my opinion previously to the meeting of the Conference on Wednesday next.

In obedience to your Lordship's commands I have taken these points into consideration, and have the honour to report—

That as to the first question, with respect to the alleged fact of the inefficiency of the late Danish blockade, it was certainly not supported by the evidence laid before me. There was no ground for supposing that Denmark did not *bonâ fide* intend to institute a

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de facto effective blockade, or that she claimed the right to institute what is called "a paper blockade." There was probably some irregularity in the first beginning, as there usually is, of the blockade; but a regular blockade *de facto*, as well as *de jure*, was speedily instituted, and, as your Lordship is aware, several British vessels were actually captured and sent in for trial, on the ground that they had violated the blockade.

But even assuming it to have been inefficient *de facto*, there was certainly no abstract claim put forward by Denmark that a blockade proved to be inefficient *de facto* should be deemed legal *de jure*. It was a question of dispute not as to the law, which Denmark did not, and does not, controvert, but as to the fact itself. As to this disputed fact, two remarks occur: first, it concerns principally neutral States; secondly, it is a fact the truth or untruth of which ought to be properly tried according to the proper rules of international law, in the proper Court, that is, unquestionably the Prize Court of Denmark, the belligerent. In that tribunal (which includes the Court of Appeal) as in every other Prize Court, it must be presumed justice will be done; if that presumption be defeated, the neutral injured by the injustice, not the belligerent, is entitled to proper redress. It seems to me clear, therefore, that Prussia is not entitled upon any principle of good faith, or according to any rule of construction applicable to a written instrument like the Declaration of Paris, to maintain that she is released from the obligation to observe every provision contained in that Declaration, on the ground that one of them has been suffered by other States to be in fact, not in terms, abrogated; while those other States absolutely deny this fact, and point to the proper tribunal appointed by the law of nations for deciding the controversy, by which they are willing that the fact should be investigated.

2. As to the second question. It certainly is a complaint which properly, primarily, and principally falls within the province of the neutral, and not of the belligerent State to make, though it cannot be denied that the belligerent is much interested in the question whether the commerce of neutral States shall or shall not reach his shores, as well as in the increased efficacy given to his enemy's operations by the recognition of the blockade. It is to be remembered, however, that this is not a case in which one belligerent complains that his right of blockade is disregarded while that of the other belligerent is observed by neutral States; a state of things which, of course, would justly entitle the former belligerent to complain in the first instance.

3. As to the third question. The general commissioning of privateers by Prussia would amount to a cancellation on her part of the Declaration of Paris, and so far as that anomalous document partakes of the nature of an international covenant, Prussia would certainly have no right to demand from other States who subscribed the declaration, the observance of any part of its provisions. But in truth, if this Declaration, which Prussia calls "ce grande acte international," is to be considered as a Treaty, Prussia would break the Treaty by such a measure on her part, and would thereby incur towards these other States, now neutral, all the responsibilities and liabilities incident to States which violate their Treaties.

In this state of things it would appear to me clearly within the competence of the now neutral States to refuse to allow Prussian privateers to search, visit, or detain vessels belonging to these States. Proper public notice of this determination on the part of the neutral, if taken, would of course be communicated to the belligerent; and with respect to this question, it is to be observed that, even if the commissioning of Prussian privateers should be not general, but limited in terms to operations upon the Danish commerce, practically the consequences of a general commissioning would follow. The Prussian privateer would seize on an English or French vessel alleging it to be Danish; would contend that the English or French flag was fraudulently hoisted; would insist on the right of search, and, in case of doubt, would carry off the vessel for adjudication to a Prussian Prize Court. It would also, of course, be impossible to prevent Denmark from using the same weapon against Prussia.

I have, &c.
(Signed) ROBERT PHILLIMORE.

SECOND APPENDIX.

No. 1.

The Law Officers of the Crown to Earl Russell.—(*Received March* 8.)

My Lord,
Lincoln's Inn, March 7, 1864.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 25th February ultimo, stating that with reference to our Report of the 4th December last, respecting the proceedings of Mr. Legal Vice-Consul Fonblanque at Alexandria, in a case of contempt of Court on the part of a French subject named Ninet, he was directed by your Lordship to transmit to us the draft of the despatch which your Lordship addressed to Sir Edmund Hornby, instructing him to require from Mr. Fonblanque the explanations suggested as necessary in our Report above mentioned.

Mr. Hammond was also pleased to forward two despatches from Sir E. Hornby, with Mr. Fonblanque's reply,* and to request our further opinion in this matter.

The former papers were also inclosed.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we are disposed to agree with the opinion expressed by Sir E. Hornby, that the circumstances of the case, as now explained, relieve Mr. Fonblanque from all blame for his conduct in this difficult and anomalous matter.

Upon the whole we incline to the opinion that the answer of M. Ruyssenaers contains the best advice as to the course which should be pursued upon these occasions, and that it is the one which should be adopted by the British Consular Court in cases of a similar description, until some arrangement be made or Convention entered into as to this subject between Christian Powers exercising jurisdiction in the Ottoman dominions.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 2.

The Law Officers of the Crown to Earl Russell.—(*Received May* 23.)

My Lord,
Lincoln's Inn, May 23, 1864.

WE are honoured with your Lordship's commands signified in Mr. Murray's letter of the 25th ultimo, stating that with reference to our Report of that day's date, relative to the proceedings of the British legal authorities in Egypt, he was directed by your Lordship to transmit to us a despatch from Her Majesty's Agent and Consul-General at Cairo (No. 16, February 1, 1864), respecting the proceedings of Mr. Legal Vice-Consul Fonblanque in the matter of a complaint made by the Egyptian Government against the publication of an objectionable newspaper under the alleged editorship of a British subject, and to request that we would favour your Lordship, at our earliest convenience, with our opinion upon Mr. Fonblanque's conduct in this respect.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That we agree with the opinion expressed in the extract of a despatch from the Judge of the Supreme Consular Court at Constantinople (No. 9 in Mr. Colquhoun's despatch No. 16), that the local Government has a right to suppress a newspaper published or printed within its limits; and that, where the proprietor claims to be under British

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* Sir E. Hornby, No. 95, December 10, 1863; Sir E. Hornby, No. 10, February 8, 1864

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protection, the British Consular officer ought to act ministerially, when requested to do so by the local Government, in aiding in the suppression of such a newspaper. And we think that Mr. Fonblanque erred in not obeying the instructions of Mr. Colquhoun and in not assisting the local officers to close the establishment of the "Il Popolo," which appears to have been justly suppressed by the Viceroy in the circumstances stated in these papers.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 3.

The Law Officers of the Crown to Earl Russell.—(*Received September 7.*)

Lincoln's Inn, September 5, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 18th July, stating that he was directed by your Lordship to acquaint us, with reference to our Report of the 25th June (?), that your Lordship is prepared to recommend to the Treasury to sanction the expenditure which would be incurred by the establishment of a Supreme Consular Court in China, to have its seat at Shanghae and to have also jurisdiction in Japan. That your Lordship considers that this Court should consist of a Judge, a Legal Vice-Consul, and a Law Clerk, severally holding the same power and authority conferred by the existing Order in Council on similar officers in the Ottoman dominions. That the Judge of this Court should have the superintendence and control, as regards judicial matters, of all the subordinate Consular Courts in China and Japan, and would be empowered to visit, either as a Circuit Judge at fixed periods, or as occasion might require, the several Consulates in the two countries, there to dispose of such civil or criminal cases as may be brought before him. That the Judge would hear appeals from the subordinate Consular Courts; and appeals from the decision of the Judge himself would be dealt with as in the case of appeals from the Judge of the Supreme Consular Court in Turkey. That the jurisdiction of the Supreme Court of the Colony of Hong Kong, in regard to civil suits arising within any part of the dominions of China or of Japan, would, under the proposed arrangement, be wholly merged in the Supreme Consular Court; but Hong Kong would still remain as the British Colony, under the Foreign Jurisdiction Act, for the trial of criminals in certain cases provided for in the Act. That the appellate jurisdiction of the Superintendent of Trade in China and the Consul-General in Japan would also generally cease, though it would be for our consideration whether any such jurisdiction should be left to them in regard to the enforcement of rules and regulations, the power of making which must still be reserved to them, for the observance of Treaties, and for the peace, order, and good government of Her Majesty's subjects in China and Japan. With these general observations Mr. Hammond was to refer to us the Order in Council now in force as regards China and Japan, with the existing rules and regulations so far as they are known in this country; and to request that we would consider in what manner the proposed Court should be established, and having come to a conclusion on that point, he (Mr. Hammond) was to suggest that Mr. Francis Reilly, who has been employed in preparing the Order in Council for the Levant, should be instructed by us to prepare drafts for our approval of such Orders and Instructions as may be necessary for carrying the arrangement into effect.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we are of opinion that no appellate jurisdiction should be left to the Superintendent of Trade in China and to the Consul-General in Japan.

With respect to the new Court which it is proposed by your Lordship to establish at Shanghae, with jurisdiction extending to Japan, we are of opinion that it must be established by the authority of the new Order in Council; and we think that this new Order should at the same time repeal the existing Orders both as to China and Japan, and should consolidate and adapt such provisions of them as may be found necessary to the scheme of the new Court which it is proposed to establish, and we will give to Mr. Francis Reilly, in compliance with your Lordship's desire, the requisite instructions for this purpose.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 4.

The Law Officers of the Crown to Earl Russell.—(*Received September 16.*)

Lincoln's Inn, September 15, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 6th instant, stating that with reference to his letter of the 18th July respecting the establishment of a Consular Court for China and Japan, he was directed by your Lordship to transmit to us a despatch from Sir Frederick Bruce (No. 85), recommending that as regards China such a Court should be established.

In obedience to your Lordship's commands we have the honour to report—

That we have taken this further despatch into consideration, and it does not appear to us to call for any observations in addition to those which we had the honour to submit to your Lordship with respect to the establishment of a Consular Court for China and Japan.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 5.

The Law Officers of the Crown to Earl Russell.—(*Received November 25.*)

Lincoln's Inn, November 24, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Murray's letter of the 2nd instant, stating that he was directed by your Lordship to transmit to us a despatch from the Judge of the Supreme Consular Court at Constantinople (No. 63, October 12, 1864), inclosing a despatch from the Legal Vice-Consul at Alexandria, relative to a complaint made by Cherif Pasha, the Egyptian Minister for Foreign Affairs, in the matter of the arrest of two Maltese accused of the murder of an Egyptian cavass or police officer; and to request that we would favour your Lordship with our opinion as to the proper interpretation of the Capitulations with regard to the question of jurisdiction raised by Cherif Pasha.

In obedience to your Lordship's commands we have taken this matter into consideration and have the honour to report—

That this appears to us to be one of those cases in which the usage of the English Consulate is not in accordance with the express provisions of the Capitulations. The provision applicable to this case appears to be the 42nd of those confirmed by the Treaty of the Dardanelles of 1809 (2 Hertslet, 357): "That in case any Englishman or other person navigating under their flag should happen to commit manslaughter, or any other crime, or be thereby involved in a law-suit, the Governor in our sacred dominions shall not proceed to the cause until the Ambassador or Consul shall be present, but they shall hear and decide it together without their presuming to give them any the least molestation by hearing it alone, contrary to the holy law and these Capitulations." And we are at a loss, therefore, to see why Sir E. Hornby and Mr. Fonblanque maintain that the British Consular Court had exclusive jurisdiction in this matter. There does, indeed, seem to be a disposition on the part of the Egyptian authorrities to concede, to a certain extent, the jurisdiction for which Sir E. Hornby and Mr. Fonblanque contend; and it may well be thought expedient to take advantage of the usage in question as far as these authorities are found willing to recognize it. But for that very reason, as the usage rests (in our opinion) upon sufferance and not on Treaty, it seems to us most injudicious to attempt to press it to an extent which gives occasion to acrimonious discussion and controversy. It would therefore appear to us that the complaint of Cherif Pasha against Mr. Fonblanque in this particular instance is well founded, and that the preliminary inquiry ought to have been carried on (according to his view of what was proper and usual) before the Turkish authority, in the presence of the British Consul or his representative. We have assumed (in accordance with what on former occasions we have understood to be the fact) that Sir E. Hornby and Mr. Fonblanque rely, not upon the text of any Treaty or Capitulation but solely upon local usage, as abrogating in Egypt the particular provision of the Capitulations to which we have referred; and if so, we think they are in error, and that the Turkish authorities are entitled, if they should think fit, to insist upon the strict observance of the Capitulations.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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No. 6.

The Law Officers of the Crown to Earl Russell.—(Received April 25.)

My Lord, *Lincoln's Inn, April* 25, 1864.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 11th instant, stating that he was directed by your Lordship to transmit to us the accompanying despatches* from the Judge of the Supreme Consular Court at Constantinople, from Her Majesty's Agent and Consul-General in Egypt, and from Mr. Legal Vice-Consul Fonblanque, relative to various charges which Mr. Fonblanque has made against the police authorities of Alexandria; and Mr. Hammond was to request that we would furnish your Lordship with our opinion generally with regard to the proceedings of the British legal authorities in Egypt.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That we find it impossible to arrive, upon the materials now before us, at any satisfactory conclusion as to the individual cases mentioned in these papers, nor, indeed, in the absence of an explicit and detailed answer from Mr. Colquhoun to the various charges preferred by Mr. Fonblanque against the Alexandrian police, are we in a condition to pronounce with certainty an opinion "generally with regard to the proceedings of the British legal authorities in Egypt." But it certainly does appear to us that a most unhappy and continuous discord prevails between the authorities of the British Legal Vice-Consular Court and the Alexandrian police; and that while, on the one hand, a power and jurisdiction inconsistent with the Capitulations and Treaties seems to have been assumed over certain Ionian subjects, Mr. Fonblanque, on the other hand, by refusing officially to receive Janas, when set at liberty, for the purpose of adjudicating upon any new charge which might be brought against him "until apology and reparation had been made," acted upon a mistaken view of his duty.

Upon the whole, the impression made upon our minds by these papers is that in fact a state of things exists at Alexandria into which a prompt and serious investigation should be made, and from the continuance of which very inconvenient consequences might probably ensue. Whether this investigation can be conducted by the British authorities in Egypt, or at the Porte, or whether some person should be specially sent out from this country for the purpose, is a matter for the consideration of Her Majesty's Government. It is, of course, obvious that a jurisdiction so peculiar and anomalous as that which is exercised by a British Court of Criminal Jurisdiction in a Mahommedan country, and under a Mahommedan Government, cannot be worked in any satisfactory manner without great and uniform discretion, caution, and moderation, as well as firmness, on the part of the British authorities.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

P.S.—Since the above was written we have received Mr. Murray's letter of the 21st instant, with the further documents therein mentioned, but it does not seem to us necessary to vary or add to the foregoing Report.

R. P.
R. P. C.
R. P.

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* Sir E. Hornby, No. 17, March 3; Mr. Colquhoun, No. 23, March 17; Sir E. Hornby, No. 25, March 24; Mr. Fonblanque, No. 5, March 29, 1864.

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No. 7.

The Law Officers of the Crown to Earl Russell.—(*Received April* 28.)

Lincoln's Inn, April 26, 1864.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 24th March ultimo, stating that he was directed by your Lordship to transmit to us the accompanying correspondence* between the Foreign Office, Her Majesty's Consul at Cairo, the Legal Vice-Consul at Alexandria, and Her Majesty's Agent and Consul-General in Egypt, relative to the case of the death of an Arab, caused accidentally by a young Englishman named Huggins; and to request that we would furnish your Lordship with our opinion as to the manner in which this case has been dealt with by Her Majesty's Consular authorities in Egypt.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we are unable, upon the present materials before us, to arrive at the conclusion that the Capitulations between the Porte and Great Britain (which extend, we presume, to the Viceroyalty of Egypt) have been superseded by any custom or usage contrary to and overriding the provisions contained in those Capitulations. If, as a matter of fact, in particular cases the enforcement of these Capitulations has not been insisted upon, we do not think that this permission has operated to prevent the proper local authorities in Egypt from requiring them to be enforced upon other occasions, and more especially upon the present occasion, which relates to the killing of an Egyptian subject by an Englishman, and for which express provision is made in the 42nd Article of the Capitulations (2 Hertslet, 357). We are therefore of opinion that the position of Mr. Fonblanque, that these Capitulations are to be treated as practically abrogated by a contrary custom, is erroneous; and that Mr. Huggins ought to have been tried at Cairo, according to the provisions of the Capitulations.

With reference to the suggestion of Mr. Fonblanque that the proceeding, with a view to compensation, ought to be regarded as in the nature of a civil suit, it seems to us to be sufficient to remark that the 42nd Article of the Capitulations appears to extend to every species of suit or procedure, which, according to the local law, might be competent in any case of homicide.

We have, &c.

(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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* Consul Dunlop, Nos. 4 and 5; Mr. Colquhoun, No. 3; to Mr. Fonblanque, No. 1; Mr. Fonblanque, Nos. 3 and 8; Consul Dunlop, No. 15; Mr. Colquhoun, No. 8, 1864.

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OF

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A. S. GREEN.

Foreign Office,
March 13, 1867.

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A. S. GREEN.

Foreign Office,
March 13, 1867.

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Austria.

No. 1.

The Queen's Advocate to Earl Russell.—(Received January 27.)

My Lord, *Doctors' Commons, January* 24, 1865.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 19th instant, stating that he was directed to transmit to me the accompanying papers respecting a commission issued by the Court of Queen's Bench to the Provincial Tribunal of Vienna,* for the examination of witnessess *in re* Thierry *v.* Lord Fermoy. That it appears that the Tribunal in question has refused to give effect to this commission upon the grounds, firstly, that it is not admissible, according to Austrian that law, officers of the Government should be heard in evidence in matters which have come to their knowledge in their official capacity; and, secondly, that the Court of Queen's Bench offers no promise of reciprocity in favour of Austria with regard to similar cases, and that with reference to this latter point the Chargé d'Affaires incloses a Memorandum, drawn up by Mr. Howe, a Barrister employed in the case, from which it would appear that the second objection of the Tribunal is founded in ignorance of the English law on the subject; and that the Chargé d'Affaires inquires whether it would be advisable that the Austrian Government should be informed of the real state of the law.

Mr. Hammond was also pleased to inclose a letter, in original, addressed by the Provincial Tribunal to the Court of Queen's Bench; and to request that I would take these papers into consideration, and furnish your Lordship with my opinion as to the course which should be taken with regard to them.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That with respect to the first objection raised by the Austrian Tribunal, which relates to the exemption of certain persons, exempt by privilege, from the liability to be examined in a Court of Justice, it must be admitted that the Tribunals of every State are entitled to decide what evidence they will consider admissible in their own Courts, or in judicial investigations carried on in their territories, and enforced by their authority. And if the Austrian Tribunal remains insensible to the argument that the evidence sought to be obtained is to be used in the Tribunal of another State where it is admissible, nothing further can be done in this matter.

With respect to the second objection, namely, the non-reciprocity of British Tribunals, it was well founded before the passing of the 19 and 20 Vict., cap. 113, which gave British Courts the power of aiding foreign Tribunals, which they did not before possess. The objection on the ground of non-reciprocity is really untenable, and probably would be abandoned if this statute were clearly and fully brought, as it ought to be, to the notice of the Austrian Tribunal.

It seems to me that it would be very proper that your Lordship should give instructions to Her Majesty's Representative at Vienna to forward by every means which may

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* Mr. Bonar, No. 9, January 12, 1865.

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be open to his discretion, the execution of this commission. But it must be borne in mind that the application for the execution of it is founded on principles of comity, and not of strict right.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 2.

The Queen's Advocate to the Earl of Clarendon.—(*Received November* 14.)

My Lord, *Doctors' Commons, November* 14, 1865.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 7th instant, stating that he was directed by your Lordship to transmit to me a despatch from Her Majesty's Ambassador at Vienna (No. 243), stating that a British subject, married in Austria according to the rites of the local Protestant communities, has applied to him to have his marriage officially registered in England; and Mr. Hammond was pleased to request that I would inform your Lordship whether this can be done, and what instructions should, in my opinion, be given to Lord Bloomfield on the subject.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That Lord Bloomfield should be instructed to the effect, that Her Majesty's Government are not aware of any means by which a marriage of a British subject in Austria, according to the *lex loci*, can be officially registered in England.

I have, &c.
(Signed) ROBERT PHILLIMORE.

Bavaria.

No. 3.

The Queen's Advocate to Earl Russell.—(*Received January* 27.)

My Lord, *Doctors' Commons, January* 27, 1865.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 21st instant, stating that he was directed by your Lordship to transmit to me therewith a despatch from Her Majesty's Minister at Munich dated the 18th instant, respecting the claim of Dr. Stenb, a notary public of that city, for 100 florins, stated to be due to him on account of legal assistance rendered to Mr. Edwardes, an English solicitor, who was in August last bearer of a commission from the English Divorce Court to Her Majesty's Legation at Munich, for the purpose of taking the evidence on oath of Mrs. Yeatman, who was a party to certain proceedings then pending in the Divorce Court.

That it is alleged that Mr. Edwardes, who has since returned to London, has hitherto failed to settle the claim of Dr. Stenb, and the latter having now applied to Her Majesty's Legation for redress, Mr. Hammond was to request that I would take this case into consideration, and furnish your Lordship with my opinion as to the steps, if any, which can properly be taken in this matter.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That it is to be regretted that Her Majesty's Minister at Munich allowed Mr. Edwardes to depart from that place without paying Dr. Stenb his lawful fee, or taking from Mr. Edwardes a proper written security that he would discharge this obligation as soon as he arrived in London; for I cannot advise your Lordship that it would be right and proper for your Lordship to take any steps in this matter.

I have, however, placed myself in communication with the Registrar of the Divorce Court, who obtained from Mr. Edwardes, on taxing his costs in the suit, a promise that he would pay Dr. Stenb his fee.

Dr. Stenb may, if he pleases, petition the Judge of the Divorce Court as an additional security; but I cannot with certainty say that the Judge would think he had the power to enforce the prayer of the petition: possibly, however, he might refuse to allow the suit to be proceeded with until the fee had been paid.

I have, &c.
(Signed) ROBERT PHILLIMORE.

Borneo.

No. 4.

The Queen's Advocate to Earl Russell.—(*Received August* 7.)

My Lord, *Doctors' Commons, August* 5, 1865.

I AM honoured with your Lordship's commands signified in Mr. Murray's letter of the 27th ultimo, stating that he was directed by your Lordship to transmit to me the accompanying correspondence as marked in the margin* upon the subject of a dispute which has arisen between the Labuan Coal Company and the Sultan of Brunei, as to the amount of rent due by the Company for certain mines held by them at Moarra, together with the draft of a despatch upon the same subject which your Lordship proposes to address to Her Majesty's Consul at Brunei; and to request that I would take this draft into consideration, and furnish your Lordship with our opinion thereupon.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I am of opinion that the letter of your Lordship is right and proper to be sent.

I have, &c.
(Signed) ROBERT PHILLIMORE.

Brazil.

No. 5.

The Queen's Advocate to Earl Russell.—(*Received January* 11.)

My Lord, *Doctors' Commons, January* 10, 1865.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 7th instant, stating that he was directed by your Lordship to transmit to me therewith a letter from Sir Alexander Reid dated 5th instant, requesting the assistance of Her Majesty's Government to bring about a settlement of the affairs of the late Mr. Alexander Davidson who died possessed of property in Brazil; and to request that I would take this paper into consideration, and furnish your Lordship with a report stating the course which should, in my opinion, be taken in the matter.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I cannot discover, in the very confused statement of Sir Alexander Reid, any special ground for the intervention of Her Majesty's Government with respect to the

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* Two volumes; Consul-General Callaghan, No. 5, June 17, 1864.

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affairs of that gentleman, connected with his executorship of a Mr. Davidson, who appeared to have died domiciled in Scotland, but with property, real and personal, in Brazil.

I think that Sir Alexander Reid should be informed that with respect to property situated in Brazil, he must adopt whatever course he may be legally advised would be most proper to enable him to discharge his duties as executor in that country; but that inasmuch as he represents that the Government of Brazil has in some way, though it is not very clear in what way, interfered with the ordinary course of justice in his case, Her Majesty's Government will give directions to Her Majesty's Consul at Rio de Janeiro to afford such assistance (if any) as, in the exercise of his discretion, he may think proper, in order to enable Sir Alexander Reid to obtain justice at the hands of the proper Brazilian authorities.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 6.

The Queen's Advocate to Earl Russell.—(Received January 14.)

My Lord, *Doctors' Commons, January* 13, 1865.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the January instant, stating that he was directed by your Lordship to transmit to me therewith a correspondence which has passed between the Foreign Office and Mr. Reeves relative to his claim to the estate of the late Mr. Robert James Renny, of which he states that he has been defrauded in consequence of the proceedings of the Brazilian Courts of law; and also a correspondence which has passed between the Foreign Office and Messrs. Burke and Barry, together with a despatch from Her Majesty's Acting Consul at Rio de Janeiro bearing upon this subject; and to request that I would take these papers into consideration, and furnish your Lordship with my opinion: first, on the merits of the case; and secondly, if it is one in which Her Majesty's Government might interfere in favour of the party, whether, notwithstanding the interruption of diplomatic relations with Brazil, there would be any objection to Her Majesty's Consul at Rio representing the case to the Brazilian Government in an unofficial manner.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That this appears to me to be a case of very gross and scandalous injustice, lamentable both on account of the injury inflicted on a private individual, one of Her Majesty's subjects, and also on account of the incredibly corrupt administration of justice in the highest Courts of the Brazilian Empire which it reveals. I am afraid that the Brazilian Government is entitled to refuse to listen to any remonstrance on this subject which does not come from a regular diplomatic organ, but I think it would be expedient that Her Majesty's Consul should be instructed to represent this case unofficially to the Brazilian Government. If he be instructed to do so, he should take care to prepare a statement of all the circumstances in careful order, and in as succinct a form as may be consistent with perspicuity. A copy of such a statement should be kept; it may hereafter be very useful. In it the letter of Senhor Cansanção de Sinimbú, Minister of Justice, should I think, find a place.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 7.

The Queen's Advocate to Earl Russell.—(Received May 17.)

My Lord, *Doctors' Commons, May* 16, 1865.

I AM honoured with your Lordship's commands signified in Mr. Murray's letter of the 11th instant, stating that he was directed by your Lordship to transmit to me, for any observations I may have to make thereupon, a despatch from Her Majesty's Consul at Rio de Janeiro, inclosing a memorandum which, in accordance with the suggestion made in my Report of the 13th January last, he had presented to the Brazilian Minister for Foreign Affairs respecting Mr. Reeves' claim to the estate of the late Mr. Robert James Kenny.

In obedience to your Lordship's commands I have the honour to report—

That it appears to me that Her Majesty's Consul at Rio de Janeiro has taken a wise and judicious course, and that his memorandum was properly drawn up.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 8.

The Queen's Advocate to the Earl of Clarendon.—(Received November 17.)

My Lord, *Doctors' Commons, November* 16, 1865.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 6th instant, stating that, with reference to my Report of the 13th January last, relative to Mr. Reeves' claim to the estate of the late Mr. Robert James Renny, of which he states that he has been defrauded in consequence of the proceedings of the Brazilian Courts of Law, he was directed by your Lordship to transmit to me a despatch from Her Majesty's Consul at Rio de Janeiro (No. 60), to whom the substance of my above-mentioned Report was communicated, reporting that the Brazilian Government, notwithstanding the representations made by him on behalf of the claimant, have rejected Mr. Reeves' claim. A letter which has been received from Mr. Reeves, dated September 30th ultimo, upon this subject, was also inclosed; and Mr. Hammond was pleased to request that I would take Mr. Consul Hunt's despatch into consideration, together with the former papers, also inclosed; and report to your Lordship my opinion as to what further steps it is competent for Her Majesty's Government to take in this matter.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That Senhor Sinimbú, the Brazilian Minister of Justice (an office analogous, I presume, to the Home Secretary of this country), in a letter which was before me on the last occasion, and which is properly recited in the memorial of Consul Hunt, deliberately says that "this is an infamous affair, one of those enormities so much in vogue in this place" (Rio de Janeiro), "by means of which people are defrauded of their property," "an act of piracy;" and expresses an anxiety "to save our country from the ignominy of so unjust a judgment," having stated premises drawn from the history of this case which fully warrant his conclusion.

That as far as I am able to form a judgment from the papers before me, I entirely agree with the opinion of this high Brazilian functionary. It therefore seems to me proper that the claim of Mr. Reeves should be again pressed upon the Brazilian Government through the proper channel of Her Majesty's Minister, now that diplomatic relations between England and Brazil are renewed.

Probably the case is without precedent, in which, after such an expression of opinion from such an authority as I have referred to, a Government has refused either to compel the due administration of justice in their own tribunals to a foreigner, or to make compensation for the injury which a corrupt judgment has, in the opinion of their own Minister of Justice, inflicted upon him.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 9.

The Law Officers of the Crown to the Earl of Clarendon.—(Received December 16.)

My Lord, *Lincoln's Inn, December* 16, 1865.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 13th December instant, stating that he was directed by your Lordship to request that we would have the goodness to inform you whether a person born in Rio de Janeiro of British parents, and having left Brazil when very young, would, on now returning to Brazil, be liable to be considered and treated as a subject of Brazil, and therefore be not entitled to claim to be protected in that country as a British subject.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That if the law of Brazil be like the law of England on this subject, the fact of birth in that State would give rise to the obligation of allegiance; and Her Majesty's Government could not properly contend against the application of a law identical with that of Great Britain; but if there be no such law in Brazil, and the mere accident of birth, without formal naturalization, or some specified term of residence, is insufficient to found allegiance there, then the fact that this person was born of British parents would entitle him to British protection until he did some act whereby, according to Brazilian law, he becomes a subject of Brazil.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

Chile.

No. 10.

The Queen's Advocate to the Earl of Clarendon.—(*Received November* 17.)

My Lord, *Doctors' Commons, November* 17, 1865.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 16th instant, stating that he was directed by your Lordship to transmit to me therewith various despatches received yesterday afternoon from Her Majesty's Chargé d'Affaires in Chile,* respecting the hostile measures adopted by a Spanish squadron against that Republic. That among those measures I should find in Inclosure 7 in No. 33, a notice of blockade of the Chilean ports, and the instructions referred to appear to be those annexed to Inclosure No. 4, of which I should find a translation among the inclosures in the letter from the Admiralty, also transmitted.

Mr. Hammond was also pleased to transmit a newspaper in which were translations of some other inclosures, and he was pleased to request that I would take these several papers into consideration, and report to your Lordship, at my earliest convenience: 1st. As to the sufficiency of the notification of blockade, and if it is sufficient, that I would prepare a notice for insertion in the Gazette; and 2ndly. As to any other facts disclosed in the correspondence to which I consider the attention of Her Majesty's Government should more particularly be directed. Mr. Hammond was also pleased to add that the mail for Chile will be dispatched this evening.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I am of opinion that the notification of the blockade is sufficient, and I have accordingly prepared a notification for insertion in the Gazette.

According to the opinion of Her Majesty's Chargé d'Affaires, the blockade of Valparaiso is supported by an adequate force; whether the other ports in Chile are or are not effectually blockaded is a question of fact to be determined by the circumstances of each case.

It should be clearly understood both by the Commander of Her Majesty's Naval Forces in the Pacific and by Her Majesty's Chargé d'Affaires in Chile that Her Majesty's Government will only récognize an effective blockade, and that the notification in the Gazette does not imply more than a formal announcement of a statement made by the Spanish naval commander, and that by an effective blockade of any port must be understood the presence of a sufficient force to prevent, in ordinary weather, the ingress and egress of vessels.

Assuming the blockade to be effective, it does not appear to me that the instructions issued by the Commander-in-chief of the Spanish squadron are oppressive to neutrals.

Looking to the 9th Article of those Instructions, however, with respect to the Chilean privateers with letters of marque, it is obvious that grave questions may arise. I am unable to see at present how such vessels can be lawfully considered as "pirates."

With regard to the mail-steamer, it would, of course, be very desirable that some arrangement should be effected whereby she may be allowed to carry letters to the different ports of Chile, but I think this can only be done by the consent of the Spanish Admiral.

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* Mr. Thornton, Nos. 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42.

It is to be observed that the 20th Article of the Instructions of the Spanish Naval Commander is as follows: "You must not hinder neutral men-of-war from entering the port which you are blockading." Therefore, in the event of there being any danger to the lives of Her Majesty's subjects in any Chilean port, no question would arise as to the right of one of Her Majesty's ships to enter the port and take them on board.

It does not occur to me that there is any other point to which the notice of Her Majesty's Government should be directed. The remarkable character of the grounds assigned by the Spanish Government for the prosecution of this war will, of course, not escape attention.

I have, &c.
(Signed) ROBERT PHILLIMORE.

Inclosure in No. 10.

Notice for the "London Gazette."

Foreign Office, November 17, 1865.

IT is hereby notified that the Earl of Clarendon, K.G., Her Majesty's Principal Secretary of State for Foreign Affairs, has received information from Her Majesty's Chargé d'Affaires in Chile, that on September the 24th last the Commander-in-chief of the Spanish Naval Forces in the Pacific communicated to him, the said Chargé d'Affaires and Consul-General of Great Britain, "that in compliance with the orders of his Government he declares the diplomatic relations with Chile broken off, and her ports in a state of blockade."

No. 11.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received November* 18.)

My Lord, *Lincoln's Inn, November* 18, 1865.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 17th November instant, stating that he was directed by your Lordship to transmit to us therewith a translation of a letter which had been received from the Spanish Minister at this Court, stating that a privateer is being fitted out in a British port with the object of attacking Spanish vessels in the vicinity of the West India Islands during the hostilities which have recently broken out between Spain and Chile, and the Spanish Minister requested the interference of Her Majesty's Government to prevent such a proceeding.

Mr. Hammond was also pleased to request that we would take the same into our consideration, and inform your Lordship of our opinion as to whether Her Majesty's Government can take any, and if so what, steps in the matter represented by the Spanish Minister.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That in the absence of more definite information we do not see what steps can possibly be taken by Her Majesty's Government.

It would, in our opinion, be proper to state to the Spanish Minister that Her Majesty's Government will be ready to take all such measures as may be in their power, according to the laws of this country, for the prevention of the illegal equipment of any vessel for purposes hostile to Spain, on receiving definite information, capable of being supported by some legal evidence, as to the facts relative to such intended equipment, but that at present they are in possession of no such information or evidence.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 12.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received November* 27.)

My Lord, *Lincoln's Inn, November* 27, 1865.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 25th instant, stating that, with reference to our Report of the 18th instant, on a

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representation from the Spanish Minister at this Court respecting a rumour that had reached him of a vessel being fitted out as a privateer to cruize against Spanish commerce, he was directed by your Lordship to transmit to us two Reports made to the Treasury, dated the 23rd and 25th instant, respecting vessels fitting out in certain ports of the United Kingdom calculated to be employed for warlike purposes; and Mr. Hammond was pleased to request that we would take these papers into consideration, and report to your Lordship our opinion whether any, and if so what, measures should be taken in regard to such vessels.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That, although the four ships referred to in these papers all appear to be designed for warlike purposes, there is at present nothing to show that any one of them is intended for any purpose prohibited by the Foreign Enlistment Act; and the statement that the two ships in Messrs. Laird's yard are intended for the Brazilian and Peruvian Governments may, in all probability, be true, as they certainly cannot have been built in anticipation of a war between Spain and Chile.

With respect to the "Pampero," and the other ship at Glasgow, it is less improbable that the agents of the Chilean Government may have been in treaty for one or both of them, as the "Pampero," having been prevented from fulfilling her original destination for the Confederate service, may have been known to be on the builders' hands ready for any purchaser when the news of the commencement of hostilities between Spain and Chile arrived in this country.

We think that it may be advisable at once to direct the attention of the Lord Advocate of Scotland to the question whether any measures can properly be taken by the law of that country for the purpose of delaying the departure of those two vessels until their destination can be ascertained.

It will be for your Lordship to consider whether it will or will not also be desirable to address any inquiry to Messrs. Laird on the subject of the ships at Liverpool. We observe, however, that any such inquiry appears to be deemed unnecessary by Mr. Gardner, the Collector of Customs at that port.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 13.

The Queen's Advocate to the Earl of Clarendon.—(*Received December* 1.)

My Lord, *Doctors' Commons, November* 30, 1865.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 29th instant, stating that he was directed by your Lordship to transmit to me a despatch which has been received from Her Majesty's Chargé d'Affaires in Chile (No. 46), inclosing copies of his correspondence with the Panulcillo Mining Company on certain points connected with the blockade of the Chilean coast by the naval forces of Spain; and Mr. Hammond was pleased to request that I would take these papers into consideration, and furnish your Lordship with my opinion thereupon.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That, if my recollection be correct, one of the instructions of the Spanish Admiral to the blockading cruizers is to warn, before seizure, any merchant-vessel approaching the blockaded port; and if this be so, the vessels of the Mining Company would not be seized unless they persisted in breaking the blockade.

Mr. Thomson should be instructed to state to the British subjects who apply to him that he has no power to protect vessels from the penal consequences of breaking the blockade; and that, though it is true that the blockade is illegal unless supported by an adequate force, that the question whether the force be adequate is one which, according to the English precedents, is cognizable by the Prize Court, subject, of course, to the interference of Her Majesty's Government if that Court should not administer justice, either as to the facts of, or the law applicable to, the case before it.

Meanwhile it is to be observed that the apprehension entertained by the owners as to the seizure of their vessels is rather in favour of the adequacy of the blockading force.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 14.

The Queen's Advocate to the Earl of Clarendon.—(*Received December* 7.)

My Lord, *Doctors' Commons, December* 7, 1865.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 4th instant, stating that he was directed by your Lordship to transmit to me a letter dated the 18th October, with its inclosures, which your Lordship has received from Mr. George Rose Innes, containing observations as to the blockade by Spain of the Chilean coast, and inclosing a certified copy of his protest against this blockade; and Mr. Hammond was pleased to request that I would take these papers into consideration, and report to your Lordship my opinion as to the answer which should be returned to Mr. Innes' letter.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I think an answer should be sent to Mr. Innes to the following effect:—That a blockade which is insufficient—making all reasonable allowances for weather and accident—to prevent the general ingress and egress of ships from the ports alleged to be blockaded is invalid in law. But that the main question is always one of mixed fact and law, and, generally speaking, cognizable in the first instance by the Prize Court of the blockading State, subject, if justice be not done, to a demand for redress from the State to which the injured owner belongs.

That Her Majesty's Government, however, have not failed to impress upon the Spanish Government that the blockade cannot be recognized as valid unless the conditions which have been mentioned are fulfilled.

I venture to add that it appears to me worthy of your Lordship's immediate consideration whether the Spanish Government should not be apprized that Her Majesty's Government, having regard to the length of coast of which the blockade is notified, find it difficult to understand how a *bonâ fide* blockade can be established by the small number of Spanish ships which they are informed are now employed in this service; and that the notification of an unreal and imperfect blockade not only inflicts severe injury upon neutral commerce, but inevitably raises international questions of a very grave character, which it would be most desirable to avoid.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 15.

The Queen's Advocate to the Earl of Clarendon.—(*Received December* 9.)

My Lord, *Doctors' Commons, December* , 1865.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 8th instant, stating that he was directed by your Lordship to transmit to me the inclosed letter which has been received from the Panulcillo Mining Company, stating that the blockade of some of the ports in the neighbourhood of their property is quite nominal, and requesting to be informed whether vessels arriving at such ports for the purpose of discharging their cargoes and loading again will receive the protection of Her Majesty's ships of war; and Mr. Hammond was pleased to request that I would take these papers into consideration, and furnish your Lordship with my opinion as to what answer should be returned to this communication.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I think an answer to the Representatives of the Panulcillo Mining Company should be sent to the following purport:—

That unless the blockade announced by the Spanish Admiral be sustained by naval forces which, after making due allowance for accidental circumstances, may be considered as generally adequate to prevent the ingress or egress of vessels into and from the ports alleged to be blockaded, it will be invalid in law, and it must be presumed will be pronounced so to be by the proper Prize Court.

That Her Majesty being neutral in the present war between Spain and Chile, it would not be proper that Her Majesty's ships should be ordered to prevent the lawful exercise of belligerent rights by either belligerent over British ships.

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That Her Majesty's Representative in Chile cannot be directed to take upon himself the responsibility of declaring what ports of the coast of Chile are or are not duly blockaded.

That Her Majesty's Government will not fail to protect Her Majesty's subjects against any act of either belligerent which they may be duly advised constitutes any infringement of international law.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 16.

The Queen's Advocate to the Earl of Clarendon.—(Received December 16.)

My Lord, *Doctors' Commons, December* 16, 1865.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 15th instant, stating that he was directed by your Lordship to transmit to me therewith a despatch from Her Majesty's Chargé d'Affaires and Consul-General in Chile (No. 58), respecting an application which has been made to him to take Spanish subjects under British protection, together with a previous despatch from the same gentleman, showing the measures adopted by the Government of Chile against the subjects of Spain; and to request that I would take the same into consideration, and report to your Lordship my opinion, if possible by to-day, as to the instructions which should be sent to Mr. Thomson on the question of protection of Spanish subjects.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That having regard to the facts that the conduct of the Chilean Government is not only at variance with modern international usage, which lies at the basis of international law, but also a plain violation of the Treaty between Chile and Spain, with reference to the treatment of Spanish subjects in Chile after the breaking out of war between the two States, and that the provisions on this important subject are also contained in the Treaties of Chile with other States, and especially with England in the Article of the Treaty referred to by Mr. Thomson;—having regard to these facts, the representation addressed by Her Majesty's Chargé d'Affaires to the Chilean Government was, in my judgment, perfectly proper.

It appears to me quite consistent with strict neutrality that foreign States should very strongly remonstrate against the principle involved in this precedent of disregarding both the general international usage of modern times, and the express obligations of a Treaty, in a matter which so nearly and deeply affects every civilized State.

I am of opinion nevertheless that it would be difficult, in the present circumstances, to justify upon strict principles of international law the application of any coercive measures by England to Chile in order to secure the full observance of the provisions of the Spanish Treaty; but I think that if the lives of the innocent subjects of Spain, an ally of Her Majesty, peaceably resident in Chile, from which the Chilean Government will not allow them to depart, were to be seriously threatened, that active intervention on their behalf by the forces of Her Majesty and of other neutral States would be justifiable, and afford no just ground of war to Chile.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 17.

The Queen's Advocate to the Earl of Clarendon.—(Received December 16.)

My Lord, *Doctors' Commons, December* 16, 1865.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 15th instant, stating that, with reference to my Report of the 30th ultimo respecting the capture of the vessel "Mattias Cousino" by the Spanish squadron off Valparaiso, he was directed by your Lordship to transmit to me a further despatch and its inclosures received from Her Majesty's Chargé d'Affaires and Consul-General in Chile (No. 59), on the same subject, together with the instruction founded on my Report which was addressed

to him by the last mail; and to request that I would take the same into consideration, and report to your Lordship as to any further instructions which should be sent to Mr. Thomson on the subject.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I still entertain great doubt whether the belligerent had not a right to consider this vessel to be *de facto* Chilean. The question of the reality of the transfer to a neutral owner of a vessel which belonged to a belligerent owner is one which often occupies the investigation of a Prize Court.

It is not the mere fact of carrying neutral papers that ousts the right of the belligerent to capture a vessel. It must be shown that she is *bonâ fide* and entirely divested of all belligerent interest. This must be proved before the Prize Court of Spain: as to the proceedings in which, the owner must take the same measures as a foreign owner would take with reference to a British Prize Court. It may be as well, however, that my view of the law should be communicated by Mr. Thomson to the owner, as it may prevent his incurring useless expense and annoyance.

I have only to add that Mr. Thomson should steadily refuse to recognize the Spanish Admiral's ship as a legitimate Prize Court—a character which, indeed, Admiral Pareja does not now appear to claim for it.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 18.

The Law Officers of the Crown to the Earl of Clarendon.—(Received December 16.)

My Lord, *Lincoln's Inn, December* 16, 1865.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 15th instant, stating that, with reference to our Report of the 8th instant, he was directed by your Lordship to transmit to us two letters, dated the 14th instant, which have been received from the Home Office, containing further particulars respecting the steamer "Eagle," now in the Victoria Docks, and supposed to be destined to be used by the Chilean Government as a privateer against Spain; and to request that we would take these papers into consideration, and furnish your Lordship with our opinion whether any steps can be taken by Her Majesty's Government in the matter.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That there seems to us to be amply sufficient evidence in this case of such an equipment and armament as would be illegal, if there were anything to show that the "Eagle" is intended for the service of the Chilean Government, or to take part in hostilities between Chile and Spain.

If there were any evidence whatever of such a destination we should not hesitate to advise the immediate seizure of the ship. But on this essential point there is at present a total defect of evidence.

It is for Her Majesty's Government to determine whether they will assume the responsibility of detaining this vessel before any such evidence (without which a seizure or forcible detention could not be justified in a Court of law) is forthcoming. For ourselves, we could not advise that step unless, in the judgment of Her Majesty's Government, or of those on whose information they rely, there were at least strong and reasonable grounds for believing that such evidence, although not as yet in their possession, might, in the event of any detention or seizure, be obtained.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 19.

The Queen's Advocate to the Earl of Clarendon.—(Received December 16.)

My Lord, *Doctors' Commons, December* 16, 1865.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 15th instant, stating that he was directed to transmit to me a despatch from Her

Majesty's Chargé d'Affaires in Chile (No. 54), inclosing copies of a correspondence with the firm of Myers, Bland, and Co., as to the steps he was prepared to take in certain supposed cases in connection with the war between Chile and Spain; and to request that I would take these papers into consideration, and furnish your Lordship with my opinion thereupon with as little delay as possible, as the mail will be made up on the 16th instant.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I beg leave to refer to my former Reports upon this blockade, more especially to that of the 30th ultimo, as to the course which I think Her Majesty's Representative at Santiago ought to pursue.

The letter of Her Majesty's Representative to Messrs. Myers, Bland, and Co. appears to me proper, but I think it would be desirable that in any further communication which he may make, he should add, in conformity with the suggestions of my former Report that the questions arising out of these blockades are questions of international law which, generally speaking, must in the first instance be discussed and decided upon in a Prize Court, properly constituted, of the belligerent.

That such is the course which Great Britain has invariably pursued herself towards neutrals in all wars in which she has been engaged as a belligerent.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 20.

The Queen's Advocate to the Earl of Clarendon.—(Received December 16.)

My Lord, *Doctors' Commons, December* 16, 1865.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 14th instant, stating that he was directed by your Lordship to transmit to me a despatch with its inclosures from Her Majesty's Chargé d'Affaires in Chile (No. 55), respecting the arrangements which have been made by Commodore Harvey and Admiral Pareja on certain points connected with the blockade of the Chilean ports; and to request that I would take these papers into consideration, and furnish your Lordship with my opinion thereupon with as little delay as possible, as the mail for Chile will be made up on the 16th instant.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I am of opinion that the arrangement which appears to have been effected between Commodore Harvey and Admiral Pareja, as contained in the papers submitted to me, is one which should receive the approbation of Her Majesty's Government.

It is of course to be understood that the list of blockaded ports is accepted by Her Majesty's Government, subject to the condition that such ports are actually and *de facto* blockaded by a force adequate for the purpose, and that neutral vessels seized on the allegation that they are endeavouring to break even these blockades are to be legally tried before a properly constituted tribunal.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 21.

The Queen's Advocate to Mr. Hammond.—(Received December 19.)

My dear Sir, *Doctors' Commons, December* 19, 1865.

I DID not gather from the covering letter that my opinion was desired as to whether Commodore Harvey had acted rightly in his arrangements with the Spanish Admiral as to the blockade.

I am of opinion that his conduct was extremely judicious, and that his arrangements with the Spanish Admiral were very favourable to neutral commerce.

I am, &c.
(Signed) ROBERT PHILLIMORE.

China.

No. 22.

The Queen's Advocate to Earl Russell.—(Received March 17.)

My Lord, *Doctors' Commons, March* 17, 1865.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 4th instant, stating that he was directed by your Lordship to transmit to me a despatch dated December 8, 1864, and its inclosures, from Her Majesty's Consul at Shanghae relative to the claim of the Chinese authorities to confiscate the British steamer "Mercury," and the charges of piracy and murder brought against Mr. J. C. Baynton, the master of that vessel; and to request that I would take this case into consideration, and report to your Lordship my opinion thereupon.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That the papers before me raise two questions: 1st. Was Captain Baynton guilty of piracy and murder, or either? 2ndly. Was the "Mercury" confiscable under the Treaty of Tien-tsin? In order to answer these questions properly it is necessary to distinguish between two periods; the periods before and after the 25th of May, 1864.

It appears that the "Mercury" was chartered 9th April, 1864, by certain Chinese authorities, whom Captain Baynton did, and reasonably might, consider as sufficient for the purpose to protect certain Chinese fisheries in the Chusan Archipelago. The charterer was Hungtao, an officer having a button of the fourth rank, the Agent of the Taoutae of the Province. During the period the "Mercury" was so engaged, her British character was in obeyance; she did not carry British papers or a British flag. Whether or not she transgressed any Consular directions in being so employed, does not clearly appear, but the fact would not materially affect the answer to the questions proposed.

During this period the vessel must be considered as Chinese, and therefore unaffected by the Treaty of Tien-tsin. Disputes arose among the Chinese authorities as to whether Hungtao was warranted in employing the "Mercury," or whether this power was not vested in another Chinese officer (Yu Shih-kao). The British authorities interfered. Mr. Brown, the Acting Commissioner of Customs at Ningpo (who appears to have held different opinions, at different times, as to the lawfulness of the employment of the "Mercury"), caused the vessel to be brought into Ningpo by a revenue cutter: there Mr. Holt, Acting Consul, arranged, as he thought, the whole matter. Under his directions the "Mercury" was to resume her British character, flag, and papers. Captain Baynton was warned not to go again to Chusan, and the "Mercury" actually cleared for Foo-chow on the 25th May. It is after this period that the difficulty of the case begins.

Unfortunately Captain Baynton had not been paid for the services of the "Mercury" during the former period. Hungtao told Captain Baynton that he had not the money at Ningpo, but promised that if he would take him on leaving the port to one of his (Hungtao's) stations, he would collect and give him the money.

Captain Baynton most unwisely assented, and called at several places, Changtoo, Kingshan, and Pinkeamum; no money was, however, obtained, but the captain allowed Hungtao to carry off from Changtoo a boat which he asserted was his, but which afterwards turned out did not belong to him.

At Changtoo they were encountered by a fleet, under the authority of the rival Chinese officer (Yu Shih-kao), and a conflict took place, which ended in some lives being lost. The taking of the boat is the foundation of the charge of piracy, and the loss of these lives the foundation of the charge of murder. The whole matter was very properly investigated under the orders of Sir H. Parkes. The Chinese authorities, however, contributed very little evidence, and seem to have been with difficulty persuaded to produce that little; in fact, they acted throughout as if they knew that Captain Baynton was not guilty. Captain Baynton's defence was that he was fired upon first by the fleet of junks; that Hungtao, a Chinese officer of high rank, assured him they were pirates, and requested him to fire; that he believed him and acted in self-defence only. And on the whole it appears to me that there is no sufficient evidence to warrant Captain Baynton being put on his trial either for piracy or murder.

With respect, however, to the confiscation of the "Mercury" a different answer must

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be given. The XLVIIth Article of the Treaty of Tien-tsin provides, "British merchant-vessels are not entitled to resort to other than the ports of trade declared open by this Treaty. They are not unlawfully to *enter other ports in China*, or to carry on clandestine trade along the coasts thereof. Any vessel violating this provision shall, with her cargo, be subject to confiscation by the Chinese Government."

I think the "Mercury" has been guilty of entering forbidden ports in China, and is liable to confiscation, if the Chinese authorities insist upon the enforcement of this penalty.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 23.

The Queen's Advocate to Earl Russell.—(Received April 26.)

My Lord, *Doctors' Commons, April 25*, 1865.

I AM honoured with your Lordship's commands signified in Mr. Murray's letter of the 21st instant, stating that with reference to my Report of the 17th ultimo he was directed by your Lordship to transmit to me, together with the previous papers, a despatch and its inclosures from Her Majesty's Chargé d'Affaires at Pekin respecting the case of the "Mercury" (No. 70, December 1, 1864); and Mr. Murray was pleased to request that I would take these papers into consideration, and report to your Lordship whether I am of opinion that any further observations and instructions should be addressed to Her Majesty's Chargé d'Affaires in this case beyond those contained in the accompanying draft of a despatch sent to Her Majesty's Chargé d'Affaires on the 27th ultimo (No. 56).

In obedience to your Lordship's commands I have the honour to report—

That I am of opinion that no further observations or instructions need be addressed to Her Majesty's Chargé d'Affaires in this case beyond those contained in the draft of the despatch.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 24.

The Law Officers of the Crown to Earl Russell.—(Received May 9.)

My Lord, *Lincoln's Inn, May* 8, 1865.

WE are honoured with your Lordship's commands signified in Mr. Murray's letter of the 20th ultimo, stating that he was directed by your Lordship to transmit to us a despatch and its inclosures from Her Majesty's Chargé d'Affaires at Peking (No. 80, December 29) respecting the case of Dr. Rice, a British subject convicted of killing a Chinese at Hankow; and to request that we would take this case into consideration, and furnish your Lordship with such observations as we may have to offer thereupon.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That we think that the view taken of this case by Mr. Wade is correct; namely, that Mr. Webster committed grave faults both in omitting to send Dr. Rice for trial before the Supreme Court at Hong Kong, and also in neglecting to report this case in a proper manner to Mr. Wade.

It is probably not necessary for us to express an opinion upon the offence itself, which was committed by Dr. Rice; but we think the facts were such as to make it proper that Dr. Rice should, at least, have been *tried* upon the more serious charge of murder, which (certainly not without apparent cause) was brought against him by the Chinese authorities.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 25.

The Law Officers of the Crown to Earl Russell.—(Received May 11.)

My Lord, *Lincoln's Inn, May* 11, 1865.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 6th of May instant, stating that he was directed by your Lordship to transmit to transmit to us the accompanying drafts which have been prepared for Sir Edmund Hornby, Her Majesty's Consuls in China and Japan, and Her Majesty's Ministers in China and Japan, in transmitting to them the Order in Council of the 9th of March last; and to request that we would take the same into our consideration, and report to your Lordship, at our earliest convenience, our opinion whether these drafts are proper and sufficient.

Mr. Hammond was also pleased to inclose a copy of the Order in Council.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we are of opinion that the drafts, with certain alterations, will be proper and sufficient for their object. In considering them, we have availed ourselves of the assistance of Mr. Reilly, by whom the recent Order in Council and Rules of Procedure were prepared; and we think the alterations suggested by him in the copies of the several drafts to which we have affixed our initials are proper to be made.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 26.

The Law Officers of the Crown to Earl Russell.—(Received June 21.)

My Lord, *Lincoln's Inn, June* 20, 1865.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 22nd ultimo, stating that he was directed by your Lordship to transmit to us a despatch from Mr. Wade (No. 23), relative to proceedings taken at Tamsuy in the case of Mr. R. D. Enscoe, master and owner of the British schooner "Madge," on account of an attempt made by him to land clandestinely a quantity of opium at the port of Kelung; and to request that we would take this case into consideration, and report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands we have taken this mattter into our consideration, and have the honour to report—

That an attentive perusal of these papers leads us to the conclusion that the letter of Mr. Wade to Mr. Swinhoe contains, in every respect, an able and just exposition of the conduct which ought to have been, and a proper censure of the conduct was, pursued at Tamsuy in case of the "Madge;" and, with respect to the port of Kelung, we are of opinion that Mr. Wade was right in holding the Rules 2 and 3 (to which he refers) to be applicable to the present condition of that port.

I have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 27.

The Law Officers of the Crown to Earl Russell.—(Received June 22.)

My Lord, *Lincoln's Inn, June* 21, 1865.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 18th ultimo, stating that he was directed by your Lordship to transmit to us the accompanying correspondence,* respecting proceedings taken by Mr. Vice-Consul Markham at Shanghae, in regard to certain seamen belonging to the British ship "Forerunner;" and also a letter from the Board of Trade, dated May 13, relative to this

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* Messrs. Hudson, December 7 and December 13, 1864; Sir H. Parkes, No. 81, February 22, 1865.

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case; and to request that we would take these papers into our consideration, and favour your Lordship with our opinion thereupon, with reference to the provisions which bear on the case, of the Mercantile Marine Act and of the China Order in Council of the 13th of June, 1853, which was in force at the time.*

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we are of opinion that Sir Harry Parkes is right in the construction which he puts upon sections 239, 269, and 518 of 17 and 18 Vict., cap. 106 (the Merchant Shipping Act), and the 41st section of the Order in Council (then in force) of 13th June 1853 (Hertslet, ix, 229). The seamen were guilty of a misdemeanour, under the 239th section of the Merchant Shipping Act. Crimes under that Act, committed on the high seas, are punishable in the same manner as if they had been committed within the jurisdiction of Her Majesty's Court of Admiralty; and if this misdemeanour had been committed within the jurisdiction of Her Majesty's Court of Admiralty, the offenders would, under section 518, have been triable before two justices of the peace. The 41st section of the Order in Council provides "that the Consul, within his Consular district, may exercise any of the powers which by any Acts of the Imperial Parliament now enacted, or hereafter to be enacted, for the regulation of merchant seamen, or for the regulation of the mercantile marine, may be exercised by one or more justices of the peace within Her Majesty's dominions." We think, therefore, that these men were subject to the jurisdiction of the Consul, though his power of inflicting punishment for the offence was very limited in comparison with that possessed by a Court of Criminal Admiralty Jurisdiction. There appears to us to be much force in the suggestion of my Lords of the Committee of Privy Council for Trade, that immediate punishment of a lesser kind may be a more effectual check to the commission of such crimes than a severer punishment inflicted after considerable delay.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 28.

The Law Officers of the Crown to Earl Russell.—(Received June 22.)

My Lord, *Lincoln's Inn, June* 21, 1865.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 22nd ultimo, stating that he was directed by your Lordship to transmit to us a despatch from Mr. Wade (No. 41), relative to certain regulations drawn up by Mr. Hewlett, Acting British Consul at Foo-chow, with a view to prevent passengers arriving at that port on board British vessels from joining the Chinese insurgents, and to request that we would take this matter into our consideration, and favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we are of opinion that the course pursued by Mr. Wade, both in disapproving the regulations of Mr. Hewlett, and in the provisions which he (Mr. Wade) substituted for those regulations, was right and proper.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 29.

The Law Officers of the Crown to Earl Russell.—(Received July 11.)

My Lord, *Lincoln's Inn, July* 11, 1865.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 5th June instant, stating that he was directed by your Lordship to transmit to us the despatches and their inclosures from Her Majesty's Chargé d'Affaires at Peking, as

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* See Hertslet, vol. ix, p. 210.

marked in the margin,* relative to a proposal of the Committee of renters of land in the British quarter at Hankow, that the leases under which renters hold land at that port should be modified, so as to allow the transfer of lots to other than British subjects; and to request that we would take these papers into our consideration, and report to your Lordship our opinion upon the several points in connection with this matter adverted to by Her Majesty's Chargé d'Affaires.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we are disposed to agree generally with the opinions expressed by Mr. Wade in these despatches. The most material points appear to be the following:—

1. We agree with Mr. Wade that it would be expedient to relax the present rules affecting the tenure of land, both at Hankow and at other places in the Chinese dominions.

2. We think that the mode of relaxation should be that suggested by Mr. Wade in his despatch (No. 50, three inclosures, March 30, 1865), namely, that the British holder should be allowed to alienate his portion of land to a foreigner on the condition that the transferee be a citizen of a Treaty Power, and that the Representative of that Power accept as binding on the transferee the conditions of the leases now issued to British subjects, and undertaking to enforce them; and, moreover, that the transferee be not allowed to alienate the land so acquired, except upon the like terms and conditions.

3. We also agree with Mr. Wade in his objection to the use of the term "concession." We think it should not be applied to British lands, and that the disuse of it should be recommended to the Renters' Committee. It appears to us that the argument of Mr. Wade upon this point is convincing, and that "the authoritative declaration" which he requests your Lordship to make in furtherance of his views upon this subject, and as to the restriction of the powers claimed by the "Conseil Municipal," may be properly made.

4. With respect to the expediency of a foreign Government becoming a lessee in the first instance of the lands at Nanking and other places, we also agree with Mr. Wade.

5. The proposed demarcation of lots, roads, and the like, at the opening of a new port under Consular jurisdiction in the first instance, and if possible, also with the consent of the Representatives of the Treaty Powers, appears to us to be a wise suggestion.

6. Upon the general question of the limitations within which exclusive foreign authority should be exercised in these settlements, and of the recognition, and indeed demand for the aid, of Chinese authority apart from these limitations, we are also disposed to concur with Mr. Wade.

It appears to us that the general principle upon which the line of demarcation between the native and the foreign authority is drawn by Mr. Wade is sound and correct, namely, that all that relates to the cleanliness and convenience of the settlement should be left to the foreign authority, and that the expenses of these matters should be defrayed by the settlement; but that all that relates to the protection of person and property, and to the proper province of the police, should be furnished by and at the expense of the Chinese Government.

We have, &c.
(Signed) ROBERT PHILLIMORE.
And for the Attorney and Solicitor-General.

No. 30.

The Law Officers of the Crown to Earl Russell.—(Received August 1.)

My Lord, *Lincoln's Inn, July* 31, 1865.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 20th instant, stating that he was directed by your Lordship to transmit to us the accompanying despatch from Mr. Wade, and its inclosures (No. 58, April 10, 1865), respecting the case of an Italian named Belfiori, who was accused of homicide at Swatow, and tried before the Chinese authorities; and was to request that we would take these papers into consideration, and furnish your Lordship with our opinion as to the course pursued by Mr. Wade and by Mr. Consul Caine, together with any other observations which we may have to offer thereupon.

In obedience to the commands of your Lordship we have taken the papers referred to us into consideration, and have the honour to report—

That we agree with the view which Mr. Wade has taken of this case. It was, we

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* Mr. Wade, No. 35, March 14; Nos. 50, and 52, March 30, 1865.

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think, proper for the influence of the Consuls of the other foreign nations to be used, for the purpose of obtaining, in the first instance, a fair trial, and afterwards (if practicable) a mitigation of the extreme punishment awarded by Chinese law for the Italian found guilty of homicide in this case.

But we agree with Mr. Wade in regretting that, in their reasonable desire to save this man from capital punishment, Mr. Caine and his colleagues should have lost sight of the fact that there existed no authority of any foreign nation, either in China or at Hong Kong, which could legally undertake to inflict upon him any punishment whatever, or even to detain him in custody with a view to any future punishment, on board a British ship or on British territory, for this offence. The result is, that the Chinese authorities have been misled into giving complete impunity to a criminal guilty of a very grave offence, by their willingness to substitute, in deference to the feelings of the European Consuls, the European penalty of imprisonment for that prescribed by their own law; and it is much to be feared that the good faith of the foreign Consuls who were parties to the arrangement under which Belfiori was sent to Hong Kong may, in consequence, be seriously suspected by the Chinese authorities.

We think that, in this respect, Mr. Caine has fallen into a most unfortunate error of judgment; and that the substance of the instructions as to his future conduct, given to him by Mr. Wade's letter of the 10th April last (Inclosure No. 10 in Mr. Wade's No. 58), may well be approved and confirmed by your Lordship.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 31.

The Law Officers of the Crown to Earl Russell.—(Received August 4.)

Lincoln's Inn, August 4, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 20th ultimo, stating that he was directed by your Lordship to transmit to us the accompanying despatch and its inclosures (No. 78, April 17, 1865), respecting the case of two persons accused of robbery at Ningpo, who, having succeeded in escaping to Hong Kong, have been able to avoid being brought to trial; and Mr. Layard was pleased to request that we would take these papers into consideration, and furnish your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That we are not disposed to agree with the Attorney-General for Hong Kong that it would have been an improper exercise of prerogative on the part of the Governor of Hong Kong to have sent these men, or, at all events, the man who admitted himself to be a British subject, to Ningpo for trial; nor is it apparent to us why this person could not have been dealt with as a criminal subject to the jurisdiction of the Supreme Court of Hong Kong, under Article 30 of the Order in Council of 1853. For the future, however, the recurrence of any failure of justice from similar causes will, it is to be hoped, be prevented by the operation of Article 158 of the new Order in Council of the 9th March, 1865.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 32.

The Law Officers of the Crown to Earl Russell.—(Received October 7.)

Lincoln's Inn, October 6, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 13th ultimo, stating that he was directed by your Lordship to transmit to us a letter from the Colonial Office, dated August 30, inclosing a copy of a letter from the Acting Governor of Hong Kong, in which he raises the question whether the power of pardoning criminals convicted of offences in China which was conferred upon the Governor of Hong Kong by the Queen's Letters Patent of the 13th of October, 1863, has not become inoperative by the repeal of the Order in Council of the 13th of June, 1853.

Mr. Layard was also pleased to state that he was directed by your Lordship to refer us to the Reports of the Law Officers of the Crown of the 13th of January and 20th of February, 1862, and to transmit to us the correspondence, as marked in the margin,* relative to the power conferred in 1863 upon Her Majesty's Minister at Peking, and upon the Governor of Hong Kong concurrently, of pardoning criminals convicted by Her Majesty's Consular Courts in China; and to request that we would take this matter into our consideration, and favour your Lordship with our opinion thereupon, more especially with reference to the Order in Council of the 9th of March last.

Mr. Layard was also pleased to state that a copy of the Letters-Patent issued to Sir Frederick Bruce is annexed to the despatch to that Minister, No. 136 of the 24th of August, 1863, and that we should observe that it was stated in the letter from the Home Office, of the 16th of March, 1863, that the draft Letters Patent had been settled and approved by the Law Officers.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That as there was no mention whatever of the Order in Council of June 13, 1853, in the Letters Patent which appointed Sir F. Bruce, we thought it our duty to request the Colonial Office to furnish us with a copy of the Letters Patent of the Governor of Hong Kong; and, upon a perusal of them, we perceive that they do refer in distinct terms to that Order in Council, which appears, indeed, to be the foundation of, or the inducement to, the grant of the Letters Patent. By the 79th section of the Order in Council of the 9th March, 1865, a power is granted of sending offenders convicted by the Courts in China and Japan to Hong Kong; and we infer from the letter of Mr. Layard that it is the intention of Her Majesty's Government that the Governor of Hong Kong should continue to exercise the power of pardoning criminals sent to Hong Kong.

Upon the whole (although we are by no means satisfied that the power of pardoning conferred by the Letters Patent of the 13th October, 1863, is limited or controlled by the recital to which we have referred), we think the safest course would be that fresh Letters Patent should be issued to the Governor of Hong Kong, conferring upon him this power.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 33.

The Law Officers of the Crown to Earl Russell.—(Received October 24.)

Lincoln's Inn, October 23, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 5th instant, stating that he was directed by your Lordship to transmit to us a despatch, and its inclosures, from Her Majesty's Chargé d'Affaires at Peking (No. 129) respecting the case of the master of the British steamer "Elfin," who was tried before Her Majesty's Consul at Taiwan, for assisting the Chinese authorities against a pirate; and Mr. Hammond was to request that we would take this case into consideration, and report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That Mr. Vice-Consul Swinhoe appears to us to have entirely misconceived the law, and his own duty, in this case.

It is clear that the master of the "Elfin" was guilty of no offence, unless it was the merely technical one of leaving port without the ship's papers, which ought not, we think, to have been regarded as any substantial offence under the actual circumstances, and which formed no part of the real grounds of Mr. Swinhoe's sentence.

We think that the view of this whole matter taken by Mr. Wade in his letter to Mr. Swinhoe of 19th April last is correct, and that it has been dealt with by him in a

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* Sir F. Bruce, No. 133, October 1; Colonial Office, November 23, 1861; to Colonial Office, January 24; Colonial Office, February 3, 1862; Home Office, May 16; to Home Office, May 25; Home Office, June 25; to Colonial Office, July 30; Colonial Office, August 19; to Colonial Office, August 24; to Sir F. Bruce, No. 13, August 24, 1863; Colonial Office, April 18; to Colonial Office, April 25, 1864.

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proper manner, except that the fine imposed upon the master of the "Elfin" ought, in our opinion, to have been wholly, and not partially, remitted, and the conviction absolutely set aside.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 34.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received November* 27.)

My Lord, *Lincoln's Inn, November* 25, 1865.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 8th instant, stating that he was directed by your Lordship to request our early attention to the correspondence inclosed.*

Mr. Hammond was also pleased to state that it had originated in the execution by a cruel death of a Chinese subject whose extradition as a pirate was demanded of and granted by the Governor of Hong Kong; and in a previous instruction given by Mr. Secretary Cardwell, though not received at the time, prohibiting the surrender of pirates except under the assurance that they would not be dealt with in a manner revolting to humanity.

Mr. Hammond was also pleased to state that Her Majesty's Government are as yet imperfectly informed in regard to the case of the surrendered pirate. But that when the reports which have been asked for have been received from the Acting Governor of Hong Kong and from Her Majesty's Consul at Canton, they would be referred to us.

But that in the meanwhile there are other questions on which your Lordship desired to have our opinion.

The question of the claim of the Acting Governor of Hong Kong to correspond directly with the local authorities at Canton has been disposed of by Mr. Secretary Cardwell's instruction prohibiting that practice.

The material questions arise under the XVIth and XXIst Articles of the Treaty of Tien-tsin.

The first of these Articles is clearly limited to the trial and punishment, by their own authorities, of Chinese subjects who are charged with having committed crimes within the dominions of the Emperor of China.

The main difficulty arises under the XXIst Article, which provides for the general surrender of Chinese criminals charged with offences committed in China, for whom a demand has been made, and supported by evidence, on the British Colonial authorities.

It appears that there are certain crimes punishable in China by a lingering and cruel death. Among these is the crime of piracy.

In the year 1855,† a question arose as to the disposal of pirates captured by British naval forces on the coast of China. That question was, at the time, considered by the legal authorities, in accordance with whose opinion Her Majesty's Naval Officers have since been instructed, while delivering up to the Chinese authorities pirates captured within Chinese jurisdiction, to make "an express stipulation with the said authorities that the pirates receive a fair trial, and are not subjected to torture, or any punishment repugnant to the usages of civilized nations."

Mr. Hammond was also pleased to state that we should see, by his letters to the Colonial Office of the 2nd and 8th instant, and by your Lordship's instructions to Sir Rutherford Alcock (No. 3, November 8), of which copies were inclosed, the course that, pending a final decision, it is proposed to follow, to guard against a recurrence of a similar result of extradition as that which has recently occurred.

But that the point which he was now specifically to submit for our consideration is, whether, as a Christian Power, Great Britain would not be entitled to insist on the renunciation by the Chinese Government, in some form or other, of the infliction of cruelties repugnant to humanity on Chinese criminals placed at the disposal of the local authorities; and, failing to obtain this, to refuse altogether to give effect to the XXIst Article of the Treaty of Tien-tsin.

Mr. Hammond was also pleased to state that we should observe that much inconvenience is felt from the omission in the Treaty of any reciprocal provision for the surrender of persons, whether Chinese or others, who, having committed crimes in Hong Kong, have sought refuge in the Chinese dominions. The Chinese authorities, indeed, while claiming to try fugitives, subjects of China, who, having committed crimes in Hong Kong, have sought an asylum in China, refuse to give them up for trial in Hong Kong. But that it is not quite clear whether this refusal extends to the Chinese subjects of the British Crown, whom the Chinese Government have, of course, no right to claim to deal with as subjects of the Emperor.

As regards the extradition of the Emperor's subjects, the question arises whether, in strictness, a nation is bound under an Extradition Treaty to give up one of its own subjects. In this country no objection is made on that ground; but it is believed that France would not surrender a French subject.

Mr. Hammond was also pleased to state that your Lordship is prepared, with our concurrence, to instruct Her Majesty's Minister at Peking to endeavour to come to some understanding with the Chinese Government on this matter, and to record that understanding either in the shape of a Treaty or otherwise, as may be found practicable; but that your Lordship would be glad to receive from us any suggestion as to the exact proposition which it would be expedient to place before the Chinese Government.

Mr. Hammond was also pleased to state that we should observe another question, respecting Chinese witnesses whose evidence is required in cases pending before the Colonial Courts. That the Chinese authorities do not seem indisposed to allow their attendance; but in cases when the witnesses are themselves accused of crimes, they require a guarantee for their safe return in custody to China, to be dealt with by Chinese law for the crimes laid to their charge.

Mr. Hammond was also pleased to state that, as many considerations on this point might occur to us, your Lordship wishes to have our opinion upon it.

And that other points might occur to us, on the perusal of this correspondence, as deserving our attention, as to which your Lordship desired him to invite a full expression of our opinion.

Mr. Hammond was further directed by your Lordship to state that, in dealing with questions of this kind with the Chinese Government, it will be necessary to take into account the feelings and prejudices of a peculiar people, and to be satisfied with obtaining an end without too much insisting on formalities.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That we are not entirely agreed upon this case. The Attorney and Solicitor-General feel unable to say that, upon recognized principles of international law, Her Majesty's Government would be entitled to refuse performance of the XXIst Article of the Treaty of Tien-tsin, unless the Chinese Government would agree, in cases of extradition under that Article, to renounce the execution of their own laws in points as to which those laws do violence to the usages and feelings of Christian and civilized nations. They do not see how the Article can be read as containing any implied condition that the criminal law of China shall, in these cases, be administered in a manner conformable to Christian views of humanity; and they think it would be difficult, in principle, to maintain that ground, having regard to the fact that this is a Treaty, not between two Christian Powers, but between a Heathen and a Christian Power.

The Queen's Advocate, on the other hand, is of opinion that a Christian Power, in a Treaty of Extradition with a Heathen State made in the nineteenth century, must in fairness be understood to have attached to the obligation of extradition in certain cases the implied condition that, whatever be the extent of the punishment to be inflicted on the criminal to be delivered up, it shall not be attended with torture. For instance, he deems it to be inconceivable that any authority, acting under Her Majesty, should deliver up a Chinese subject guilty of felony with the knowledge that he will be burnt alive, or subjected to any torture by the Chinese authorities, and he thinks that the Chinese Government should be distinctly apprized, if not so already, that no Chinese criminal will be delivered up for the future without a sufficient guarantee, in each case, that he will be fairly tried, and that his punishment, if he be found guilty, be unaccompanied by any kind of physical torture.

But we all agree in thinking that it will be very expedient to endeavour to obtain, by a Supplementary Treaty or Convention, some modification or explanation of this Article which may provide against the delivery up of criminals, liable by Chinese law to such punishments as we justly deem inhuman, without a security against the infliction of those punishments; and, for this purpose, we think full advantage may properly be taken of all the uncertainties and doubtful questions which may fairly be represented as making this Article, as it now stands, scarcely susceptible of any clear or satisfactory construction.

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* *Three volumes; List of Papers.*

† *N.B.—Before the Treaty of Tein-tsin.—R. P.*

It applies only to "criminals," whose "guilt" may be "proved," in Hong Kong, but it does not define what shall be considered *crimes*, or what *guilt*, for this purpose. The rule, in all our other Extradition Treaties, is not to regard anything as a crime for the purpose of extradition, which would not be so in the place where extradition is demanded, if the act had been done in that place. It is difficult to see how the authorities of Hong Kong can try the question of guilt by the rules of Chinese, and not of their own law.

It applies only to those who "shall take refuge," &c., which would not extend to pirates or others captured and taken to Hong Kong by British authorities, who would be justiciable there by British law.

It cannot, we think, be extended to mere political offenders, and it would be a just ground of complaint on our part, if advantage were taken of extradition on one ground, to try and punish a man upon a different charge, and not on that upon which extradition was demanded.

These suggestions, together with the manifest insufficiency of Article XVI to meet the requirements of a due reciprocity in our own favour (as to which we concur in the views suggested by your Lordship), may, we think, well be made the basis of a negotiation for the revision of those Articles of the Treaty.

As to witnesses sent to Hong Kong from China, local legislation will be necessary to secure their return.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 35

The Law Officers of the Crown to the Earl of Clarendon.—(Received November 29.)

Lincoln's Inn, November 28, 1865.

My Lord,

WE are honoured with Earl Russell's commands signified in Mr. Hammond's letter of the 30th ultimo, stating that, with reference to our Report of the 6th ultimo, in which we stated that, though by no means satisfied that the power of pardoning offenders convicted in the Consular Courts in China, which was conferred upon the Governor of Hong Kong by the Letters-Patent of the 13th October, 1863, is limited or controlled by the recital therein of the Order in Council of the 13th June, 1853 (now repealed), we were nevertheless of opinion that the safest course would be that fresh Letters-Patent should be issued to the Governor of Hong Kong, conferring this power upon him, he was directed by Earl Russell to state to us that his Lordship concurred in this opinion, as the Order in Council of the 9th of March last provides that convicted offenders shall, as heretofore, in certain cases be brought within the Colony of Hong Kong to undergo their punishment. That his Lordship also desired him, at the same time, to submit to our consideration whether it would not be desirable to issue fresh Letters-Patent to Her Majesty's Minister in China. That the Letters-Patent issued to Sir F. Bruce did not, it is true, recite the Order in Council of 1853, but they appear to have conferred the pardoning power upon Sir F. Bruce alone, and, consequently, not to extend to his successor, even if they may be assumed to have extended to the gentleman who was appointed to act as Chargé d'Affaires during what was, at the time, believed to be Sir F. Bruce's temporary absence from China.

That Earl Russell wished further to consult us whether it would not be desirable to confer this pardoning power upon Her Majesty's Minister in Japan, making of course the Letters-Patent issued to the Governor of Hong Kong applicable to Japanese cases also. That if we should be of opinion that Letters-Patent should be issued in these several cases, Earl Russell wished to know whether, in our opinion, the Letters might not be made general, so as not to be confined to the person actually holding the office of Her Majesty's Minister in Peking, or in Japan, or of Governor of Hong Kong, but to extend to the person or persons who might be discharging the duties of either of those offices, in the event of the death of the Minister or Governor, or of his absence from his post for any other cause.

The previous papers were returned therewith for reference, if required.*

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* Sir F. Bruce, No. 133; Colonial Office, November 23, 1861; to Colonial Office, January 24; Colonial Office, February 3, 1862; Home Office, May 16; to Home Office, May 25; Home Office, June 25; to Colonial Office, July 20; Colonial Office, August 19; to Colonial Office, August 24; to Sir F. Bruce, No. 13; Colonial Office, August 30, 1865.

In obedience to the above commands we have further considered this case, and have the honour to report—

That we think it would be expedient to issue fresh Letters-Patent to Her Majesty's Minister in China, and to issue such Letters to Her Majesty's Minister in Japan, conferring the power of pardoning criminals; and we agree that it would be expedient to make the Letters-Patent of the Governor of Hong Kong applicable to cases in Japan.

We think, also, that it would be proper so to frame the Letters-Patent as to continue the power of pardoning therein contained to the successor or occasional deputy (in case of absence) of the officer to whom they were originally granted.

With reference to the inquiry made in the letter from the Colonial Office, dated the 2nd instant, we consider it to be the better opinion that the Letters-Patent of the 13th October, 1863, to the Governor of Hong Kong, are not repealed, but are still in force; but, for the reasons stated in our former Report, and which we understand to have met with Earl Russell's approval, we think it is expedient to obviate, by the issue of further Letters-Patent, every question of this kind.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 36.

The Law Officers of the Crown to the Earl of Clarendon.—(Received December 9.)

Lincoln's Inn, December 9, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 8th instant, stating that with reference to our Report of the 25th ultimo, he was directed by your Lordship to transmit to us the accompanying draft of an instruction which your Lordship proposes to address to Sir Rutherford Alcock with respect to the rendition of Chinese criminals, and to request that we would take the same into immediate consideration, and furnish your Lordship with our opinion whether it is right and proper to be sent; Mr. Hammond was also pleased to add that your Lordship would be glad to be informed of our opinion, if possible, by this day, the 9th instant, in order that the instruction may be dispatched by this day's mail; and to call our attention to a question in the margin of the fifth page of the draft.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we think the draft despatch, including the passage noticed in the margin of page 5, is proper to be sent, with the addition of a short passage at the end of page 12, which we have noted in the margin of that page.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 37.

The Queen's Advocate to the Earl of Clarendon.—(Received December 20.)

Doctors' Commons, December 19, 1865.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 11th instant, stating that he was directed by your Lordship to transmit to me a despatch and its inclosures from Her Majesty's Consul at Chin-kiang, dated September 25, reporting the circumstances of a murderous attack committed upon two British subjects and an American at that port.

A letter (and its inclosure) from Mrs. Filleul, dated December 5, the mother of one of the young men, who subsequently sank from the wounds which he received on the occasion in question, in which she attributes her son's murder to a desire to prevent his obtaining possession of some property belonging to his elder brother, who had previously died in China, was also inclosed, and stating that Mrs. Filleul consequently requests that a searching inquiry may be made into the matter with a view to secure for the heirs the

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property still remaining, as also to obtain proper indemnity from the Chinese Government on her behalf; and Mr. Hammond was pleased to request that I would take this case into consideration, and report to your Lordship my opinion thereupon.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That Mr. Consul Harvey appears to have taken, with vigour and success, every measure that could be taken in this unhappy affair. I am quite unable to see any ground for requiring compensation from the Chinese Government on account of this murder. It would be proper, I think, to tell Mrs. Filleul that Mr. Harvey will be instructed to give any assistance in his power towards recovering the property spoken of by her; but that the account is so extremely vague that there appears little hope of a successful result.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 38.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received December* 29.)

My Lord, *Lincoln's Inn, December* 28, 1865.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 8th instant, stating that in his letter of the 8th ultimo he had informed us that the Reports which had been asked for from the Acting Governor of Hong Kong and from Her Majesty's Consul at Canton, relative to the case of the pirate Ho Yu-teen, whose surrender to the Chinese authorities formed the subject of Colonel Sykes' representation of the 25th of last July, should be referred to us as soon as they should be received; and he was accordingly now directed by your Lordship to transmit to us, with reference to that letter and to our Report of the 25th ultimo, two letters from the Colonial Office,* the last inclosing a Report from Acting Governor Mercer, and two despatches from Consul Robertson,† respecting the case of this man; and to request that we would take the same into our consideration, and report to your Lordship our opinion thereupon.

Mr. Hammond was also pleased to state that the Ordinance No. 2 of 1850, under which the Governor of Hong Kong acted in this case, was sent therewith.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That with respect to the general subject of the Treaties of Extradition between Great Britain and China, we crave leave to refer to our former Report.

With respect to this particular cese of the man Ho Yu-teen it appears to us that the Acting Governor of Hong Kong took every precaution in his power to carry the provisions of the Treaty of Extradition into proper execution. The man was charged, not with piracy, which would be justiciable at Hong Kong, but with robbery, which brought him within the terms of the Treaty. The case was properly investigated, and there was abundant evidence to support the decision of the magistrate.

We have the honour to agree with Mr. Cardwell that no blame attaches to Mr. Mercer in this matter.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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* Colonial Office, November 14 and December 6, 1865.
† Mr. Robertson, September 22 and September 25, 1865.

Columbia.

No. 39.

The Queen's Advocate to Earl Russell.—(*Received July* 14.)

My Lord, *Doctors' Commons, July* 13, 1865.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 5th instant, stating that he was directed by your Lordship to transmit to me a despatch from Her Majesty's Acting Chargé d'Affaires at Bogotá (No. 26), relative to a tax which has been imposed by the Constituent Assembly of the States of Bolivar on all persons engaged in industrial pursuits at Carthagena; and to request that I would take these papers into consideration, and furnish your Lordship with any observations I may have to offer thereupon. A despatch from Her Majesty's Consul at Carthagena upon this subject was also inclosed (No. 2, June 1).

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That at present I agree with the opinions of Messrs. O'Leary and Fonblanque, that the simple imposition of this tax, which equally affects natives and foreigners, does not call for the interference of Her Majesty's Government on behalf of Her Majesty's subjects resident in these States.

Certainly, however, no such interference should take place until the decision of the Supreme Court, to whose jurisdiction the British residents have voluntarily resorted, has been declared. If it should hereafter be proved that the tax has been imposed or levied with plain injustice towards Her Majesty's subjects, or that the States of Bolivar have released the subjects of any other foreign State from the tax which they continue to impose upon British subjects, the whole matter ought again to be submitted to the consideration of Her Majesty's Government.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 40.

The Queen's Advocate to Earl Russell.—(*Received July* 22.)

My Lord, *Doctors' Commons, July* 22, 1865.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 18th instant, stating that he was directed by your Lordship to transmit to me a despatch and its inclosures from Her Majesty's Chargé d'Affaires at Bogotá (No. 27), respecting a law which has been passed by the Columbian National Congress defining the condition, rights, and obligations of foreigners. A correspondence which took place in 1848 and 1855 relative to similar laws in force in New Granada at those periods was also inclosed; and Mr. Hammond was pleased to request that I would take these papers into consideration, and inform your Lordship of my opinion as to the nature of the instructions, if any, which should be addressed to Mr. O'Leary thereupon.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I am of opinion that Mr. O'Leary has pursued a right course. It does not appear to me necessary that any instructions should be addressed to Mr. O'Leary, though it would be proper that he should be desired to apprize the Columbian Government that Her Majesty's Government approve of his letter to that Government.

I have, &c.
(Signed) ROBERT PHILLIMORE.

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No. 41.

The Queen's Advocate to the Earl of Clarendon.—(*Received December* 19.)

Doctors' Commons, December 19, 1865.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 13th instant, stating that he was directed by your Lordship to transmit to me therewith a despatch from Her Majesty's Chargé d'Affaires at Bogotá (No. 64), respecting a question which has been put to him by a Señor Montoga, who is anxious to know whether his children, born in England, are entitled, whilst in the United States of Columbia, to the privileges and exemptions secured by Treaty or otherwise to British subjects domiciled there, and also whether they are liable to serve in the Columbian army; and Mr. Hammond was pleased to request that I would take this despatch into consideration, and furnish your Lordship with my opinion as to what answer should be returned to Mr. O'Leary.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That this is really a question of Columbian municipal law; but upon the statement contained in these papers I have no doubt that the children of Señor Montoya, who is a native Columbian, are domiciled in Columbia, and that they are subject to the obligations of Columbian citizenship. The fact that Señor Montoya is a naturalized British subject does not exempt him from the operation of the law of the State of his birth and natural allegiance while he resides in that State.

On the whole, the opinion expressed by Mr. O'Leary is quite correct.

We have, &c.

(Signed) ROBERT PHILLIMORE.

Costa Rica.

No. 42.

The Queen's Advocate to Earl Russell.—(*Received April* 8.)

Doctors' Commons, April 7, 1865.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 5th instant, stating that he was directed to transmit to me a despatch from Her Majesty's Chargé d'Affaires in Central America (No. 11), inclosing a copy of a Decree issued by the Government of Nicaragua, prohibiting under certain penalties all commercial intercourse between that State and Costa Rica, together with a copy of a Decree of the Guatemalan Government prohibiting also, under certain penalties, all intercourse whatever between that Republic and Costa Rica; and Mr. Hammond was pleased to request that I would take the inclosed papers into consideration, and report to your Lordship my opinion as to the instructions which should be given to Mr. Fraser as to the legality of such acts not being absolute declarations of war on the part of Nicaragua and Guatemala.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I am of opinion that Mr. Fraser should be instructed to the effect that he must continue his remonstrance to the Governments of Nicaragua and Guatemala as to the hardship and injustice inflicted by their Decrees upon the commercial interests of British subjects, resident and commorant within the territories of these States, under the faith of Treaties and of general usage that they would be allowed to carry on commercial operations with all States with whom these Governments are not, as they are not with Costa Rica, at war. And that Her Majesty's Government confidently expect that the due consideration of this injustice or hardship will induce these Governments to withdraw the Decree for which it would be difficult to find any precedent, or to justify upon the ordinary usages of international law.

I do not advise that Mr. Fraser be instructed, at present at least, to place his remonstrance upon any other footing than that which I have already pointed out.

I have, &c.

(Signed) ROBERT PHILLIMORE.

Denmark.

No. 43.

The Queen's Advocate to Earl Russell.—(*Received May* 1.)

Doctors' Commons, April 29, 1865.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 27th instant, stating that he was directed by your Lordship to inclose a letter from Messrs. Willis and Co., dated the 19th instant, praying for the assistance of Her Majesty's Government in support of a claim upon the Danish Government on account of a loss sustained by them through the capture, by a Danish man-of-war, and detention at Copenhagen, of the Hanoverian vessel "Margaretha," having on board a cargo of tallow consigned to the applicants; and Mr. Hammond was pleased to request that I would furnish your Lordship with my opinion as to whether the claimants are entitled to the support of Her Majesty's Government.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That the Articles of Peace between Denmark and Germany referred to in the letter of Messrs. Willis do not accompany the papers submitted to me in this case; but I should think it most probable that the decision of the authorities as to the construction of that Treaty was correct, namely, that it related to the belligerents who were parties to it, and not to neutrals who were not parties to it.

The claim of Messrs. Willis ought, it would appear to me, to be made in the first instance to the Danish Government. They were entitled to have their vessel tried in the Prize Court of Denmark, and to a proper legal sentence of acquittal, with costs and damages, if their ship was innocent and her capture unjustifiable.

I have, &c.

(Signed) ROBERT PHILLIMORE.

No. 44.

The Queen's Advocate to Earl Russell.—(*Received June* 8.)

Doctors' Commons, June 6, 1865.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 2nd instant, stating that he was directed by your Lordship to transmit to me a letter from Messrs. Walters and Bubb, requesting the assistance of Her Majesty's Government to obtain from Denmark compensation for the capture and detention of certain German vessels during the war between Denmark and Germany; and to request that I would take this paper into consideration, and inform your Lordship what answer should be returned to Messrs. Walters and Bubb. A copy of the Treaty of Peace of 1864 between Austria, Prussia, and Denmark, is inclosed for my convenience.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I am of opinion that an answer should be sent to Messrs. Walters and Bubb to the following effect:—That whatever claim they may have in this matter must depend upon their representing, and having for the time being the status of, German owners of German vessels and cargoes. The Treaty was concluded between, and had exclusive reference to the belligerents,—Austria, Prussia, and Denmark, and is one of which a neutral State like Great Britain, who was no party to the Treaty, has no right to enforce the provisions on behalf either of a belligerent or a neutral owner. The Treaty does not contemplate, either in its general principles or in its particular provisions, the interests of neutrals. If the underwriters are right in considering, as they say, that "they acquire all the rights of the Austrian or Prussian owner," it is to the Government of these owners that they should have had recourse, before the Commission, which was partly composed of Austrian and Prussian Commissioners, had concluded its sittings, for redress against any miscarriage of justice in the treatment of their claims by that Commission.

I have, &c.

(Signed) ROBERT PHILLIMORE.

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No. 45.

The Queen's Advocate to Earl Russell.—(Received June 10.)

Doctors' Commons, June 9, 1865.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 3rd instant, stating that with reference to my letter of the 11th July last, and to previous correspondence on the subject of the capture and condemnation by the Danish Prize Court of the British vessel "Estella," he was directed by your Lordship to transmit to me a letter from Mr. Burnitt, the owner of the "Estella," forwarding a translation of the Judgment of the Danish High Court of Admiralty, by which Judgment the decision of the Prize Court is reversed and the vessel released, but without costs and damages; and Mr. Hammond was to request that I would furnish your Lordship with my opinion upon a review of the case, as to the answer which should be returned to Mr. Burnitt's inquiry whether he is entitled to claim damages from the Danish Government.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That a consideration of the precedents in the English Prize Court on the subject of awarding or refusing costs and damages in cases of this kind obliges me to say that it is probable that if, *mutatis mutandis*, the case had been tried here, the English Court would have given the same sentence as the Danish Court. I cannot, therefore, advise your Lordship that you ought to address any remonstrance to the Danish Government on account of the Danish Prize Court's refusal to award costs and damages to the owners of the "Estella."

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 46.

The Queen's Advocate to Earl Russell.—(Received June 19.)

Doctors' Commons, June 17, 1865.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 14th instant, stating that he was directed by your Lordship to transmit to me a letter from Mr. A. W. Stratton, asking for the intervention of Her Majesty's Government in order to procure compensation from the Danish Government for the expense and delay to which he was subjected in obtaining the property left by his deceased wife. A correspondence which took place with regard to this case, together with my Reports on this subject were also transmitted; and Mr. Layard was pleased to request that I would take Mr. Stratton's letter into consideration, and furnish your Lordship with my opinion whether Her Majesty's Government would be justified in supporting Mr. Stratton's claim for compensation.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I have no information as to the history of this case since my Report upon it was made to your Lordship on the 16th of June, 1863. I perceive that in that Report I expressed "a firm conviction that if it should turn out, as the Vice-Consul has from the first declared, that Mr. Stratton has been put to unnecessary cost and expense by an unfounded litigation, the Danish Tribunal will condemn the adverse party to pay the costs." I perceive from Mr. Stratton's letter that a decision was given in his favour by the legal tribunal at Copenhagen, on the 14th of October, 1863; whether the sentence did or did not also decree the costs of the litigation to be paid to Mr. Stratton, or if not, upon what grounds it declined to do so, I am not informed. As I understand this case, it had become, whatever it originally was, a private suit between two litigant parties; and at present I do not see upon what grounds the Government of Denmark can be called upon to pay any compensation to the successful litigant, on the ground of the time which was occupied in investigating the merits of the controversy, unless, indeed, the Government in some way interfered with the judicial proceedings, as to which I have no evidence at present before me.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 47.

The Queen's Advocate to Earl Russell.—(Received June 28.)

Doctors' Commons, June 27, 1865.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 22nd instant, stating that, with reference to that portion of my letter of the 17th instant in which I stated that I had no information as to the case of Mr. Stratton since my Report upon it was made in June 1863, he was directed to call my attention to the two accompanying despatches from Her Majesty's Minister at Copenhagen, dated in August and September 1863, which may have escaped my notice, and which appears to show that the transaction was not in the form of a private suit between two litigant parties, but of an investigation by a Magistrate; and further to state that your Lordship would be glad, before referring the case to Copenhagen, to be informed whether these papers would cause any modification in the views expressed in my above-mentioned Report, which was also returned.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That my attention is now directed to two despatches, dated August 17 and September 17, 1863, from Her Majesty's Minister at Copenhagen, and which are therefore both subsequent to my Report of the 16th of June of that year.

It would certainly appear from the first of those despatches, taken by itself, that there was no private litigant, for in it his Excellency, among other things, says that he had ascertained that "the Magistrate was about to dispose of the property among Mrs. Stratton's relatives on his own initiative;" but in the inclosure of his Excellency's despatch of September 17th there is a statement from Mr. Petersen, who appears to be the Magistrate or Judge of a Court of Probate, that the relatives of Mrs. Stratton did appear in Court, and did insist upon the alleged marriage being judicially inquired into, and the fact of its alleged dissolution. The words of Mr. Petersen are, "Whereas the relatives have maintained their assertion that the deceased was a Danish subject, and that her estate should pass through the hands of the Court of Probate of this place, *and they have finally claimed that the question at issue should be decided by the said Court.*"

It would therefore seem to me that, practically, the relatives were litigants in the first suit, and it would appear, *primâ facie* at least, that as their claim was unsuccessful, they ought to have been condemned in the costs of trying the question upon which they asked for the decision of the Court.

I should be glad, therefore, to receive the information upon this subject to which I adverted in my last Report. At present I do not clearly understand how much of this litigation was consequent upon the course taken by the Judge alone, and how much of it was caused by the opposition of the relatives of Mrs. Stratton to the claim of Mr. Stratton. It is true, indeed, as suggested, that the Court of Probate in England would not allow a grant of administration, except to a party who had made a proper *primâ facie* title to it, whether the application was contested or not; but if a next of kin or relative appeared to oppose the grant, there would be immediately a suit between two parties, one of whom might, or might not, according to the circumstances, be liable to pay the costs of the inquiry or litigation. I may also observe that it does not appear from Mr. Stratton's letter (dated 2nd June, 1865), when he was first apprized that his case was settled in his favour on the 14th of October, 1863.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 48.

The Queen's Advocate to Earl Russell.—(Received July 13.)

Doctors' Commons, July 13, 1865.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 6th instant, stating that, with reference to my letter of the 29th of April last on the subject of the claim of Messrs. Willis and Co. for compensation, on account of the capture and detention by the Danish Government during the recent war, of a cargo of hemp and tallow, on board the Hanoverian vessel "Margaretha," he was directed by your Lordship to transmit to me two despatches from Her Majesty's Minister at Copenhagen, stating that the Danish Government refuse to entertain the claim of Messrs. Willis on the ground

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that Article XIII of the Treaty of Vienna, respecting compensation for captured property, referred solely to German property, and that, as neutrals, Messrs. Willis have no claim under international law. Mr. Layard was also pleased to state that I should doubtless observe that in conversation with Sir Augustus Paget, the Danish Minister for Foreign Affairs stated that the ship and cargo had been condemned by a Prize Court; and to request that I would furnish your Lordship with my opinion as to whether, in face of the refusal of the Danish Government to entertain the claim on the grounds above alluded to, it would be expedient for Her Majesty's Government to take any further steps in this matter. The previous papers were inclosed for convenience of reference.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That the decision of the Danish Government that the Treaty is not applicable to neutrals accords with the opinion which I had the honour to express in my former Report. I also stated in that Report that the owners of the "Margaretha" had a right to trial and sentence in the Prize Court, but it now appears that this vessel has been tried, and has been duly condemned in that Court.

I am of opinion that there is no obligation on Her Majesty's Government to take any further steps in this matter.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 49.

The Queen's Advocate to Earl Russell.—(Received July 19.)

Doctors' Commons, July 17, 1865.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 14th instant, stating that with reference to my Reports of the 17th and 27th ultimo relative to Mr. Stratton's claim for compensation from the Danish Government for the delay and loss he incurred in obtaining possession of his deceased wife's property, he was directed by your Lordship to transmit to me a copy of a despatch (No. 76) which has been received from Her Majesty's Minister at Copenhagen in reply to the inquiries addressed to him on the subject, and which furnishes the information desired by me in my above mentioned Reports; and Mr. Layard was pleased to request that I would furnish your Lordship with my opinion whether, under the circumstances of the case, Mr. Stratton is entitled to the support of Her Majesty's Government in favour of his claim.

In obedience to your Lordship's commands I have the honour to report—

That it now appears that the suggestion in my last Report, that "this case had become, whatever it originally was, a private suit between two litigant parties," was perfectly correct.

I still do not understand why the Court at Copenhagen did not condemn Mr. Lohman, the defeated litigant, in costs; why, to use Mr. Vice-Consul Lange's expression in his letter to Sir A. Paget, "both parties were free of Court charges."

However, it is clear to me that this suit has been conducted with all due regard to substantial justice, and according to the ordinary practice of the Court at Copenhagen; and I see no ground whatever for making any demand for compensation to Mr. Stratton against the Danish Government, who could not have interfered with the ordinary course of justice in the tribunals of that country any more than the English Government could have interfered if there had been a suit between a Danish and an English subject in this country; and I humbly advise that an answer to this effect be sent to Mr. Stratton.

I have, &c.
(Signed) ROBERT PHILLIMORE.

Equator.

No. 50.

The Queen's Advocate to Earl Russell.—(Received March 7.)

Doctors' Commons, March 6, 1865.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 3rd instant, stating that he was directed by your Lordship to transmit to me a despatch and its inclosures from Her Majesty's Chargé d'Affaires at Quito (No. 5, January 15), respecting the intention of the Equatorian Government, which had been signified to the British Vice-Consul at Guayaquil, of taking by force from the English steamer touching at that place any political exiles who may remain on board during the vessel's stay in that port; and Mr. Hammond was pleased to request that I would take these papers into consideration, and report to your Lordship my opinion as to the instructions which should be given to Mr. Fagan in this matter.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That merchant-vessels, while in the ports of a foreign State, are so far amenable to its jurisdiction as to be liable to be searched for native subjects credibly alleged to be on board, and charged with offences committed within the territories of that State; and that it is competent to the proper authorities of such State, especially after due warning, as in the present case, to take such persons out of the merchant-ship.

I think that the mere presence of Her Majesty's mails on board a merchant-vessel would not afford to such persons, while she was in port, an exemption from the liability to be seized.

In the present case, however, the vessel does not even appear to belong to the class of mail-steamers between England and South America.

Mr. Fagan appears to me to have taken a proper course in warning these vessels that they ought not to incur the risk of lowering the national character of their ship by bringing such persons into these ports, and thereby provoking and justifying the interference of the local police.

I have, &c.
(Signed) ROBERT PHILLIMORE.

France.

No. 51.

The Law Officers of the Crown to Earl Russell.—(Received January 18.)

Lincoln's Inn, January 17, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 10th instant, stating that he was directed by your Lordship to transmit to us the accompanying despatch from Her Majesty's Ambassador at Paris, inclosing a copy of a letter from the Préfet de Police, containing information supplied by him at the request of British Embassy for the use of Mr. Linden, of New Square, Lincoln's Inn Fields, respecting a Turkish officer named Riskallat, and another person, who appear to be involved in legal proceedings about to be instituted in this country; and to request that we would favour your Lordship with our opinion whether a copy of the inclosure of Lord Cowley's despatch might be given to Mr. Linden.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

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That we think that a copy of so much of the Report of the Préfet de Police as is included between the second paragraph beginning, "Il s'agissait de savoir," &c., down to the close of the last paragraph but two, ending with the words "hotel de cette ville," might be furnished to Mr. Linden, on his undertaking not to attempt to use that copy as evidence of any of the facts stated in it, in any Court of Justice.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 52.

The Queen's Advocate to Earl Russell.—(Received January 28.)

Doctors' Commons, January 28, 1865.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 20th instant, stating that, with reference to his letter of the 17th December last addressed to the Law Officers of the Crown, and to their Report of the 6th of October, he was directed by your Lordship to transmit to me a despatch from Her Majesty's Ambassador at Paris (No. 1, January 6), inclosing a *note verbale* containing the reply of the French Government to the invitation of Her Majesty's Government, that the Government of the Emperor should declare the Slave Trade piracy, and should affix the penalties of that crime to all persons who shall be convicted of being engaged in Slave Traffic, in a Court which takes cognizance of piracy, and to request that I would take these papers into consideration, and prepare the draft of such an answer as I may consider proper to be returned to the *note verbale* of the French Government.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I humbly submit to your Lordship the appended draft answer to the *note verbale* of M. Drouyn de Lhuys.

I have, &c.
(Signed) ROBERT PHILLIMOEE.

Inclosure in No. 52.

Draft of Answer to Note-Verbale of French Government.

THAT Her Majesty's Government have perused with mingled satisfaction and regret the *note verbale* of M. Drouyn de Lhuys.

It is a matter of satisfaction to them to learn that the municipal law of France places the odious crime of slave-trading in the category of those criminal offences which are visited with the severest punishment, and Her Majesty's Government have no reason whatever to doubt the sincerity of that abhorrence with which M. Drouyn de Lhuys speaks of this abominable traffic; but in proportion to this satisfaction is the regret which Her Majesty's Government are constrained to feel at the rejection by M. Drouyn de Lhuys of a proposal, by the adoption of which Her Majesty's Government had earnestly hoped that the last traces of this great guilt might be effaced wherever the flag of France or of England floated.

Her Majesty's Government must observe that, however severely the municipal law of France may punish, within the territory of France, the French slave-dealer, the offender would not naturally bring himself within the operation of the law, while the absence of French cruizers from the African coast enables him to exercise his trade with comparative impunity. For while it may, Her Majesty's Government believe, with truth be said that few, if any, Frenchmen engage in this accursed traffic, the evil is that the French as well as the English and Spanish flag may be, and often is, wrongfully assumed by the slave-traders of all nations. The most effectual remedy would appear to be that, within certain latitudes and under certain limitations, the right of ascertaining whether the vessel be a slaver or a foreign merchantman should be conceded to the ships of war of Christian States, while, if the vessel proved to be a slaver, she might, in the absence of any Mixed Commission Court, be delivered to the authorities of the country to which she belonged. But if the French Government consider this suggestion for any reason impracticable, Her Majesty's Government are not the less desirous of stating that they attach the greatest importance to a joint declaration of France and England that, as far as their influence extends at least, this accursed traffic should be placed in that category of piracy to which by its nature and the reason of the thing it properly belongs.

Murder and robbery of the worst kind are its inevitable companions; for in no other light can be regarded the stealing of human beings of all ages and all sexes, and the death of many who perish either on the coast or during the horrors of the transit from the shore of Africa to the shore of some Christian State.

It is true, indeed, that the authority of publicists and jurists, and that a certain usage of nations, may be cited to show that slave-trading has not been hitherto considered piracy by international law; but international law, like all other law, has a deeper foundation than mere usage.

International law, like all other law, makes progress with the advance of Christian civilization, and if it be found that a practice not hitherto treated as a positive violation of its provisions be nevertheless a crime of the darkest character against our common humaity, it would surely become the great Christian States to include, by their united verdict, this atrocious crime among those which it is the duty of international law to prevent and punish.

Scarcely more than a century ago jurists of eminence were found to maintain the abstract right of a Christian belligerent to sell prisoners of war into slavery; in still more recent times the Bey of Tunis and the Bey of Algiers traded in Christian slaves. No Christian Government now would maintain the former opinion, or deny that the practice of the Algerines was justly punished as piracy by the armed forces of Christian nations.

But it is said that a bare declaration by France and England that slave-trading should be considered by them as piracy would have little or no practical effect unless accompanied by a mutual right of visit and search of each other's vessels, and that this is a thing which France could not permit.

Her Majesty's Government, fully appreciating the high sentiment of national honour which induces France to make this refusal, regrets that it should be called forth in the present instance, because England, which claims to be as jealous as any nation of the honour of her national flag, would feel a pride in submitting it, with reasonable and proper limitations, to the visitation of a French officer for so holy and noble a purpose.

But if circumstances unhappily render these means of destroying this wicked trade impossible, Her Majesty's Government still think the joint declaration of France and England that the Slave Trade is piracy would be a great boon to Christendom, and to the interests of the civilized world. No practice was more firmly embedded in the law of nations than that of privateering, and yet how much has the bare declaration of the chief States of Christendom done to put an end to this usage; in like manner, the example of France and England making a public declaration that Slave Trade was piracy would be followed no doubt by the adhesion of other nations, especially Spain and Portugal, and the new Empire of Mexico—kingdoms whose sentence would have, from peculiar circumstances, so much weight in this matter.

Upon the whole, therefore, Her Majesty's Government still earnestly hope that the Government of the Emperor may be induced to reconsider this proposal, and to take a step which, without wounding national susceptibilities, would make France a fellow-worker with England in removing the great reproach of Christendom.

R. P.

No. 53.

The Law Officers of the Crown to Earl Russell.—(Received January 31.)

Lincoln's Inn, January 28, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 12th of January instant, stating that with reference to our Report of the 2nd ultimo, respecting the demand for the extradition of the French fraudulent bankrupt Dulac, who had fled from the Island of Réunion and taken refuge in Mauritius, he was directed by your Lordship to state to us, that as we were clearly of opinion that the extradition in such a case could not, on the true construction of the Convention of Extradition between Great Britain and France, and of the Act of Parliament for giving effect thereto, be made on production of a warrant issued by a magisirate in the French Colony, your Lordship was desirous of proposing to the French Government to conclude an additional Article to the Convention, with a view to prevent the inconvenience and failure of justice which must

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occasionally occur, from the want of a suitable provision in the Convention to meet such cases.

Mr. Hammond was also pleased to state, that your Lordship accordingly directed him to transmit to us the draft of such an Article, and of a note to the French Ambassador, proposing it; and to request that we would take the same into our consideration, and report to you whether we saw any objection thereto.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we are of opinion that the proposed additional Articles will suffice for the object for which they are framed, and that your Lordship's letter to the French Ambassador is fit and proper to be sent.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 54.

The Law Officers of the Crown to Earl Russell.—(Received February 9.)

My Lord, *Lincoln's Inn, February* 8, 1865.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 25th ultimo, stating that he was directed by your Lordship to transmit to us the accompanying letter from the Colonial Office, dated the 21st ultimo, inclosing a copy of a correspondence received from the Governor of the Windward Islands, reporting the circumstances under which he had declined to surrender to the Commander of the French ship of war "L'Amaranthe" four sailors who had deserted from that vessel and taken refuge in St. Lucia; and to request that we would take this case into our consideration, and favour your Lordship with our opinion as to the proceedings of Governor Walker in the matter.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That we are of opinion that the Administrator of the Government of St. Lucia was rightly advised by the Attorney-General of that island, that these French seamen could not be delivered up under the existing Treaties between France and Great Britain.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 55.

The Queen's Advocate to Earl Russell.—(Received February 15.)

My Lord, *Doctors' Commons, February* 15, 1865.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 14th instant, stating that he was directed by your Lordship to transmit to me therewith a copy of a despatch from Her Majesty's Ambassador at Paris (No. 187), reporting that a contract for the establishment of a National Bank in Mexico was signed on the 11th instant, and that, among other advantages, the privilege of exporting silver free of duty would be enjoyed by it; and Mr. Hammond was pleased to request that I would furnish your Lordship with my opinion whether, under the IVth Article of the Treaty between Great Britain and Mexico (a copy of which was inclosed for reference), it is not in the competence of Her Majesty's Government to claim a similar privilege.

In obedience to your Lordship's commands I have taken this matter into consideration, and have the honour to report—

That the IVth Article of the Treaty between Great Britain and Mexico entitles Her Majesty's Government to claim that "no other or higher duties or charges" be imposed upon the exportation of silver to British territories than is imposed upon the exportation of that article to the territories of any other foreign State.

If the effect of the Contract signed at Paris is to enable silver to be exported from Mexico to French territories free of duty, I think it is competent to Her Majesty's Government to require that the same privilege be accorded to British territories. It is not, however, by any means clear to me that such would be the effect of the Contract signed at Paris; or that it would do more than confer privileges on a National Mexican Bank, the consequences of which (of whatever members the bank may be composed) would apply equally to all foreign States. It is, of course, necessary to examine the Contract itself before any satisfactory opinion can be formed upon the purport and effect of it.

I have, &c.
(Signed) ROBERT PHILLIMORE

No. 56.

The Queen's Advocate to Earl Russell.—(Received March 4.)

My Lord, *Doctors' Commons, March* 3, 1865.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 2nd instant, stating that he was directed by your Lordship to transmit to me therewith the accompanying correspondence* with Mr. Ferdinand Niemann, a naturalized British subject, who is anxious to obtain the assistance of Her Majesty's Ambassador at Paris in order to enable him to lay before the French authorities a claim he prefers against Mr. F. W. Hermann, a merchant at Bahia, who is at present in custody at Paris at the instance of the Brazilian Embassy in that city; and Mr. Hammond was to request that I would take the papers into consideration, and furnish your Lordship, at my earliest convenience, with my opinion as to any steps which Her Majesty's Government can properly take in the matter.

In obedience to your Lordship's commands I have taken the papers into consideration, and have the honour to report—

That I think Her Majesty's Ambassador at Paris might be instructed, so far, to assist Mr. F. Niemann so as to enable him to lay his claim against Mr. Hermann before the French authorities.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 57.

The Queen's Advocate to Earl Russell.—(Received March 7.)

My Lord, *Doctors' Commons, March* 6, 1865.

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 2nd instant, stating that he was directed by your Lordship to transmit to me a letter from Mr. Stubs, dated the 27th ultimo, complaining of proceedings in France as regards trade marks, which he considers are injurious to his interests; and to request that I would report to your Lordship my opinion whether this is a matter in which your Lordship can take any or what steps on behalf of Mr. Stubs.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I consider the decision of the "Cour de Paris" to have been right, and that of the "Cour Impériale" and of the "Cour de Cassation" to have been wrong.

The Cour de Paris held that the French Law of 1857, and the Treaty with England of 1860, enabled the English proprietor Stubs to recover damages against the Frenchman who counterfeited his trade marks, that is, who sold, as his own production, certain articles marked with the name of Stubs, who invented them, and had a patent for them.

The Courts which reversed and annulled this sentence held that long usage of the Stubs trade mark in France (for about seventy years) had caused the use of this trade mark to belong to the "domaine public," and that the Law and the Treaty referred to had no retrospective operation upon articles already, by virtue of long usage, belonging to the "domaine public."

The answer is, that long usage can only prevail when the party injured might have interfered, and has not done so; but that in this case Stubs had always protested against the counterfeit, but before the passing of the Treaty had been able to obtain no redress. That the maxim of jurisprudence "contra non valentem agere non currit præscriptio"

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* Mr. Niemann, March 2; to Mr. Niemann, March 2; Mr. Niemann, March 2, 1865.

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applies; and that the sentences of French Courts in 1846 (so much lamented even then by the most eminent French jurists), and previously to the Treaty, had, indeed, freed the authors of the counterfeit from *liability to punishment* in France at that period, but had not given them any *property* in the counterfeited mark. That the Treaty had clothed Stubs with the legal means of protecting himself from the usurpation of his name, the moral right to do which he had always possessed.

I am of opinion that the English Courts of Justice would protect the Frenchman's trade mark in similar circumstances.

I think that, although the construction of the French Law and the Treaty belongs to the French Tribunals, there is ground for representing to the French Government that these decisions must greatly impair the usefulness of the Treaty.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 58.

The Law Officers of the Crown to Earl Russell.—(*Received March* 9.)

Lincoln's Inn, March 7, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 25th February ultimo, stating that he was directed by your Lordship to transmit to us the accompanying despatch from Her Majesty's Ambassador at Paris (No. 239), inclosing a copy of a letter from the Préfet of Police, containing information supplied by him at the request of Messrs. Lewis and Cutts, Solicitors, of Ely Place, Holborn, with reference to a person named Victor Legrand, who is at present confined in Newgate Prison on a charge of extorting money from Mr. Walker; and to request that we would favour your Lordship with our opinion whether it would be advisable to communicate the information in question to the parties interested.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we think the information in question might be properly communicated to Messrs. Lewis and Cutts.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 59.

The Law Officers of the Crown to Earl Russell.—(*Received March* 15.)

Lincoln's Inn, March 14, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 21st ultimo, stating that with reference to our Report of the 8th instant respecting a case which had arisen at the Windward Islands, in which the Governor had declined to surrender to the Commander of the French ship of war "L'Amaranthe" four sailors who had deserted from that vessel and taken refuge in St. Lucia, he was directed by your Lordship to transmit to us a further letter from the Colonial Office upon this subject, inclosing a copy of a correspondence received from the Governor-in-chief of the Windward Islands; from which it appears that that officer has instructed the Administrator of the Government, in case of desertion from foreign ships of war to those islands, to be guided by the Act of Parliament 15 Vict., cap. 26, and the Order in Council, which determine the course to be pursued in regard to the apprehension and surrender to foreign Powers of deserters from merchant-vessels.

Mr. Hammond was also pleased to state that we should perceive that the Secretary of State for the Colonies proposes to disapprove Governor Walker's instructions to the Administrator; and that he was directed by your Lordship to request our opinion upon this matter.

We are also honoured with your Lordship's commands signified in Mr. Hammond's letter of the 22nd ultimo, stating that with reference to his letter of the day before he was directed by your Lordship to transmit to us a further letter from the Colonial Office, relative to the question of the surrender of the four saliors who had deserted from the French ship of war "L'Amaranthe" at St. Lucia.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we have the honour to agree with Mr. Secretary Cardwell that the instruction, given by the Governor-in-chief of the Windward Islands to the Administrator of the Government of St. Lucia is wrong; and that the provisions of the 15 Vict., cap. 26, are not applicable to deserters from a foreign ship of war.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 60.

The Queen's Advocate to Earl Russell.—(*Received March* 31.)

Doctors' Commons, March 29, 1865.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 25th March instant, stating that he was directed by your Lordship to transmit to me a despatch from Her Majesty's Consul at Marseilles, reporting the sudden departure of and defalcations by Mr. Birch, who held the post of British Vice-Consul at that port; and to request that I would take these papers into consideration, and report to your Lordship whether I consider that, in view of the fact that Mr. Birch was not a salaried officer of the Crown, but merely held the position of a paid Clerk at Her Majesty's Consulate, the losses incurred by Mr. Consul Mark should be made good to him out of the public funds.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I understand that Mr. Birch, though he bore the title of Vice-Consul, discharged the duties only of a paid Clerk of the Consul, by whom he was selected, and to whom he was alone responsible for the money which he was entrusted by the Consul to receive as his private agent, in the same manner as the clerk of a firm would be entrusted by the manager of it.

I do not think that the general principles applicable to such a case warrant the Consul in claiming assistance from the public funds to make good the defalcations of Mr. Birch.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 61.

The Law Officers of the Crown to Earl Russell.—(*Received April* 8.)

Lincoln's Inn, April 7, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 13th ultimo, stating that, with reference to our Reports of June 18th, November 17th, and December 7th last, he was directed by your Lordship to transmit to us a despatch from Earl Cowley (No. 25, Commercial), containing the reply of the French Government to the representations which Her Majesty's Government have made regarding "expertise" in France; and Mr. Layard was to request that we would take this despatch into our consideration, together with the previous correspondence,* and that we would report to your Lordship such observations as we may have to offer in the matter.

In obedience to your Lordship's commands we have taken these further papers into our consideration, and have the honour to report—

That the Memorandum of the French Minister of Commerce, communicated in the note of M. Drouyn de Lhuys, is principally addressed to the proof of a point which we

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* To Earl Cowley, No. 1,225; Earl Cowley, No. 1,167; to Earl Cowley, No. 1,397, 1863; Earl Cowley, No. 113; to Earl Cowley, No. 261; Mr. Grey, No. 15; to Earl Cowley, No. 596; Board of Trade, September 10; to Mr. Grey, No. 50; Mr. Grey, Nos. 76 and 130; to Mr. Grey, No. 201; Mr. Grey, No. 308, October 7, and October 10; to Earl Cowley, No. 790 and 791, 1864; Earl Cowley, No 20, 1865.

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never controverted, namely, that it is competent to the French Government, by proper means of investigation and trial, to protect itself against the fraudulent introduction into France, as British, of articles which, although regularly documented, are not really of British origin. We accede to the view that the governing Article of the Treaty is the first, under which goods of British origin only are entitled to the benefit of the Treaty. But we find in the French Memorandum no answer to our view, founded on the same Article, that all goods which are really of British origin, which are introduced into France without fraud, and of which the British origin is authenticated in the mode prescribed by the Treaty, *are* entitled to its benefits; and that it is inconsistent with the Treaty to exclude such goods merely because certain experts, acting under a municipal law of France, may be of opinion that the allegation of British origin is false and fraudulent; fraud, and the place of growth or manufacture of particular goods, being questions of fact which ought to be the subject of evidence, and not of mere science, on which the opinion of experts might be held conclusive. The application of such a test as this to the question of origin manifestly opens a door to the erroneous, and merely arbitrary, exclusion of particular goods from the benefit of the Treaty, while they are really entitled to it.

Having regard, however, to the practical considerations suggested by Earl Cowley in his despatch of the 27th February, 1865, it may, perhaps, appear to your Lordship to be unnecessary, at the present time, further to pursue this controversy with the Government of France.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No 62.

The Queen's Advocate to Earl Russell.—(Received May 1.)

My Lord, *Doctors' Commons, April* 29, 1865.

I AM honoured with your Lordship's commands, signified in Mr. Murray's letter of the 25th instant, stating that, with reference to my Report of the 29th ultimo relative to the defalcations of Mr. Birch, lately British Vice-Consul at Marseilles, he was directed by your Lordship to transmit to me a further despatch from Her Majesty's Consul at that port, dated April 25, containing additional observations in regard to this matter; and Mr. Murray was to request that I would inform your Lordship whether I see any reason for altering the opinion already expressed by me thereupon.

In obedience to your Lordship's commands I have taken this case again into consideration, and have the honour to report—

That I regret to say that, in the additional observations furnished to your Lordship by Her Majesty's Consul at Marseilles, I find no reason for altering the opinion which I have already had the honour of expressing to your Lordship on this unfortunate case.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 63.

The Law Officers of the Crown to Earl Russell.—(Received May 31.)

My Lord, *Lincoln's Inn, May* 29, 1865.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 19th instant, stating that he was directed by your Lordship to transmit to us a correspondence which has taken place between the Foreign Office and Messrs. Morlet, and Her Majesty's Ambassador at Paris,* subsequent to the receipt of our Report of the 4th of August last respecting the case of the British schooner "Blue Jacket," which had been compelled by the French steamer "Milan" to desist from discharging her entire cargo at Campeachy, although duty on the whole was exacted at that port; and Mr. Hammond was pleased to request that we would take into consideration the answer which has now been returned by the French Government, as contained in Lord Cowley's despatch (No. 517) of the 1st instant, to the representation made by his Excellency founded upon our Report above referred to, and furnish your Lordship with our opinion as to the further course which Her Majesty's Government should take in this matter.

In obedience to your Lordship's commands we have taken this case again into consideration, and have the honour to report—

That we see no reason to vary the opinion expressed in our former Report on this subject. The real point of the case, namely, the ineffectiveness and practical non-existence of the blockade at the time when the "Blue Jacket" was prevented from pursuing her lawful trading operations, remains untouched by the French Government, who continue as before to assume that point, as if it were not in dispute. If the matter proceeds further, it will, we think, be necessary to request the particular attention of the French Government to this subject, and of course to state to them distinctly (if this has not already been done) on what grounds Her Majesty's Government have been led to the conclusion that there was no legal blockade.

If Her Majesty's Government should for any reason deem it inexpedient to enter into, or to press, a controversy upon this point, we are unable to suggest any other steps which they can take in this matter.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 64.

The Queen's Advocate to Earl Russell.—(Received July 17.)

My Lord, *Doctors' Commons, July* 17, 1865.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 10th instant, stating that upon the receipt of my Report of the 29th of May last, respecting the proceedings of the French authorities in the Gulf of Mexico in regard to the British vessel "Blue Jacket," Her Majesty's Ambassador at Paris was instructed to ask the French Government upon what grounds the French Government deemed the blockade to have been effective at the time when the proceedings complained of took place; and Mr. Hammond was directed by your Lordship to transmit a despatch from Lord Cowley containing the reply of the French Government, upon which he was to request that I would furnish your Lordship with my opinion.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That Lord Cowley states that the French Government contend that "Le Milan" was on the spot before the arrival of the "Blue Jacket." It would rather have appeared to me that the French Government considered the blockade of Campeachy to have been effective, because the "Blue Jacket" arrived off Campeachy after the formal declaration of blockade, and after a French cruizer ("Le Milan") *had received orders* to enforce the blockade; but the complaint of the "Blue Jacket" is, that *at the time of her arrival* off Campeachy there was, *de facto*, no French ship of war on the station, and therefore no legal blockade; to constitute which there must be not only a formal declaration of blockade, and an order given for its enforcement, but the actual presence of a naval force on the spot.

In this case it is alleged that the "Le Milan" did not arrive until *after* the "Blue Jacket" had actually begun to discharge her cargo, and, if so, the "Blue Jacket" could not have broken a blockade which at the time of her entering the port did not *de facto* exist. But even if "Le Milan" was on the spot and failed to prevent the entry of the "Blue Jacket," the blockade was ineffective as far as the "Blue Jacket" was concerned.

As I understand the case, she, a neutral vessel, had passed into a friendly port, and was only liable to be seized if she came out with cargo while the blockade existed.

It is of course for your Lordship to decide whether the case be, all the circumstances considered, of sufficient importance to render necessary the continuance of the discussion respecting it with the French Government.

I have, &c.
(Signed) ROBERT PHILLIMORE.

P.S.—On referring to the former Reports, I perceive that the French Government assert that the "Blue Jacket" at the time of her being prevented from discharging the remainder of her cargo was lying out of the territorial waters of Mexico; this fact, if it be true, may furnish some colour for a very arbitrary exercise of extreme belligerent rights to a neutral

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* To Earl Cowley, No. 670; Messrs. Morlet, March 25; to Messrs. Morlet, March 25; to Earl Cowley, No. 262; Earl Cowley, No. 515, 1865.

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vessel. Possibly, all the circumstances considered, your Lordship might think it expedient to apprize the owner of the "Blue Jacket" that, after a full discussion of the question with the French Government, it did not appear to Her Majesty's Government that the prohibition by the belligerent ship to a neutral vessel to discharge a part of her cargo on a coast which that belligerent's vessel was, during the time while the discharge was taking place, blockading, warranted Her Majesty's Government in demanding compensation from the Government of the belligerent for a loss of price incurred by the neutral on account of his being compelled to complete the discharge of the cargo at another port.

R. P.

No. 65.

The Queen's Advocate to Earl Russell.—(Received September 26.)

Doctors' Commons, September 23, 1865.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Murray's letter of the 16th instant, stating that he was directed by your Lordship to transmit to me a despatch from Her Majesty's Consul-General at Algiers (No. 50, September 5) respecting the Consular attestation prescribed by the Foreign Marriage Facilitating Act, 12 and 13 Vict., cap. 68, and the application of that Act to his own marriage in his own Consulate.

The draft of an answer which your Lordship proposes to return to Mr. Churchill's despatch was also inclosed, and Mr. Murray was pleased to request that I would furnish your Lordship with my opinion whether it is right and proper.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That, having regard to the general provisions of the 12th and 13th Vict., cap. 68, and more especially to those contained in the 9th section, I am of opinion that under those provisions the officiating chaplain at Algiers (referred to in Mr. Churchill's letter) may lawfully celebrate the marriage of the Consul at the Consulate, and that the same may be lawfully *registered* by the Consul himself, under the 11th section of that statute. I think it would expedient that a letter to this effect should be sent to Mr. Churchill, as it is certainly desirable that the marriage should not be *solemnized* by himself.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 66.

The Queen's Advocate to Earl Russell.—(Received October 7.)

Doctors' Commons, October 7, 1865.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 27th ultimo, stating that he was directed by your Lordship to transmit to me a letter from the Home Office, inclosing a correspondence relative to the proceedings of certain English fishing boats, in seizing and taking to Whitby a French fishing boat which had caused damage to the nets of one of the former; and Mr. Hammond was pleased to request that I would take these papers into consideration, and furnish your Lordship with my opinion as to any steps which should be taken in the matter.

I am also honoured with Mr. Hammond's letter of the 28th instant, transmitting a letter from the Home Office containing further information respecting this case.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That if the account of Superintendent Gregory (September 24) to the Chief Constable of the North Riding be accurate, no offence was committed by the Penzance fishermen. It appears that the French vessel while in English waters took the English nets on board, and intended to go to Scotland with them; and it is stated that when the Penzance vessels pursued the French vessel, the latter "wore round to meet them, and they came into the Whitby Roadstead together," no Englishman being, as I understand, on board the French vessel at the time; that legal advisers were employed by both parties, and a sum paid for the damage.

In these circumstances it does not seem to me that Her Majesty's Government are bound to take any steps.

I have, &c.
(Signed) ROBERT PHILLIMORE.

P.S.—Since writing the above Report I am honoured with Mr. Hammond's letter of the 3rd instant, transmitting further papers, which do not induce me to alter the opinion above expressed.

R. P.

No. 67.

The Queen's Advocate to the Earl of Clarendon.—(Received November 14.)

Doctors' Commons, November 14, 1865.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 10th instant, stating that he was directed by your Lordship to transmit to me the accompanying letter dated the 6th instant, which has been addressed to your Lordship by Messrs. Clarkson Son and Cooper, stating that on the 3rd instant the French steamship of war "Dix Décembre" ran into and sank the Spanish merchant steam-ship "Murillo," in the neighbourhood of the South Foreland, thereby causing the loss of the whole cargo, and, it is feared, the death of three persons.

That Messrs. Clarkson state that the collision was occasioned solely by the bad navigation of the "Dix Décembre," and under these circumstances they request the intervention of Her Majesty's Government to obtain from the French Government compensation for the sufferers; and Mr. Hammond was pleased to request that I would take Messrs. Clarkson's letter into consideration, and furnish your Lordship with my opinion whether Her Majesty's Government ought to take any, and if so what, steps in the matter to which it relates.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I am of opinion that Her Majesty's Government ought to take no official steps in this case. The vessel alleged to be the wrong-doer is a French ship of war; the vessel alleged to have been injured is a Spanish merchant-ship. It is, therefore, *primâ facie* a matter between the Spanish and French Governments. I do not think that the fact of their being cargo on board belonging to a British merchant takes it out of this category.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 68.

The Law Officers of the Crown to the Earl of Clarendon.—(Received December 18.)

Lincoln's Inn, December 18, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 11th instant, stating that he was directed by your Lordship to acquaint us that much inconvenience has for many years past been experienced in the Colony of British Guiana from the immigration from the conterminous French Colony of Cayenne of persons who are either escaped convicts, or convicts who have either entirely served out their sentences or are at large under a system analogous to that of tickets-of-leave in this country. That various plans have been, from time to time, proposed with a view to rid the Colony of such persons, as detailed in the Memorandum which accompanies this letter; and that it is now suggested that the Colonial Legislature should pass an Ordinance subjecting such persons to the penalty of banishment. The reasons for suggesting this measure will appear on a perusal of the accompanying correspondence with the Colonial Office.

Mr. Hammond was also pleased to request that we would peruse and consider these papers, and report to your Lordship our opinion upon the subject.

He was also pleased to add that the French Ambassador has within the last few days, by order of his Government, given official notice of their intention to terminate the Convention of Extradition between Great Britain and France of February 13, 1843,* and that the nature of the answer to be returned to his Excellency's note is under the consideration of Her Majesty's Secretary of State for the Home Department.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That of the various plans proposed in these papers for getting rid of these persons

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* Hertslet, vol. vi, page 244. (See Article IV.)

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from the Colony, we think the one now suggested, namely, that the Colonial Legislature should pass an Ordinance subjecting them to banishment, is the best, and we humbly advise that it be carried into execution.

We entertain, however, serious doubts whether, in case of such persons not leaving the Colony within the time prescribed, it will be advisable (even if an affirmative answer should be returned by the Governor to Mr. Cardwell's question) to adopt the plan of compelling these persons to leave the Colony in some vessel bound for the country from which they came. We think that such a course, in some cases, might lead to complaints on the part of foreign Governments; and the Government of the Colony might be under the necessity of making arrangements with the masters or owners of ships, for the conveyance of these persons to some foreign destination, which would probably give occasion to various legal questions.

No Colonial Act or Ordinance can authorize *deportations* to any place beyond the limits of the Colony, and it follows that the infliction of imprisonment, or some other penalty, *within* these limits, is the only sanction by which a sentence of banishment can, in case of disobedience, be enforced.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 69.

The Law Officers of the Crown to the Earl of Clarendon.—(Received January 3, 1866.)

Lincoln's Inn, December 31, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 18th instant, stating that he was directed by your Lordship to transmit to us the accompanying correspondence, which has been received from the India Office, relative to an outrage committed by some French sailors, forming part of the crew of the Imperial ship of war "European," while on shore at Singapore, which resulted in the death of a British subject; and to request that we would take these papers into our consideration, and favour your Lordship with our opinion in regard to the nature of the answer that should be sent to the Government of India on the point raised by the Governor of the Straits Settlements as to whether a legal demand could be made under the French Extradition Treaty for the surrender of a French subject perpetrating a crime upon British territory and taking refuge on board a French man-of-war prior to arrest, and by whom such demand could legally be made.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we agree with the opinion expressed by the Advocate-General of India as to the proper interpretation of the Extradition Treaty of the 13th February, 1843, between England and France, and that we think that the words "Diplomatic Agents" do admit of a formal requisition being made by the Governor in the name of Her Majesty, and that a requisition may be properly made by the Governor on the present occasion for the extradition of the French sailors charged with the perpetration of this crime.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

Frankfort.

No. 70.

The Queen's Advocate to Earl Russell.—(Received February 13.)

Doctors' Commons, February 13, 1865.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 8th instant, stating that he was directed by your Lordship to transmit to me the inclosed despatch from Her Majesty's Minister at Frankfort, inquiring whether it would be allowable for him to permit marriages between Jews, or in which one of the parties might be a Jew, to take place at Her Majesty's Legation. A copy of the Act of Parliament under which marriages are solemnized, and of the oath which is required to be taken by persons proposing to be married at Her Majesty's Embassies or Legations, was also inclosed; and Mr. Layard was pleased to request that I would furnish your Lordship with my opinion as to the answer which should be returned to the Minister's question.

In obedience to your Lordship's commands I have taken this matter into consideration, and have the honour to report—

That I am of opinion that the words of the oath cannot be altered or omitted, but that if the Jew chooses to take the proper oath, and go through the ceremony according to the rites of the Church of England, he ought to be allowed to do so. It does not seem to me to be any part of the duty of Her Majesty's Minister at Frankfort to inquire into the religious faith of the subjects of Her Majesty who desire to be married according to the prescribed forms in the chapel of the Embassy.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 71.

The Queen's Advocate to the Earl of Clarendon.—(Received December 5.)

Doctors' Commons, December 5, 1865.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 28th ultimo, stating that he was directed by your Lordship to transmit to me three letters and a statement respecting the circumstances under which the son of Mrs. Baldock, a minor, is detained, as she alleges, against her will in Darmstadt.

A despatch from Her Majesty's Minister at Frankfort (No. 93), inclosing a full report on the case and detailing the steps taken with regard to it by himself before the local legal Tribunals, was also inclosed; and Mr. Hammond was pleased to request that I would furnish your Lordship with my opinion as to whether, under the circumstances, Her Majesty's Minister at Frankfort should be instructed further to interfere; and if not, what course Mrs. Baldock should be recommended to adopt in the matter.

I am also honoured with Mr. Hammond's letter of the 1st instant, transmitting a further despatch which has been received from Her Majesty's Minister at Frankfort respecting the circumstances under which the boy Baldock was detained at Darmstadt against the will of his mother.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I have no difficulty in advising your Lordship that Her Majesty's Minister at Frankfort should not be instructed to interfere further in this matter. Justice seems to have been well administered by the local Tribunals. The extremely foolish and injudicious conduct of Mrs. Baldock's agent, Madame de Jouy, appears to have been the principal cause of the confusion and trouble in which this simple matter became involved.

If your Lordship thinks that any advice should be tendered to Mrs. Baldock, it should be to bring her son home as soon as she pleases, there being no obstacle to her doing so.

I have, &c.
(Signed) ROBERT PHILLIMORE.

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No. 72.

The Queen's Advocate to the Earl of Clarendon.—(Received December 29.)

Doctors' Commons, December 29, 1865.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 21st instant, stating that he was directed by your Lordship to transmit to me the correspondence which has taken place since the date of my letter of the 5th instant respecting the detention of Mrs. Baldock's son at Darmstadt.*

That I should see from these papers that the youth has been released, and has returned to England, but that the greater portion of his effects are still retained. That the despatch of the 15th instant from Her Majesty's Minister at Frankfort, which I should find among the papers, contains a copy of a document which he has received from the Darmstadt Government, which purports to be a memorandum of the terms in which Mr. Kösterns, who detained the youth, is prepared to compromise the dispute about the effects.

That the same despatch contains a receipt given by Mr. Kösterns' daughter to Madame de Jouy, acknowledging that she has received her effects, which document was forwarded by Madame de Jouy to Her Majesty's Minister, and has subsequently been reclaimed by her, and which the Darmstadt Government believe to have been improperly obtained by Madame de Jouy, as it has been reported to them that Miss Kösterns' effects are still in that person's possession; and Mr. Layard was pleased to request that I would furnish your Lordship with my opinion as to what further steps, if any, it would be advisable to take in the matter.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I am of opinion that there is no reason for any further official interference in this matter. There is no longer any question of the personal liberty of the boy, and the question as to whether his clothes are or are not rightly impounded for a debt is one, I think, for the Civil Tribunal at Darmstadt, and not for Her Majesty's Government.

I have, &c.
(Signed) ROBERT PHILLIMORE.

P.S.—I think that the receipt may be returned to Madame de Jouy, but it would be expedient to preserve an exact copy of it.

General.

No. 73.

The Law Officers of the Crown to Earl Russell.—(Received March 10.)

Lincoln's Inn, March 10, 1865

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 8th of March instant, stating that a question having arisen as to the position of foreigners naturalized in a British colony, he had the honour, by direction of your Lordship, to request that we would, at our earliest convenience, favour your Lordship with an answer to the following question:—

Is a foreigner, so naturalized, entitled to the protection of the British Government beyond the precincts of the Colony in which he has been naturalized; reservation being, of course, made of the rights claimed over him, on his native soil, by the Government of which he is by birth a subject?

In obedience to your Lordship's commands we have taken this question into our consideration, and have the honour to report—

That we are of opinion that a foreigner, duly naturalized in a British Colony, is entitled, as a subject of the Queen in that Colony, to the protection of the British Government, in every other State but that in which he was born, and to which he owes a natural allegiance.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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* Mrs. Baldock, December 2, 5, 10, and 14; to Mrs. Baldock, December 7; Sir A. Malet, Nos. 94 and 98; to Sir A. Malet, Nos. 5 and 6.

No. 74.

The Queen's Advocate to Earl Russell.—(Received March 28.)

Doctors' Commons, March 28, 1865.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 20th instant, stating that he was directed by your Lordship to transmit to me the accompanying correspondence, as marked in the margin,* together with a Memorandum which has been prepared in the Foreign Office, relative to certain islands in the Pacific Ocean, for the grant of Crown leases of which applications have been made by certain British subjects in the Australian colonies; and to request that I would take these papers into consideration, and furnish your Lordship with my opinion whether a title can be made to these islands by any foreign Power.

In obedience to your Lordship's commands I have the honour to report—

That as far as I am able to form an opinion from the papers before me I think that no foreign State can maintain any title to these islands. They appear to bear no trace of the existence of the dominion of any foreign State, and having been discovered by subjects of Her Majesty they accrue to the Crown, if it think fit to take possession of them.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 75.

The Queen's Advocate to Earl Russell.—(Received July 24.)

Doctors' Commons, July 20, 1865.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Murray's letter of the 18th instant, stating that he was directed by your Lordship to transmit to me the accompanying despatch and its inclosures from Mr. Smith, Registrar of the Mixed Commission Courts established at Sierra Leone under the Treaties concluded by this country with foreign States for the suppression of the Slave Trade, reporting the death of Mr. Skelton, Judge in those Courts.

Mr. Murray was also pleased to state that it will be seen that, in consequence of Mr. Skelton's decease, and the absence of the Governor and of the Chief Justice of the Colony of Sierra Leone, a difficulty has arisen as to who is the proper person to fill the vacant Judgeship pending the appointment of a successor to Mr. Skelton.

And he was to request that I would take these papers into consideration, and furnish your Lordship with my opinion as to the instructions which should be sent to Mr. Smith under the circumstances of the case.

And he was also to add that your Lordship would be glad to receive my Report in time to send instructions to Sierra Leone by the packet appointed to take out the mails to Africa on the 23rd instant.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I am of opinion that the words "the principal Magistrate" must be construed in accordance with the 2nd section of the Act of Parliament, to be "the principal Magistrate *then residing and acting in the Colony*," and therefore that Mr. Huggins, the Queen's Advocate, is the proper person to fill the office *ad interim* of the Judge of the Mixed Commission Court.

I have, &c.
(Signed) ROBERT PHILLIMORE.

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* Colonial Office, January 6; Foreign Office, March 2; to Admiralty, March 7; Admiralty, March 10, 1865.

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Prussia and Austria did not, by this engagement, agree that the future Government of the Duchies should be bound to grant to such merchandize any other exemptions or facilities than those which Denmark was at that time bound to grant, by the Treaty of 14th March, 1857. They did not agree to extend to the roads or canals within the ceded Duchies, after their severance from the Kingdom of Denmark, any further exemptions or facilities which might result, not from any legislation of their own or of the Government of the Duchies, nor from any stipulations of the Treaty of 14th March, 1857, but from the mere subsequent spontaneous legislation of Denmark herself, without their consent or concurrence.

The recent abolition of transit dues by Denmark (so far as it affected articles not exempted from such dues by the prior Treaty), which the Treaty of 1857 contemplated indeed as possible, but did not require, was an act of spontaneous legislation of this kind, and could operate only within the territories which, at the time of such legislation, belonged to Denmark.

The stipulations of the 5th and 6th paragraphs of the IInd Article of the Treaty of 14th March, 1857, as to extending the exemptions of the 5th paragraph to "other articles" which might "hereafter, on any line of communication whatever, be allowed a similar exemption," and as to placing the roads or canals in question upon a footing of equality "with the most favoured roads upon the King of Denmark's territory," in case "the transit duties should be reduced below the rate above specified," bind the King of Denmark, within the limits of his own territory, for the time being; but they do not, in our opinion, enable him to bind, by Danish legislation, the Duchies of Schleswig and Holstein after their severance from his territory.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.

Report of the Queen's Advocate.

I am sorry to be obliged to differ from my colleagues upon this matter. The reasoning which leads me to a conclusion at variance with the one which they have arrived at is as follows:—

It is clear that by the XVIIth Article of the Treaty of Austria and Prussia with Denmark (30th October, 1864), the new Government of the Duchies succeeds to whatever rights and obligations, relative to matters of public interest in the ceded territory, had been previously stipulated for by the Crown of Denmark.

The King of Denmark, if the Duchies had remained in his possession, would certainly have been bound, after the Law of the 1st of April, 1865, to abolish transit duties on the lines of communication in the Duchies between the North and the Baltic Sea; and with respect to the obligation of the present Government of the Duchies, the true question appears to me to be whether paragraphs 5 and 6 of the Treaty of March 14, 1857 (for the redemption of the Sound dues), must not fairly be considered as contemplating the further reduction or abolition of the transit duties, and not whether that Article rendered such future reduction or abolition a matter of absolute certainty.

I think such a reduction or abolition was clearly contemplated by this Article. The Protocols and the Declarations, especially of Lubeck, Hamburgh, and Mecklenburg (referred to in the letter of M. Schleiden), which preceded this Treaty of 1857, strongly support this view, and good faith requires that Treaties of this kind should receive a liberal construction. If this view be correct, then, the abolition of the transit duties having actually taken place, the abolition of the road and canal duties in the Duchies is obligatory on the present Government of those Duchies; because it is an obligation which, according to the above-mentioned XVIIth Article of the Treaty of 1864, belongs to the category of "droits et obligations résultant de contrats régulièrement stipulés par l'administration de Sa Majesté le Roi de Danemark pour des objets d'intérêt public concernant spécialement les pays cédés."

(Signed) ROBERT PHILLIMORE.

Greece.

No. 79.

The Law Officers of the Crown to Earl Russell.—(Received March 28.)

My Lord,
Lincoln's Inn, March 28, 1865.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 24th ultimo, stating that he was directed by your Lordship to transmit to us the accompanying despatch from Her Majesty's Minister at Athens, inclosing copy of a note which he had received from the Greek Minister for Foreign Affairs in reply to the one which he addressed to his Excellency founded upon the opinion contained in our Report of the 22nd of December last, on the subject of the refusal of the Greek Government to execute sentences pronounced in British Consular Courts against Ionians before the 2nd of June last; and to request that we would take these papers, together with the former ones inclosed therewith, into our consideration and furnish your Lordship with a Report thereupon.

We are also honoured with your Lordship's commands signified in Mr. Hammond's letter of the 2nd instant, stating that he was directed by your Lordship to request that we would take the accompanying despatch from Mr. Logie into our consideration, together with the papers referred to us in his letter of the 24th February on the subject of the refusal of the Greek Government to execute sentences pronounced in British Consular Courts against Ionians before the 2nd of June last.

We are also honoured with your Lordship's commands signified in Mr. Hammond's letter of the 11th instant, stating that with reference to his letter of the 24th February on the subject of the refusal of the Greek Government to execute Judgments pronounced by British Consular Courts against Ionian citizens while under the protection of Her Majesty, he was directed by your Lordship to transmit to us a letter from the Italian Minister at this Court, requesting the good offices of Her Majesty's Minister at Athens to induce the Greek Government to come to a decision upon the claim of Messrs. Rodokanaki and Copello against the Ionian Verissi; and to request that we would take these papers, together with the former correspondence on the subject inclosed therewith, into our consideration and favour your Lordship with any observations we might have to make thereupon.

We are also honoured with your Lordship's commands signified in Mr. Hammond's letter of the 18th instant, stating that he was directed by your Lordship to transmit to us the accompanying despatch and its inclosure from Mr. Logie, and to request that we would take these documents into our consideration, together with the papers referred to us in his letters of the 24th of February and 11th instant, relative to the refusal of the Greek Government to execute Judgments pronounced by British Consular Courts against Ionian subjects.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we do not think that this is a case within the rule applicable to Judgments pronounced in a ceded territory before the cession. That rule would apply if we were dealing with any Judgment pronounced in the Ionian Islands. But we are here dealing with Judgments pronounced within the extra-territorial Turkish jurisdiction of Great Britain, which extra-territorial Turkish jurisdiction belongs to Great Britain at this moment as much as it did before the cession of the Ionian Islands to Greece. Great Britain has not ceded that jurisdiction to Greece; the Court which pronounced these Judgments is not at this moment a Greek Court; it remains just what it was before; and the only change is, that the person of a Greek defendant is no longer amenable to the authority of that Court, and that we have lost the power to *compel* his obedience to a sentence by which he was and is bound.

We continue to think (as was stated in our Report of December) that the analogy most in point is that of a foreign Judgment; and that, under the peculiar circumstances of these cases, Her Majesty's Government has a right to expect from the Greek Government that they shall be treated as valid English Judgments, not open to appeal or cassation before any Greek Court.

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If the position of the Greek Minister, that they have become Greek Judgments by the cession of the islands, were sound, we should not be disposed to take exception to the rules for dealing with them laid down in his despatch. But we think the principle unsound; and we agree with the able Report of Mr Logie. Without binding ourselves to the adoption of all his premises, we agree in his conclusion, that these cases should be pressed on the Greek Government alone, and that every endeavour should be made to obtain from them a distinct engagement that both these Judgments shall be forthwith and unconditionally executed, on the application of the Supreme Consular Court.

It is very fortunate that Mr. Erskine was so discreet as to abstain from introducing into his communication with the Greek Government anything to the effect of the concluding passage of the Foreign Office despatch of the 27th of December, 1864. For (unless the Law Officers' Report on which that despatch was founded, was miscopied) it will be seen, on reference thereto, that the Law Officers did *not* "concur with Signor Pellegrini in thinking that these British Consular sentences might still be executed against Ionians by the sole authority of the British Consular Courts in Turkey," &c. On the contrary, they expressed (for reasons substantially the same with those offered by Mr. Logie) their dissent from that suggestion. We presume that the two important words "do not" (before "concur") were accidentally omitted in the draft of the Foreign Office despatch.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 80.

The Queen's Advocate to Earl Russell.—(Received April 22.)

Doctors' Commons, April 21, 1865.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Murray's letter of the 18th instant, stating that he was directed by your Lordship to transmit to me the accompanying despatch and its inclosures from Her Majesty's Minister at Athens (No. 74), respecting the circumstances under which Mr. E. Draculi, a pensioner of the Ionian Government, has had his pension suspended by the Greek Government; and Mr. Murray was pleased to request that I would take this question into consideration and report to your Lordship my opinion thereupon.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That whether Mr. Draculi was or was not entitled to receive the allowance of a Representative in the Greek Parliament, as well as the pension secured to him by the Convention of March 29, 1864, is a matter exclusively for the determination of the Greek Government; but the Convention between Her Majesty and the King of the Hellenes guarantees to Mr. Draculi the payment of a pension. The Convention recites that "whereas certain Ionian subjects are in the enjoyment of pensions granted to them under the Ionian Government, His Majesty the King of the Hellenes undertakes that their rights shall be respected, and *that they shall continue duly to receive the same.*" In the present instance the payment of it appears to have been suspended by the Greek Minister of Finance in order that the Greek Government may repay itself for money alleged to have been improperly paid or received by Mr. Draculi as a Representative.

Without maintaining that there may not possibly arise cases in which the Greek Government may be warranted in suspending payment of the guaranteed pension, they certainly ought to be of a most exceptional character. The terms of the Convention are specific; the pensioners are to "continue duly to receive" their pensions. The present case does not appear to me to justify the Greek Government in departing from the engagements of the Treaty. If the allowance as Representative has been improperly received, the Greek Minister should resort to proper legal means of municipal law to compel the repayment of it, and not place an embargo on a pension which he is obliged by the international engagements of a Treaty to pay.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 81.

The Law Officers of the Crown to Earl Russell.—(Received June 2.)

Lincoln's Inn, May 31, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 10th instant, stating that he was directed by your Lordship to transmit to us therewith a copy of an instruction given to Her Majesty's Minister at Athens, founded on our Report of the 8th of November last, respecting the case of certain persons formerly in the service of the Ionian Government, but now pensioned by the Government of Greece under the Convention of the 29th March, 1864, together with Mr. Erskine's reply, and a further instruction addressed to him.

Mr. Hammond was also pleased to state that he inclosed a letter dated May 6 from the Colonial Office, inclosing a further letter from Mr. Boyd, who claims to be allowed to receive his pension, irrespective of any employment which he may hold under the British Government. And that he was directed by your Lordship to request that we would take Mr. Boyd's application into consideration, and report to your Lordship our opinion as to any instructions which might be addressed to Her Majesty's Minister at Athens on the subject.

We are also honoured with your Lordship's commands signified in Mr. Hammond's letter of the 13th instant, stating that with reference to his letter of the 10th instant he was directed by your Lordship to transmit to us the accompanying letter from Mr. Boyd dated the 11th instant, and to request that it might be taken into consideration with the former papers.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we are of opinion that the letter of Mr. Boyd should be forwarded to Her Majesty's Representative at Athens, with instructions to support the claim which it contains and to endeavour to induce the Government of the King of the Hellenes to take it into their favourable consideration. The principle involved in this claim seems already to have been conceded by the Greek Government, in a just and liberal spirit, in the similar case of Mr. Stevens (see the printed correspondence pages 29-31;) and we cannot suppose that a like act of justice will be much longer denied to Mr. Boyd.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 82.

The Law Officers of the Crown to Earl Russell.—(Received June 7.)

Lincoln's Inn, June 6, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 25th of May ultimo, stating that with reference to our Report of the 28th of March on the question of the refusal of the Greek Government to execute sentences pronounced in British Consular Courts against Ionians before the 2nd of June last, he was directed by your Lordship to transmit to us the accompanying despatch from Her Majesty's Minister at Athens (No. 94), reporting the result of his endeavours to induce that Government to execute forthwith the Judgments in the two suits of Copello and Rodocanachi against Verissi; and to request that we would again take this question into our consideration (the former papers being therewith annexed), and favour your Lordship with our opinion in regard to the arrangement suggested by M. Braila, the Greek Minister for Foreign Affairs.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That the arrangement embodied in the proposed Convention of M. Braila does, upon the whole, appear to us to be a solution of the existing difficulties on this subject, which it would be expedient that Her Majesty's Government should adopt.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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No. 83.

The Law Officers of the Crown to Earl Russell.—(Received July 5.)

My Lord, *Lincoln's Inn, July* 4, 1865.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 21st June ultimo, stating that with reference to our Report of the 6th ultimo, in which we stated that we were of opinion that it would be expedient to conclude the Convention proposed by the Hellenic Government for giving effect to Judgments pronounced by British Courts in Ionian suits before the annexation of the Ionian Islands to Greece, he was directed by your Lordship to state to us that it was necessary, according to diplomatic usage, that the Convention should be signed in English, as well as French, and that your Lordship had accordingly caused a translation of the French draft to be made; but as there are many technical terms in the original, your Lordship requested that we would have the goodness to examine the English translation, and to make any corrections therein which we may consider necessary to adapt it to the French version.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we have made some slight alterations in the English text of the Treaty, which, so altered, appears to us to be fit and proper.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

Inclosure in No. 83.

Draft of Convention.

HER Majesty the Queen of the United Kingdom of Great Britain and Ireland, and His Majesty the King of the Hellenes, being desirous to regulate by a special Convention the effects which are to result in Greece from judgments or decrees pronounced, previously to the annexation of the Ionian Islands to Greece, by British Tribunals or Courts in Ionian suits, have named as their Plenipotentiaries, that is to say:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, the Honourable Edward Morris Erskine, Her Envoy Extraordinary and Minister Plenipotentiary to His Majesty the King of the Hellenes;

And His Majesty the King of the Hellenes,

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon the following Articles:—

ARTICLE I.

All definitive judgments or final decrees pronounced in Turkey or in countries beyond Christendom before the $\frac{\text{21st May}}{\text{2nd June}}$, 1864, the date of the annexation of the Ionian Islands to Greece, by British Consular Tribunals or Courts in suits between Ionian subjects, or between Ionians and subjects of any

SA Majesté la Reine du Royaume Uni de la Grande Bretagne et d'Irlande, et Sa Majesté le Roi des Hellènes, désirant régler par une Convention spéciale les effets que produiront en Grèce les jugements ou arrêts rendus avant l'annexion des Iles Ioniennes à la Grèce par les Tribunaux et les Cours Britanniques sur des procès Ioniens, ont nommé pour leurs Plénipotentiaires, à savoir:

Sa Majesté la Reine du Royaume Uni de la Grande Bretagne et d'Irlande, l'Honorable Edouard Morris Erskine, Son Envoyé Extraordinaire et Ministre Plénipotentiaire près Sa Majesté le Roi des Hellènes;

Et Sa Majesté le Roi des Hèllenes,

Lesquels, après s'être communiqué leurs pleins pouvoirs respectifs, trouvés en bonne et due forme, sont convenus des Articles suivants:—

ARTICLE I.

Seront exécutoires tant en Grèce que par devant les autorités Consulaires Helléniques à l'étranger, sans révision du fond du procès, tous les jugements ou arrêts définitifs rendus en Turquie ou dans les pays hors de Chrétienté avant le $\frac{\text{21 Mai}}{\text{2 Juin}}$, 1864, jour de l'annexion des Iles Ioniennes à la Grèce, par les Tri-

other State, shall be executable as well in Greece as before Hellenic Consular authorities abroad, without revision on the merits of the case, if at the time those judgments or decrees had acquired the force of a final decision. They shall be invested with the executory formula by the Hellenic judicial authority before which execution shall be solicited, without any other formality than the production of an authenticated copy of the judgment or decree, at the end of which the Ambassador or Chargé d'Affaires of Her Britannic Majesty at Constantinople shall have affixed the words "*définitif, et passé en force de chose jugée,*" dated and signed by him.

The execution of the same shall take place on the application of the interested party in the forms and by the ways and methods authorized by Hellenic law, or, if any method is specified in the directory part of the judgment or decree, by that method, provided it be not contrary to the laws of public order in Greece.

ARTICLE II.

The definitive judgments or final decrees pronounced by British Courts and tribunals under the conditions above-mentioned, which may not have acquired the force of a final decision up to the date of the annexation of the Ionian Islands to Greece, shall be declared to be provisionally executable by the Hellenic tribunals, and shall be carried into effect, notwithstanding any act done by way of appeal, or of staying execution, upon the production, for each of such judgments or decrees, of an authenticated copy bearing the visa of the Ambassador or Chargé d'Affaires of Her Britannic Majesty at Constantinople, attesting that it is definitive and provisionally executable, but subject to appeal or opposition, or to any other duly specified mode of action by which it may be impugned or the execution of it stayed. But if such judgments or decrees should afterwards be disputed in the competent methods, the Hellenic tribunals shall determine therein.

ARTICLE III.

Suits commenced and not terminated by British Consular Tribunals or Courts up to the $\frac{\text{21st May}}{\text{2nd June}}$, 1864, shall continue their course before the Hellenic tribunals.

ARTICLE IV.

The present Convention shall continue in force during five years dating from the exchange of the ratifications When that period shall have expired, the judgments or

bunaux Consulaires ou les Cours Britanniques entre sujets Ioniens, ou entre Ioniens et des sujets de tout autre Etat, si à cette époque ils avaient acquis l'autorité de la chose jugée. Ils seront revêtus de la formule exécutoire par l'autorité judiciaire Hellénique devant laquelle l'exécution sera demandée, sans aucune autre formalité que la production d'une copie authentique du jugement ou arrêt, à la fin duquel l'Ambassadeur ou Chargé d'Affaires de Sa Majesté Britannique à Constantinople aura apposé les mots "*définitif, et passé en force de chose jugée,*" datés et signés par lui.

Leur exécution aura lieu à la diligence de la partie intéressée dans les formes et par les voies et moyens autorisés par les lois Helléniques, ou si quelque voie se trouve spécifiée dans le dispositif du jugement ou arrêt, par cette même voie, pourvu qu'elle ne soit contraire à des lois d'ordre public en Grèce.

ARTICLE II.

Les jugements ou arrêts définitifs rendus par les Cours et les Tribunaux Britanniques dans les conditions ci-dessus énoncées, qui n'auraient pas acquis l'autorité de la chose jugée jusqu'au jour de l'annexion des Iles Ioniennes à la Grèce, seront déclarés provisoirement exécutoires par les Tribunaux Hellènes, et mis à exécution, non obstant tout recours, sur la production pour chacun d'eux d'une copie authentique, portant le visa de l'Ambassadeur ou Chargé d'Affaires de Sa Majesté Britannique à Constantinople, et attestant qu'il est définitif et provisoirement exécutoire, mais sujet à appel ou opposition, ou à tout autre recours dûment spécifié. Mais si plus tard ils sont attaqués par la voie qui leur est ouverte, les Tribunaux Helléniques en statueront.

ARTICLE III.

Les procès commencés et non terminés par les Tribunaux Consulaires ou les Cours Britanniques jusqu'au $\frac{\text{21 Mai}}{\text{2 Juin}}$, 1864, continueront leur cours devant les Tribunaux Helléniques.

ARTICLE IV.

La présente Convention continuera d'être en vigueur pendant cinq ans à partir de l'échange des ratifications. Passé ce terme, les jugements ou arrêts émanant des Cours

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decrees emanating from British Courts or Tribunals, which shall not then have been declared executable by the Hellenic Tribunals, shall no longer enjoy the advantages conferred upon them by the present Convention, but they shall retain all their other effects according to Hellenic law.

ARTICLE V.

The present Convention shall be ratified, and the ratifications shall be exchanged at Athens within six months, or sooner if possible.

In witness whereof the respective Plenipotentiaries have signed the same, and have affixed thereto their seals.

Done at Athens, the day of , in the year of our Lord one thousand eight hundred and sixty five.

et des Tribunaux Britanniques, qui n'auraient pas été jusqu'alors déclarés exécutoires par les Tribunaux Helléniques ne jouiront plus des avantages qui leur sont conférés par la présente Convention, mais ils conserveront tous leurs autres effets d'après les lois Helléniques.

ARTICLE V.

La présente Convention sera ratifiée, et les ratifications en seront échangées à Athènes, dans l'espace de six mois, ou plus tôt si faire se peut.

En foi de quoi les Plénipotentiaires respectifs l'ont signée, et y ont apposé leurs sceaux.

Faite à Athènes le , de l'an de grâce mil huit cent soixante-cinq

R. P.
R. P. C.
R. J. P.

No. 84.

The Law Officers of the Crown to Earl Russell.—(*Received August* 29.)

Lincoln's Inn, August 29, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 11th instant, stating that with reference to our Report of the 18th March last, relative to the claims of some Turkish subjects to certain lands near Thebes, he was directed by your Lordship to transmit to us, together with the previous papers, and the correspondence which took place subsequent to the date of our Report, a note from Musurus Bey, inclosing a memorandum containing observations on the decision come to in this matter by the Government of Great Britain, France, and Russia: and he was to request that we would take the same into consideration, and report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands we have the honour to report—

That the note and memorandum of Musurus Bey do not induce us to alter the opinion which we expressed in our last Report on this subject.

If (as we understand to be the case) Turkish subjects have not been legally competent since the Treaty of the 21st July, 1832, to acquire or hold lands in Greece, the claim of the Turkish subjects, advocated by Musurus Bey, which rests upon an alleged re-transfer to them in 1840, of the lands alleged to have been sold to M. Zacharoff after the Treaty of the 21st July, 1832, and before the Convention of 1837, seems to labour under a radical defect; even though every disputed question of law and of fact arising previous to such alleged retransfer could be assumed in their favour. For it by no means follows that because M. Zacharoff, if a *bonâ fide* purchaser, might have been entitled to the same rights which were conceded to other purchasers of lands under similar circumstances by the Hellenic Government under the Report of the Commission of 1849, it was therefore competent for him, either by a resale, or by the mutual cancellation and abandonment of his contract of purchase, to vest his rights, as such purchaser, in any Turkish subjects, whether those from whom he himself derived title or any others. Nor does it seem to us to be a sufficient answer to this objection that M. Zacharoff (if a *bonâ fide* purchaser, of which fact no evidence seems yet to have been offered) had been kept out of possession, down to 1840, by the acts of the Greek Government. The right reserved to Turkish land-owners by the Treaty of the 21st July, 1832, being at most to sell, and a sale (as it is alleged) having been actually and *bonâ fide* made, the alleged transaction of 1840 does not seem to us to have been one which, in any view of the case, the Greek Government could be called upon to recognize.

With respect to the other points in which the views expressed in the Report of the Representatives of the three Powers at Athens (23rd January, 1865), are now controverted

by his Excellency Musurus Bey, we think it sufficient to refer generally to the Reports of our predecessors.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 85.

The Queen's Advocate to Earl Russell.—(*Received September* 21.)

Doctors' Commons, September 20, 1865.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 15th instant, stating that he was directed by your Lordship to transmit to me the accompanying despatch from Her Majesty's Minister at Athens (No. 152) explaining fully the circumstances connected with the case of Mrs. Ingate, the widow of a British subject who had established a commercial firm at Patras, who had to proceed to Greece in order to administer the estate of her late husband.

A letter received from Mrs. Ingate's mother on her daughter's behalf, together with an instruction which was addressed to Mr. Erskine thereupon, was also inclosed,* and Mr. Hammond was pleased to request that I would take these papers into consideration, and report to your Lordship my opinion on the case.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That whatever ground there may be for supposing that Mrs. Ingate's dealings with the creditors of her late husband are not altogether above suspicion, it seems unfortunately difficult to doubt that the Greek Tribunal, both in allowing the intervention of the Italian Legation (a fact apparently admitted) to prevent the examination ordered by the Court of Malleso's books, accounts, &c., and in the revoking order of the Judge Canellopoulos, has failed in the pure administration of justice. Nevertheless I think Mr. Erskine is right in apprising Mrs. Ingate that she should (the litigation relating to a matter cognizable only by the Greek Tribunals) exhaust the remedy of an appeal before she calls for the interference of Her Majesty's Minister. I venture, however, to make the suggestion that Mr. Erskine might find an occasion of speaking unofficially to the Greek Minister of Justice upon the subject of Mrs. Ingate's complaint, and that there is reason to believe that more speedy justice would be in consequence administered to her.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 86.

The Law Officers of the Crown to Earl Russell.—(*Received September* 29.)

Lincoln's Inn, September 29, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 15th instant, stating that he was directed by your Lordship to transmit to us the accompanying letter, dated the 29th ultimo, from Mr. Routh, the legal adviser of Messrs. Capello and Rodocanachi, calling attention to the inclosed copy of a letter which he has addressed to Her Majesty's Minister at Athens in regard to the Convention between Great Britain and Greece for carrying into execution British Judgments in Ionian suits.

A despatch from Mr. Erskine on the subject of Mr. Routh's complaint was also inclosed, and Mr. Hammond was pleased to request that we would take these papers into consideration with reference to our Report of the 6th June last, and report to your Lordship our opinion thereupon.

The previous papers were also inclosed for convenience of reference.

We are also honoured with Mr. Hammond's letter of the 21st instant, transmitting a further letter from the Italian Minister at this Court on this subject.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we are not sure whether Mr. Routh objects to the terms of the Convention on the ground that it leaves an appeal to the Greek Court open to the parties against whom his clients have obtained Judgments in the British Consular Court at Constantinople, or on the ground that it does not sufficiently provide against any perversion of justice under colour of that right of appeal.

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* Mrs. C. Palk, August 2; Mr. Erskine, No. 87, August 9, 1865.

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If his objection be to the admission of any such appeal at all under the circumstances of his clients' cases, we think it is not well founded or reasonable. It was not in our judgment expedient that Her Majesty should insist upon the continuance, in such cases, of the jurisdiction of the British Privy Council as the proper Court of Appeal, notwithstanding the transfer of the sovereignty of the Ionian Islands to Greece. But if that jurisdiction was not to be preserved, and if no right of appeal had been given to the Courts of the country in which the Judgment was to be executed, the consequence would have been that the defendants would have lost their right of appeal altogether, and Judgments which were not originally conclusive would have been rendered so, merely by the change of sovereignty; which would have been, in our opinion, much more unjust to the defendants than the necessity of justifying their decrees before an Athenian instead of an English Court of Appeal can be to the plaintiffs.

The same reason which made it proper to provide for the continuance before Greek Courts of suits in progress, in which no definitive Judgments had been pronounced, made it also reasonable to give an appeal to the Greek Court from Judgments which, at the time of the transfer of sovereignty, were still appealable to Her Majesty in Council.

But if the point of the objection be, that the terms of the Convention do not adequately provide against any possible perversion of justice (supposing the existence of that disposition to do injustice which Mr. Routh, without any sufficient ground that we can see, imputes to the Greek Courts and Government), we think that, under the particular circumstances of these cases, there is some apparent ground for that objection.

When the terms of the Convention were originally before us, we were not aware that an appeal from the Judgment obtained by Mr. Rodocanachi had been actually brought before the Athenian Court, and had been already decided against that gentleman in his absence.

We think that, under these circumstances, it would have been prudent and desirable to stipulate, in the Convention, that no Judgment obtained in any British Consular Court, which was subject to appeal or other opposition at the time of the cession of the Ionian Islands to Greece, should be reversed or set aside, or otherwise treated as void, or deprived of effect, or prejudicially affected, by reason of any proceedings whatever which might have been taken in any Hellenic Court before the date of the ratifications of the Convention; and also that in case of any such appeal from any such Judgment to an Hellenic Court, the Appeal should be determined upon its merits according to the law by which the cause was governed at the time of its decision by the British Consular Court, and not according to any different law which might prevail in the dominions of His Hellenic Majesty.

We think it would be desirable (if not too late) even now to introduce a supplementary Article into the Convention into this effect. Under the Convention, as it stands, Her Majesty's Government would (we think) have just ground of complaint if these principles of judgment were not adopted by the Hellenic Courts; but it would be very desirable, if practicable, to exclude any ground for future discussion on that subject. We do not think it is by any means so clear as Mr. Erskine seems to imagine, that the money decreed in these cases either ought to be, or would be, ordered to be paid to the plaintiffs, pending an appeal, even if the Convention were executed in the best possible faith and according to the principles of judgment above-maintained. It is quite consistent with our own jurisprudence that payment of money under a Judgment may be stayed (in order to secure final justice) pending an appeal; and such a power seems to be contemplated, in cases proper for its exercise, by the express terms of this Convention. The difficulty of getting the money back again if the appeal should be successful (to which Mr. Erskine seems to allude, as making it a matter of practical indifference to the plaintiff, after he has received his money, whether there is any appeal or not), seems to us to be a strong reason why the Greek Courts should not, in all such cases, enforce actual payment before the right thereto has become final and absolute.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

P.S—Since the above was copied we have received Mr. Hammond's further letter of the 25th instant, with the inclosures therein; on which, however, we do not think it necessary to make any further remark.

R. P.
R. P. C.
R. J. P.

No. 87.

The Queen's Advocate to Earl Russell.—(Received October 4.)

My Lord, *Doctors' Commons, October* 4, 1865.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 25th ultimo, stating that with reference to my Report of the 21st of April last, on the subject of the sequestration of Mr. Draculi's Ionian pension by the Greek Government, he was directed by your Lordship to transmit to me the accompanying despatch from Her Majesty's Minister at Athens (No. 172), inclosing a copy of a note from the Greek Minister, justifying the course they have taken in this matter; and to request that I would again take this matter into consideration, and report to your Lordship my opinion as to the course which should be taken in regard to Mr. Draculi's claim.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I still doubt the strict right of the Greek Government to lay an embargo on this fund; but if the "cumul," as it is called, is contrary to law (and the decision of the Court must soon determine this point), it is perhaps too much to expect the Greek Government to bring their action against Mr. Draculi, when they can repay themselves from money due to him which passes through their hands. But, however this may be, I do not advise Her Majesty's Government, after the explanation of the Greek Minister, to take any further steps in this matter.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 88.

The Law Officers of the Crown to Earl Russell.—(Received October 13.)

My Lord, *Lincoln's Inn, October* 13, 1865.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 3rd instant, stating that with reference to our letter of the 29th ultimo, he was directed by your Lordship to transmit to us the accompanying draft of an instruction which your Lordship proposes to address to Mr. Erskine, Her Majesty's Minister at Athens, accompanied by a draft declaration for carrying into effect judgments pronounced by British Courts in Ionian suits; and to request that we would take these papers into our consideration, and favour your Lordship with our opinion thereupon at our earliest convenience.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we are opinion that the draft of the instruction is fit and proper to be sent, and that the draft declaration is, with the slight verbal alteration which we have suggested, right and proper.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 89.

The Law Officers of the Crown to the Earl of Clarendon.—(Received December 28.)

My Lord, *Lincoln's Inn, December* 26, 1865.

WE are honoured with your Lordship's commands signified in Mr, Hammond's letter of the 20th ultimo, stating that he was directed by your Lordship to transmit to us the accompanying draft of an instruction, which, founded on our Report of the 29th of September, was addressed to Her Majesty's Minister at Athens (No. 114), on the subject of a Declaration, or supplementary Article, to be attached to the Convention respecting British judgments in Ionian suits; he was also to transmit the accompanying despatch from Mr. Erskine, reporting the result of his endeavours to carry out that instruction; and inclosing a copy of a report of a Commission of the Chamber of Deputies on the subject of the Convention itself; and was pleased to request that we would take these papers into

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consideration and report to your Lordship any observations or suggestions we may have to offer thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we think it is desirable to endeavour to arrive at some arrangement of this embarrassing question, as to which it cannot be said that any clear or certain rule is afforded by the settled principles of private international law; the case of an extra-territorial tribunal, which by subsequent international arrangements during the interval between a particular judgment and its execution, loses a jurisdiction over the defendant which it possessed at the date of the judgment, being altogether novel and peculiar.

As far as we can understand from the papers before us, the nature of those modifications of the present Convention which the Commission of the Greek Parliament think desirable (if any Convention is made), we think they are likely to afford the basis of such a reasonable revision of the terms of the Convention as may be satisfactory if the supplementary terms proposed by Her Majesty's Government (in a form modified to correspond with the altered form of the original Articles) should be at the same time adopted. And we think it will be expedient that Mr. Erskine should be instructed to do all in his power in order to arrive at a final agreement with the Hellenic Government upon this footing.

We cannot assent to the view of the Athenian Commission, that any Convention or legislation upon the subject is superfluous; and, so far as the question of reciprocity is concerned, it may safely be stated that the tribunals of this country would certainly treat any sentence of the British Consular Court at Constantinople in favour of Ionian subjects from which an appeal had not been made in due time to Her Majesty in Council as final and conclusive, unless it appeared on the face of the proceedings that the Court had not jurisdiction over the parties and the subject matter of the cause.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

Hayti.

No. 90.

The Queen's Advocate to Earl Russell.—(Received January 4.)

Doctors' Commons, January 4, 1865.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 29th ultimo, stating that he was directed by your Lordship to transmit to me a note which your Lordship has received from the Haytian Chargé d'Affaires at this Court dated the 20th ultimo, inclosing copy of a Treaty signed on the 3rd November between Hayti and the United States of America; and to request that I would take this Treaty into consideration, and report to your Lordship my opinion thereupon. Mr. Layard was also pleased to inclose, for my perusal, some correspondence which took place between your Lordship and Her Majesty's Chargé d'Affaires at Hayti with reference to the negotiation and signature of this Treaty.

In obedience to your Lordship's commands I have taken this matter into consideration and have the honour to report—

That I think the original objections of Mr. Spenser St. John were well founded. That I think the Haytian Government should be distinctly apprised that Her Majesty's Government regard this Treaty with great surprise and concern. With great surprise, inasmuch as it appears to Her Majesty's Government a most inconsistent act on the part of a State which, like Hayti, has signed the Declaration of Paris, having for its principal object the abolition of privateering, to consent to a subsequent Treaty which confers especial privileges upon privateers; and that the excuse put forward by the Haytian Government that the Treaty

is made with a nation which has not signed that Declaration, and that Hayti will keep faith with the Powers who have signed that instrument, is really valueless, inasmuch as the very fact of admitting United States' privateers into the harbours of Hayti (to say nothing of the especial privileges which they are to enjoy) would, in the event of a war between the United States and any Power that had signed the Declaration, be, in fact, to lend efficient aid to the system of privateering, practised perhaps only by the United States during the war.

That Her Majesty's Government also view the Treaty with great concern, inasmuch as it is obvious that both on this account, and also on account of the especial favour covenanted to be shown to the United States, when belligerent, by Articles XV, XXIX, and XXX, it is impossible not to foresee that the other belligerent may deem himself entitled, if not obliged, to treat the Haytian Government, not as a neutral, but as an ally of the United States in any future war.

The United States' Government is of course aware of the embarrassment into which the provisions in their original Treaty with France as to the bringing prizes into their ports involve their country at the breaking out of the Revolutionary war in 1792; and even if it be intended (which is doubtful by the concluding words of the XXIXth Article of the Haytian Treaty) to accord this favour to other nations as well as to the United States, the experience of the *present war* must surely satisfy all Governments of the great improbability, if not of the moral impossibility, of being able to preserve neutrality in such circumstances.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 91.

The Law Officers of the Crown to the Earl of Clarendon.—(Received December 18.)

Lincoln's Inn, December 18, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 16th of December instant, stating that he was directed by your Lordship to transmit to us a letter, dated the 15th instant, with its inclosures, from the Colonial Office, stating that the Governor of Jamaica had ordered the deportation from that Colony of certain Haytian refugees who had been conspiring against the Government of Hayti; and to request that we would take these papers into consideration, and favour your Lordship at our earliest convenience with our opinion thereupon, and as to the answer which Mr. Secretary Cardwell proposes to return to Governor Eyre upon the subject.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we agree with the opinion expressed by Mr. Cardwell, and we think that the instructions which he proposes to send to Governor Eyre are proper to be sent.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 92.

The Queen's Advocate to the Earl of Clarendon.—(Received December 22.)

Doctors' Commons, December 22, 1865.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 18th instant, stating that he was directed by your Lordship to transmit to me a despatch from Her Majesty's Chargé d'Affaires and Consul-General for the Republic of Hayti (No. 36), containing observations on the right of Her Majesty's Consulate to afford an asylum to political refugees.

An instruction which, upon the receipt of my Report of the 11th instant, was addressed to Mr. St. John, the concluding paragraph of which has reference to this subject, was also inclosed; and Mr. Hammond was pleased to request that I would take these papers into consideration, and furnish your Lordship with any further observations I may have to offer thereupon.

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In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That Mr. Spenser St. John seems to draw no distinction between the house of the Consulate and of the Embassy with respect to the question of an asylum. There is, however, no doubt, speaking generally, that the law of nations does make the important distinction between them which was adverted to in the former Report.

It is certainly possible that by long usage, as well as by direct concession, the Consular residence may have acquired privileges in this matter which are usually incident only to the house of the Embassy.

It is a matter for your Lordship's consideration whether or not it be expedient that a formal concession of such privileges should be obtained from the Government of Hayti, and the decision on this point may perhaps be influenced by the inquiry as to whether such privileges are now conceded to the Consulates of other foreign States. France, I believe, has always been inclined to extend as much as possible the privileges of her Consuls.

One obvious disadvantage of obtaining such increase of privileges is, its tendency to involve Her Majesty's Government in the civil quarrels of the State in which the Consul is resident.

In the meanwhile there is no sufficient evidence before me that Her Majesty's Consul at Hayti has at present any privileges beyond those usually incident to his office.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 93.

The Queen's Advocate to the Earl of Clarendon.—(*Received December* 23.)

Doctors' Commons, December , 1865.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 18th instant, stating that he was directed by your Lordship to state to me that a despatch has been received from Her Majesty's Chargé d'Affaires and Consul-General in the Republic of Hayti, stating that he had been informed by the Haytian Secretary for Foreign Affairs that the blockade of Cape Haytien had been raised, and that the port had been opened to commerce; and that as the notification of such blockade has never been made public, Mr. Hammond was pleased to request that I would inform your Lordship whether, in my opinion, it is necessary that the notification of the raising of the blockade of Cape Haytien should be made public.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I am of opinion that it is not necessary that a notification of the raising of the blockade of Cape Haytien should be made public.

I have, &c.
(Signed) ROBERT PHILLIMORE.

Italy.

No. 94.

The Queen's Advocate to Earl Russell.—(*Received March* 11.)

Doctors' Commons, March 11, 1865.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 8th instant, stating that he was directed by your Lordship to transmit to me the accompanying correspondence which your Lordship has had with the Italian Minister at this Court respecting the nationality of certain parties at Messina, together with a

correspondence on the same subject with the British Vice-Consul at that place, from which I should see that in the case of Mr. Richard Edward Sofio, Mr. Richards was informed that, as that person was born in Messina, he could not be protected as a British subject in the dominions of His Italian Majesty. That as, however, the Italian Minister has applied in other cases, and as Mr. Richards states in his despatch of the 1st instant, that there are about 100 individuals residing within his Consular district all born in Messina, or in Sicily, who claim British protection on the ground that their fathers were British by birth, Mr. Hammond was to request that I would report to your Lordship my opinion as to whether the instruction given to Mr. Richards in Mr. Sofio's case were right and proper, and are applicable to other cases.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That there are two abstract propositions respecting the subject which have at different times been found difficult to reconcile in practice. One, that the sons of British-born subjects are bound by the obligations of allegiance, and therefore entitled to the protection of Her Majesty. This is the proposition which was present to the mind of Sir W. Temple, and is stated without qualification in his despatch of the 16th of September, 1837, to the British Consul at Messina (Inclosure No. 14, Mr. J. Richards), and which was unhesitatingly admitted, it is to be observed, by the Neapolitan Minister for Foreign Affairs.

The other, that as Great Britain claims as a maxim of her municipal and constitutional law that all persons born in British territories are British subjects, she cannot refuse the recognition of the same principle to other States. It seems to me, however, that these two propositions may be sufficiently reconciled in practice.

With respect to States which have the same rule of law as Great Britain on this subject of the accident of birth impressing a national character on the person born, and which also claim from Great Britain the recognition of this law, such recognition ought not to be refused by Her Majesty's Government. Therefore, if the law of the Kingdom of Italy be, that a person born in Italian dominions owes allegiance to the King of Italy, and the Italian Government claims to treat such person as an Italian subject; he, though the son of a British father, ought not, while in the Italian dominions, to be protected by British authority from discharging the duties incident to the fact of his birth, such as serving in the national army and the like.

Such person, however, is entitled to British protection in every other State but the Kingdom of Italy, and moreover ought not to be compelled at any time by the Italian Government to the performance of any service which would bring him in direct conflict with his allegiance to the British Crown.

It may also be as well to state, with reference to this subject, that the son of a British subject born in the house of the Embassy, or in the lines of Her Majesty's army, or on board one of Her Majesty's ships, though locally born in the dominions or waters of a foreign State, is entitled to be considered as born in Her Majesty's dominions.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 95.

The Queen's Advocate to Earl Russell.—(*Received April* 4.)

Doctors' Commons, April 3, 1865.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 21st ultimo, stating that he was directed by your Lordship to transmit to me a despatch from Her Majesty's Minister at Turin (No. 82, March 9) relative to a question which has arisen in connection with the proposed sale of the Italian State railways: that it appears that in July 1851, the Italian Government contracted a loan with the London house of Hambro and Son, which, besides the ordinary State security, obtained in addition the further one of a mortgage upon certain Government railways; that by the 14th Article of the Contract, copy of which accompanies Mr. Elliot's despatch, it is established that if the Government determine to sell to any Company the railways mortgaged to the Messrs. Hambro, the holders of the bonds of the loan shall be entitled to exchange them, at par, for a corresponding amount in shares of the Railway Company at their nominal value; that the Italian Government having sold the State railways to the Lombard and Central Italian Railway Company, the holders of the Hambro bonds conceive themselves, under the clause above cited, to have a right to exchange their

HAÏTI.

No.

The Law Officers of the Crown to Earl Russell.—(Received December 11.)

My Lord, *Lincoln's Inn, December 11, 1865.*

Circumstances connected with the loss of Her Majesty's ship "Bulldog" at Cape Haïtien.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the [illegible] ultimo, stating that he was directed by your Lordship to transmit to us a despatch from Her Majesty's Chargé d'Affaires and Consul-General in Haïti, reporting the circumstances connected with the loss of Her Majesty's ship "Bulldog" at Cape Haïtien, together with the previous despatches which had been received from Mr. St. John, as well as various letters from the Board of Admiralty, relating to the state of affairs at Cape Haïtien; and to request that we would take all these papers into our consideration, and favour your Lordship with our opinion as to whether, under the circumstances therein set forth, Captain Wake, commanding Her Majesty's ship "Bulldog," was, by any acts of provocation or hostility on the part of the insurgents, justified in using force against them; and whether he was justified in resenting the firing by the insurgents into the "Jamaica Packet," which vessel was sailing under the British flag, though being at the time in the service of the Haïtian Government.

Was Captain Wake justified in using force against the insurgents?

We are also honoured with your Lordship's commands signified in Mr. Hammond's letter of the [illegible] ultimo, stating that, with reference to his letter of the [illegible] November, he was directed by your Lordship to transmit to us the letters which your Lordship had received from the Revolutionary Council at Cape Haïtien, respecting the state of affairs at that place, and [illegible] the proceedings of the British Vice-Consul and of the Commander of Her Majesty's ship "Bulldog." And also a letter, with its inclosures, which had been received from the Board of Admiralty, relative to the proceedings of Captain Wake, and to the circumstances connected with the loss of Her Majesty's ship under his command; and to request that we would take these papers into our consideration, and favour your Lordship with such observations as we might have to offer thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

These papers raise two very serious questions for our consideration, viz.:—

1. As to the conduct of the "Bulldog" in forcibly protecting the "Jamaica Packet" from the visitation of the ships of war belonging to the Revolutionary Council at Cape Haïtien.

2. As to the conduct of the "Bulldog" in making war upon the Revolutionary Council, sinking their ships, and silencing their fort.

There is, however, a question of fact, which presents itself *in limine*, as [illegible] bearing upon our opinion as to both these matters, [illegible] which, unfortunately, we have no very clear information. This [illegible] question of fact is, whether Her Majesty's naval officers on this [illegible] had, or had not, received orders from Her Majesty's Government [illegible] to the conduct which they ought to pursue as to this Haïtian [illegible].

[illegible] rebellion which so assumes the character and dimensions [illegible] to induce the relations of belligerent and neutral. The [illegible] properly used to designate not an infraction [illegible] on the high seas, but an act of national authority in [illegible] country. If it should be the case that Her Majesty's

naval officers were instructed in no way to recognize the rebel forces as *belligerents*, then the conduct of the "Bulldog" was (so far as any principle of international law is in question) fully justifiable; and the Revolutionary Council has no *de facto* or *de jure* international status which can even entitle them to be heard. The Government of President Jeffrard is the only organ of communication which Her Majesty's Government can recognize; and he has no complaint to prefer against the "Bulldog." It is, of course, quite consistent with this view that, upon the same hypothesis, our own Government might have reason to blame an officer who, in their opinion, had officiously and unnecessarily interfered to aid a foreign Government against insurgents. If, on the other hand, this contest was, in the instructions given to Her Majesty's naval officers, treated as a state of war, in which they were to observe a strict neutrality, and, without a direct and positive recognition of the revolutionary party, to abstain from any conduct which might be injurious to them, then there was an order, amounting to the practical recognition of them as belligerents, and imposing a consequent duty of neutrality upon Her Majesty's ships.

Captain Wake's action in forcibly protecting the "Jamaica Packet" from visitation of ships of war belonging to the Revolutionary Council at Cape Haïtien.

We should be disposed to think, from the papers before us, that this latter view was the one taken by Captain Wake himself, for, in his letter of the 18th October, he says of the rebels that they "were in possession of, and the *de facto* Government of, Cape Haïtien:" and in another part, "I have promised to observe a strict neutrality, and the Council cannot allege that I have shown any disposition to depart from it." He, nevertheless, maintains that they were not at liberty to exercise belligerent rights beyond the limits of Cape Haïtien waters, and that, if they were, "they must instruct their Commanders to refrain from interfering with ships carrying the British flag, which flag is a *primâ facie* evidence of their nationality." He applies this doctrine to the "Jamaica Packet," of which he says: "In the case of the 'Jamaica Packet,' this *primâ facie* evidence was fully borne out by the papers produced by her captain. She is an English ship, chartered by the Government of the Haïtian Republic for the purpose of carrying stores" (which, in his subsequent statement, he describes as partly consisting of gunpowder). "She is," he adds, "unarmed, and her crew English." He, therefore, forcibly prevented the revolutionary ships of war from exercising the belligerent rights of visitation, search, and detention. There is no doubt, however, that if the revolutionary party were belligerents they were entitled not only to search, but to capture, and subsequently to condemn this ship as [illegible] *pro hac vice* the property and in the service of their enemies, whatever register she might have, whatever flag she might fly, and whatever might be the national character of her crew. If, therefore, the Revolutionary Council ought to have been treated as belligerents, this act of Captain Wake was wrong—founded, it appears, upon an error in law into which [illegible] of considerable difficulty and embarrassment might not unnaturally lead him at the moment.

2. With respect to the second question, we must observe that there are some material facts as to which we are not certain that we are rightly informed.

If we are to form our judgment upon the statement of Captain Wake himself, and the letters which he appends to it, the substantial facts appear these: After the affair of the "Jamaica Packet," the revolutionary party broke into the British Consul's house, took forcibly from thence certain refugees, Haïtians, and imprisoned them; a great panic prevailed, and it was feared that foreigners would be massacred. Captain Wake wrote to the Consul "to haul down his flag and come on board;" and to General Salnave (the revolutionary leader) to demand redress for the insult offered to the British flag by withdrawing the refugees from its protection. General Salnave [illegible] no answer, but his party again entered the Consul's house and took from thence two other refugees, Haïtian ladies. And [illegible] from [illegible] were pointed against the "Bulldog." The Captain of an American man-of-war tried in vain to mediate. Captain Wake prepared for battle, and [illegible] upon the revolutionary party, destroyed their two ships of war [illegible]

Captain Wake was not warranted in making war upon the Revolutionary Council on account of the removal of refugees from the British Consulate.

It will be observed that the insult complained of was, so far as these papers inform us, the forcible abduction of refugees from the protection of the British Consul's house and flag. But the Consular dwelling has not the privileges which attach to the dwelling of an Ambassador, and without stopping to inquire whether such a privilege as the reception and protection of refugees would have been incident even to the latter, it is clear that it was not incident to the former. The fact of their removal, therefore (even by force, if that was necessary), was not a violation of international law, nor an insult to Her Majesty's flag. It did not, therefore, warrant Captain Wake in making war upon the Revolutionary Council.

In the letters, however, of Her Majesty's Chargé d'Affaires, Mr. Spenser St. John, of the 18th October, to the Senior Officer of Her Majesty's naval forces, and of the 28th October to your Lordship, it is further stated that the Consulate was plundered, and that General Salnave, in the presence of Her Majesty's Consul, incited his men to assassinate Captain Wake. If these statements were accurate, and if these facts occurred simultaneously with the forcible abduction of the refugees, or before any act of hostility on the part of Captain Wake, they might materially affect the opinion which we have expressed. At present we think ourselves bound to accept Captain Wake's own history of what happened, in which these material facts are not once mentioned, and upon that history the present Report is founded.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

List of Papers.

Mr. S. St. John	(No. 16)	May	23, 1865.
Ditto	(No. 18)	June	8, ,,
Admiralty	..	June	16, ,,
To ditto	..	June	21, ,,
Admiralty	..	June	29, ,,
To ditto	..	July	4, ,,
Mr. S. St. John	(No. 19)	June	24, ,,
To Admiralty	..	July	20, ,,
Mr. S. St. John	(No. 21)	July	8, ,,
Admiralty	..	July	31, ,,
Ditto	..	August	14, ,,
To ditto	..	August	24, ,,
[illegible] Committee of Public Safety ..	..	July	20, ,,
Mr. S. St. John	(No. 25)	July	24, ,,
Ditto	(No. 26)	August	8, ,,
Admiralty	..	September	6, ,,
[illegible]	..	September	8, ,,
To Admiralty	..	September	13, ,,
Mr. S. St. John	(No. 27)	August	24, ,,
Ditto	(No. 28)	September	8, ,,
Ditto	(No. 29)	September	23, ,,
Ditto	(No. 30)	October	9, ,,
Ditto	(No. 31)	October	24, ,,
To Admiralty	..	November	23, ,,
[illegible]	(No. 39)	November	16, ,,
To Mr. S. St. John	(No. 2)	November	17, ,,
Mr. S. St. John	(No. 32)	November	23, ,,
Admiralty	..	November	25, ,,

[illegible] Revolutionary Council	..	October	19, 1865.
Ditto	..	October	23, ,,
Ditto	..	October	24, ,,

HAÏTI.

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No. .

The Law Officers of the Crown to the Earl of Clarendon.—(Received December 22.)

My Lord, *Lincoln's Inn, December* 22, 1865.

Loss of Her Majesty's ship "Bulldog."

WE are honoured with your Lordship's commands signified to us by Mr. Hammond's letter of the 18th December instant, stating that he had been directed by your Lordship to transmit to us a further letter from the Board of Admiralty, together with its inclosures, respecting the loss of Her Majesty's ship "Bulldog," and requesting that we would take those papers into our consideration, together with those already before us, and favour your Lordship with our opinion thereupon at our earliest convenience; and we have accordingly taken all the before-mentioned papers into our consideration, and have the honour to report to your Lordship thereupon that—

We beg to refer to our former Report in the case of the "Bulldog," and to the opinion which we therein expressed upon these proceedings. The subsequent information which we have derived from these papers confirms us in the view which we were then obliged to take.

It seems now to be clear that there was a state of war *de facto* between the Government and the revolutionary party at Haïti; that the belligerent right of blockade had been recognized by Her Majesty's naval forces on behalf of one of the parties in this contest, and that orders had been given to Captain Wake not to interfere, although Her Majesty's Government had not formally recognized the existence of a state of war.

We find it impossible to escape from the conclusion that Captain Wake did, upon an erroneous notion that he had a right to protect the steamer which was employed by the Haïtian Government, actively interfere against the revolutionary party; and from this source it is evident to us that all the subsequent mischief flowed.

The next error seems to have been the notion that the Consul was entitled to receive and protect refugees in his house, and the present papers more than confirm our former opinion that no injury was inflicted upon the official house of the Consul previous to the time when the "Bulldog" opened her fire. Indeed, it would now appear that no injury whatever was inflicted upon the official house, and very little, if any, upon the private dwelling of the Consul.

True aspect of the whole affair is that of an active intervention on behalf of the Government of Haïti at variance with policy of Her Majesty's Government.

With respect to the subsequent action of the "Galatea," we presume that this must be treated as having been taken under the orders of Her Majesty's Chargé d'Affaires, upon whom the responsibility must principally rest; and we cannot but think that the true aspect of the whole affair, from first to last, is that of an active intervention on behalf of the Government of Haïti in this civil war, at variance with the policy which Her Majesty's Government had determined to adopt.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
R. PHILLIMORE.

No. 93 A.

The Queen's Advocate to Earl Russell.—(Received January 11.)

Doctors' Commons, January 10, 1865.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 24th ultimo, stating that with reference to my Report of the 13th ultimo, relative to the claims of British subjects in connection with the affairs of the Apulian Railway, he was directed by your Lordship to transmit to me, therewith, a letter from Mr. Conder, inclosing a further statement respecting his case, and expressing a wish to have an interview with me thereupon; and Mr. Hammond was pleased to request that I would make arrangements for a meeting with Mr. Conder, and communicate to your Lordship any further observations I may have to make on the case after my interview. The former papers were inclosed for convenience of reference.

In obedience to your Lordship's commands I have taken this case again into consideration, and have the honour to report—

That I have had a long interview with Mr. Conder, and received from him an elaborate statement of all the proceedings which have taken place with respect to his claims, as one of the concessionnaires or grantees of the Apulian Railway, both before the Civil Tribunals and by the direct action of the Executive Government, apart from, and indeed in opposition to, the principal Civil Tribunals.

I think it unnecessary to trouble your Lordship in this Report with a recapitulation of all the details of this long-pending and rather complicated case.

The question whether, and how far, Her Majesty's Government ought to accede to the request of Mr. Conder, and intervene on his behalf by a direct application to the Italian Government, does not seem to me to require for its solution any such recapitulation.

The principal features of the case, as it now stands, are these:—

It is undisputed that on the 19th of May, 1856, Mr. Conder became, so to speak, a co-concessionnaire of the grant or concession of the Apulian Railway, which had been made to Melisurgo on the 6th of April, 1855.

It appears from the Instrument (which Mr. Conder has shown me) of this Concession, that (Articles 12 and 13) if the railway was not open for public traffic, at least for the greater part, after the lapse of five years, that the caution-money mentioned in Article 23 was to be forfeited to the Royal Government; but that even in this event, as soon as ten miles of the railway from Naples were completed, the caution-money was to be restored to the concessionnaire, and the ten miles to be substituted for it as the property of the Government, the Crown might grant a second term, if it thought fit, to the concessionnaire.

It appears that the original term of five years would have expired before the requisite works were completed, and that the term was enlarged to six years, but that eighteen months before the expiration of this term the Government thought proper to treat the concession as null and void, on the ground of the non-fulfilment, or rather of their opinion of the impossibility of the fulfilment, of the contract, and to bestow the grant on other parties. *Primâ facie*, at least, this determination of the Government was in direct contravention of the 26th Article of the grant, which had expressly provided as follows:—"The questions that may arise from the present contract shall be decided, without judicial forms, by two arbitrators, of whom one shall be nominated by the Royal Government, and the other by the concessionnaire. In case of difference of opinion, the third arbitrator necessary shall be the President of the Grand Civil Court of Naples, whom the King, in the plenitude of his sovereign power, expressly dispenses from the disposition of Article 212 of the Law of the 29th of May, 1817. The said arbitrators shall judge, without appeal, and their sentence shall have the force of a legal judgment, against which no extraordinary remedy shall be admissible, especially application for reversal." Mr. Conder claimed the execution by the Government of this Article, and cited the Agente del Contenzioso, that is, the Law Officer intrusted with the defence of the Neapolitan Government against all claims. The Court of the First Instance at Naples considered itself incompetent to entertain the case; but the Court of Appeal, called the Grand Civil Court of Naples, gave sentence for the appointment of arbitrators, as sought by Mr. Conder (1861-62).

At this period in the history of the case the Government appears to have determined on [illegible] an arbitrary power incident to the old Kingdom of Naples (and [illegible] [illegible] extent of its injustice), of transferring the cognizance of this [illegible] from the Civil Tribunals to the Executive itself, on the ground that the interests of the [illegible] were affected. The Government with this view referred the matter, as they [illegible] to the Privy Council (a [illegible] body analogous to it at Naples), and

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that body all but unanimously decided against the Government that the arbitration clauses of the instrument ought to be put in force. Much delay thereupon ensued, the Government refusing to act upon the decision of the Privy Council, being, it must be presumed, apprehensive that the arbitrators would decide in favour of Mr. Conder. At last, being much pressed, though unofficially, by Her Majesty's Representative at Turin, they took the singular course (as I understand it) of instructing the Agente del Contenzioso to cite Melisurgo and Conder before the Privy Council or the Council of Prefecture (of which body I am informed that the Agente is himself a member), in order that these gentlemen might "hear it declared by that body that they had no right to any reference or nomination of arbitrators, nor to any discussion before any authority subordinate to the Royal power," that is, in other words, the Italian Government again insisted upon withdrawing the interpretation of this contract from the cognizance of the ordinary and proper tribunals of justice, and upon dealing with it by the arbitrary power of the Executive itself.

It may be observed, in passing, that the citation confers one advantage upon Mr. Conder, namely, that by its recital of the proceedings which have taken place, it places beyond doubt a point which the Italian Government formerly disputed, namely, the right of Mr. Conder to sue in his own name for the execution of his contract as a co-concessionnaire with Melisurgo.

It does appear to me that Her Majesty's Government, in this state of things, are entitled to press upon the Italian Government the injustice of depriving Mr. Conder of the right which clearly accrues from the language of the instrument of the concession. I think this is the point which it is expedient that Her Majesty's Government should urge; and in all probability the result of their so urging it would be, that some compromise would be offered by the Italian Government which Mr. Conder would no doubt be well inclined to accept.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 93 B.

The Queen's Advocate to Earl Russell.—(Received January 27.)

Doctors' Commons, January 27, 1865.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 25th instant, stating that, with reference to my Report of the 10th instant, respecting the claims of Mr. Conder and other British subjects against the Italian Government, arising out of a concession for the construction of the Apulian Railway, he was directed to transmit to me a despatch from Her Majesty's Minister at Turin, inclosing a letter from M. Jacini, the Italian Minister for Public Works, stating the conditions upon which alone the Italian Government are disposed to enter into an arrangement with the claimants in this case.

A correspondence which has passed between the Foreign Office and Messrs. Conder and Barry, on the subject of the Italian proposals, and which include some further information furnished by Mr. Barry in support of the claim, was also inclosed; but that in transmitting these papers Mr. Hammond was to explain that your Lordship considered it advisable to defer acting upon my Report above referred to, until answers should have been received from Messrs. Conder and Barry to the communication of the Italian conditions; and to request that I would take these papers into consideration, and furnish your Lordship with my opinion as to the course which should now be pursued by Her Majesty's Government with reference to this claim.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That in my former Report I suggested, that if Her Majesty's Government were to press upon the Italian Government the right of Mr. Conder to the nomination of arbitrators, some compromise might probably be offered by that Government.

It seems now unnecessary to take this course, inasmuch as Messrs. Conder and Barry appear to me to have acted very wisely in accepting, as I understand them to have done, the arrangement proposed by the Italian Government; and though I adhere to the opinion that the refusal to allow Mr. Conder's claim to be taken before arbitrators was indefensible on the part of the Italian Government, I have the honour to [illegible] Her Majesty's Government that it would be wise and proper, having regard to all the circumstances of the case, to accept the present offer of the Italian Government as a [illegible] [illegible] of this [illegible].

I have, &c.
(Signed) ROBERT [illegible]

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bonds at par against shares in the new Company. That the Italian Government, however, take a different view of the matter, in which they are supported by the Committees of the Chambers of Deputies, and by a special Commission appointed to report on the subject; and Mr. Hammond was accordingly to request that I would take this question into consideration, and furnish your Lordship with my opinion thereupon.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That the leading principles of jurisprudence applicable to an agreement of this description are: first, that the language of the Articles shall be interpreted according to their plain and natural meaning, unless such a construction would involve a manifest contradiction or an absurdity; and, secondly, that if there be an ambiguity in the language, it shall be construed rather adversely than favourably to the borrower who needed the loan and prepared the agreement.

It appears to me that the language of Article 14 is perfectly plain, and certainly does give Messrs. Hambro and Co. the option of exchanging their loan, at par, against a corresponding number of shares, at their nominal value, of the Railway Company to whom the Italian Government (which represents the original borrower, the Sardinian Government) has sold the railways mortgaged to this firm.

It appears to me impossible, with any regard to fairness or the true principles of interpretation, so to restrict the expressions "qualche Compagnia" as to make them signify a Company only which has not already issued its shares.

The plain dictates of justice, no less than the acknowledged rules of interpretation, required that if an important limitation of a general term employed in a contract without any restriction was intended, it should have been somewhere expressed, and not have been left to be imported into the contract at a future period by an elaborate argument on the part of the borrower to the injury of the lender. The consideration of the other Articles of the Contract does not, in my opinion, furnish any justification for the insertion of this new condition.

I do not comprehend the force of the argument adopted in the Report of the Committee to the Italian Minister of Finance, that by this construction the lenders "would not only have right of converting a right of mortgage into a joint dominion right, but the acquisition of an unjust gain would depend upon their option."

I see no unjust gain in the transaction. The Sardinian Government (then the Government of a poor State) required foreign capital to enable it to carry on a very important domestic undertaking; and in order to obtain the capital, offered terms such as might be supposed equivalent to the risk which the capitalist incurred.

I am equally at a loss to understand the argument, that because the Italian Government have sold other railways besides those mortgaged to the Messrs. Hambro, therefore the conditions of the 14th Article are inapplicable. I do not see how this fact can in any way affect the question. The simple truth is, that the argument now advanced by the Italian Government amounts to this—that the Sardinian Government, while it gave, in literal terms, an advantageous option to the lenders, as an inducement to supply the loan, meant all the while to reserve to itself means, which it forhore to express, of rendering that option altogether illusory.

I have read with sorrow and surprise what I must consider the sophistical attempt of the Committee, instituted by the Italian Minister of Finance, to alter the plain conditions of a contract with a foreign firm, which it is obviously inconvenient to the Italian Government to fulfil.

I humbly report my opinion that if the Italian Government persist in adopting this construction of the contract, they will be guilty of a breach of good faith to the Messrs. Hambro.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 96.

The Queen's Advocate to Earl Russell.—(Received April 14.)

My Lord, *Doctors' Commons, April* 13, 1865.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 8th instant, stating that he was directed by your Lordship to transmit to me, with reference to my Report of the 27th of January, on the case of the Apulian railway, a draft of a despatch which, in conformity with my Report, was addressed by your Lordship to

Her Majesty's Minister at Turin. That I should perceive by Mr. Elliot's reply that the parties in this country who are interested in the matter, namely, Mr. Conder, who, after the conclusion of the contract, associated himself with the original contractor, M. Melisurgo, and Mr. Barry, the representative of Messrs. Pickersgill, and others who provided for the contractors the greater portion of the deposit required to be made by the latter, having misapprehended the offer made by M. Jacine, the Italian Minister, in the Memorandum inclosed in Mr. Elliot's despatch No. 11 of the 7th of January, Mr. Elliot thought it advisable to defer acting upon your Lordship's instructions until some further explanation could be obtained from the parties; reporting, at the same time, that M. Chiassusso, the Advocate, who had often been consulted in the case, had written direct to Mr. Barry on the subject. That, in this state of things, having obtained from Mr. Barry a copy of M. Chiassusso's letter, which inclosures, with others that Mr. Barry has also sent to Mr. Hammond, he (Mr. Hammond) informed the several parties, by direction of your Lordship, of the answer received from Mr. Elliot, and invited them to make any further statements they might think fit.

Mr. Hammond was pleased to inclose those statements, and to request my opinion as to the instructions to be sent to Her Majesty's Minister at Turin.

That the case, however, being one of a very complicated character, and the position of the several parties not very clearly defined, at least so far as their right to be assisted by Her Majesty's Government is concerned, your Lordship would be glad to be informed whether the following is not a correct statement of the case, and of the extent of the obligations of Her Majesty's Government to render official assistance.

Melisurgo obtained a contract with the Bourbon Government of Naples, to which he afterwards admitted Conder. A part of the conditions of the contract was that the contractors were to find a deposit amounting, in the whole to 300,000 ducats, 50,000 to be paid within eight months, and the remaining 250,000 to be paid within the four months next ensuing after the first payment. This deposit was to be invested in Neapolitan Rentes, either in Melisurgo's name or in that of some other party named by him, but not to be sold out without the assent of the Government. This assent was obtained as regards the 50,000 ducats, which Melisurgo obtained from different sources, and the money was sold out and released; and it is made cause of complaint by Mr. Barry that this portion of the deposit has been preferentially released, leaving only in the rentes the sum representing the 250,000 ducats which Melisurgo obtained from certain parties in this country now represented by Mr. Barry, the rentes standing in the names of those parties, and they receiving the dividends, but having, at present, no control over the principal.

The contract has remained unexecuted, the concession being assigned by the Government to other parties on the ground of non-execution, the validity of which ground is disputed by the contractors, and specifically by the British subject Conder. Conder now claims from the Italian Government, first, the release of the deposit on the ground that the fulfilment of the contract was impeded wrongfully by the Government; and, secondly, full compensation for works done and materials supplied; and he invokes a provision of the contract purporting that any difference arising during its execution should be settled by arbitration.

The right of the contractors to obtain a settlement by arbitration has been established before the Neapolitan Tribunals, but the Government have claimed, in virtue of an obsolete law, that the case should be determined by a special Tribunal at Turin.

The Government have, however, expressed a readiness to treat for the release of the deposit and a settlement of accounts, provided the consent of Melisurgo can be obtained, either voluntarily or forcibly, by legal process, to a settlement being made by the Government with Conder, and the parties who advanced the deposit. The British Minister at Turin has been instructed to press the right of Mr. Conder to the appointment of arbitrators, but without success; nevertheless, in the interval, the obnoxious tribunal is abolished, and cases formerly triable in it are henceforth to be determined in a regular Court of Law.

Mr. Hammond was also pleased to state that your Lordship understands that the only point of the case in which any of the British parties are entitled to be assisted by Her Majesty's Government is that which relates to obtaining for Mr. Conder, a British subject, the nomination of arbiters, to which it is held the contract entitles the contractors. That this appointment of arbiters would, of course, be also in the interest of M. Melisurgo, though not a British subject, in his character of original contractor. That if this is the case, the question would arise whether the substitution for the exceptional Tribunal of the "Amministrativo Contentioso," of a regular Tribunal before which Mr. Conder might

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proceed against the Italian Government, may be held sufficient to render any further pressure on the Italian Government for the nomination of arbiters unnecessary, and, if so, whether Mr. Conder should be recommended to have recourse to the Tribunal open to him.

That it would seem that Mr. Conder cannot claim the assistance of Her Majesty's Government in order to obtain a settlement with the Italian Government, under any circumstances, or at all events until he obtains voluntarily, or by course of law, the consent of M. Melisurgo to a separate settlement, and the renunciation by the latter of any opposition to such settlement being effected without his participation.

That as regards the parties represented by Mr. Barry, it would seem that they have no direct claim on the Italian Government. indeed, they have proceeded against Conder and Melisurgo for recovery of the deposits; they entered into no contract with the Neapolitan Government, but merely advanced the money to Melisurgo, to whom and to his associates they are to look for reimbursement, either on the ground that the contractors have been wrongly dealt with, or that they are, in fact, the wrong-doers, in failing to fulfil their contract, on the assurance of their intended fulfilment of which the parties advanced the money.

That the further question then arises, whether the money, having by the terms of the contract been invested in rentes, the mere release of the embargo placed by the Government over those rentes is all that the depositaries, whether in the first or second degree, can claim, or whether they are entitled to receive in money the amount deposited in money, and not merely the amount of stock, however depreciated in value it now is, which was purchased when the money was first deposited.

That this question, however, would seem to be equally one between the parties and the contractors, and not between them and the Italian Government, and, at all events, not one for the settlement of which they can claim the assistance of Her Majesty's Government.

Mr. Hammond was pleased to add that he had entered into these details in order that I might understand the points in regard to which your Lordship would be glad to have my opinion after a re-consideration of the whole case as stated in the papers in the volume now sent to me, and which contains all the correspondence on the subject up to the 31st of last month.

In obedience to your Lordship's commands I have taken this case again into consideration, and have the honour to report—

That with respect to the case of Mr. Conder, the history of it, so far at least as is requisite for the consideration as to whether and how far this gentleman may be entitled to call upon Her Majesty's Government for their assistance, appears to me to be fairly and properly stated in the letter of Mr. Hammond.

In the first Report which I had the honour to make upon this subject (dated 6th July, 1864), I expressed my general concurrence with the views of my predecessor in office (before whom the case had also been laid), and my opinion to the effect that Mr. Conder could not claim a better position than M. Melisurgo, the original grantee: and that Melisurgo had, so far as this contract was concerned, placed himself on the footing of a Neapolitan subject; and that with respect to the execution of this contract, he could not claim any right which was not incident to a Neapolitan subject; but that I thought Her Majesty's Government might direct Mr. Elliot to urge upon the Italian Government that Her Majesty's Government considered that Mr. Conder was unjustly treated in being denied the recourse to arbitration for which specific provision was made in the contract. In my Report of the 13th December, 1864, I repeated in substance this opinion. In my last Report of the 10th January of this year—made after an interview which I was requested to have with Mr. Conder—I entered at greater length into the history of the case, but again arrived at the conclusion that the interposition of Her Majesty's Government should be limited to pressing upon the Italian Government the justice of Mr. Conder's demand for the appointment of arbitrators, and the removal of the case to this tribunal from another Court of a most objectionable kind, to which the Italian Government, availing themselves of a most obnoxious privilege of the Neapolitan Crown, had submitted the matter.

At this period, Mr. Conder represented that the Italian Minister of Public Works had proposed terms which might end the controversy; that, in fact, the Minister offered to release the whole caution money, and repay the outlay.

It now appears that Mr. Conder has materially misapprehended the offer of the Italian Minister, which was, in effect, no more than a declaration of his willingness to treat with Mr. Conder as soon as he could produce the consent of M. Melisurgo.

In my first Report I had expressed my opinion that such a demand was reasonable on the part of the Italian Government, and I certainly understood from Mr. Conder that he had obtained this consent.

In the proceedings before the peculiar Court to which reference has been made, the Italian Government had cited personally Mr. Conder, and had, as I observed in my last Report, so far as that Court was concerned, given him a *locus standi* before it.

But it now appears that this Court, justly complained of by Mr. Conder, has been abolished, and that the claim of this gentleman will be referred to the ordinary Tribunals. It must be presumed that these Courts will decide (as indeed the Grand Civil Court—see printed papers by Mr. Conder, Naples, 20th October, 1862—seems, in 1861, to have done) in favour of the arbitration provided for by the contract.

But however this may be, and in any case, I think that the construction of this Italian contract, and the validity of all its provisions and the consideration of all its incidents, must be left to the ordinary Italian Courts of Justice. The grievance of the extraordinary and unjust tribunal against which the interposition of Her Majesty's Government has been hitherto mainly directed, is now removed; and though I think Her Majesty's Government might again direct Mr. Elliot still to express their hope that the arbitration will be fairly carried into effect, I am of opinion that Mr. Conder should be apprised that he must not rely upon any further interposition from Her Majesty's Government; that he must now, and henceforth, consider that he must make out his case as an Italian subject would be obliged to do before the proper Italian tribunals, and to take whatever measures—whether for obtaining or compelling the assent of M. Melisurgo—he may be advised are necessary, either for that purpose, or for entering upon an amicable arrangement out of Court with the Italian Government.

With respect to the parties represented by Mr. Barry, it does not appear to me that they can claim the official assistance of Her Majesty's Government.

I have, &c.
(Singed) ROBERT PHILLIMORE.

No. 97.

The Queen's Advocate to Earl Russell.—(Received April 26.)

My Lord, *Doctors' Commons, April* 25, 1865.

I AM honoured with your Lordship's commands signified in Mr. Murray's letter of the 24th instant, stating that he was directed by your Lordship to transmit to me the accompanying drafts of further communications which your Lordship proposes to address to Her Majesty's Minister at Turin, and to Messrs. Conder and Barry, and which are founded upon the opinion expressed in my Report of the 13th instant in regard to the further interference of Her Majesty's Government in the matter of the Apulian Railway; and to request that I would take these drafts into consideration, and inform your Lordship whether I concur therein.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I am of opinion that the letter which it is proposed to send to Messrs. Conder and Barry is fit and proper to be sent.

That in the letter to Her Majesty's Minister at Turin the concluding words "before an ordinary Italian Tribunal" should be omitted.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 98.

The Queen's Advocate to Earl Russell.—(Received May 11.)

My Lord, *Doctors' Commons, May* 11, 1865.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 8th instant, stating that with reference to his letter of the 24th ultimo, inclosing a draft of a letter which your Lordship proposed to address to Mr. Conder and to Mr. Barry with reference to the present aspect of their claim in the matter of the Apulian Railway, and explaining the extent to which Her Majesty's Government are prepared to support their interests through Her Majesty's Minister at Turin, he was directed by your Lordship

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to transmit to me a letter which your Lordship has received from Mr. Conder in reply, and from which I should perceive that he is dissatisfied with the view taken of this case by Her Majesty's Government, and with the instruction which he was informed would be sent to Mr. Elliot; and Mr. Hammond was pleased to request that I would take this letter into consideration and furnish your Lordship with my opinion as to what course it may be desirable for your Lordship to take thereupon. The letter to Mr. Conder and the instruction to Mr. Elliot were also inclosed for convenience of reference.

In obedience to your Lordship's commands I have the honour to report—

That I think the proper answer to Mr. Conder would be to the following effect: that Mr. Conder is entirely in error as to the main proposition of international law upon which he founds his objection to your Lordship's letter. It is by no means correct to say that a British subject who purchases an estate in a foreign country can call upon his own Government to enter into a consideration of the foreign law applicable to that estate. The contrary proposition is, generally speaking, true; but a British subject who engages to execute a work in a foreign country, and who enters into, and derives his title from, a contract which contains express stipulations that the parties to it shall be, with respect to its interpretation and other incidents, governed by the law of the country, is certainly not entitled to any interposition on the part of Her Majesty's Government. Her Majesty's Government would, from the first, have been perfectly justified in refusing to interfere, at all, in this matter. They were only induced to do so because it appeared that the interpretation of the contract was not submitted to the tribunal or arbitration to which, according to the terms of the instrument, it ought to have been submitted; but to an arbitrary and unfair tribunal not contemplated by the contract. During the discussion which arose upon the subject of this grievance, namely, the submitting the question to an unfair and unjust tribunal, propositions were made or suggested from time to time for a compromise or adjustment of the matter; among them, that referred to of Signor Jacini, and Her Majesty's Minister at Turin was instructed to aid as far as he could the settlement of the question.

In the meanwhile the Italian Government abolish the tribunal which is complained of, and the existence of which alone, in the circumstances of this contract, warranted the interposition of Her Majesty's Government. In this state of things Her Majesty's Government cannot maintain that the claim of Mr. Conder, any more than that of his principal M. Melisurgo, shall be withdrawn from the operation of the law of the place of the contract, to which it is, both by the general law and the particular provisions of the instrument, subject and amenable.

Mr. Elliot will probably still be willing unofficially to assist any attempt of Mr. Conder to obtain any compromise of his claim, but Her Majesty's Government can interfere no further in this matter.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 99.

The Queen's Advocate to Earl Russell.—(Received May 13.)

My Lord, *Doctors' Commons, May 12, 1865.*

I AM honoured with your Lordship's commands signified in Mr. Murray's letter of the 10th instant, stating that he was directed by your Lordship to transmit to me therewith a despatch from Her Majesty's Consul at Rome, requesting to be furnished with instructions bearing on the question whether Her Majesty's Consuls can properly afford asylum within their Consular residence to British subjects expelled by order of the local authorities. A draft of a reply which your Lordship proposes to send to Mr. Severn was also inclosed, and Mr. Murray was pleased to request that I would inform your Lordship whether in my opinion that draft is right and proper.

In obedience to your Lordship's commands I have taken this matter into consideration, and have the honour to report—

That I am of opinion that the draft of a letter which your Lordship proposes to send to Mr. Severn is right and proper for the object which your Lordship has in view. That object, as the marginal note of your Lordship apprises me, is one of political discretion, on which of course my opinion is not desired. I ought, however, to state that upon general principles of international law and in ordinary cases the house of the Consul has not the privilege of inviolability which belongs to the house of the Ambassador; probably, however, by usage, the house of Her Majesty's Consul at Rome, at which Court Her Majesty has no diplomatic Representative, has acquired the privilege usually incident to the house of an Ambassador.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 100.

The Queen's Advocate to Earl Russell.—(Received May 23.)

My Lord, *Doctors' Commons, May 22, 1865.*

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 17th instant, stating that your Lordship has had under your consideration my Report of the 28th ultimo on the question of the nationality of certain persons born in the Italian dominions of British fathers, and their claim to exemption from military conscription in Italy; and Mr. Hammond was directed by your Lordship to transmit to me a draft of a letter to the Italian Chargé d'Affaires at this Court, which was founded upon my Report referred to, and which your Lordship proposes to address to Count Maffei, but that, before doing so, your Lordship would be glad to be informed whether it correctly embodies my views on this question; and Mr. Hammond, at the same time, was to observe that your Lordship is of opinion that the doctrine which it is desired that the Italian Government should adopt should be stated as clearly and explicitly as the circumstances of the case and the state of the British and Italian laws bearing upon it will admit of.

In obedience to your Lordship's commands I have taken these papers again into consideration, and have the honour to report—

That I have ventured to suggest certain alterations in the draft letter laid before me, with the view of carrying into effect the wish of your Lordship that the statement of the request of Her Majesty's Government to the Italian Government should be as distinct as possible.

And, with these alterations, the letter does embody the views which I have had the honour to express on this subject.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 101.

The Queen's Advocate to Earl Russell.—(Received June 3.)

My Lord, *Doctors' Commons, June 1, 1865.*

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 29th ultimo, stating that he was directed by your Lordship to transmit to me a letter from the War Office, dated the 23rd ultimo, inclosing a copy of a despatch from the Governor of Gibraltar, in which the question is raised as to the right of domicile at Gibraltar which may be claimed by Italian subjects under the Treaty of Commerce between this country and Italy of the 6th of August, 1863, and to request that I would take this case into consideration and furnish your Lordship with our opinion upon the question raised by the Governor of Gibraltar.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I do not think that the law of Gibraltar is abrogated by the Treaty of the 6th April, 1863; and though it is much to be regretted that the general terms used in Articles XIV and XVI were not accompanied by some distinct reference to restrictions necessarily arising from the municipal laws of some of Her Majesty's foreign Possessions, yet I think that the subsisting restrictions, both as to holding lands by foreigners and as to the power of the Governor to remove foreigners, may, in so peculiar a case as that of the military fortress of Gibraltar, be maintained by Her Majesty's Government as not inconsistent with the general obligations imposed by this Treaty as to the privileges of foreigners in these matters in other parts of Her Majesty's dominions.

I have, &c.
(Signed) ROBERT PHILLIMORE.

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No. 102.

The Law Officers of the Crown to Earl Russell.—(Received September 6.)

My Lord, *Lincoln's Inn, September* 4, 1865.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 19th ultimo, stating that he was directed by your Lordship to transmit to us the accompanying correspondence received from Messrs. Woodhouse and Co. in regard to what they consider the unjustifiable course pursued by the communal authorities of Marsala and by the Italian Government in imposing certain duties on articles consumed within their wine establishment at that place, from which until recently they had been exempt.

Mr. Layard was also pleased to state that we should perceive that Messrs. Woodhouse request the intervention of Her Majesty's Government with that of Italy on their behalf, and he was therefore directed by your Lordship to request that we would take these papers into our consideration, and favour your Lordship, at our early convenience, with our opinion as to what steps, if any, it would be advisable for Her Majesty's Government to take in regard to this subject.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we are of opinion that the proper construction of the Italian Ordinances and laws relative to the imposition of the tax complained of, and to the power of defining or enlarging the municipal boundaries within which it is levied, must be left to the determination of the Italian authorities.

The opinion expressed by the Minister of the Interior, the translation of which is marked 10, does not seem to us inequitable.

It also appears that the question of the power of the Municipality of Marsala to extend the line of the communal district, whereby these wine establishments are brought within the reach of the tax, is still undecided; and that if the Municipality be found to possess such power, an appeal lies from the exercise of it to various judicial or executive authorities.

Upon the whole we are of opinion that Her Majesty's Representative at Florence might be properly instructed to give any assistance in his power towards obtaining an equitable adjustment of the dispute, but that no case is made out for any direct and official remonstrance on the part of Her Majesty's Government. R. Palmer

We have, &c. R. Collier

(Signed) ROBERT PHILLIMORE.

No. 103.

The Queen's Advocate to the Earl of Clarendon.—(Received November 14.)

My Lord, *Doctors' Commons, November* 14, 1865.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 10th instant, stating that he was directed by your Lordship to transmit to me the accompanying papers* relative to the case of a Maltese named Felice Attardi, now imprisoned in Cattania, on suspicion of being concerned in a political conspiracy, and who complains of the delay which has taken place in bringing him to trial; and Mr. Hammond was pleased to request that I would take these papers into consideration, and furnish your Lordship with my opinion whether there are any grounds for the interference of Her Majesty's Government in the case, and if so, what steps it may be desirable for them to take in the matter.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I am of opinion that there are no grounds for the interference of Her Majesty's Government in this case. It is impossible to read the letters of Mr. Vice-Consul Jeans to Mr. Herries, and especially that of August 24, 1865 (Inclosure 5 in Mr. Herries No. 48 of September 9, 1865), without perceiving that a most incorrect and exaggerated statement of facts has been made by the brother of Attardi, and indeed by Attardi himself.

The only plausible ground of complaint arises from the rather long detention of Attardi without trial; but this seems to be not unreasonably accounted for, and it is expected that the trial will take place in the present month, in circumstances which will secure to the accused person ample opportunity of making his defence, and the verdict of a respectable jury.

I have, &c.

(Signed) ROBERT PHILLIMORE.

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* Mr. Herries, Nos. 48 and 99.

Japan.

No. 104.

The Law Officers of the Crown to Earl Russell.—(Received April 11.)

My Lord, *Lincoln's Inn, April* 10, 1865.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 4th of April instant, stating that he was directed by your Lordship to transmit to us a despatch, and its inclosures, from Her Majesty's Chargé d'Affaires in Japan, to which is attached a Memorandum by Sir Rutherford Alcock, relative to a complaint of the Japanese Government that an illicit and clandestine trade in arms was being carried on by foreigners with Mori Daizen, the Prince of Choshiu; and to request that we would take these papers into our consideration, and favour your Lordship with our opinion whether existing powers are sufficient to enable Her Majesty's Consuls in Japan to repress this traffic so far as British subjects are concerned, or whether a special Order in Council is required.

Mr. Hammond was also pleased to state that copies of the existing Orders in Council relative to Japan were annexed.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That by Article 85 of the proposed new Order in Council for China and Japan, the Minister in Japan will possess the power to issue regulations for the peace, order, and good government of British subjects, which is now possessed by the Consuls; and that we think it will be competent to the Minister to issue a Regulation to obviate, if he shall think fit, the evil complained of, namely, the sending of munitions of war by British subjects to the enemies of the Japanese Government.

We have, &c.

(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 105.

The Law Officers of the Crown to Earl Russell.—(Received May 26.)

My Lord, *Lincoln's Inn, May* 23, 1865.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 2nd instant, stating that with reference to our Report of the 17th of November last he was directed by your Lordship to transmit to us, together with the previous papers, a further despatch and its inclosure from Her Majesty's Chargé d'Affaires in Japan (No. 13, February 4), on the subject of a Regulation for the proper ordering of butcheries in Yokohama; and Mr. Hammond was pleased to request that we would take these papers into consideration, and report to your Lordship our opinion thereupon.

A volume containing Mr. Winchester's despatch No. 20 of the 29th April, 1862, to which he refers in the present despatch, was also inclosed; and Mr. Hammond was to refer us, with regard to it, to our Report of the 27th September, 1862.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

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That the Regulation dated 21st April, 1862, the 8th Article of which prohibits the establishment of a butcher's shop, or slaughtering-house, without the sanction of the Consul, and without such conditions as he may require, was not particularly brought to our attention when the further proposed Regulation upon this subject, dated the 10th of August, 1864, was submitted to us for our opinion upon it.

In our Report upon that Regulation we did not advise that it should be then either finally allowed or disallowed by Her Majesty, because it was possible that Regulations of a more positive and definite character referring thereto might have been made, which, when read with it, would come under the category of regulations for the peace, order, and good government of Her Majesty's subjects being within the dominions of the Tycoon of Japan."

We still adhere to that view, which is not affected in any manner by the Regulation of the 21st April, 1862. To the prohibition of unlicensed slaughter-houses, &c., contained in that Regulation (which was competently made and properly approved of) the Regulation of the 10th August, 1864, added nothing positive or definite; it merely announced the intention to make future regulations and provisions on the same subject, which it would of course be necessary to see in order to judge of their propriety and probable effect, and no such subsequent regulations or provisions have even yet been submitted to us.

In his despatch of the 4th of February, 1865, Consul Winchester does indeed say that he now forwards "a copy of the bye-laws, as intimated to the one English butchery established at Yokohama." But the only document sent as an inclosure in that despatch is the "Municipal Organization Draft proposed by Her Britannic Majesty's Consul," which seems to relate to a quite different and more important subject, mentioned at the conclusion of the despatch, which was partly discussed in a recent Conference between ourselves and Sir E. Hornby, and Sir R. Alcock, when the new Order in Council for China and Japan was in course of preparation, and which it was then thought expedient to reserve for future consideration, after experience should have shown what voluntary arrangements for common action, in matters concerning their mutual interests, the members of the foreign communities in Japan and China might be able and willing to make among themselves, and how far any such arrangements when made might require and admit of support, from legislation within the competency of Her Majesty.

We do not think it possible that this document can be the "copy of bye-laws" mentioned by Consul Winchester; it does not, in fact, purport to enact or to propose any bye-laws, nor does it relate particularly to slaughter-houses or butchers' shops. It is a general project of municipal government for general purposes of police, contemplating (no doubt) the suggestion of proper bye-laws against obstructions and nuisances from time to time by the proposed "Municipal Committee," and the enactment of such bye-laws from time to time by the several Consular authorities, but it does not indicate the nature of any particular intended bye-laws connected with the subject of the Regulation of the 10th August, 1864.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No 106.

The Law Officers of the Crown to Earl Russell.—(*Received June* 27.)

My Lord, *Lincoln's Inn, June* 26, 1865.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 19th instant, stating that he was directed by your Lordship to transmit to us the accompanying despatch from Her Majesty's Chargé d'Affaires in Japan, and its inclosures (No. 58, April 10), respecting a question which has been raised by the Japanese Government, with regard to the exercise of jurisdiction over the subjects of Powers not having Treaties with Japan; and to request that we would take the same into consideration and favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That we are of opinion that Mr. Consul Winchester has taken a correct view of the law applicable to cases of this kind. It is clear that the subjects of States having no Treaty engagements with Japan are subject to Japanese jurisdiction.

It seems to be most expedient, however, that the administration of this jurisdiction should be tempered (if possible) by the advice and moral control of Christian assessors. The scheme proposed by Mr. Winchester of Consular assessors, under the limitations suggested, appears to us free from all objection, and expedient.

We have, &c.
(Signed) ROUNDELL PALMER
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 107.

The Law Officers of the Crown to Earl Russell.—(*Received August* 4.)

My Lord, *Lincoln's Inn, August* 4, 1865.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 21st ultimo, stating that he was directed by your Lordship to transmit to us the accompanying despatch from Mr. Winchester (No. 80), reporting that he had received information of certain European and American adventurers having proceeded to join the Daimio Choshiu, with the probable intention of rendering him assistance in his operations against the Tycoon's Government. That it appears to your Lordship that the punishment of such a proceeding, as far as British subjects are concerned, is provided for by the 6th section of the Order in Council of the 9th of March last; but Mr. Layard was, nevertheless, to request that we would take this matter into consideration and furnish your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report —

That it appears to us that the case of these adventurers, so far as they are British subjects, is clearly and sufficiently provided for by the 81st Article of the Order in Council of the 9th March, 1865.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 108.

The Law Officers of the Crown to Earl Russell. —(*Received August* 4.)

My Lord, *Lincoln's Inn, August* 4, 1865.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 29th of March last, stating that he was directed by your Lordship to transmit to us a despatch from Mr. Winchester, together with a despatch and a Memorandum from Sir Rutherford Alcock,* setting forth the reasons on account of which it was deemed necessary that Her Majesty's Consul at Kanagawa should be invested with authority to make and carry into effect certain municipal and sanitary regulations therein specified.

Mr. Hammond was also pleased to state that these papers also show the steps which have been already taken in this matter; and Mr. Consul Winchester had drawn up the draft of a proposed Order in Council, which forms the inclosure in his despatch, to confer power on Her Majesty's Consuls in Japan for the above mentioned purposes.

Mr. Hammond was accordingly to request that we would take this matter into consideration and favour your Lordship with our opinion with regard to the regulations in question.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we think it right to observe that these papers were submitted to us during the time when the Chinese and Japanese Orders in Council were being prepared by Mr. Reilly; and it was necessary, therefore, that they should be considered in connection with these Orders, and they were accordingly referred by us to Mr. Reilly for that purpose, and we have only recently received them back from that gentleman, accompanied with some observations with which we agree, and which are embodied in this Report.

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* Mr. Winchester, No. 3; Sir R. Alcock, No. 111, 1864, and Memorandum.

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The questions connected with the effective organization and authority of Municipal Councils in China and Japan are too important to be dealt with in the indirect manner proposed in Mr. Consul Winchester's draft Order in Council. It appears that a Municipal Council, representing various nationalities, has long been in existence at Shanghae. Its working seems not altogether unsatisfactory to the British community there. The difficulties connected with the constitution and operation of such a body are difficulties of law, partly international, and partly English.

The recent establishment of the Supreme Court for China and Japan affords to Her Majesty's Government an opportunity to obtain competent advice respecting the best course to be taken, in order to establish at the several ports Municipal Councils on a legal basis, as regards British subjects.

In these circumstances it does not seem to us expedient that any steps should be taken in the matter in this country until Sir E. Hornby has reported on the present position of affairs, and on the arrangements that may be desirable for the future.

After such a Report, Her Majesty's Government will be in a position to judge of the nature and extent of any new legislation which will be requisite to carry into execution any such arrangements as those which appear to be contemplated by Mr. Winchester.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 109.

The Law Officers of the Crown to Earl Russell.—(Received September 20.)

My Lord, *Lincoln's Inn, September 20, 1865.*

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 30th of August ultimo, stating that he was directed by your Lordship to transmit to us a despatch and its inclosures from Her Majesty's Chargé d'Affaires in Japan (No. 106, June 23), respecting the formation of a Municipal Body at Yokohama; and to request that we would take this matter into our consideration, and favour your Lordship with any observations we might have to offer thereupon.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That, as far as we are able to form an opinion, the formation of this voluntary Municipal Body at Yokohama is likely to be attended with beneficial results to the European community. It is possible, and indeed not improbable, that difficulties may arise with respect to the enforcement of particular Municipal Ordinances, even as against parties who may have concurred in the general arrangement; but in such a matter, all that can be attempted is to proceed by degrees, and to endeavour to meet practical difficulties as they occur.

In the meantime, it would appear to us to be expedient that Her Majesty's Chargé d'Affaires in Japan should be cautioned to be on his guard against taking any steps which may involve any question of the assumption or exercise of British jurisdiction over foreign subjects, or of foreign jurisdiction over the subjects of Her Majesty.

It is not possible for us to suggest any regulation which could properly be made under Sections 85 to 90 of the Order of the 9th of March, 1865, for the purpose of carrying into effect the rules which may be promulgated by this Municipal Body.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 110.

The Law Officers of the Crown to Earl Russell.—(Received September 20.)

My Lord, *Lincoln's Inn, September 20, 1865.*

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 11th of September instant, stating that he was directed by your Lordship to transmit to us two despatches and their inclosures from Her Majesty's Chargé d'Affaires in Japan (No. 98, June 10, and No. 107, June 23), stating the measures adopted by the Representatives of the Treaty Powers in view of the impending hostilities between the Tycoon and the Daimio Choshiu; and to request that we would take these papers into our consideration, and favour your Lordship with any observations we might have to offer thereupon with reference to the provision made in the late Order in Council of March 9 in respect to such matters.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That the provisions contained under Sections 7, 8, and 9 of the last Order in Council, March 9, 1865, will, when the Order arrives, give ample power to the British authorities in Japan to prevent British subjects from interfering in the apprehended civil war in Japan, as "any strait or other water in Japan" (Section 95), may be closed by Order of Her Majesty's Minister, or the passage through it made subject to any restrictions which may be deemed expedient. So with regard to the prevention of illicit trading, the provisions of the new Order are quite adequate, as, indeed, are the provisions of the Order of the 23rd of January, 1860, under which Her Majesty's Minister in Japan is now acting.

It seems to us that Her Majesty's Minister has taken every proper step in his power at present, until the arrival of the new Order, to prevent British subjects from interfering in these hostilities.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 111.

The Law Officers of the Crown to Earl Russell.—(Received November 1.)

My Lord, *Lincoln's Inn, October 30, 1865.*

WE are honoured with your Lordship's commands signified in Mr. Murray's letter of the 19th instant, stating that he was directed by your Lordship to transmit to us the accompanying despatch from Sir Harry Parkes (No. 25, August 11), inclosing two notifications which have been issued by the Acting British Consul at Kanagawa (Yokohama); and Mr. Murray was pleased to request that we would take the same into consideration, and furnish your Lordship with our opinion whether these notifications should be approved.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we are of opinion that the Regulations referred to are, in substance, proper, and ought to receive the approval of your Lordship.

At so great a distance from Japan we do not feel disposed to recommend the disallowance of Regulations which are substantially convenient and proper, on any mere grounds of form; but, considering that the "Municipal Council," referred to in these Regulations, has no recognized legal character, and the "Municipal Police" being constituted (so far as we are at present aware) without any general legal authority, we think it will be for the future safer and better to avoid expressly referring to these organizations upon the face of any Regulation intended to have the force of law against British subjects.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 112.

The Law Officers of the Crown to the Earl of Clarendon.—(Received November 4.)

My Lord, *Lincoln's Inn, November 3, 1865.*

WE are honoured with the commands of Earl Russell signified in Mr. Hammond's letter of the 25th ultimo, stating that, with reference to our Reports of the 17th

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of November and 23rd of May last, respecting proposed Regulations for the proper ordering of butcheries in Yokohama, he was directed by his Lordship to transmit to us, together with the previous papers, a despatch from Her Majesty's Minister in Japan (No. 26, August 11), inclosing copies of a Regulation which he had caused to be issued interdicting the slaughter of animals for food by British subjects within the settlement of Yokohama; and to request that we would take this Regulation into our consideration, and favour Earl Russell with our opinion whether it should receive the Secretary of State's approval.

In obedience to the commands of Earl Russell we have taken this matter into our consideration, and have the honour to report—

That we think that this Regulation may receive the approval of Her Majesty's Secretary of State.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

Madagascar.

No. 113.

The Law Officers of the Crown to Earl Russell.—(Received February 10.)

My Lord, *Lincoln's Inn, February* 10, 1865.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 26th ultimo, stating that, with reference to our Report of the 27th May last on the draft of a Treaty intended to be proposed to the Government of Madagascar, he was directed by your Lordship to transmit to us a letter from the Colonial Office, dated the 21st ultimo, inclosing a copy of a despatch from the Governor of Mauritius, and copy of a Report from the Procureur-Général of that Colony on the subject of the Treaty. Mr. Hammond was also to remark that the Procureur-General had not before him the draft of Treaty prepared by Her Majesty's Government, but only a draft prepared by the French Government, with which the English draft was to be in general harmony, and that therefore some of his observations do not apply to the latter draft.

That there were, however, two points mentioned by the Procureur-Général with regard to which your Lordship would be glad to be furnished with our opinion, namely, whether the Article about Extradition should be amended so as to include persons other than British subjects, and to apply to warrants of arrest issued by Colonial Courts, and whether a power should not be reserved to the Queen of Madagascar to prohibit the exportation of contraband of war.

A Memorandum relative to the points raised by the Procureur-Général was also inclosed for convenience of reference; and Mr. Hammond was pleased to request that we would take the subject into consideration, and report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

1. That we think there is sufficient weight in the observations of the Procureur-Général of the Mauritius upon the Article numbered XVI in the English (and VIII in the French) draft to make the amendment of that Article expedient, and we recommend that it should stand as follows:—

"Her Majesty the Queen of Madagascar engages to deliver up to the British Consul, on requisition, all persons, of whatever nation, who may be under prosecution before any Courts of Justice in Great Britain, or in any British Colony or possession, for any criminal offence committed within British jurisdiction, and who may take refuge within Her Majesty's dominions: Provided always that, if any such person shall be a subject of any European nation over whose subjects Her Majesty the Queen of Madagascar shall be precluded by Treaty from exercising jurisdiction, such person shall not be delivered up without the consent of the Consul or other proper authority of his own nation."

2. With respect to the Article numbered V in the English (and IV in the French) draft, which is criticised by the Procureur-Général, although the verb in the English draft is *may*, not *must*, we still think the interpretation so far open to doubt as to make the amendment of that Article also expedient, and we would suggest the substitution for the sentence beginning "leases, contracts of sale or purchase," of the following words:—

"Leases, contracts of sale, or purchase, *of houses or lands in Madagascar*, and engagements of labourers, may be executed by deeds signed before the British Consuls and local authorities" (omitting the words "and other engagements," and restricting the preceding words to contracts concerning houses and lands in Madagascar).

We do not think that it would be necessary, or even expedient, to propose that in such cases the authentication of a contract by the British Consul only, without the concurrence of any local authority, should be conclusive.

3. With respect to Article VI of the English (XIV of the French) draft, we presume that Her Majesty's Government had some reason, unknown to us, for thinking it proper to make a difference between the importation into Madagascar, and the exportation from Madagascar, of munitions of war. Subject to the weight which may be due to that motive (whatever it may be) we should have been disposed to think that the same reasons which made it proper to allow the local authority in Madagascar to prohibit the importation, might also have made it proper to allow the same authority to prohibit (if it should think fit) the exportation, of munitions of war; and the remarks of the Procureur-Général of the Mauritius on this subject (which certainly apply as much to the exportation as to the importation of contraband) seem to us to be deserving of attention. If this view were adopted, the VIth (English) Article might begin thus:—"No article whatever, save munitions of war, shall be prohibited from being imported into, or from being exported from, the territories of Her Majesty the Queen of Madagascar."

4. Upon all the other points embraced in the observations of the Procureur-Général, we concur entirely in the views expressed in the Foreign Office Memorandum of the 23rd January, 1865.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 114.

The Law Officers of the Crown to Earl Russell.—(Received March 15.)

My Lord, *Lincoln's Inn, March* 14, 1865.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 20th of February ultimo, stating that your Lordship was about to prepare instructions for Her Majesty's Consul in Madagascar on the subject of the draft Treaty with the Queen of that island, in conformity with the recommendations contained in our note of the 10th of February, when your Lordship received from the Consul a despatch reporting the result of his negotiation with the Malagasy authorities, and inclosing a copy of the draft Treaty with the modifications desired by the Malagasy Plenipotentiaries.

Mr. Layard was further pleased to state that your Lordship desired him to transmit to us that despatch and its inclosures, and to request that we would take the same into our consideration and report to you our opinion thereupon, more especially as to Article XI, with reference to the Foreign Jurisdiction Act, and Article XVI, relating to extradition.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That with respect to the Articles in the Treaty which restrain the powers of Europeans to purchase and acquire land in perpetuity, and which vest in the Queen of Madagascar the property of places of worship, but which provide that these places shall not be diverted from the objects to which they have been dedicated, we see no reason to object to the alterations proposed by the Malagasy Government.

With respect to Article VI, on the subject of import and export duties, there is probably no reason why Her Majesty's Government should insist upon a Tariff of duties being now fixed, or upon a maximum rate of duty lower than 10 per cent., if those terms are objected to by the Queen of Madagascar.

With respect to Article XI, we think the words in ink should be altered as follows:—

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"but any British subject whom the British Consul or other officer shall find to have been guilty of having openly offended, shall be liable to be banished from the country."

With respect to Article XVI, we think that the modifications now proposed by the Malagasy Government may properly be made in the Article on the subject of extradition prepared by us, and contained in our last Report, and that the Article so prepared by us should, with these modifications, be substituted for the printed Article. In all other respects we think the proposals of the Malagasy Government may properly be agreed to.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

Mexico.

No. 115.

The Law Officers of the Crown to Earl Russell.—(Received January 18.)

My Lord, *Lincoln's Inn, January 17, 1865.*

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 4th January, stating that, with reference to our Report of the 12th September last relative to the caveat which had been entered against the marriage by Her Majesty's Consul in Mexico of Francis Rule with Mary Hosking, he was directed by your Lordship to transmit to us, with the former papers,[*] the reply which Mr. Walsham has returned to the instruction which was thereupon addressed to him;[†] and Mr. Hammond was pleased to request that we would communicate to your Lordship our opinion as to the nature of any further instructions which should be sent to Mr. Walsham on the matter in question.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That we think it right to state, in the first instance, that these questions of marriages at the Consulate are placed by the statute which authorizes them within the duty and competency of the Consul alone, and that the Ambassador or Minister of Her Majesty has no legal power or control whatever over or respecting them.

Mr. Walsham is entirely mistaken in supposing that our Report led to the conclusion that a caveat must be examined before it is entered: we said "that the grounds of it ought to have been examined immediately;" to that opinion we adhere.

He has not less completely misunderstood our reference to the law of Mexico. A legal marriage, solemnized according to the *lex loci* in Mexico, though between English subjects, would of course be a bar, by the law of England as well as of Mexico, to any subsequent marriage of either party in the lifetime of the other, no divorce having taken place. What we said was, in substance, that if marriage could be constituted in Mexico (as in Scotland, &c.) by a mere promise, *subsequente copulâ*, the facts alleged in the caveat might, perhaps, have been a legal bar to the marriage between Francis Rule and Mary Hosking, but not otherwise. To that opinion also we entirely adhere.

The ordinary practice with respect to caveats is, that the person against whose proceedings they are entered should, as it is technically termed, "warn" the caveat; that is, call upon the person entering it to set out and maintain the grounds of it. This should be done without delay in these cases, either by the Consul or by the party against whom the caveat is directed. It might be expedient that the Consul should make a rule, that if within a reasonable time (to be fixed according to circumstances) the caveat was not properly maintained, it should be disregarded and treated as abandoned.

But this is a matter of practice, which may properly be left to each Consul to settle. The grounds upon which a caveat can be sustained must, as we have already stated, be such as would, in the case where the parties are of age, invalidate the marriage if

performed, or, in cases where one of the parties is a minor, the absence of consent of the parent or guardian is also a good ground for not allowing the marriage to take place. It does not appear to us to be necessary to offer any further observations upon this subject, as it is for your Lordship, and not for us, to judge whether the tone and tenour of Mr. Walsham's letter to Mr. Glennie is such as, under the circumstances, your Lordship can approve.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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[*] Mr. Walsham, No. 28; Law Officers, September 12; to Mr. Walsham, No. 17, 1864.

[†] Mr. Walsham, No. 41, November 27, 1864.

No. 116.

The Queen's Advocate to Earl Russell.—(Received May 1.)

My Lord, *Doctors' Commons, April 29, 1865.*

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 29th instant, stating that he was directed by your Lordship to acquaint me that Her Majesty's Minister at Mexico has suggested, in a despatch which was inclosed for my perusal, that a Mixed Commission should be established at Mexico to investigate and decide upon all claims on the part of British subjects upon the Mexican Government which have not already been recognized as valid by that Government. That your Lordship thinks favourably of this suggestion, and has caused a draft of Convention to be prepared for the purpose of carrying it into effect. Mr. Hammond was also pleased to transmit such draft; and to request that I would take it into consideration, and report to your Lordship my opinion thereupon.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That the draft of the Convention which has been prepared appears to me fit and proper to carry into effect the object which it has in view.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 117.

The Queen's Advocate to Earl Russell.—(Received May 16.)

My Lord, *Doctors' Commons, May 15, 1865.*

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 10th instant, stating that he was directed by your Lordship to transmit to me a letter and its inclosure from Messrs. Suzdaltseff and Sullivan, stating the difficulty which they experience in the Courts of Law of Mexico in obtaining a sentence in the prosecution of certain persons whom they accuse of having swindled them at the Havana, and who afterwards took refuge in Mexico: and to request that I would take these papers into consideration, and inform your Lordship of my opinion whether this is a case in which Her Majesty's Government are called upon to interfere.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That the gentlemen whose letter is submitted to me complain that the Mexican Court, in which their suit is being prosecuted, delays to adjudicate upon the question raised by their suit, on the ground that it entertains doubts as to its competence; and the Court refers, I presume, according to the law of the land, to a superior Tribunal, in order that the doubt as to its competence may be resolved. I am of opinion that no ground is laid for the intervention of Her Majesty's Government in this matter.

I have, &c.
(Signed) ROBERT PHILLIMORE.

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No. 118.

The Queen's Advocate to Earl Russell.—(Received May 23.)

My Lord, *Doctors' Commons, May* 22, 1865.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 18th May instant, stating that he was directed by your Lordship to transmit to me therewith a despatch, with its inclosures, from Her Majesty's Minister in Mexico (No. 37), in which he requests to be instructed as to the liability of British subjects to serve in a force which, it appears, is being organized for the protection of property in Mexico from the depredation of guerilla bands; and Mr. Hammond was to request that I would take this question into consideration, and report to your Lordship my opinion as to the instructions which should be sent to Mr. Scarlett thereupon.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I am of opinion that Mr. Scarlett should be instructed that the line of distinction is properly drawn by him between the case of foreigners resident in a State called upon to aid in the defence of property attacked by robbers for the sake of plunder, and the case of foreigners required to defend a town or village assailed by a regular military force for a political object. In the former case the foreigner cannot justly complain if he be compelled to serve; in the latter case, his services ought not, as a general rule, and apart from any exceptional circumstances, to be demanded by the State in which he happens to be sojourning.

The suggestion of Mr. Scarlett that foreigners declining to serve should submit to the payment of a reasonable tax, levied for the general purposes of defence, appears to me reasonable.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 119.

The Law Officers of the Crown to Earl Russell.—(Received June 2.)

My Lord, *Lincoln's Inn, June* 1, 1865.

WE are honoured with your Lordship's commands signified in Mr. Murray's letter of the 22nd of May ultimo, stating that, with reference to our Report of the 21st of June of last year, relative to the case of the British vessel "Nancy Dawson," which was seized by the Custom-house authorities at Matamoros for an alleged breach of Custom laws, he was directed by your Lordship to transmit to us a despatch from Her Majesty's Consul at Tampico (No. 13), in answer to an instruction which, on the receipt of our Report, was addressed to him from the Foreign Office upon this case.

Mr. Hammond was also pleased to state that Mr. Jonson inclosed a copy of a despatch from the British Vice-Consul at Matamoros, together with a transcript of the proceedings taken by the Custom-house authorities at that port in the matter of the above-mentioned vessel and her cargo, and the decision of the Supreme Government, declaring the ship and her cargo to be lawfully confiscated; and to request that we would take the inclosed (which include the former papers) into our consideration, and favour your Lordship with our opinion as to what course Her Majesty's Government should take in the matter.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That, having regard to the materials before us, which consist (in addition to those upon which we have already reported) simply of a transcript and translation of the proceedings taken by the Custom-house authorities at Matamoros, we cannot advise Her Majesty's Government to take any further steps whatever in this matter.

It appears that the captain deliberately refused to make any defence against the charge brought against him, of having been guilty of a violation of the Customs Laws of Mexico, involving (by those laws) the liability of the ship and cargo to confiscation. It does not appear that Her Majesty's Consul takes any objection to the legality of these proceedings; and we are bound to assume, for the present at least, that the vessel and her cargo were lawfully condemned, by competent authority, for a violation of the municipal law which, at the date of the seizure, was in force at Matamoros.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 120.

The Queen's Advocate to Earl Russell.—(Received June 9.)

My Lord, *Doctors' Commons, June* 8, 1865.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 2nd instant, stating that he was directed by your Lordship to transmit to me the accompanying despatch and its inclosures from Her Majesty's Minister in Mexico (No. 40), respecting the claim of Mr. Oldenburg against the Mexican Government for the seizure of his property under the circumstances detailed in his letter to Mr. Scarlett; and Mr. Hammond was pleased to request that I would take these papers into consideration and furnish your Lordship with my opinion thereupon.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That Mr. Scarlett seems to be of opinion that the claim of Mr. Oldenburg is valid, because the "Schwan" sailed from Hamburgh to the port of Manzanillo, with a cargo principally consisting of arms, before any notice of the blockade of that port had reached Hamburgh; and if the vessel had been condemned on the ground of her having attempted to violate the blockade which was established when she reached the vicinity of that port, I should be disposed to agree with Mr. Scarlett, if not generally, at least in his application of the law to this particular case: because according to the construction put upon the law of blockade by the highest authorities in France (the country of the captor), no neutral vessel which has sailed in ignorance of the blockade can be lawfully seized by the belligerent without its having first received a notification and warning from one of the ships of the blockading squadron. (See "Traité des Prises Maritimes" of De Pistoye et Duverdy, vol. i, p. 373.)

But the "Schwan" was seized by the French vessel "La Cordelière," not for attempting a breach of the blockade, but for carrying unquestionable contraband of war, namely, arms ready for use; and the true question appears to me to be whether the "Schwan" was aware of the existence of a war in Mexico, and with that knowledge was carrying arms to the port of Manzanillo. If this was the case the seizure of the contraband was not an unlawful act on the part of the belligerent.

Upon this important point I cannot find any satisfactory evidence. The conduct of the consignees in giving notice to the French cruizers of the expected arrival of these arms seems to indicate good faith and innocence in the whole transaction, and it would certainly be satisfactory if Mr. Scarlett's request should prove successful; although, for the reason which I have stated, I am of opinion that it was incorrectly founded upon an application of the law of blockade to a seizure of these goods on board the "Schwan."

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 121.

The Queen's Advocate to Earl Russell.—(Received June 10.)

My Lord, *Doctors' Commons, June* 9, 1865.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 6th instant, stating that he was directed by your Lordship to transmit to me two despatches from Her Majesty's Minister in Mexico (Nos. 38 and 43), relative to two Decrees which have been recently published by the Mexican Government by which the illegitimate children born of foreigners and Mexican women, as well as those foreigners who may acquire landed property in Mexico, are to be considered as Mexican subjects; and Mr. Hammond was pleased to request that I would take these papers into consideration, and furnish your Lordship with my opinion thereupon.

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In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That the Decree with respect to the illegitimate children of Mexican women seems to me to furnish no ground for any remonstrance of any kind from the Governments of foreign States, except, perhaps, so far as it extends to the illegitimate children born of Mexican women in foreign States ("dentro ó fuera del territorio del Impero"), a matter, however, of little practical importance.

That the Decree imposing the character of a Mexican subject upon the foreigner who is possessed of landed property, furnishes good ground for remonstrance from foreign States so far as it is immediately retrospective in its operation.

Some reasonable time ought, as a matter of justice, to be allowed to foreigners who have embarked their capital in the purchase of landed property at a time when no such restriction or condition was, by the Law of the State, attached to such purchase, to determine whether they will continue landed proprietors, and to enable them to dispose of their property without any injury or loss accruing from this *ex post facto* Law. With regard to its prospective operation, though it will be severe upon foreigners, especially if the words "propiedad territoria" extend to shares in mines, and leases of land and houses, yet it is certainly within the abstract competence of the Mexican Government to make such a law, however expedient it may be that diplomatic measures should be employed to procure an alteration of it.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 122.

The Queen's Advocate to Earl Russell.—(Received June 12.)

My Lord, *Doctors' Commons, June* 12, 1865.

I AM honoured with your Lordship's commands signified in Mr. Murray's letter of 8th instant, stating that he was directed by your Lordship to transmit to me the accompanying papers* relative to the claim of Mr. Richard Friend to receive compensation from the Government of Mexico for having been pressed into the service of that country; and Mr. Murray was pleased to request that I would furnish your Lordship with my opinion in regard to this claim.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That having regard to the great lapse of time since the alleged pressing of Mr. Friend on board the Mexican ship, which appears from his affidavit to have been in July 1854, to the fact that the circumstances of the case were investigated at the time by Mr. Hale (see letter of Mr. Allsopp, December 22, 1863), and the result was that no action was taken thereupon, and to the opinion adverse to Mr. Friend's claim expressed by Mr. Consul Allsopp, I do not advise your Lordship to take any steps in this matter.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 123.

The Queen's Advocate to Earl Russell.—(Received June 21.)

My Lord, *Doctors' Commons, June* 20, 1865.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 16th instant, stating that with reference to my Report of the 22nd ultimo he was directed by your Lordship to transmit to me a despatch, with its inclosures, from Her Majesty's Minister in Mexico (No. 55), relative to the question of the exemption of foreigners to serve in the National Guard in Mexico; and to request that I would take these papers into consideration, and furnish your Lordship with my opinion thereupon. The previous papers were inclosed for convenience of reference.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

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* Mr. Friend, March 13; to Consul Glennie, No. 2; Consul Glennie, No. 11, 1863; to Mr. Friend, May 24, 1865.

That I am of opinion that Her Majesty's subjects ought not to be compelled to serve, and ought not to serve, in the national guard of Mexico, in the circumstances mentioned in the last despatch of Mr. Scarlett (9th May, 1865). It is clear that by so doing they would render themselves liable to serve in the national army of Mexico, and that their service would not be confined to the protection of property against robbers. I must repeat that it seems reasonable that those of Her Majesty's subjects who determine to continue their residence at Mexico should pay the moderate sum required in order to procure for them an exemption from service in the national guard.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 124.

The Queen's Advocate to Earl Russell.—(Received July 15.)

My Lord, *Doctors' Commons, July* , 1865.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 10th instant, stating that he was directed to transmit to me two letters dated 29th April and 5th July from Mr. Bourdillon respecting the claims of Messrs. Manning and Mackintosh against the Mexican Government. A memorandum upon these claims which has been drawn up in the Foreign Office, together with a draft of Convention for the settlement of British claims which Her Majesty's Minister in Mexico has been instructed to submit to the Mexican Government, was also inclosed; and Mr. Hammond was pleased to request that I would take these papers into consideration, and furnish your Lordship with my opinion whether there are any grounds for dealing with the claims of Messrs. Manning and Mackintosh differently from other British claims, and if not whether they would come under the examination prescribed by Article II of the proposed Convention. The previous correspondence in this case was inclosed for convenience of reference.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I am of opinion that there are not sufficient grounds for dealing with the claims of Messrs. Manning and Mackintosh differently from other British claims, and that they would come under the examination prescribed by the IInd Article of the proposed Convention.

It is very probable that Messrs. Manning and Mackintosh may be able to avail themselves of the investigations already entered into and the Reports already made by the Mexican Commissioner, Señor Piquero, before the Commissioners appointed under the Convention; but however this may be, I think their claims should be submitted to that Tribunal.

I have, &c.
(Signed) ROBERT PHILLIMORE.

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No. 125.

The Law Officers of the Crown to Earl Russell.—(Received October 31.)

My Lord, *Lincoln's Inn, October* 30, 1865.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 13th instant, stating that he was directed by your Lordship to transmit to us a despatch, with its inclosure, from Her Majesty's Minister in Mexico (No. 113), relative to a claim for protection as a British subject which has been made to the British Consular Agent at San Luis Potosi by Mr. Benjamin Crowther, who appears to have been in the service of the so-called Confederate States of America during the late civil war; and Mr. Hammond was pleased to request that we would take these papers into consideration and furnish your Lordship with our opinion as to whether the view taken by Mr. Scarlett in this particular case, and the general rule he has laid down for the guidance of British Consular Agents in Mexico in similar cases, should be approved.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

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That we are of opinion that the general rule which Mr. Scarlett has laid down for the guidance of British Consular Agents in these cases ought in the main to be approved by Her Majesty's Government, though at the same time the Consular Agents should be informed by Mr. Scarlett that if there should be any case in which the requisite documentary evidence is not forthcoming, but which presents circumstances which leave no practical doubt that the applicant for protection is a British subject, such cases should be specially referred to Mr. Scarlett, in order that he may exercise his discretion thereupon.

It would appear to us that the case of Mr. B. Crowther falls under this latter category; and we do not think that a British subject who has neither been enrolled as a citizen, nor naturalized in America, ought, on the ground of his having served on either side during the late civil war, to be deprived in a third country like Mexico of all British protection. If, indeed, he should seek such protection for any particular purpose, with respect to which the circumstance of his having taken part in the late civil war might be at all material, it would, probably, be a sound exercise of discretion to refuse interference on his behalf; but we do not think that he ought on that account to be treated generally as if he were not a British subject.

It seems to us that if Mr. Scarlett should be *bonâ fide* satisfied that Mr. Crowther is a British subject, then, although he might require Mr. Crowther to produce documentary evidence of the fact within a reasonable period, he may fairly during the interim extend to Mr. Crowther the protection ordinarily given to British subjects, subject to the qualification above explained.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 126.

The Queen's Advocate to Earl Russell.—(Received November 3.)

My Lord, *Doctors' Commons, November* 2, 1865.

I AM honoured with your Lordship's commands signified in Mr. Murray's letter of the 28th ultimo, stating that with reference to my Report of the 8th June last, he was directed by your Lordship to transmit to me a further despatch, with its inclosures, from Her Majesty's Minister in Mexico (No. 126), relative to the claim of Mr. Oldenburg for the losses incurred by him in consequence of the seizure of his vessel the "Schwan" off the port of Manzanillo by a French vessel of war; and Mr. Murray was pleased to request that I would take these papers into consideration and furnish your Lordship with my opinion thereupon. The former papers connected with this case were also transmitted.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I agree with the opinion expressed by Mr. Scarlett that the doctrine of the Mexican Government that they are not responsible to a neutral State for the act of a French ship forming part of the Mexican squadron, and acting on behalf of the Mexican Government, is untenable.

The other objection of Señor Ramirez that Mr. Oldenburg should seek redress in the Prize Court is more plausible; but it does not *per se* constitute a sufficient answer to the demand of Mr. Oldenburg. For it appears from Mr. Oldenburg's letter (12th March, 1865) that the "Schwan" was taken into port, and there searched and examined, and that her contraband goods were there taken out. This was an irregular proceeding on the part of the captor, as, according to the law of nations, to which Señor Ramirez refers, it was the duty of the captor to obtain a sentence of condemnation in the Prize Court; and had he taken this regular course the owner might have been able to show cause why the goods should not be condemned. It is a case, therefore, which *primâ facie* justifies diplomatic interference. I have not before me the answer (if any has been sent) of Mr. Oldenburg to Mr. Scarlett's letter of the 2nd September, 1865 (Inclosure 4 in No. 126), in which Mr. Oldenburg is requested to offer proofs that his European agents "were ignorant of the fact that they were shipping contraband of war on board the 'Schwan' when she sailed from Hamburgh in September 1863." Mr. Scarlett means, I infer from his letter to Señor Ramirez, that proof should be produced that the shippers were ignorant at the time of the shipment that the war still existed in the country to which the arms were sent, because there can be no doubt that they were plain contraband of war, if the shippers admit that they were, or if they must have been, aware of the continuance of the war.

If it should turn out that the shippers were aware of the continuance of the war, but not of the existence of the blockade, and erroneously supposed that contraband of war could not be seized unless a blockade existed, there will be no ground for further application in this matter to the Mexican Government.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 127.

The Queen's Advocate to Earl Russell.—(Received November 8.)

My Lord, *Doctors' Commons, November* 7, 1865.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 1st instant, stating that, with reference to my Report of the 30th May last respecting the amount of support to be given by Her Majesty's Minister in Mexico to persons holding certificates as British naturalized subjects, he was directed by your Lordship to transmit to me therewith a despatch from Mr. Scarlett (No. 143), with its inclosures, relative to the claim to protection put forward by Mr. Saviñon, a Mexican by birth, but a naturalized British subject; and Mr. Hammond was to request that I would take these papers into consideration, and inform your Lordship whether I consider that Mr. Saviñon can, even though there were no question as to the effect of his British naturalization, be entitled in Mexico to be protected as a British subject.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That in this case a Mexican-born subject, apparently never, so to speak, denaturalized by the country of his birth, asks, on the ground that he is a naturalized British subject, for the diplomatic intervention of Her Majesty's Minister in Mexico relatively to a litigation before the legal tribunal about an estate in that country. I am clearly of opinion that Mr. Scarlett was perfectly right in the refusal which he gave to this request.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 128.

The Queen's Advocate to Earl Russell.—(Received November 8.)

My Lord, *Doctors' Commons, November* 7, 1865.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 1st instant, stating that he was directed by your Lordship to transmit to me therewith a despatch from Her Majesty's Minister in Mexico (No. 146) relative to the case of Mr. Carmichael, a British subject, who claims compensation from the Government for losses sustained by him through a robbery on the high road; and to request that I would take these papers into consideration, and inform your Lordship of my opinion as to the nature of any instruction to be addressed to Mr. Scarlett in reply.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I am of opinion that the Mexican Government cannot, as the circumstances are now stated to me, be called upon to reimburse Mr. Carmichael for the loss which he has sustained by a highway robbery.

If there be any such law as that to which Mr. Carmichael refers, he must put in force that law by recourse to the proper tribunal.

I have, &c.
(Signed) ROBERT PHILLIMORE.

1865

No. 129.

The Queen's Advocate to the Earl of Clarendon.—(Received November 30.)

My Lord, *Doctors' Commons, November* 30, 1865.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 29th instant, stating that with reference to my Report of the 29th of April last on the draft of a Convention between Great Britain and Mexico for the investigation and settlement of British claims upon the Mexican Government by means of a Mixed Commission, he was directed by your Lordship to acquaint me that the Mexican Government have suggested various amendments to that draft, the nature of which I should perceive from the accompanying correspondence, and which for the most part appear to your Lordship to be inexpedient, and that your Lordship has therefore caused the inclosed draft to be prepared; and Mr. Hammond was pleased to request that I would take it and the other papers into consideration, and report to your Lordship my opinion as to the draft to Mr. Scarlett.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That it appears to me that the despatch which your Lordship proposes to send to Mr. Scarlett is, with a very slight alteration which I have ventured to suggest, and subject to the following remarks, fit and proper to be sent:—

With respect to Article I, I think that in the event of a claim coming before the Commission in which a British Commissioner is directly interested, there ought to be a positive provision preventing him from adjudicating in that matter, and for the appointment of a substitute: this may entail some difficulty, but which I should think might be overcome by Mr. Scarlett.

As to the IInd Article, I have suggested a verbal alteration at the bottom of the page.

With respect to the new Article proposed by Señor Ramirez, excluding all claims but those of strictly British origin, I entertain considerable doubt; and I think it would be far better, as suggested, that the decision upon this subject should be left to the determination of the Commissioners and the Umpire.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 130.

The Queen's Advocate to the Earl of Clarendon.—(Received December 5.)

My Lord, *Doctors' Commons, December* 5, 1865.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 2nd instant, stating that with reference to my Reports of the 8th June and the 2nd ultimo, he was directed by your Lordship to transmit to me a further despatch and its inclosures from Her Majesty's Minister in Mexico (No. 160), in regard to the claim of Mr. Oldenburg against the Government of that Empire for the losses he incurred in consequence of the seizure, by a French vessel of war, of some goods consigned to him from Hamburgh on board the "Schwan;" and to request that I would take these papers into consideration, together with the former papers, and furnish your Lordship with any observations I may have to offer thereupon.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I beg to refer to my two former Reports on this case. That I understand it to be now directly admitted by Mr. Oldenburg that the goods seized were contraband of war. This is indeed, in point of fact and law, equally incontrovertible; and I conceive it to be virtually admitted by that gentleman that he was aware at the time when the goods were shipped on board the "Schwan" that war had broken out in Mexico. What he says is, "when the 'Schwan' left Hamburgh in September 1863, neither had France declared war against Mexico."

I am of opinion that the letters of Mr. Scarlett of the 3rd and 17th October to Mr. Oldenburg state the facts and the law correctly; and I think that there is no occasion for any further instructions from Her Majesty's Government to him.

I have, &c.
(Signed) ROBERT PHILLIMORE.

Monte Video.

No. 131.

The Queen's Advocate to Earl Russell.—(Received January 7.)

My Lord, *Doctors' Commons, January* 7, 1865.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 4th instant, stating that with reference to my Reports of the 26th and 13th ultimo, he was directed by your Lordship to transmit to me, together with the correspondence which had been previously submitted to me, two further despatches from Her Majesty's Chargé d'Affaires at Monte Video (Nos. 106 and 107), respecting the course pursued by the Commander-in-chief of the Brazilian naval forces in the blockade of the ports of Paisandú and Salto; and Mr. Hammond was to request that I would take the same into consideration, and report to your Lordship at my earliest convenience my opinion as to any further instructions which should be given to Mr. Lettsom on this subject.

I am also honoured with Mr. Hammond's further letter of the 4th instant, transmitting a letter from the Admiralty, inclosing copies of despatches from Rear-Admiral the Honourable Charles Elliot, relative to this blockade; and Mr. Hammond was further to request that I would report to your Lordship my opinion whether any further notice of this blockade is required than is contained in the "Gazette" of the 16th ultimo, and also whether instructions should be sent to Admiral Elliot to see that a proper time should be allowed to British vessels after the notification of the blockade.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That the blockade of Paisandú and Salto must be respected so long as the naval force employed in maintaining the blockade is fairly adequate for the purpose. The absence of the military forces with which, Mr. Lettsom says, it is intended that the naval forces should co-operate, cannot invalidate the blockade.

It is, of course, competent to Her Majesty's Government to require the Brazilian Government to say how long this interruption of the legitimate commerce of neutrals with the ports of Monte Video is likely to be continued, and within what limits the war will probably be circumscribed; but I see no necessity for sending any further instructions at present with respect to the recognition of the blockade.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 132.

The Law Officers of the Crown to Earl Russell.—(Received January 20.)

My Lord, *Lincoln's Inn, January* 19, 1865.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 10th instant, stating that he was directed by your Lordship to state that since the publication in the "London Gazette" of the notice to claimants on the Government of Monte Video, dated December 23, 1864, of which we approved in our Report of the 20th ultimo, several parties, as we should see by the letters inclosed, made applications to the Foreign Office claiming to have interest in the sums payable severally to Chalmers, Cosgrove, O'Brien, and Yates; and to suggest, for our consideration, whether it would not be advisable that these and other applicants should be told that it will be requisite for them to make out, to the satisfaction of the Solicitor to the Treasury, their rights of representation, and that having done so, they should acquaint him with their wishes as to the disposal of their respective amounts, and that thereupon instructions would be sent to Her Majesty's Chargé d'Affaires at Monte Video.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

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That we are of opinion that the course which is suggested in the letter of Mr. Hammond with respect to these various claimants is one which it would be proper and expedient to adopt.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 133.

The Queen's Advocate to Earl Russell.—(Received February 16.)

My Lord, *Doctors' Commons, February* 15, 1865.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 11th instant, stating that he was directed by your Lordship to transmit to me the accompanying despatches from Her Majesty's Chargé d'Affaires at Monte Video (Nos. 97, 100, 110, and 111), containing copies of correspondence which has passed between the Uruguayan Government and the Diplomatic Body, with regard to some small vessels fitted out at Buenos Ayres in aid of the revolutionary party in Uruguay, but sailing, according to circumstances, either under the Argentine or the Uruguayan flag; and Mr. Hammond was to request that I would take these papers into consideration, and report to your Lordship my opinion as to any instructions which should be addressed to Mr. Lettsom.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That it appears to me that the course pursued by Her Majesty's Chargé d'Affaires at Monte Video in conjunction with the European Diplomatic Body at Monte Video has hitherto been proper, and, as far as I am able to judge, the opinion which he has formed with respect to these vessels is correct.

On the one hand the visitation and search which the Uruguayan Government suggests should be exercised by foreign ships-of-war over Uruguayan vessels, has been, at present, with great propriety refused by Mr. Lettsom and his colleague.

On the other hand, the interests of neutral commerce afloat and the safety of neutral subjects, and their property, in places accessible by ships, require that the vessels employed by a belligerent shall sail under the flag of that belligerent, and shall not, by the occasional assumption of the flag of the other belligerent, harass the property and endanger the safety of neutrals.

It does not seem to me necessary to send more specific instructions than these to Her Majesty's Chargé d'Affaires at Monte Video. It is, of course, very important that he should continue to act in concert, so far as he is able, with his European colleagues in all measures taken on behalf of neutral interests.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 134.

The Queen's Advocate to Earl Russell.—(Received April 11.)

My Lord, *Doctors' Commons, April* 11, 1865.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 7th instant, stating that he was directed by your Lordship to transmit to me the accompanying despatches from Her Majesty's Chargé d'Affaires, inclosing copies of correspondence with the Brazilian Admiral respecting the imposition and the raising of the blockade of Monte Video; and Mr. Hammond was to request that I would take the accompanying papers into consideration, and furnish your Lordship with my opinion as to whether any notification under the circumstances is necessary, and if so, that I would prepare a form of notice for insertion in the "London Gazette."

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That it has seemed to me desirable that the raising of the blockade of Monte Video should be duly notified in the "Gazette;" and that I have prepared a notification accordingly, which I have the honour to append to this Report.

I have, &c.
(Signed) ROBERT PHILLIMORE.

Inclosure in No. 134.

RIVER PLATE.—BRAZIL AND MONTE VIDEO.

Notification of the Raising of the Blockade of Monte Video.

Foreign Office, April 11, 1865.

IT is hereby notified that Earl Russell, K.G., Her Majesty's Principal Secretary of State for Foreign Affairs, has received a despatch from Her Majesty's Chargé d'Affaires at Monte Video, inclosing a letter addressed by his Excellency Baron de Tamandaré, Commander-in-chief of the Brazilian naval forces in the River Plate, to Rear-Admiral the Honourable C. B. Elliot, C.B., Commanding-in-chief Her Majesty's naval forces on that station, announcing that the blockade of the port of Monte Video, established by the Brazilian naval forces, by order of the Government of that country, was raised on the 21st of February last.

The following is a copy and translation of the letter of his Excellency Baron de Tamandaré to Rear-Admiral the Honourable C. B. Elliot, above referred to:—

Here print a copy of the letter (and of the translation) from Baron de Tamandaré dated 21st February, 1865.

R. P.

Morocco.

No. 135.

The Queen's Advocate to Earl Russell.—(Received April 26.)

My Lord, *Doctors' Commons, April* 25, 1865.

I AM honoured with your Lordship's commands signified in Mr. Murray's letter of the 20th instant, stating that he was directed by your Lordship to transmit to me the accompanying despatch from Her Majesty's Minister at Morocco (No. 4), recommending to the favourable consideration of Her Majesty's Government the claim of the interpreter of the British Vice-Consulate at Tetuan, for the loss of property deposited in the Vice-Consulate at the time of the occupation of Tetuan by the Spanish forces; and Mr. Murray was pleased to request that I would take this case into consideration, and furnish your Lordship with my observations I may have to offer thereupon.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That it would appear to me that the proposition of Mr. Drummond Hay, that the small sum of 50*l.* should be presented by Her Majesty's Government to Mr. Nahon as a compensation for the losses which he has sustained, is, in the particular circumstances, reasonable and proper to be carried into effect.

I have, &c.
(Signed) ROBERT PHILLIMORE.

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No. 136.

The Queen's Advocate to Earl Russell.—(Received August 22.)

My Lord, *Doctors' Commons, August* 21, 1865.

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 14th instant, stating that he was directed by your Lordship to transmit to me a despatch from Sir J. D. Hay (No. 4), and the previous correspondence, relative to a claim put forward by Mr. Joseph Samuel to obtain compensation from the Moorish Government on account of the destruction by fire of certain stores outside the town of Mogador; and Mr. Layard was to request that I would take Mr. Samuel's claim into consideration, and report to your Lordship my opinion thereon.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I am of opinion that it would not be proper that Her Majesty's Government should press upon the Moorish Government the claim of Mr. Samuel; that Government is not, upon the evidence before me, responsible for the loss which he has sustained.

I have, &c.
(Signed) ROBERT PHILLIMORE.

Muscat.

No. 137.

The Law Officers of the Crown to Earl Russell.—(Received June 9.)

My Lord, *Lincoln's Inn, June* 8, 1865.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 25th of May ultimo, stating that he was directed by your Lordship to transmit to us the accompanying correspondence with the India Office, together with the despatch from Her Majesty's Consul and Political Agent at Zanzibar referred to therein,* upon the subject of certain changes suggested by Lieutenant-Colonel Playfair, in the administration of justice at Zanzibar, as regards British subjects; and to request that we would favour your Lordship with our opinion as to whether the IInd and Vth Articles of the Treaty between this country and Muscat of May 31, 1839 (see Hertslet's Treaties, vol. v, p. 611), are sufficient to enable Her Majesty to issue an Order in Council under the Foreign Jurisdiction Act, enabling the Consul to exercise jurisdiction, civil and criminal, over British subjects, whether natives of India or other parts of Her Majesty's dominions, and to appoint Bombay as the place of trial for serious crimes.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we think the provisions of the Foreign Jurisdiction Act are applicable to the case of Zanzibar and Muscat, by reason of the Treaty of 1839, and of the usage which (as we understand) has followed.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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* To India Office, March 28; India Office, May 11; Lieutenant-Colonel Playfair, No. 2, January 2, 1865.

Netherlands.

No. 138.

The Queen's Advocate to the Earl of Clarendon.—(Received December 13.)

My Lord, *Doctors' Commons, December* 13, 1865.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 8th instant, stating that he was directed by your Lordship to state to me that the Board of Trade have recommended that having regard to the position of the existing Treaty relations between Great Britain and the Netherlands, and to the exceptional treatment which is accorded to the subjects of various foreign States by the Netherlands Government, the Treaty engagements between Great Britain and the Netherlands should be rendered more in accordance with the provisions of modern Treaties of Commerce between Great Britain and other foreign Powers; and that the Board have prepared the accompanying draft of Treaty with that view. That it is, however, very desirable that any new Treaty of this kind should not interfere with the Treaty of the 17th of March, 1824, between Great Britain and the Netherlands respecting territory and commerce in the East Indies, and that your Lordship would therefore be glad if I would examine the inclosed draft Treaty specially with a view to that point, as well as generally as to its fitness to be substituted for the existing Treaties of Commerce.

The despatch from Mr. Ward (No. 6), to which reference is made by the Board of Trade, was also inclosed for convenience and reference.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That the draft of Treaty prepared by the Board of Trade appears to me generally fit and proper for effecting the object which your Lordship has in view.

There does not, however, occur to me any reason why the provisions relating to commercial travellers, referred to by Mr. Ward as forming the XXIInd and XXIIIrd Articles of the French Convention, should not be imported into this Treaty; there may, however, be some reason against this, of which I am not aware. If it should be thought expedient to introduce such Articles, they might come in after the XIIth Article.

Having regard to the anxiety expressed by your Lordship with respect to maintaining the provisions of the Treaty of the 17th of March, 1824, as to the territory and commerce in the East Indies, I think it might be well to add to the XXIst Article of the proposed Treaty a clause to this effect:—

"It is agreed that none of the provisions of this Treaty are intended to interfere with, or shall have the effect of interfering with, the provisions contained in the Treaty concluded between the High Contracting Parties on the 17th of March, 1824, respecting territory and commerce in the East Indies."

I have, &c.
(Signed) ROBERT PHILLIMORE.

New Granada.

No. 139.

The Queen's Advocate to Earl Russell.—(Received October 17.)

My Lord, *Doctors' Commons, October* 16, 1865.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 7th instant, stating that with reference to my Report of the 25th of November, 1862, on the subject of Messrs. Langton and Longrigg's claim on the New Granadian Govern-

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ment, on account of the seizure in 1861 of a cargo of divi divi by the revolutionary authorities of Rio Hacha, he was directed by your Lordship to refer to me the correspondence which has taken place with regard to that case.

That I should perceive from the last despatch of Her Majesty's Chargé d'Affaires at Bogota, that after nearly three years' delay the New Granadian Government have put forward the new view that it will be necessary that Messrs. Langton and Longrigg should prove their claim in the Law Courts of the country before they can be entitled to any indemnity. That under these circumstances Mr. O'Leary has applied for instructions; and Mr. Hammond was pleased to request that I would take these papers into consideration, and furnish your Lordship with my opinion as to the course which Her Majesty's Government should pursue.

In obedience to Lordship's commands I have taken this case into consideration, and have the honour to report—

That I agree with the opinion expressed by Mr. O'Leary in his despatch No. 46, of the 30th July, 1865.

I am of opinion that in the circumstances which he states it would be a gross injustice to subject the claim of Messrs. Langton and Longrigg to a judicial investigation. That claim was founded upon a wrongful act of spoliation by the Executive Government, or the authorities which represented it in 1861.

The justice of Messrs. Langton and Longrigg's claim has been substantially admitted by the New Granadian Government; and whatever laws that Government may think fit to make for its own subjects, it has no right, in its relations to foreign States, to make an *ex post facto* law which is to have the effect of evading or delaying the payment of a compensation, which, long before the passing of that law, had been due to the subjects of a foreign State on account of an act of violence on the part of the Executive Government, nor of a private individual, which had deprived that subject of his lawful property.

I think that Mr. O'Leary should be instructed that Her Majesty's Government must require prompt payment of the claim of Messrs. Langton and Longrigg, and that they decline to admit the authority of any municipal law which would further delay the already tardy execution of this act of international justice.

I have, &c.
(Signed) ROBERT PHILLIMORE.

Nicaragua.

No. 140.

The Queen's Advocate to Earl Russell.—(Received March 30.)

My Lord, *Doctors' Commons, March 29, 1865.*

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 22nd instant, stating that he was directed by your Lordship to transmit to me a letter from Messrs. Vaughan, dated the 18th instant, inclosing copies of two grants from the Nicaraguan Government, giving them certain privileges in the production and exportation of mahogany in the districts therein mentioned, and requesting to be informed, with reference to the latter of those two grants, whether the Mosquito Indians have any right to interfere with them in their operations, or make any exactions beyond those that are specified in the contract.

A copy of the Treaty with Nicaragua, respecting the Mosquito Indians, of the 28th January, 1860, together with Bailey's map of Central America, was also inclosed; and Mr. Hammond was pleased to request that I would take the inclosed papers into consideration, and report to your Lordship my opinion as to the answer which should be returned to Messrs. Vaughan's letter.

In obedience to your Lordship's commands I have taken this matter into consideration, and have the honour to report—

That by Article III of the Treaty of Managua, January 28, 1860, it is provided that within the district, which I understand comprises portions of the Rivers Rio Grande and

Prince Apulca, "the Mosquito Indians shall enjoy the right of governing, according to their own customs, and according to any regulations which may from time to time be adopted by them not inconsistent with the sovereign rights of the Republic of Nicaragua, themselves and all persons residing within such district. Subject to the above-mentioned reserve, the Republic of Nicaragua agrees to respect and not interfere with such customs and regulations so established, or to be established, within the said district."

The effect of this Article would be to place foreigners while resident or commorant within the district, to a certain extent under the authority of the Government of the Mosquito Indians; whether that authority would extend to a right of interference with the privilege granted by the Nicaraguan Government to Messrs. Jones and Vaughan of cutting timber, &c., must depend upon whether the grant to cut the timber is incident to "the sovereign rights of the Republic of Nicaragua."

This is, in great measure, a question of fact of which I have no evidence before me, but I should incline to the opinion that such a grant was incident to the rights of sovereignty especially reserved by the Treaty as belonging to the Republic of Nicaragua.

It seems to me that Messrs. Jones and Vaughan, who are now, I presume, in the territories of the Republic, should make inquiries for themselves as to whether the Government of the Mosquito Indians puts forward any claim, and if so, upon what grounds, in this matter.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 141.

The Queen's Advocate to the Earl of Clarendon.—(Received December 23.)

My Lord, *Doctors' Commons, December 23, 1865.*

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 18th instant, stating that he was directed by your Lordship to transmit to me a despatch and its inclosures from Her Majesty's Consul at Greytown (No. 12), stating that the Governor Intendent at that port imposes, whenever an opportunity occurs, the Decree of Managua of the 4th of October, 1864, upon the residents and traders within the Mosquito Reserve, in contravention of the IIIrd Article of the Treaty between Her Majesty and the Republic of Nicaragua of January 28, 1860, a copy of which was also inclosed; and Mr. Hammond was to request that I would take this despatch into consideration, and furnish your Lordship with my opinion as to what answer should be returned to Mr. Paton.

In obedience to your Lordship's commands I have the honour to report—

That a consideration of the whole Treaty, more especially of Articles III and VII (though the question is not wholly free from doubt), leads me to the conclusion that the Mosquito Indians are entitled to impose duties on merchandise imported into their territory, and the exercise of this right "is not inconsistent with the sovereign right of the Republic of Nicaragua" (Article III). If this be so, of course the Government of the Republic is not entitled to compel the repayment of such duties at Greytown, or the payment of duties on goods not imported into, but transhipped from, that port.

I am not aware, however, whether Her Majesty's Government have hitherto expressed any opinion on this claim to the Nicaraguan Government, but the subject appears to have been already brought under its notice.

I have, &c.
(Signed) ROBERT PHILLIMORE.

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Paraguay.

No. 142.

The Queen's Advocate to Earl Russell.—(*Received May* 10.)

My Lord, *Doctors' Commons, May* 9, 1865.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 5th instant, stating that he was directed by your Lordship to transmit to me therewith the translation of a letter dated the 26th ultimo from M. Candido Bareiro, the Paraguayan Chargé d'Affaires accredited to this Court, calling the attention of Her Majesty's Government to the conduct of the Argentine Government in allowing a Brazilian squadron to pass up the Paraná, with reference to the existing Treaties relating to the navigation of the affluents of the River Plate; and Mr. Hammond was pleased to request that I would, with reference to my Report of the 8th March last, report to your Lordship my opinion of the nature of the reply which should be returned to M. Candido Bareiro's observations. For my consideration the accompanying despatches,* bearing upon the above subject, which have been received from Her Majesty's Minister at Buenos Ayres, were also transmitted.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I am of opinion that a reply should be returned to M. Candido Bareiro to the following purport and effect: that Her Majesty's Government does not consider that the provisions of the Treaties to which his Excellency refers would justify the interposition of Her Majesty's Government relatively to the subject which is now in dispute between the Argentine and Paraguayan Governments.

Her Majesty's Government are of opinion that by the Treaty between Her Majesty and the Argentine Confederation (July 10, 1853), they are entitled to insist upon the free navigation of the Rivers Paraná and Uruguay by merchants of all nations, even in time of war, "excepting in what may relate to munitions of war, such as arms of all kinds, gunpowder, lead, and cannon balls; but they are not of opinion that they are empowered, either by the express provisions of any Treaty or by the general principles of international law, to prevent the sailing of a Brazilian fleet up the River Paraná for the purpose of carrying on hostilities, in a war in which Her Majesty is strictly neutral, against Paraguay, and that it must be for the Argentine Government to consider whether she ought or ought not to allow that fleet to pass through the waters of her territory.

I have, &c.
(Signed) ROBERT PHILLIMORE.

Persia.

No. 143.

The Queen's Advocate to Earl Russell.—(*Received February* 25.)

My Lord, *Doctors' Commons, February* 24, 1865.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 20th instant, stating that, with reference to my Report of the 29th November last, he was directed by your Lordship to transmit to me, for any observations I may have to make thereupon, the accompanying despatch and its inclosures from Her Majesty's Minister at Tehran (No. 122), respecting Mr. Ralli's claim on the Persian Government for compensation for losses sustained on account of the interference with his trade by the

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* Mr. Thornton, Nos. 10, 18, and 20, 1865.

Persian authorities at Tabreez. The previous papers were also inclosed for convenience of reference.

In obedience to your Lordship's commands I have taken this matter into consideration, and have the honour to report—

That if Mr. Glen be correct in stating in his Memorandum (Inclosure 3 in No. 122) that "an explicit contract was *voluntarily* concluded or submitted to by Mr. Michoglou," acting as the Agent of Messrs. Ralli, I should agree with Mr. Glen that Her Majesty's Government would not be bound to support a claim for losses which were the consequences of such an agreement; but it appears to me that this contract was *involuntarily* concluded under the pressure of an illegal violence, which upon the principles of all jurisprudence and the plainest rules of right vacated the contract and rendered it null.

The important question therefore is, was the contract, as it is called, made under constraint, and in consequence of unlawful pressure upon Mr. Michoglou?

I presume that Her Majesty's Minister at Tehran, and the Acting British Consul at Tabreez, were satisfied on this point when they refused to recognize the validity of the agreement.

Moreover, however timid and reprehensible the conduct of Mr. Michoglou may have been, it seems to me very inexpedient, for the general interests of British commerce, that the Persian authorities should be allowed to commit with impunity a very gross violation of the stipulations of positive Treaties and of the general principles of international law.

I think an absolute discretion should be vested in Her Majesty's Minister at Tehran as to the amount of compensation which he urges upon the Persian Government, and I think that Her Majesty's Minister may properly consider the conduct of Mr. Michoglou, after the warning given to him by the Consul, as affecting the amount which, in the circumstances, Her Majesty's Minister may think it prudent and expedient to support.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 144.

The Law Officers of the Crown to Earl Russell.—(*Received March* 8.)

My Lord, *Lincoln's Inn, March* 8, 1865.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 16th ultimo, stating that he was directed by your Lordship to transmit to us the accompanying papers, as marked in the margin,* respecting the course pursued by Her Majesty's Consul at Bagdad in the case of a native Indian subject, accused of having murdered a Persian subject; and to request that we would take these papers into our consideration, and favour your Lordship with our opinion thereupon.

We are also honoured with your Lordship's commands signified in Mr. Hammond's letter of the 28th ultimo, stating that, with reference to his letter of the 16th February, respecting the case of a native Indian subject charged with causing the death of a Persian at Bagdad, he was directed by your Lordship to transmit to us the accompanying further despatch, which has just been received from Mr. Logie (No. 10), reporting the proposal which had been made for the settlement of this case; and to request that we would furnish your Lordship, at our earliest convenience, with a report as to the course which should be taken in this matter.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we are clearly of opinion that the jurisdiction of the Consul was well founded by the Capitulations; and there appears to us no foundation for the idea that the Persian Consul, either by Treaty with the Porte or by the assent of Her Majesty (and both would be necessary), has acquired any authority to try this case in the Ottoman dominions. We think, however, that it was incumbent upon the Consul to take proper measures for appointing a day for the trial of the accused person, and for securing his being forthcoming on that day; but if no charge was then preferred against him, or no charge sustained by the evidence, it would be the duty of the Consul to dismiss the case, and let the accused person go free. We are glad to see from the despatch of Mr. Logie (No. 10, Constantinople, February 17, 1865) that this is the course which the Consul intended to adopt; although we cannot but observe that the course previously taken in

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* Mohamed Ali, January 9; to Mr. Logie, No. 1; Mr. Logie, No. 3; Mr. Stuart, No. 48, 1865.

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allowing the accused person to return to his master's service, and to be practically at large, before the case was finally disposed of, was calculated (to say the least) to give occasion for misunderstanding on the part of the Persian authorities.

We are clearly of opinion that the Consul ought not to sanction any such private compromise by payment of blood-money, as the Persian authorities appear to suggest.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 145.

The Queen's Advocate to Earl Russell.—(Received April 7.)

My Lord,
Doctors' Commons, April 5, 1865.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 28th ultimo, stating that he was directed by your Lordship to transmit to me the accompanying draft of an instruction which was addressed to Her Majesty's Minister in Persia, founded upon my Report of the 24th of February, on the subject of Mr. Ralli's claim against the Persian Government; but that he was, however, to acquaint me that, in consequence of the receipt of the accompanying despatch, Mr. Alison has been directed by telegraph not to act on your Lordship's despatch No. 8 of the 2nd ultimo until he receives further instructions on the subject. A despatch and its inclosure from Her Majesty's Consul at Tabreez, containing a report upon this claim, was also inclosed; and Mr. Hammond was pleased to request that I would take these despatches into consideration, and report to your Lordship my opinion as to the instructions which should now be given to Mr. Alison in regard to Mr. Ralli's claim.

In obedience to your Lordship's commands I have taken this case again into consideration, and have the honour to report—

That the reprehensible and foolish conduct of Mr. Michoglou does certainly much embarrass the principal consideration in this case, namely, what amount of compensation should be claimed on behalf of the house of Ralli against the Persian Government; nevertheless, I am of opinion that some compensation ought to be claimed on behalf of that house, though the conduct of their agent, Mr. Michoglou, must have its effect in regulating the amount of the demand.

I am of opinion, also, that the compact between Mr. Michoglou and the Persian merchants ought not to be recognized by Her Majesty's Government. A perusal of this document satisfies me that it is not in any proper sense a covenant at all. It is simply a statement of the conditions under which six Persian merchants undertake not to resort to violent measures of outrage and plunder upon the property of the house of Ralli; and these conditions containing, in substance, an undertaking on the part of Mr. Michoglou that he will abstain from making a lawful profit on the commercial transactions of the firm of which he is agent. That the whole compact is the result of intimidation on the one side, and fear on the other, appears pretty clearly from the last clause of it;—"Mr. Michoglou must not depart from these conditions. If he does infract one of these conditions, in the smallest degree, his affairs will again assume an unfavourable turn.

"(Follow the signatures of six Persian Merchants.)
(Signed) "Michoglou."

The existence of such a compact, in truth, affords clearest evidence of the weakness or guilt of those who ought to have administered the law, by which alone it could have been rendered necessary. Mr. Alison, indeed, states that the Persian Government is prepared to show that Mr. Michoglou inflicted severe loss on the Persian merchants, and that this view is supported by the opinion of European merchants at Tabreez; but it is not suggested that Mr. Michoglou did any act which was unlawful or not warranted by the Treaty, though probably he acted with extreme and culpable indiscretion in all the circumstances of his position.

On the other hand, I agree with the statement in the second part of the very able and clear Reports of Mr. Consul Abbott, that the Persian Government has incurred responsibility, whatever the amount of it may be, "first, in permitting for about the space of four months a state of things so contrary to the spirit and letter of the Treaties and the universally acknowledged rules of justice and fairness and of commercial rights; so contrary also to the tenour of the instructions issued to the Tabreez authorities on the representations of Her Majesty's Minister at Tehran, and in defiance of the representations and warnings made on the spot by the Acting Consul; and secondly, for the compact made under the auspices of the Naib el Vizuuh, in which a total disregard of the rights and privileges of a merchant under the English flag was shown, although that merchant was a consenting party."

Upon the whole, I am of opinion that the most expedient course to pursue would be to adopt substantially the Report No. 3 of Mr. Consul Abbott, as the basis of the compensation to be demanded, but nevertheless with certain limitations:—

1st. That the compact be not recognized at all in principle in any application made to the Persian Government. It seems to me important for the general interests of the British mercantile community, as well as on the grounds which I have already mentioned, that no such recognition should be made.

2ndly. I think that the misconduct and indiscretion of Mr. Michoglou throughout the whole of this transaction may be considered as a reason for claiming a less sum than might otherwise have been demanded, even as to the items which are approved of by Mr. Abbott. This consideration may fairly operate to reduce the amount demanded under the heads of interest on delay caused in the recovery of bazaar claims and the calculation of contingent speculative profit, which, it is alleged, would have accrued to the firm of Ralli if their commerce had not been interfered with by these lawless proceedings.

Lastly. I still think that a certain discretion should be left to Mr. Alison as to the amount which he may deem it expedient to claim in the very peculiar circumstances of this case, though the principles on which the demand is founded ought to be clearly stated to the Persian Government.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 146.

The Queen's Advocate to Earl Russell.—(Received April 22.)

My Lord,
Doctors' Commons, April 21, 1865.

I AM honoured with your Lordship's commands signified in Mr. Murray's letter of the 18th instant, stating that he was directed by your Lordship to transmit to me a despatch which has been received from Mr. Abbott, containing an amended Report on Mr. Ralli's claim against the Persian Government; and to request that I would take these papers into consideration, and inform your Lordship whether any new facts recorded therein would cause me to alter the opinion contained in my letter of the 5th instant. The previous papers were inclosed for convenience of reference.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That the amended Reports received from Mr. Abbott do not induce me to alter the opinion expressed in my former Report. Their effect is to show, more strongly perhaps than ever, that there is really but one question of principle which can interfere with the right of Firm, so feebly represented by Mr. Michoglou, to compensation, namely, the contract of that person with the Persian merchant.

But I adhere to my opinion that this contract must be considered not only as to the language and expressed condition which itself reveals the pressure under which it was made, but also with reference to the facts which preceded and accompanied it, facts which show that the Persian Government had abetted, and was abetting, indirectly, the measures of violence and injustice adopted by the Persian merchants against Mr. Michoglou, and that this person, however wretched and reprehensible his conduct, was at the time of making the alleged contract, in truth, scarcely more a free agent than a person whose house was surrounded by incendiaries who exacted the payment of a sum of money from him as the condition of sparing the rest of his property.

To recognize the validity of this contract would be not only to leave the firm represented by Mr. Michoglou to suffer the consequences of his folly and timidity, but to encourage the Persian Government in the belief that by directly or indirectly abetting the violence of their subjects they may at any time terrify a weak and timid man into an abandonment of the protection which on public grounds Her Majesty's Government have obtained by Treaty for Her Majesty's subjects in Persia.

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But I also adhere to my opinion that the conduct of Mr. Michoglou may properly operate in guiding the large discretion which I think should be left to Her Majesty's Representative in Persia, as to the amount of indemnity which in the circumstances he should require at the hands of the Persian Government.

I have, &c.
(Signed) ROBERT PHILLIMORE.

Peru.

No. 147.

The Law Officers of the Crown to Earl Russell.—(Received January 3.)

Lincoln's Inn, January 3, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 31st of December, 1864, stating that your Lordship having been informed that an iron-clad vessel (stated to have been originally destined for the service of the Confederate States), constructed in France, had been purchased by the Peruvian Government, and is at present in course of equipment at Greenhithe, he was directed to transmit to us a letter from the Home Office, dated December 30, 1864, containing a Report of the result of the inquiry which had been instituted at your Lordship's request respecting the vessel in question; and to request that we would take the inclosed papers into our consideration, and favour your Lordship with our opinion at our early convenience as to the steps, if any, which should be taken by Her Majesty's Government in this matter.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That as we understand that the Peruvian Government are not at present engaged in war with any State at amity with Her Majesty, we do not recommend any steps to be taken in consequence of the police report on the screw-steamer now lying at Greenhithe. Perhaps, however (in order to remove the possibility of any doubt, whether this vessel is really being fitted out on account of the Peruvian Government), it might be expedient for your Lordship to ascertain by communication with the Representative of Peru in this this country, that the steamer in question is acknowledged by him as belonging to Peru.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 148.

The Queen's Advocate to Earl Russell.—(Received May 12.)

Doctors' Commons, May 11, 1865.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 6th instant, stating that he was directed by your Lordship to transmit to me a despatch from Her Majesty's Chargé d'Affaires at Lima (No. 25, March 13), inclosing a copy and translation of a Decree, declaring that all duties collected by the insurgents, who are now in possession of the Custom-house at Isla, will be considered as not paid, and that the Government will require such duties to be paid again to their own officers as soon as their authority is re-established in that port.

The accompanying despatches from Mr. Jerningham* respecting the revolutionary movement which has taken place in Peru was also inclosed, and Mr. Hammond was pleased to request that I would take these papers into consideration, and report to your Lordship my opinion as to the instructions which should be given to Mr. Jerningham with regard to the Decree above referred to.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I think Her Majesty's Chargé d'Affaires at Lima should be instructed to the following effect:—

That he should apprize the Government of Peru that Her Majesty's Government have learnt with surprise and regret the tenour of this Decree, and as far as Her Majesty's subjects are concerned they at once protest against its operation and effect.

That according to the universal usage of nations dues paid by foreigners, who take no part whatever in a civil war which breaks out in the country where they are peaceably resident and carrying on trade under the faith of Treaties and general international law, to a *de facto* Government which demands and has the power of compelling this payment, must be considered to be paid to the Government of the country.

At the same time Her Majesty's Chargé d'Affaires should be instructed not to offer any encouragement to British subjects to pay these dues to the Insurrectionary Government, nor to give any pledge or promise to them that they will be protected from the repayment of such dues, but to warn them of the necessity of being very careful not to do any act which may be fairly treated as voluntarily aiding and abetting the Insurrectionary Government.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 149.

The Queen's Advocate to Earl Russell.—(Received July 7.)

Doctors' Commons, July 7, 1865.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 5th instant, stating that he was directed to transmit to me a despatch from Her Majesty's Chargé d'Affaires at Lima (No. 53), reporting that the port of Islay and the Cove of Quilca have been closed to all merchant-vessels, in pursuance of a Decree which has been issued by the President of Peru.

A despatch which has been received from Her Majesty's Consul at Islay (No. 14) respecting the closing of that port was also inclosed; and Mr. Hammond was to request that I would take these papers into consideration and furnish your Lordship with my opinion thereupon.

In obedience to your Lordship's commands I have the honour to report—

That the Decree in question must be at present considered as one which the public safety of the Kingdom of Peru requires in the particular emergency which has arisen; and as, moreover, it affects equally national and foreign vessels, I am of opinion it does not now warrant any interference on the part of Her Majesty's Government.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 150.

The Queen's Advocate to Earl Russell.—(Received October 20.)

Doctors' Commons, October 19, 1865.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 13th instant, stating that he was directed by your Lordship to transmit to me a despatch from Her Majesty's Acting Charge d'Affaires at Lima (No. 7), inclosing copies of his correspondence with the Peruvian Minister for Foreign Affairs in regard to some English subjects who had been enlisted in this country to serve on board the Peruvian ship of war "Union," which vessel was subsequently made over by her commander to the Revolutionary party in Peru; and Mr. Hammond was to request that I would take these papers into consideration and furnish your Lordship with my opinion thereupon.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That it appears to me that Her Majesty's Acting Chargé d'Affaires at Lima has, in the circumstances stated to me, properly refused the request of the Peruvian Govern-

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* Mr. Jerningham, Nos. 23 and 24, March 10; No. 26, March 13; No. 28, March 25; No. 31, March 27, 1865.

No. 147*.

The Queen's Advocate to Earl Russell.—(Received May 5.)

Doctors' Commons, May 4, 1865.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 1st instant, stating that he was directed by your Lordship to transmit to me therewith a despatch from Her Majesty's Consul at Islay (No. 5), reporting the arrest on board a mail-steamer, by a party of Peruvian Government officers, of an officer belonging to the Revolutionary party in Peru, and his subsequent release by the captain of the vessel; that I should perceive that Mr. Consul Withew requests to be furnished with instructions relative to the course he should pursue in cases of the nature of that above adverted to; and Mr. Hammond was pleased to request that I would inform your Lordship what reply should in my opinion be returned to Mr. Withew on this subject.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report:—

That I am of opinion that the proper answer to send to Her Majesty's Consul at Islay would be to this effect: that he must exercise a careful discretion in all cases of this description; that he must not claim, upon principle, for all British merchant-ships in a Peruvian port a right of entire exemption from the jurisdiction of the local authorities, but may properly remonstrate against the exercise of any such authority as a breach of usage and comity, except in very extreme cases. That with respect to mail-steamers, he may still more strongly remonstrate against any exercise of local jurisdiction on board them; but he must not claim even for them, as a matter of strict right, while they are on their present footing, that total exemption from jurisdiction which is the privilege of a ship of war in a foreign port.

That he appears to have exercised his discretion wisely and in accordance with these suggestions in the present case.

I have, &c.
(Signed) ROBERT PHILLIMORE.

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ment to interfere with respect to the Englishmen who formed part of the crew of the "Union."

I think, however, it would be right that he should avail himself of any opportunity to apprise these persons that, as they have chosen to embark in the service of a foreign State and to take part in the civil war waged therein, they must not count upon the assistance of Her Majesty's Government to extricate them from any difficulties in which such conduct may place them.

I have, &c.
(Signed) ROBERT PHILLIMORE.

Portugal.

No. 151.

The Law Officers of the Crown to Earl Russell.—(*Received March* 28.)

Lincoln's Inn, March 28, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 8th instant, stating that he was directed by your Lordship to transmit to us the accompanying correspondence* respecting the claims put forward by the executors of Mr. Richard Thornton, late geologist to the Zambesi Expedition, for payment of salary during the time that his services were dispensed with by Dr. Livingstone, for payment of the money stated to have been expended by him during that period for hire of servants, food, and other necessaries, and for instruments purchased, as alleged, for the use of the expedition, but without authority.

Mr. Hammond was also pleased to state that he was directed by your Lordship to transmit to us four volumes of the "Correspondence respecting the Zambesi Expedition," in which the principal papers are marked that refer to the above-mentioned claims; and to request that we would take the correspondence inclosed into our consideration, and report to your Lordship our opinion upon the questions raised by the late Mr. Thornton's executors.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That a perusal of the papers submitted to us lead us to the conclusion that it would be a harsh measure, and one not called for by the exigencies of justice, to refuse the claim of Mr. Thornton's executors to payment of arrears of salary, including the interval during which this gentleman's services were dispensed with by Dr. Livingstone. It appears from a letter of Dr. Livingstone, of 7th December, 1859, that, in his opinion, this gentleman had suffered "a complete collapse, consequent on the climate;" that he had made "a praiseworthy chart of the river;" but that his inability or disinclination to work ought to cause his salary to cease from the 3rd of May, 1859. On the 30th of March, 1860, the Hydrographer of the Admiralty, reports that "this boy of 18 had been *prostrated* by the climate;" and that he thinks "he may do good service if he survives the trying climate, of which I have great fears." He thought Dr. Livingstone certainly should be supported, but that if Lord John Russell took a favourable view of his case the salary might be restored. Your Lordship did take this view. On the 29th of December, 1862, in a letter dated from the River Zambesi, Dr. Livingstone announces that he has told Thornton that Lord Russell had decided in favour of his receiving the salary, and adds, "he (Thornton) is working at different points on the Zambesi river under my direction, with greatly improved health and energy, and it is likely he will give a good account of the geology of this region." On the 28th April, 1863, Dr. Livingstone announces the death of Mr. Thornton, the consequence of over fatigue, induced by a journey from Murchison's Cataracts to Tette: "of his own accord," he writes, "he (Thornton) performed a most fatiguing journey from this to Tette and back again on

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* Admiralty, January 13; to Admiralty, February 3; Admiralty, February 7; Memorandum, January 25, 1865.

foot. His object was to get bearings from the hills at Tette to the mountains here, and I became aware of his intention only after he had left: the exertion used up all his strength, and soon after his return he was seized with diarrhœa, which went into dysentery and fever, under which he sank."

It seems rather difficult to reconcile these Reports to the Foreign Office from Dr. Livingstone upon Mr. Thornton's case with those which he afterwards addressed to the Admiralty on the same subject (10th January and 6th February, 1865); but we think that the interests of Thornton, now transmitted to his executors, ought not to suffer from this contradiction, and that the more favourable view taken by Dr. Livingstone in his letters to the Foreign Office should be adopted by Her Majesty's Government.

With respect to the sums claimed for the expenses of servants, food, necessaries, and instruments, we think that my Lords of the Admiralty should decide upon these items; but if we are to express our opinion it would lean against the recognition of these expenses by Her Majesty's Government, as no other officer of the expedition appears to have been allowed extra pay for servants, food, or necessaries, and the instruments were not ordered by the authority of the head of the expedition, and have not been returned to the Admiralty.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 152.

The Queen's Advocate to Earl Russell.—(*Reeeived April* 3.)

Doctors' Commons, March 31, 1865.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 22nd instant, stating that he was directed by your Lordship to transmit to me the accompanying despatches which have been received from Her Majesty's Minister at Lisbon,* inclosing his correspondence with the Count d'Avila, who has been appointed Portuguese Plenipotentiary to treat with him on the question of the right of sovereignty over the Island of Bulama, now in dispute between this country and Portugal. The correspondence which has taken place thereupon between the Foreign Office and the Colonial Office, together with a copy of the last despatch to Sir A. Magenis, were also inclosed; and Mr. Hammond was pleased to request that I would take these papers into consideration, and report to your Lordship my opinion as to the instructions which should be addressed to Her Majesty's Minister thereon, especially on the question whether the British title having been derived by purchase would, or would not, lapse from non-occupation, as a title from discovery would; and further respecting the period of non-occupation after which a right by discovery or previous occupation lapses. The previous correspondence which has taken place on this subject was also inclosed for convenience of reference.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I am of opinion that instructions should be sent to Her Majesty's Minister at Lisbon firmly to maintain the right of Her Majesty to the Island of Bulama. It seems to me unnecessary to me to state in detail the historical facts carefully collected and ably narrated in the Memorandum from the Colonial Office. The conclusion to which a perusal of all the documents has led me is as follows:—

I think that there is sufficient evidence that a title such as in the circumstances would be recognized by international law was acquired to that territory in the year 1792. The evidence is affirmative of the British right, and negative of the right of any other State. In that year possession was obtained by *purchase* from the owners or Governors of the territory; the title so acquired was further strengthened by immediate *occupation*, which was continued for eighteen months. I know no authority for saying that territory so acquired is lost by the single fact that after the occupation, consequent on the purchase, has lasted between one and two years, a considerable interval has occurred during which no subject of the State which has acquired it has occupied the territory.

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* Sir A. Magenis, No. 121, November 25; No. 129, December 27, 1864; No. 6, January 27; No. 21, February 28, 1865.

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On the assumption, which the history of the case appears fully to warrant, that the original sale of the Bejouga Chiefs to Captain Beaver and the English Company in 1792 was in the circumstances a valid sale and cession of territory duly purchased and duly granted, Bulama accrued at that time to the British Crown (which must be treated as the principal for whom Captain Beaver acted as agent) in the same way as any other territory acquired by purchase or cession. The power of a State so to acquire property is incontrovertible. All international jurists admit the propositions that the *dominium* over territory may be transferred from one State to another. Vattel may serve as a sample: "Quand une nation," he says, "a cédé quelque parti de ses biens à une autre, la cession doit être tenue pour valide et irrévocable, comme elle l'est en effet, *en vertu de la notion de propriété*." (Vattel, l. i., fol. 262.) Cessions of territory, though generally consequent on war, are not without precedents in time of peace. In 1777, I think, Portugal ceded to Spain the Islands of Annobon and Fernando del Po, in order to facilitate the Slave Trade of Spain with the coast of Africa. In 1850, I believe, Denmark ceded to Great Britain, in consideration of the sum of 10,000*l.*, all the possessions of the Danish Crown on the Gold Coast or Coast of Guinea. I am opinion that territory acquired by sale or by cession becomes *the property* of the State which acquires it, of which it cannot be divested, as it may be in certain cases of mere transitory occupation, by a mere non-user of the territory for a considerable interval of time. The title was then originally *de jure* and *de facto* valid, according to the usage and law of nations applicable to cases of this description. Her Majesty has never abandoned that title, either by any direct act of the State, or by an indirect permission of the exercise of the rights of sovereignty of another State.

On the contrary, directly the knowledge of any such attempt on the part of Portugal was made,—and it was made by no other State,—Her Majesty's Government distinctly and positively resisted it, ratifying the acts of force used by the officers of the Crown to remove the Portuguese authorities and subjects from the island. The British inhabitants of the island in 1814 or 1816 (the date seems uncertain) were driven out by an attack from natives of an adjoining island. Neither on that occasion nor in 1792 did Portugal or any other European Power put forward any title to the island. Indeed, on the latter occasion the Portuguese Government of Bissagos appear to have aided the British Government of Sierra Leone.

Since that period circumstances have made Her Majesty's Government think it expedient that this possession of the Crown should be more carefully guarded by naval and military force. Some measures for the accomplishment of this object have accordingly been taken; and, moreover, in the exercise of her right of sovereignty, Bulama has been formally attached to Her Majesty's possession of Sierra Leone by an Order in Council and solemn Proclamation in the year 1860.

It is to be observed that if the title of Her Majesty can be impeached at all, or by any counter-claimant, Portugal is certainly not, in my opinion, entitled to be the impugner or to prefer the adverse claim. That State has, to use the language of civilians, no *persona standi* in the matter.

The claim of title, founded on an averment of discovery in 1752 and subsequent grant originally put forward by that Crown, was destitute of all foundation in fact and law. The alleged discovery was not followed by any occupation; the erection of a wooden pillar alone, or any emblem of the kind not followed by occupation, constitutes, according to the opinion of every jurist of repute, no legal possession. The alleged grant to Portugal was never produced; the letters said to illustrate the transaction did not refer to any grant; and the alleged grantor, the Governor of Sierra Leone, had no power to make the grant.

Probably a sense of the utter insufficiency of these grounds to found any title induced the Portuguese Government tacitly to abandon them, and no proof of title is now produced anterior to the year 1828, and the first real attempt to occupy the island was made in 1830 In September 1831 this forcible occupation was practically resisted by one of Her Majesty's subjects, Captain Goddard, commanding a merchant-ship, who was fired upon for not saluting a Portuguese flag on the island. As soon as Her Majesty's Government received this information measures were taken in various ways, and at various times, for reinstating Her Majesty's authority in the island, and from that period to the present Her Majesty's Government have never ceased to maintain the right of the British Crown to this territory. Considerations of policy or expediency are, of course, without the province of my duty, but in my opinion international law furnishes no reason why these steps should be retraced or this possession abandoned.

I have, &c.
(Signed) ROBERT PHILLIMORE.

Prussia.

No. 153.

The Law Officers of the Crown to Earl Russell.—(Received January 12.)

My Lord,
Lincoln's Inn, January 11, 1865.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 9th instant, stating that he was directed by your Lordship to transmit to us the draft of a note which your Lordship proposes to address to the Prussian Ambassador at this Court, in conformity with our Report of the 29th of August last, on the subject of the Convention between Great Britain and Prussia of the 5th March last, for the mutual surrender of criminals; and Mr. Hammond was pleased to request that we would take the same into consideration, and report to your Lordship whether we see any objection thereto.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we see no objection to the proposed note, which is in strict conformity with our former Report.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 154.

The Queen's Advocate to Earl Russell.—(Received February 9.)

My Lord,
Doctors' Commons, February 9, 1865.

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 3rd instant, stating that he was directed by your Lordship to transmit to me the inclosed papers* respecting the circumstances attending the loss of the British brig "Queen" on Fehmern Island in the month of April last; and to request that I would furnish your Lordship with my opinion as to the course which Her Majesty's Government should pursue with regard to the request of persons interested that compensation may be claimed from the Prussian Government for the loss of the vessel, and the personal losses of the captain and crew.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I am of opinion that the protest of the captain of the "Queen" states a strong *primâ facie* case for reasonable compensation from the Prussian Government, and I think that Her Majesty's Government may very properly assist the owners of this vessel in obtaining such compensation.

It may be of course that the Prussian authorities have a different story to tell, but it appears to me that there is ample ground for requiring them to controvert the averments contained in the protest, which, uncontroverted, found a just claim for indemnification.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 155.

The Queen's Advocate to Earl Russell.—(Received February 28.)

My Lord,
Doctors' Commons, February 28, 1865.

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 25th instant, stating that he was directed by your Lordship to transmit to me a note

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* Messrs. Walker, Hunter, and Grey, January 16, 1865.

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from the Austrian Ambassador, and a translation of a note from the Prussian Ambassador in London, dated the 21st instant, stating that the Governments which they represent have determined to grant a provisional national flag to the ships of the Duchies of Schleswig, Holstein, and Lauenburg, pending the final decision as to the constitution of those Duchies. That the Ambassadors express a hope on the part of their Governments that Her Majesty's Government will grant to ships bearing the provisional flag the same rights which belonged to the ships of the Duchies previously to their separation from Denmark; and Mr. Layard was pleased to request that I would take this subject into consideration, and furnish your Lordship with my opinion as to the course which should be taken by Her Majesty's Government with regard to this proposition.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That it is of course competent to Her Majesty's Government to accede to the request of the Austrian and Prussian Governments.

To do so, however, is to recognize distinctly the absolute right of Austria and Prussia, as joint conquerors of Schleswig, Holstein, and Lauenburg, to dispose of these Duchies as they please.

If these Duchies are free and independent States separately, or collectively a federation of States, the application to recognize their national flag ought to proceed from themselves in one capacity or the other.

It is to be observed, also, that to accede to this recognition is to set aside altogether any rights in this matter which may or may not be incident to the Germanic Confederation, a body recognized by the States who subscribed the Treaty of Vienna as having a distinct international status, and to which a British Minister is accredited.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 156.

The Law Officers of the Crown to Earl Russell.—(*Received February* 28.)

My Lord,
Lincoln's Inn, February 28, 1865.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 22nd instant, stating that with reference to our Reports of the 29th August and 11th January last, on the subject of the proposed modification in the Treaty of Extradition concluded between Great Britain and Prussia on the 5th March, 1864, he was directed by your Lordship to acquaint us, that on the 13th ultimo your Lordship addressed to the Prussian Ambassador at this Court the note of which the draft had been submitted to our perusal; and that your Lordship has received from Count Bernstorff the inclosed answer thereto.

That seeing that the Prussian Government absolutely refuses to accede to the condition which would require the production of oral evidence in support of any demand for extradition, and considering moreover the general tone of Count Bernstorff's communication, your Lordship is of opinion that the negotiation may be allowed to drop for the present, and that your Lordship would be glad to know whether we concur in this opinion.

In obedience to your Lordship's commands we have considered this case, and have the honour to express our agreement with the opinion of your Lordship that the letter of Count Bernstorff renders it inexpedient to continue for the present the negotiation in this matter with the Prussian Government.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 157.

The Law Officers of the Crown to Earl Russell.—(*Received March* 8.)

My Lord,
Lincoln's Inn, March 7, 1865.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 5th instant, stating that he was directed by your Lordship to acquaint us that your

Lordship has received from the Prussian Government a counter-draft of a new Treaty of Commerce between Great Britain and the Zollverein. That that draft has been submitted to the Board of Trade, and that the Board of Trade has sent to your Lordship a revised draft, a copy of which, as well as a copy of the Prussian draft, was also inclosed. That by the Vth Article of the draft Treaty, as amended at the Board of Trade, Canada and Australia could not impose greater duties on Rhine wine than on French wines, nor on German flax than on United States' flax; and Mr. Hammond was pleased to request that we would furnish your Lordship with our opinion at our earliest convenience whether such a stipulation would be in conformity with the Act of 1846 (8 and 9 Vict., cap. 93) which gave the British colonies power to reduce or repeal certain duties of Customs, and with the Reciprocity Treaty with the United States of the 5th of June, 1854 (Hertslet, vol. ix, page 998). In connection with these questions Mr. Hammond was to call our attention to the Treaty with Belgium of July 1862, which it is presumed is in entire accordance with the laws of the country.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we think there will be nothing at variance with the Act of 1846 (8 and 9 Vict., cap. 93), or with the Treaty with the United States of the 5th of June, 1854, in such a stipulation as that referred to.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 158.

The Law Officers of the Crown to Earl Russell.—(*Received June* 1.)

My Lord,
Lincoln's Inn, May 30, 1865.

WE are honoured with your Lordship's commands signified in Mr. Murray's letter of the 26th instant, stating that he was directed by your Lordship to transmit to us the accompanying despatch from the British Vice-Consul at Memel, dated the 22nd instant, requesting to be furnished, for the use of the Crown Prosecutor of that city, with information as to whether the criminal laws of England and Prussia agree in certain specified points; and Mr. Murray was pleased to request that we would furnish your Lordship with our opinion thereupon at our earliest convenience.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That the criminal law of England agrees substantially with that of Prussia upon the points referred to, except that the penalties affixed in this country to the offences in question differ in some respects from those under the Prussian law.

1. By statute 24 and 25 Vict., cap. 97, sec. 3, the offence of "setting fire to any building with intent thereby to injure or defraud any person" is a felony, punishable by penal servitude for life (or with less punishments within certain limits according to the discretion of the Court).

2. By section 7 of the same statute the offence of unlawfully and maliciously "setting fire to any matter or thing being in, against, or under any building, under such circumstances that if the building were thereby set on fire, the offence would amount to a felony," is also a felony, punishable with penal servitude for any term not exceeding fourteen years (or with certain minor punishments).

3. By section 43 of the same Act, "Whosoever shall unlawfully and maliciously set fire to, or cast away, or in anywise destroy any ship or vessel with intent thereby to prejudice any owner or part owner of such ship or vessel, or of any goods on board the same, or any person that has underwritten or shall underwrite any policy of insurance upon such ship or vessel, or on the freight thereof, or upon any goods on board the same," is also guilty of felony, and punishable with penal servitude for life (or with less punishments within certain limits, according to the discretion of the Court).

4. By the statute 24 and 25 Vict., cap. 100, sec. 13, "Whosoever shall set fire to any ship or vessel, or any part thereof, or any part of the tackle, apparel, or furniture thereof, or any goods or chattels being therein, or shall cast away or destroy any ship or vessel, with intent in any of such cases to commit murder," is guilty of felony, punishable with penal servitude for life (or with certain less punishments, according to the discretion of the Court).

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If the intent of taking life by any such act is actually accomplished, or if (without such intent) life is actually taken in the course of the commission of a felony, the offence is murder, and punishable with death.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 159.

The Queen's Advocate to Earl Russell.—(*Received October* 14.)

My Lord, *Doctors' Commons, October* 14, 1865.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 4th instant, stating that he was directed to transmit to me a note dated the 27th ultimo, which has been received from the Prussian Ambassador at this Court relative to the detention of the merchant-vessel "Falk" or "Bacchante" by order of the Vice-Admiralty Court at Hong Kong. That it would appear that this vessel, while sailing under Danish colours, was captured by a Prussian ship of war in the Gulf of Pecheli, and brought into the harbour of Tien-tsin, where she was sold to Messrs. Alisch and Co., and provided with Prussian papers. That on her arrival in Hong Kong an embargo was laid on her by the British Vice-Admiralty Court there at the suit of the Danish Consul and of the former owner, Mr. Charles Karberg, of Sonderberg; and notwithstanding the protest of the Prussian Consular Agent, was adjudicated by the same Court to the original owner, while the purchasers were condemned in costs. That Count Bernstorff protests against the legality of these proceedings, and denies the competency of the Vice-Admiralty Court to act in the matter, and demands that Messrs. Alisch and Co. may be indemnified for any loss they have suffered in consequence.

Mr. Hammond was also pleased to transmit, for our further information, a letter dated the 26th August from the Colonial Office, inclosing the report of the Governor on the correspondence which he had had on the subject; and to request that I would take these papers into consideration, and inform your Lordship what course should be taken by Her Majesty's Government in this matter.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That the question appears to be, whether the British Court of Admiralty at Hong Kong had, or had not, jurisdiction in this matter; and not whether it exercised that jurisdiction properly, or, in other words, whether it rightly applied the laws to the facts placed in evidence before it. I am of opinion that the Court has jurisdiction; and I have no doubt that the High Court of Admiralty in England would have entertained such a suit in similar circumstances, though it is very true that there are judgments to be found in which the Court has expressed a reluctance to entertain such suits, and in the exercise of its discretion has required the consent of the Consuls of both nations before it adjudicated on a suit between foreigners. But even in these cases the Court has never denied its jurisdiction, but, inasmuch as what are called "causes of possession" between foreigners sometimes depend upon *Foreign Statute Law*, has been unwilling to decide upon them. It is to be remarked that this was not a case of that kind. The Court of Admiralty exercises its jurisdiction *in rem*, and administers the *jus gentium*, as well as the particular law of its own country. The cases of salvage and wages between foreigners are familiar instances. It is to be observed, that if the "Falk" had been an English vessel, there could, of course, be no doubt whatever that the Court would have heard the case, whether the Prussian defendant submitted or not to the jurisdiction. In this case the Danish claimant, both personally and by his Consul, claimed the possession of a ship which was in British waters, and of which he said he had been wrongfully dispossessed. The Court of Admiralty had certainly jurisdiction over the *res*, and was bound, I think, to exercise it on the application of the Dane who invoked it, just as much as it would have been if the claimant had happened to be an Englishman. It is, of course, competent to the Prussian Government to refuse to recognize within their own territorial limits, however inconsistent with usual comity, the authority of the sentence of the British Court, but within the dominions of Her Majesty that sentence must take effect.

I think, therefore, that the course that Her Majesty's Government ought to pursue, is to represent to the Prussian Ambassador that the British Courts of Admiralty do take cognizance of suits between foreigners when the *res* over which they exercise their authority is within British territory.

That in such case they administer the *jus gentium*, and that the consent of the foreign Consul is not necessary to found their jurisdiction.

That Her Majesty's Government have, therefore, no more power to interfere with the authority of the Judge in this case than they would have if the suit had been between one of Her Majesty's subjects and a foreigner, or between two of Her Majesty's subjects.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 160.

The Queen's Advocate to Earl Russell.—(*Received November* 4.)

My Lord, *Doctors' Commons, November* 3, 1865.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 30th ultimo, stating that he was directed to transmit to me a despatch from Her Majesty's Ambassador at Berlin (No. 238), forwarding a despatch from the Consul at Königsberg, in which the latter raises the question whether he is entitled or bound to celebrate a marriage between a Christian British subject and a Jewish lady, a subject of the King of Prussia. That Lord Napier also draws attention to two other questions connected with this subject; and Mr. Hammond was pleased to request that I would take these papers into consideration, and furnish your Lordship with my opinion as to the instructions which should be addressed to the Consul with regard to this matter.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I am of opinion that, under the provisions of the first section of the 12 and 13 Vict., cap. 68, the Consul is required to marry two persons, whatever their religious faith may be, one of whom is a British subject, if there be no lawful impediment, according to the law of England and the statute aforesaid, to such marriage.

That I do not think the Consul is "bound," though he is "entitled," to celebrate such marriage if, by so doing, he not having the privileges of a Diplomatic Minister or Agent, subjects himself to penalties or punishment in the foreign State in which he is Consul, and of which one of the parties to be married is a subject. I am of opinion that a marriage so solemnized would be valid throughout the dominions of Her Majesty, but would not necessarily be valid in the State in which it was celebrated or in any third country.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 161.

The Queen's Advocate to the Earl of Clarendon.—(*Received December* 5.)

My Lord, *Doctors' Commons, December* 4, 1865.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 30th ultimo, stating that he was directed by your Lordship to transmit to me the accompanying despatch from Her Majesty's Ambassador at Berlin (No. 274), requesting an opinion as to the claim to be considered as a British subject, and as such to receive a British passport, of a M. Renkewitz, an individual who was born in the British Colony of Tobago, of a Saxon father and a Danish mother, and has not resided in British territory since he was seven years of age; and Mr. Hammond was pleased to request that I would furnish your Lordship with my opinion as to the answer which should be returned to the Ambassador on this subject.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That having regard to the facts that M. Renkewitz is, strictly speaking, in the eye of the law, a subject of Great Britain, and that no other State at this moment lays claim to his allegiance, I think his petition to receive a British passport may properly be granted.

I have, &c.
(Signed) ROBERT PHILLIMORE.

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River Plate.

No. 162.

The Queen's Advocate to Earl Russell.—(*Received March* 8.)

My Lord, *Doctors' Commons, March* 8, 1865.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 7th instant, stating that he was directed by your Lordship to state to me that in consequence of hostilities now directed against the Republic of Uruguay by a party in insurrection against the Government of the Republic, aided by the Brazilian land and sea forces, the Government of Brazil having also commenced hostilities against Uruguay, which act on their part has produced a declaration of war against Brazil on the part of the Government of Paraguay, there may be reason to apprehend that the rights of navigation secured to Great Britain in the River Plate and adjoining rivers by the Treaties of which copies were inclosed, [*sic*] Mr. Hammond was to request that I would acquaint your Lordship whether Her Majesty's Government would be justified in instructing the British Admiral in the Plate to see that the privileges granted by those Treaties to Great Britain are not infringed.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That the Treaty to which I am referred, between Her Majesty and the Argentine Confederation, provides by its VIth Article that if a "war should break out between any of the States, Republics, or Provinces of the River Plate or its confluents, the navigation of the Rivers Parana and Uruguay shall remain free to the merchant flag of all nations excepting in what may relate to munitions of war, such as arms of all kinds, gunpowder, lead, and cannon-balls."

The Treaty between Her Majesty and the Republic of Paruguay, to which I am also referred (which I therefore conclude to be in force, though by Article XVI it would have expired after the lapse of seven years, that is, in 1860), contains no provision similar to that which is to be found in the Treaty with the Argentine Confederation.

The States now at war I understand to be the State of Uruguay and the State of Paraguay, and the Empire of Brazil. It does not appear that the States of the Argentine Confederation are at present engaged in this war.

On the whole, I am of opinion that in the present state of things Sir C. Hotham should be instructed generally to see that the free navigation of the River Plate by British merchants be not interfered with, at the same time to cause strict injunctions to be given to the masters of British vessels not to carry any munitions of war of any description to any belligerent, accompanied by a warning that if they do so they may render themselves liable to the exercise of belligerent rights, and the penalties incident to an infringement of neutrality.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 163.

The Queen's Advocate to Earl Russell.—(*Received March* 13.)

My Lord, *Doctors' Commons, March* 13, 1865.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 11th instant, stating that with reference to my Report of the 8th instant respecting the course to be taken by the British Admiral for securing the observance of the rights of navigation in the River Plate and adjoining rivers, granted by Treaty to Great Britain, he was directed by your Lordship to state that your Lordship concurs in the suggestion in the inclosed letter from the Admiralty, that a notice should be inserted in the "Gazette" warning British merchants trading in the River Plate of the liabilities they incur in the present state of affairs by carrying munitions of war to any of the belligerent Powers; and Mr. Hammond was to request that I would prepare a notification accordingly for insertion in the "Gazette."

In obedience to your Lordship's commands I have prepared, and herewith submit, a draft of a notification which I think proper and sufficient for insertion in the "London Gazette."

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 164.

The Queen's Advocate to Earl Russell.—(*Received April* 3.)

My Lord, *Doctors' Commons, April* 3, 1865.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 24th ultimo, stating that the claims of British subjects on account of losses arising out of the non-admittance into the port of Buenos Ayres of the "Cestus," and other British vessels, in 1845, in consequence of General Rosas' Decree of the 13th of February of that year, formed the subject of my predecessor's Report of the 5th November, 1861, and of previous correspondence with the Foreign Office. That on the 22nd of February, 1858, all the documents connected with these claims were sent, together with the papers respecting other British claims on Buenos Ayres, to Mr. Christie, then Her Majesty's Chargé d'Affaires at that place, in order to assist him in bringing about an arrangement for their settlement. That from the accompanying correspondence I should perceive that it has been agreed between Mr. Thornton, Her Majesty's Minister at Buenos Ayres, and the Argentine Government, to refer to the arbitration of a friendly Power the question involved in the claims arising out of General Rosas' Decree above referred to. Mr. Hammond was also directed by your Lordship further to transmit a despatch from Mr. Thornton (No. 4, January 24), stating that it has been agreed that the President of Chile should be invited to arbitrate, and inclosing a case for submission to the arbiter; and was pleased to request that I would take these papers into consideration, and report to your Lordship my opinion whether the case drawn up by Mr. Thornton is fit and proper to be laid before the arbiter on behalf of Her Majesty's Government. The Conventions of November 24, 1849, and of August 21, 1858, alluded to in the inclosed correspondence, were also inclosed for convenience of reference.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I am of opinion that the case drawn up by Mr. Thornton is fit and proper to be laid before the arbiter on behalf of Her Majesty's Government.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 165.

The Queen's Advocate to Earl Russell.—(*Received April* 20.)

My Lord, *Doctors' Commons, April* 20, 1865.

I AM honoured with your Lordship's commands signified in Mr. Murray's letter of the 13th instant, stating that he was directed by your Lordship to transmit to me a letter, dated the 29th ultimo, from M. Balcarce, the Argentine Minister at the Court of St. James, claiming compensation for M. Pedro Justo, an Argentine citizen, for the loss of goods on board the British ship "Caledonia," in the year 1845, in consequence of that vessel having been burnt by the orders of the British Admiral. A letter from the Admiralty, dated the 11th instant, inclosing a copy of a Report on this subject by the Registrar of the High Court of Admiralty, was also inclosed; and Mr. Murray was pleased to request that I would take these papers into consideration, and inform your Lordship of my opinion as to the reply which should be returned to M. Balcarce's application.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I am of opinion that an answer should be sent to the Argentine Minister to the following effect. That your Lordship is advised that M. Pedro Justo has no claim for compensation, according to the recognized principles of international law, for the burning of his goods on board the British ship "Caledonia" in 1845, inasmuch as at that time Her Majesty was waging war with the Argentine Republic, and the destruction of

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the British ship "Caledonia" was an act rendered necessary by the operations of that war; moreover, the goods for which compensation is claimed belonged to the belligerent with whom Her Majesty was then at war: and on these grounds, irrespective of the delay of twenty years (though that is a circumstance not entirely to be put out of the question), it is clear that the claim of M. Pedro Justo cannot be admitted by Her Majesty's Government.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 166.

The Queen's Advocate to Earl Russell.—(Received May 15.)

My Lord, *Doctors' Commons, May 15, 1865.*

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 13th instant, stating that with reference to my Report of the 9th instant he was directed by your Lordship to transmit to me a draft of the reply which it is proposed to return to M. Candido Bareiro's observations on the conduct of the Argentine Government in allowing a Brazilian squadron to pass up the Paraná; and Mr. Hammond was pleased to request that I would inform your Lordship whether I consider the proposed note to M. Bareiro to be right and proper.

In obedience to your Lordship's commands I have the honour to report—

That I am of opinion that the reply which it is proposed to return to the observations of M. Candido Bareiro is right and proper to be sent.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 167.

The Queen's Advocate to Earl Russell.—(Received May 26.)

My Lord, *Doctors' Commons, May 25, 1865.*

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 18th instant, stating that with reference to my Report of the 20th ultimo on the claim of Don Pedro Justo to compensation for the loss of his property destroyed on board the British vessel "Caledonia" in the River Plate in the year 1846, he was directed by your Lordship to transmit to me a further representation on the subject dated the 15th instant, which has been received from the Argentine Minister at this Court; and to request that I would take the same into consideration, and inform your Lordship whether the present statement of M. Balcarce leads me to alter the opinion already expressed by me on this matter. The former papers in this case were transmitted for convenience of reference.

In obedience to your Lordship's commands I have the honour to report—

That the present statement of M. Balcarce does not suggest any grounds which induce me to alter the opinion which I had the honour to express in my former Report.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 168.

The Queen's Advocate to Earl Russell.—(Received June 8.)

My Lord, *Doctors' Commons, June 8, 1865.*

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 6th instant, stating that he was directed by your Lordship to transmit to me therewith despatches from Her Majesty's Chargés d'Affaires at Buenos Ayres and Monte Video, together with a letter from the Admiralty,* relative to notifications which have been issued of a blockade of the ports of Paraguay by the naval forces of Brazil and the Argentine Republic; and Mr. Hammond was to request that if, after taking these papers

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* Mr. Lettsom, No. 36; Mr. Thornton, No. 29; Admiralty, June 5, 1865.

No. 168*.

The Queen's Advocate to Earl Russell.—(Received October 20.)

My Lord, *Doctors' Commons, October 19, 1865.*

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 12th instant, stating that he was directed by your Lordship to transmit to me the accompanying despatches from Her Majesty's Minister in the River Plate (Nos. 60 and 66) relative to the expedition of Her Majesty's ship "Doterel" up the Rivers Paraná and Paraguay, and inclosing copies of a correspondence between himself and Senhor Octaviano, who is on a special mission from Brazil to the Republic of Buenos Ayres, as to the alleged infringement of Brazilian belligerent rights by the commander of Her Majesty's ship "Doterel;" that in transmitting to me further papers, as marked in the margin,* in connection with this case Mr. Hammond was to state to me that the despatch No. 61 from Mr. Thornton, and referred to in his despatch No. 66 of the 24th of July, has been mislaid, and could not therefore be transmitted to me.

Mr. Hammond was also to inclose a note verbale, dated 29th September, which has been communicated to Earl Russell, by the French Secretary of Embassy at this Court, relative to the pretensions of Brazil and her allies to prevent foreign ships of war from passing up the River Paraná during the hostilities with Paraguay; and Mr. Hammond was to request that I would take all these papers into consideration and furnish your Lordship, at my earliest convenience, with my opinion thereupon.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That the belligerent right of bockade claimed by Brazil is, in the circumstances of the case, subject to very peculiar considerations.

In the first place, the free navigation of the River Plata and of its confluents, especially the Paraná, by European merchant-vessels, has been the subject of frequent negotiations between the States of South America and Europe.

In the next place, the Argentine Republic is the ally of Brazil in the present war against Paraguay; and it is clear, I think, that the Treaty obligations, whatever they may be, of that Republic with neutral States, are binding upon her, notwithstanding that alliance, and it is difficult to see how her ally can escape from these obligations while the war is carried on jointly by both States.

Now, by the VIth Article of the Treaty between the Argentine Confederation and Great Britain (10th July, 1853) it was provided that, "if a war should break out between any of the States, Republics, or Provinces of the River Plate, or its confluents, the navigation of the Rivers Paraná and Uruguay shall remain free to the merchant flag of all nations, excepting in what may relate to munitions of war, such as arms of all kinds, gunpowder, lead, and cannon balls."

I do not agree with Senhor Octaviano (Inclosure 5 in Mr. Thornton's No. 66 of the 24th July) that because Paraguay has declared war against Brazil and the Argentine Republic, the *casus fœderis* has not arisen, or that there is any absurdity incident to such a construction; and I am by no means certain that an *innocent* merchant-vessel, passing up these waters, could have been lawfully seized even by a Brazilian ship of war.

In making these observations I have not forgotten the cases decided by Lord Stowell relatively to the blockade of the Elbe and the Weser, which Senhor Octaviano, the Brazilian Minister, appears to have had present to his mind (the "Spes" and the "Irene," 5 Rob., p. 78; the "Maria," 6 Rob., p. 201). Even in these cases Lord Stowell lamented and softened as much as possible the severity of the rule which he was applying; but the circumstances with respect to the blockade of these rivers materially differ from those which relate to the waters of the La Plata.

I do not think it a certain inference from the before-mentioned Article of the Treaty that neutral ships of war were also allowed in time of war to pass up the river, though such is the inference unhesitatingly drawn by the French Minister (Baron Baude, in his note verbale, 29th September, 1865).

But, having regard to the exceptional circumstances stated in these papers and to the very peculiar considerations applicable to the exercise of belligerent rights in the waters of the La Plata, I am of opinion that the commander of the "Doterel" was not guilty of any violation of international law in passing up these waters for the purpose of saving the lives of neutral British subjects which were in great peril, and who had taken up their abodes and established their commerce under the faith of Treaties, in towns situate in these

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* Admiralty, August 4; to Admiralty, August 8; Admiralty, September 2; to Mr. Thornton, No. 7; Mr. Thornton, No. 80, 1865.

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waters, it not being denied that he carefully abstained from taking any part whatever in the war which was being carried on, and it not being alleged on the part of Brazil that he rendered any service whatever to her enemy.

Upon the whole question I will observe that it may, in my opinion, be fairly stated, as a proposition consistent with international law, that the right of the neutral subject to protection is as strong as the right of the belligerent to blockade; and this belligerent right is not violated by the passage of a ship of war belonging to a neutral State up a river, for the sole purpose and with the sole consequence of saving the lives of the subjects of that State, in those exceptional circumstances which render it very probable, from the condition of the belligerents, that those lives would otherwise be sacrificed; though, as a matter of comity, convenience, and respect for the belligerent flag, it would be proper that this should be done, if possible, with the consent of the blockading Power, as I venture to hope it will be on the present occasion.

I have, &c.
(Signed) ROBERT PHILLIMORE.

into consideration, I should be of opinion that any notice to this effect should be inserted in the "Gazette," I would prepare and transmit a draft of the same to your Lordship.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I am of opinion it would be proper to notify in the "Gazette" the alleged intended blockade; but from the peculiar wording of the despatches I have thought it best not to set out at length, as is usually done, the letter or the decree announcing such blockade, but merely to notify the purport and effect of them. I have also thought it more proper to confine such notification to a blockade by the naval forces of Brazil, without including the blockade asserted by the Argentine Confederation, as to the effective character of which there appears to be reason to doubt.

I have, &c.
(Signed) ROBERT PHILLIMORE.

Inclosure in No. 168.

RIVER PLATE.

Notification of intended Blockade of the Ports and Coast of Paraguay.

Foreign Office, June 7, 1865.

IT is hereby notified that Earl Russell, K.G., Her Majesty's Principal Secretary of State for Foreign Affairs, has received intelligence from Her Majesty's Minister at Buenos Ayres and from Her Majesty's Chargé d'Affaires at Monte Video to the purport and effect that the ports and coast of the Republic of Paraguay were about to be blockaded by a Brazilian naval force which, on the 24th of April last, was on its way up the Paraná; and further that the ports in the Province of Matto Grosso are closed to all vessels.

R. P.

No. 169.

The Queen's Advocate to Mr. Hammond.—(*Received November* 10.)

(Private.)
My dear Sir, 5, *Arlington Street, London, November* 10, 1865.

THE notification of March 14 did, in effect and substance, give notice of a blockade, *regard being had to the Treaty.*

The notification of June 9 mentioned the blockade in express terms.

I am much obliged by your note, and return the inclosure.

Yours very truly,
(Signed) ROBERT PHILLIMORE.

No. 170.

The Queen's Advocate to the Earl of Clarendon.—(*Received December* 2.)

My Lord, *Doctors' Commons, December* 2, 1865.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 21st ultimo, stating that he was directed by your Lordship to transmit to me a despatch with its inclosure from Her Majesty's Acting Chargé d'Affaires (No. 5), forwarding a copy and translation of a law recently sanctioned by the Argentine Congress in regard to the administration of intestate estates in that Republic.

For my convenience Mr. Hammond also inclosed all the previous correspondence, as marked in the accompanying volumes, which has passed on this subject; and was pleased to request that I would take these papers into consideration, and furnish your Lordship with any observations I may have to offer thereupon.

In obedience to your Lordship's commands I have the honour to report—

That I have perused all the papers relating to this subject in the thirteen volumes which accompany the letter of Mr. Hammond. The result of the whole correspondence and negotiations on the subject is shortly as follows:—

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The Treaty of 1825 between Great Britain and the Argentine Confederation provided, by the 13th clause, that British Consuls might appoint curators to the effects of British subjects dying intestate, "sin intervencion alcuna" of the local authorities.

Upon the strength of these words, British Consuls for a long time—about thirty years—appear to have been allowed, upon various occasions, to treat British property of this kind as exempt altogether from the jurisdiction of the local authorities; but at last the Argentine Confederation demurred to this construction, and contended that an undue latitude was given to these words, which only meant that the State should not arbitrarily interfere to appropriate in any way such property.

The British Consul, however, maintained the contrary opinion, and appealed also to long usage as confirming it.

The matter was carefully considered by the Foreign Office, and the opinion of the Queen's Advocate several times taken upon it.

As to the usage, it appeared, in the language of Mr. Christie's despatch of the 31st March, 1858, that "neither the claim of Buenos Ayrean Courts to exercise jurisdiction in cases of succession to British subjects, nor the exercise of the jurisdiction, is new."

As to the language of the clause of the Treaty, the opinion of Her Majesty's Chargé d'Affaires accredited to the Confederation coincided with the opinions of my predecessor in office and of myself, namely, that the "intervencion" excluded was not the operation of the ordinary legal authorities, but the let or hindrance of extraordinary action by the State; and Her Majesty's Government adopted and acted upon this opinion.

From time to time, however, a new law upon the subject of intestate foreigners' effects was proposed or suggested by the various Governments of the Republic, and it was intended that further privileges should be conferred on foreigners, but with the condition of reciprocity on the part of the State to which they belonged.

As this condition was impracticable in England, we endeavoured to obtain, in lieu of the reciprocity clause, either the "most favoured nation clause" or a reciprocity clause qualified "so far as English laws and institutions would permit;" and at one time there appeared to be a reasonable hope of obtaining the adoption of the former of these alterations by the Government of the Confederation. But in the political vicissitudes of this Confederation, Ministers unfavourable to any condition less stringent than absolute reciprocity have obtained the ascendancy, and the result is the present law.

There is no doubt that the effect of it is to place British subjects on a less favourable footing than other foreigners,—but this is because British law places all foreigners (including Buenos Ayreans) on a less favourable footing than they are placed by the terms of this law, and does not admit, by her common law, as other foreign States do, the principle of reciprocity.

I am of opinion that no ground of complaint for any violation of international law is laid by the enactment of this statute.

Probably the administration of justice in this Republic deserves the censure which I perceive is cast upon it in the course of the correspondence on this subject; but British subjects who make and leave fortunes in the territories of this Republic are aware of this fact, and cannot claim, upon any general principles of international law, an entire exemption from the law of the place in which they reside and in which their effects are situated.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 171.

The Queen's Advocate to the Earl of Clarendon.—(Received December 8.)

My Lord,
Doctors' Commons, December 8, 1865.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 6th instant, stating that he was directed by your Lordship to transmit to me therewith, with its several inclosures, a despatch from Her Majesty's Chargé d'Affaires at Monte Video (No. 83), giving an account of the state of affairs now existing between the Government of Monte Video and a company of householders who in 1845 advanced to that Government a sum of money to be repaid in 1848; that I should see by the concluding paragraph of Mr. Lettsom's despatch the difficulty in which he finds himself placed as to his own conduct in the matter on the date at which he wrote; and Mr. Hammond was pleased to request that I would take these papers into consideration, and report to your Lordship my opinion as to the nature of the instruction which should be addressed to Mr. Lettsom in reply.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I am of opinion that the decree of a Court of Justice founded upon the proposition that a subject is not bound by the law of his country because he protested against it is not to be received by any foreign State whose subject is injured thereby.

I agree with Mr. Lettsom that the sentence is plainly in opposition to the letter and spirit of Article VII of the Convention of 7th September, 1858.

The Government of Monte Video must in the circumstances of this case be constrained to redeem their solemn pledge embodied in a formal Convention, and confirmed by their Legislature, of protecting the British shareholders from the consequences of Signor Antonini's action.

It appears to me that the duty of Mr. Lettsom is confined to obtaining from the Government the redemption of this pledge, without regard to the motives which may induce the Government to do so.

I have, &c.
(Signed) ROBERT PHILLIMORE.

Russia.

No. 172.

The Queen's Advocate to Earl Russell.—(Received January 24.)

My Lord,
Doctors' Commons, January 23, 1865.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 14th instant, stating that he was directed by your Lordship to transmit to me therewith a correspondence between the Foreign Office and Her Majesty's Consul-General at Odessa and others regarding the alleged murder at that port of Captain Middleton; and to request that I would take these papers into consideration, and inform your Lordship whether, in view of the circumstances detailed in the inclosed correspondence, Her Majesty's Government can properly interfere in the matter, and if so, what steps they should take.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I am afraid there can be little doubt that this unfortunate person was murdered on the night on which he was on shore at Odessa. There are many circumstances in the evidence which point to this conclusion. The bad character of Gills' house, the proof that other persons had been robbed there, the fact that Captain Nelson took him there, the language and conduct of that person, the discrepancy between the statement of Gill and his wife as to the sobriety of Captain Middleton on that occasion, the fact that there was a quarrel of a serious character on that occasion, the broken window unsatisfactorily explained, the large sum of money which Captain Middleton was known to have about him not found upon him, the place in which he was found away from the natural place of embarkation, the nature of the wounds on his person, the general good character of the deceased,—all conspire to render it almost certain that he died by violence.

Against this inference, the facts that he had been in low spirits, and had written a dejected though very religious letter to his wife, suggesting, if any, a very remote possibility of suicide, are of very little avail.

There is much also which points to Captain Nelson as having been concerned in the robbery, if not in the murder; but I have the honour to express my agreement with the Secretary of State for the Home Department, that Her Majesty's Government have no legal power or authority to send Captain Nelson to be tried at Odessa according to the request, unfortunately tardy, of the Russian Acting Police-master Vicoff. It is true, as Mr. Waddington remarks, that there is nothing said in the depositions about the beating of Captain Middleton by Nelson in conjunction with the Gills; but probably subsequent

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evidence of this very important fact has been discovered, and I think that Her Majesty's Consul at Odessa should be instructed to forward to Her Majesty's Government any further evidence that may have been obtained since the Report of Mr. Zohrab; for, though at present there is certainly not evidence enough to warrant Her Majesty's Government in trying Captain Nelson in this country, further evidence might lead to different advice.

I have, &c
(Signed) ROBERT PHILLIMORE.

No. 173.

The Queen's Advocate to Earl Russell.—(Received February 1.)

My Lord, *Doctors' Commons, January* 31, 1865.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 27th instant, stating that he was directed by your Lordship to transmit to me the accompanying despatch and its inclosures from Her Majesty's Ambassador at St. Petersburgh (No. 21), respecting the wish of the British Factory to induce the Council of the Empire to revise the 6th section of the law for the naturalization of foreigners in Russia, which relates to children born after their parents had adopted Russian allegiance. Mr. Hammond was pleased to transmit the accompanying papers, as noted in the margin,* on the question of the nationality of foreigners; and to request that I would take these papers into consideration, and report to your Lordship my opinion as to the course it would be right and proper for Her Majesty's Ambassador to pursue.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That the wish of the British Factory to induce the Council of the Empire to revise the 6th section of the new Russian law for the naturalization of foreigners in Russia appears to me very reasonable, and one which Sir A. Buchanan should be instructed to further as much as possible. At the same time it is impossible to press upon the Russian Government the law of England as a complete reason for the concession which is desired.

It is true, indeed, that the present law of England would allow the Russian merchant to carry on his business in Great Britain without being naturalized, and so far the doctrine of reciprocity may be made available; but, on the other hand (and this brings me to the consideration of the second subject submitted to me), the law of England considers that allegiance, whether acquired by birth or by naturalization, is indelible, except, perhaps, in the case of a conflict of duty between the obligations of the naturalized foreigner to the State to which he originally belonged and Great Britain.

The questions propounded by Lord Napier in his despatch No. 319 must be answered as follows:—that the Russian may exercise wholesale and retail trade in England on the same footing as a British subject, with the exception that he cannot lease land or houses for a longer term than twenty-one years unless he be naturalized. That a Russian cannot, according to the theory of the law, put off the allegiance acquired by naturalization, though practically he would do so if he returned to his own country, except, perhaps, in a case of war between Russia and England.

I have, &c.
(Signed) ROBERT PHILLIMORE.

P.S.—It might be added that no pecuniary fine would be demanded from the Russian, on his returning to his own country, by the English law.

R. P.

No. 174.

The Queen's Advocate to Earl Russell.—(Received March 22.)

My Lord, *Doctors' Commons, March* 21, 1865.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 15th instant, stating that, with reference to my Report of the 23rd January last, he was directed by your Lordship to transmit to me therewith a despatch from Her Majesty's Consul-General at Odessa (No. 16, March 4), furnishing further evidence bearing upon the alleged murder of Captain Middleton; and to request that I would report to your Lordship my opinion whether any and what steps can be taken thereon. The former papers were also annexed.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That the evidence now submitted to me may be considered as establishing the fact that there was a violent quarrel at Gill's house on the night of the murder, and that Captain Middleton was beaten. If this fact be established, the Gill's have sworn falsely as to this part of the case. There is, however, no evidence at present that any person accompanied Captain Middleton when he left, whether by compulsion or by his own free will, the house. The evidence tends to show that the Gills did not leave the house that night after Captain Middleton was gone; and there is no proof at present that either Captain Nelson or Sherwood did leave the house. Sherwood has been most improperly allowed by the Russian police to leave Odessa. He is said to be now at Constantinople. I have again read over his evidence, laid before me on a former occasion, and I feel satisfied that he knows much more than he has stated.

Though these depositions increase the probability that Captain Middleton was murdered, there is not in them, or in the papers now before me, evidence upon which Captain Nelson or any other person could be found guilty of the murder.

I have, &c.
(Signed) ROBERT PHILLIMORE.

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* Lord Napier, Nos. 186, 207, 319; Baron Brunnow, July 15; Home Office, August 13, 1864.

No. 175.

The Queen's Advocate to Earl Russell.—(Received June 7.)

My Lord, *Doctors' Commons, June* 7, 1865.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 2nd instant, stating that with reference to my Report of the 26th of October, 1863, on the subject of the claim of Messrs. Douglas and Condiff for compensation on account of the outrage committed on their persons and property by certain persons in the district of Kieff, he was directed by your Lordship to transmit to me the accompanying despatch from Her Majesty's Ambassador at St. Petersburgh (No. 216), together with the previous correspondence therein referred to, and to request that I would take these papers into consideration, and report to your Lordship my opinion as to the instructions which should be given to Sir A. Buchanan in regard to Messrs. Douglas and Condiff's claim.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I am of opinion that Her Majesty's Representative at St. Petersburgh should be instructed that Her Majesty's Government agree with him in the view which he has taken of the inadequacy of the compensation for outrages now proved and admitted of a very gross character, under the sanction of public authority, against peaceable and unoffending British subjects. That the case seems to have been very properly laid, both as to the letter and the spirit, before Prince Gortchakoff. The precise amount to be demanded should, I think, be left to the discretion of Her Majesty's Representative; but the difference between 5 roubles (the sum awarded) and 1,000 and 2,000 roubles, the sum which appeared fitting to Lord Napier, is very wide, and I should think that 500 roubles for Mr. Condiff and 1,000 for Mr. Douglas might be not improperly demanded by Her Majesty's Government.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 176.

The Law Officers of the Crown to Earl Russell.—(Received July 11.)

My Lord, *Doctors' Commons, July* 11, 1865.

WE are honoured with your Lordship's commands signified in Mr. Murray's letter of the 27th of June last, stating that with reference to the Queen's Advocate's Report of the 21st of March last respecting the case of Captain Middleton, who is supposed to have been murdered at Odessa, he was directed by your Lordship to transmit to us all the

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correspondence which has ensued on this subject, together with a despatch from Her Majesty's Consul-General in that city (No. 35, June 6), suggesting that as Captains Nelson and Sherwood, who are suspected to have been concerned in the murder, cannot be sent to Odessa for trial, their evidence should be taken, and copies thereof sent to Odessa for communication to the Russian police; and Mr. Murray was pleased to request that we would furnish your Lordship with our opinion as to the steps which may properly be taken in this matter.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we are of opinion the suggestion of Her Majesty's Consul-General at Odessa may be properly acted upon, viz., that the evidence of Messrs. Nelson and Sherwood (if they choose to give it) should be taken, and communicated to the Russian police at Odessa; but that there is no power to *compel* them to give evidence.

I have, &c.
(Signed) ROBERT PHILLIMORE.
Also for the Attorney and Solicitor-General.

No. 177.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received November* 29.)

Lincoln's Inn, November 29, 1865.

My Lord,

WE were honoured with the commands of Earl Russell, signified in Mr. Murray's letter of the 28th of October ultimo, stating that he was directed by his Lordship to transmit to us the accompanying memorandum, which was delivered to his Lordship by the Russian Ambassador at this Court, respecting the course pursued by the Courts of law in this country in a suit between the heirs at law of the late Sir James Wylie and the executors appointed in a will made by him in Russia in 1852; and to request that we would take this memorandum into consideration and favour Lord Russell with our opinion as to the answer which should be returned thereto, and also with any observations which we might have to offer thereupon.

In obedience to the commands of Earl Russell, we have taken this matter into consideration, and have the honour to report—

That we understand the Russian Government to complain, first, that the will of the late Sir James Wylie has been practically set aside by what they consider the false construction placed upon it by the English tribunals; and, secondly, that in taking upon themselves to construe that will at all, and to decide upon the beneficial title to the English moveable property of the testator, these Courts exceeded their jurisdiction, and violated the rules of international comity.

It would, we think, be a sufficient answer to this complaint to say, that the suit of Enohin *v.* Wylie was one which came before our civil tribunals at the instance of private parties in the ordinary course of law; that the executors of Sir James Wylie, who defended it in the usual way, must (like all other suitors in the Courts of every country) abide by the result of the litigation in which they have been engaged; and that our Courts did not proceed upon the principle of refusing to give effect to the will of Sir James Wylie, either because he was domiciled in Russia, or for any other reason: but admitting that full effect was to be given to that will, according to its true construction, and that, in this as in all other respects, the law of the domicil was to be regarded, they came to the conclusion (after hearing and carefully considering evidence as to that law) that the will contained no dispositive words applicable to the English property, which, therefore, they adjudged to the testator's next of kin. Against such a decision (even if the Russian Government could show good grounds for their opinion that the words ought to have received a different construction), the Government of this country has no power, and is clearly under no obligation, to grant relief.

But, inasmuch as the main ground assumed by the Russian memorandum is, that by international comity it was incompetent for the Courts of this country to take cognizance of this case at all, even as to the moveable property in Great Britain (unless for the sole purpose of handing it over to the Russian executors, to be administered by them in Russia), and that the next of kin ought to have been remitted to the Russian Court, there to litigate all questions as to the proper construction of the will and the proper distribution of the English property, we think it necessary to state that this proposition appears to us to be entirely opposed to the settled law and usage of this country; nor can it, we believe,

be shown that there is any well-established and universally received rule of international comity at variance with our own law and usage in this respect.

It is undoubtedly true that the late Lord Chancellor, when delivering his opinion in the House of Lords in this case of Enohin *v.* Wylie, did make use of the expressions quoted in the memorandum. But the Lord Chancellor has no greater authority in the House of Lords than any other Lord who takes part in a judgment of that House; and on this particular point the two other Lords who concurred in that judgment distinctly dissented from Lord Westbury's remarks, which were, indeed, opposed to a former express decision of the House of Lords itself, in a case of Preston *v.* Melville (reported in Clarke and Finnelly's Reports, vol. viii, p. 1).

In that case of Preston *v.* Melville an order had been made by the Court of Session in Scotland directing an English administrator, who had in his hands funds belonging to the English personal estate of a testator domiciled in Scotland, to pay over those funds to the Scotch testamentary trustees for the purpose of being administered by the Scotch Courts, being the Courts of the domicil. The House of Lords upon appeal reversed this Order, and Lord Cottenham (delivering their unanimous judgment) said,*—

"By the law of England the person to whom administration is granted by the Ecclesiastical Court is by statute bound to administer the estate, and to pay the debts of the deceased. The letters of administration under which he acts direct him so to do, and he takes an oath that he will well and truly administer all and every the goods of the deceased, and pay his debts so far as the goods will extend, and exhibit a full and true account of his administration. That such are the duties of an executor or administrator acting under a probate or letters of administration in this country is certain, although the testator or intestate may have been domiciled elsewhere. The domicile regulates the right of succession, but the administration must be in the country in which possession is taken and held under lawful authority of the property of the deceased."

Lord Cranworth in the case of Enohin *v.* Wylie declared his adherence to the principles of that judgment, saying,†—

"The rules of law applicable to such a case are, as I conceive, well established; personal property in this country belonging to a foreigner or to a British subject domiciled abroad can only be obtained in the event of his death through the medium of a representative in this country. *The duty of administration is to be discharged by the Courts of this country*, though in the performance of that duty they will be guided by the law of the domicile. This was the mode in which the law was laid down by Lord Cottenham in this House in the case of Preston *v.* Lord Melville."

Lord Chelmsford in the same case said,‡—

"The Appellants farther insisted that the porbate having given the executors the right to receive the stock of the English funds, the Court of Chancery ought to have ordered it to be transferred to them, to be disposed of according to the directions of the Russian tribunals. But the fund is within the jurisdiction of the Court, the rights of the parties, according to the law of the domicile (assuming an intestacy), have been ascertained, the next of kin are, for the most part, in this country, and why under these circumstances the property should be remitted to the forum of the domicile, in order that it should be sent back again to be distributed, and why the Court should be incompetent to act effectively, and finally, in the suit which has been instituted by decreeing a distribution amongst the several persons entitled, and transmitting to Russia the shares of the next of kin resident there, I am unable to comprehend."

With all due deference to the (generally) high authority of Lord Westbury, we must say that in this case we find it opposed to higher authority, as well as the general practice of our Courts, and we are not aware of any British authority which can be cited in support of it. His Lordship (followed in this respect by the Russian Memorandum) seems to have regarded it as a necessary consequence of the admitted principle that the succession to moveable property is regulated by the *law* of the domicil, that all such property must therefore be handed over to the executors designated by that law, in order to be brought together *in the country* of the domicil, and adjudicated upon in case of contention by the Courts of that country only. But such a consequence has not heretofore been regarded by the Courts of this country as following from that principle, and, as was pointed out by Lord Chelmsford, its universal adoption might lead in many cases to very unjust and inconvenient results. The difficulty of receiving evidence of the law of the domicil, and of applying and acting upon that law is, in such cases no greater than in others of still more frequent occurrence, in which contracts which have been made or rights which have been acquired under the law of one country (and which are therefore governed by that law) afterwards become the subject of litigation before the Courts of another country in which a different law prevails. The comity of nations in all such cases requires that the Court in which the contest arises should ascertain the foreign law to the best of its power, and should adjudicate to the best of its power according thereto; but not that it should refuse cognizance of the cause, and remit the parties to litigate it before any foreign Court.

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* Preston *v.* Viscount Melville, 8 Cl. and Fin., 12.

† Enohin and others *v.* Wylie and others, 10 House of Lords Reports, pp. 18 and 19.

‡ Ibid., pp. 23 and 24.

We think, therefore, that nothing has been done in the case of Sir James Wylie's succession to justify the remonstrance of the Russian Government, or to render necessary any new Convention in order to prevent the recurrence of similar cases.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 178.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received December* 30.)

My Lord,
Lincoln's Inn, December 29, 1865.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 13th instant, stating that he was directed by your Lordship to transmit to us the accompanying note from the Russian Minister at this Court containing further observations respecting the case of the will of the late Sir James Wylie in reply to a Memorandum which was transmitted to his Excellency on the 2nd instant, founded on our Report of the 29th ultimo, and to request that we would furnish your Lordship with any observations we may have to offer on Baron Brunnow's note.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That the further observations of Baron Brunnow do not appear to us to require any reply from your Lordship.

Upon the abstract question whether it would be convenient for the tribunals of the country in which any question depending upon foreign law (whether by reason of domicil, in cases of succession, or otherwise) is litigated, to decline jurisdiction, opinions may possibly differ.

If, on the one hand, there is (as Baron Brunnow suggests) some serious risk of an erroneous interpretation of the foreign law by those tribunals, it is (on the other hand) very difficult to see how complete justice could in many cases be administered and fraud prevented, if the courts of the country in which the property is actually situate, and in which the persons bound to administer it according to foreign law also reside, were to decline jurisdiction: for those Courts could not practically compel such persons to transfer themselves, or to remove the property, to the foreign country, in order to litigate all questions of title there; and the Courts of the foreign country would generally be unable adequately to protect the rights of those interested, while the property itself and the persons having control over it were beyond their own jurisdiction. But without entering into the question how far a system of jurisprudence might be established which might overcome these difficulties consistently with the principle on which the Russian Minister relies, it is sufficient to repeat our former statement that no such general rule has yet been established so as to be binding upon all nations, and that a different rule, in fact, prevails in the Courts of this country.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

Salvador.

No. 179.

The Queen's Advocate to Earl Russell.—(*Received July* 28.)

My Lord,
Doctors' Commons, July 28, 1865.

I AM honoured with your Lordship's commands signified in Mr. Murray's letter of the 20th instant, stating that he was directed by your Lordship to transmit to me therewith a despatch from Her Majesty's Consul at Sonsonate, inclosing a correspondence which has passed between him and the Minister for Foreign Affairs of the Republic of Salvador relative to a Decree issued by the Government of that country relative to the mode of paying certain Government duties, by which Decree Mr. Joseph Kerferd, a British subject, will be a heavy loser; and Mr. Murray was pleased to request that I would take these papers into consideration, and furnish your Lordship with my opinion thereupon.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I am of opinion that the view taken by Her Majesty's Consul at Sonsonate of this proceeding by the Government of Salvador is, upon general principles of international and public law, substantially correct.

Your Lordship would probably, in any instruction which you may think proper to send to Her Majesty's Consul, direct him to insist principally upon the point that the Government of Salvador can have no right to violate what I understand to be the express provisions of the existing law of the 18th February, 1841 (and on the faith of which the subjects of a foreign State have lent money to the Government of Salvador), to the great detriment of these subjects, without notice to them or their Governments and without their consent.

I have, &c.
(Signed) ROBERT PHILLIMORE.

Saxony.

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No. 180.

The Queen's Advocate to Earl Russell.—(*Received April* 24.)

My Lord,
Doctors' Commons, April 20, 1865.

I AM honoured with your Lordship's commands signified in Mr. Murray's letter of the 13th instant, stating that he was directed by your Lordship to transmit to me a despatch from Her Majesty's Minister at Dresden (No. 12), requesting to be informed as to the nationality of a child of foreign parents born on board a British vessel, and of a child born without the British dominions, of foreigners naturalized as British subjects; and Mr. Murray was pleased to request that I would furnish your Lordship with my opinion upon the two points raised.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

1. That I am of opinion that a child of foreign parents born on board one of Her Majesty's ships of war would be a British subject wherever the ship might be; and that a child born on board a British merchant or private unprivileged vessel on the high seas would also be entitled to be considered a British subject. I think it is more doubtful whether such a child born on board such a vessel in the port or waters of a foreign State would be entitled to be considered as a British subject.

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2. I am of opinion that a child born without the British dominions of foreign parents, naturalized as British subjects, would be entitled to be considered as a British subject with reference to all other States but that to which his parents owed an original allegiance, unless indeed that State has, by its own law, allowed its subject to divest himself of his allegiance.

I have, &c.
(Signed) ROBERT PHILLIMORE.

Siam.

No. 181.

The Law Officers of the Crown to Earl Russell.—(Received July 28.)

My Lord, *Lincoln's Inn, July* 27, 1865.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 11th instant, stating that he was directed by your Lordship to transmit to us a despatch (No. 25) from Her Majesty's Consul at Bangkok, inclosing copies of a correspondence with the French Consul at that port, respecting the course of proceeding to be adopted in the British Consular Court, in a case where a French subject has a complaint to prefer against a British subject; and to request that we would take these papers into our consideration, and favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we are of opinion that Her Majesty's Consul at Bangkok is quite right in his position, that the foreign subject who is the plaintiff in an action or suit in a British Consular Court must submit himself to the laws and the procedure which prevail in that Court; and we think that his conduct, on this particular occasion, has been in every respect proper. If he was called upon to exercise jurisdiction over an English subject, he would only do so according to English law; and he could not accept the statement of the French Consul as a substitute for the sworn accusation of the aggrieved person, in any case in which an information upon oath is required by English law, as generally administered in his Court.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 182.

The Queen's Advocate to Earl Russell.—(Received August 26.)

My Lord, *Doctors' Commons, August* 25, 1865.

I AM honoured with your Lordship's commands signified in Mr. Murray's letter of the 16th instant, stating that he was directed by your Lordship to transmit to me, together with the previous papers, a despatch, and its inclosures, from Her Majesty's Consul at Bangkok (No. 30, June 27), giving explanations respecting the case of Mong Shuay Gan *v.* the Chief of Chiengmai, which formed the subject of my Report of the 2nd December last; and Mr. Murray was pleased to request that I would take the same into consideration, and report to your Lordship my opinion thereupon.

In obedience to your Lordship's commands I have taken this case into consideration and have the honour to report—

That I must, in the first place, observe that I do not find in these papers any answer from Captain Burn as to the charge of having bribed or abetted the bribing of the Chief Judge of the Court, though I perceive that your Lordship (see letter of January 13) directed that Sir C. Wood should be moved to request Captain Burn to answer this serious

charge; and it is remarkable that Mr. Consul Knox (p. 70) who, in some degree (but in my opinion most inadequately), defends the conduct of Captain Burn in this respect, is, nevertheless, obliged to add that the documents which distinctly prove that the bribes were given "are not creditable to Captain Burn."

In the next place, after a most careful perusal of Mr. Knox's Report, and a reperusal of the former documents, I am unable to arrive at any other conclusion upon the main point, namely, the exercise of the influence of the Consul to obtain what was practically a reversal of a sentence given in favour of Mong Shuay Gan, than that such influence was exercised, and that such a result was obtained. I think the distinction which Mr. Knox attempts to establish between a judicial arrangement and a judicial sentence, practically, and with reference to the circumstances of this case, nugatory. It may be, as I had the honour to observe before, that in no other way than by such interference as is complained of in this case can justice be obtained from the Courts of Justice in Siam; but the expedient is obviously, as the present case itself shows, most objectionable. As Mr. Knox concludes his despatch by a statement that a compromise has been effected between Captain Burn and Mr. Johnstone, it seems unnecessary to add any further observations on the subject of this and my former Report.

I have, &c.
(Signed) ROBERT PHILLIMORE.

Spain.

No. 183.

The Queen's Advocate to Earl Russell.—(Received January 4.)

My Lord, *Doctors' Commons, January* 4, 1865.

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 28th ultimo, stating that he was directed by your Lordship to transmit to me the correspondence, of which a list was inclosed, regarding the case of the British vessel "Mermaid," injured by shots from the Spanish fort at Ceuta; and Mr. Layard was to request that I would take these papers into my consideration, and report to your Lordship my opinion as to the course which Her Majesty's Government are called upon to take in this matter.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I am not of opinion that any advantage would accrue from another examination (according to the suggestion of Sir J. Crampton, No. 279, December 21) of the English witnesses, the master and crew of the "Mermaid." They have already been examined several times, and some discrepancies in the different statements of the captain have already been seized upon by the Spanish authorities to discredit his story altogether. Such discrepancies frequently occur in the examination of seamen, and it would be extremely unjust on that account to draw a conclusion of the general incredibility of their statement.

There are two principal questions in this case: the first, as to whether the shot of the fortress hit the "Mermaid," and caused her to sink; the second, as to when and where the British ensign was hoisted.

With respect to the first question, I think it right (after a perusal of these papers, including, according to the best of my ability, the untranslated Spanish depositions) to express my decided opinion that there can be no reasonable doubt whatever that the question whether the "Mermaid" did or did not sink in consequence of the shot from the fort must be determined in the affirmative by any person of a judicial mind. If the "Mermaid" did not sink in consequence of this shot, which it is admitted was fired at her, she must have been wilfully destroyed by her crew.

This alternative appears to me to be of the very grossest improbability; the whole *res gesta* is opposed to it, and there is not a circumstance of a feather's weight in the balance of evidence to support such an incredible conclusion.

I may here observe that I see no material inconsistency in the different statements

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of the captain: nor can I agree with Señor Llorente that the statement of the captain of this small merchant-vessel, that he did not, when the vessel was hit, make for the shore because he was afraid of being fired at again, is at all improbable: he says in his deposition (page 15), as I understand it, that after he had been fired at the third time he was (not unnaturally, surely) afraid of being fired at again.

It is to be remembered that, according to his own statement, the ensign had been hoisted before the third shot.

Then, as to his two statements, that the vessel went down at once after the shot, and that she went on a few miles before she sunk; the discrepancy is really immaterial.

As to the depositions of the men on shore, as to what they observed, or what a particular officer observed, or thought he observed, through a telescope, such evidence can have very little weight against the direct evidence of the master and crew on board the vessel at the time.

I must repeat that no credible motive has been, or I think can be assigned for the wilful destruction of the vessel, laden with cargo, in no distress, in the direct course of her legitimate voyage. It does not even appear whether or no she was insured, or to what extent; but if she were, it would be still, in the particular circumstances of this case, a monstrous inference that she had been scuttled by her master and crew.

If the determination, therefore, of this question ought to close the case, I have no hesitation in expressing my opinion that it is closed in favour of the "Mermaid," and against the Spanish Government.

But as to the other part of the case, namely, the time and place of hoisting the British ensign, there seems to be more legitimate room for doubt.

My conclusion from the evidence of the master alone would be, that the ensign was placed at three different times in three different parts of the ship: first, flying at the peak when off Europa Point; secondly, when the halyards were carried away on the weather or *port* main rigging (the vessel being then under a port helm), about 18 feet above the deck; thirdly,* after the vessel had come head to wind, and after she had been struck on her *starboard* bow, about the water-line, and after she had wore round, the ensign was shifted into the starboard main rigging, not *before* she wore round, as Governor Codrington states (Inclosure 1 in No. 248. See Declaration of Master, October 22, Inclosure 2 in No. 248 of Sir J. Crampton).

How soon after the vessel wore round I think doubtful. It is probable that the firing ceased as soon as the flag was seen at Ceuta. In all probability the regulations of the fort as to firing referred to by Mr. Dunlop Graham (October 25, 1864) were intended to be observed, and no shot was aimed to hit the hull of the vessel; but partly owing to the manœuvre of the vessel at the moment of firing, and partly, perhaps chiefly, to the want of skill in the cannoneer, the second shot, intended to go through the rigging, hit the vessel.

I think that, on the present evidence, the "Mermaid" ought to receive compensation from the Spanish Government; but while I think that Her Majesty's Government should urge this claim on the Spanish Government, I do not advise Her Majesty's Government to refuse to abide by the finding of a fairly composed Mixed Commission.

It is hardly necessary to say that the act of the authorities at Ceuta in exacting 600 reals from these unfortunate men for the cost of their maintenance at Ceuta will, of course, be repudiated by the Spanish Government.

As to the general question, there seems to be every reason why the practice of requiring the national ensign to be hoisted by vessels passing Gibraltar and by the Spanish ports should be discontinued, subject always, however, to the three limitations in Señor Llorente's letter (December 7, in Sir J. Crampton's No. 273) which seem to me very proper, namely, first, as to time of war; secondly, as to meeting in common waters a squadron with the Admiralty flag; and, thirdly, as to Harbour or Port Regulations.

I have, &c.
(Signed) ROBERT PHILLIMORE.

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* In the printed accounts in the newspaper (2 Admiralty letter, No. 4, 1864), the facts of which I presume the master supplied, it is stated as follows:—"He had hardly got his ship round, when a third gun was fired, the ball passing over the master's head, who was at the tiller, and striking the water sixteen or eighteen feet from the lee-quarter. As soon as the men had finished trimming sails, *after* the vessel was on the starboard tack, the master directed two sailors to remove the colours from the port to the starboard main rigging, which on the vessel's new course was to windward, and the side nearest the land. The two men displaying the colours in the main rigging appear to have been seen from the battery, *as no other shots were fired.*"

No. 184.

The Queen's Advocate to Earl Russell.—(*Received January* 25.)

My Lord, *Doctors' Commons, January* 24, 1865.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 21st instant, stating that he was directed by your Lordship to transmit to me therewith a letter dated the 17th instant, from Mr. J. S. Leigh, stating the circumstances connected with an alleged fraud in a shipment of cochineal on board the vessel "Candida," under which he requests to be furnished with a letter of introduction to Her Majesty's Minister at Madrid, with the view of stating his case to the Spanish Minister of Grace; and Mr. Hammond was pleased to request that I would take this letter, together with the former papers on the subject, into consideration, and report to your Lordship my opinion whether such a letter as Mr. Leigh desires can properly be given to him.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That as Sir J. Crampton has been directed by your Lordship to introduce Captain Heathcote, the other party in this litigation, to the Spanish Minister, I think that he should be instructed to procure a simple audience for Mr. Leigh from the same Minister, through the medium of a letter as carefully guarded and as cautiously expressed as his discretion may suggest.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 185.

The Law Officers of the Crown to Earl Russell.—(*Received February* 11.)

My Lord, *Lincoln's Inn, February* 10, 1865.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 18th of January ultimo, stating that he was directed by your Lordship to transmit to us therewith a letter from the Bishop of Gibraltar, together with a copy of his Letters Patent, and other papers* bearing on the question as to whether Tangier and Cadiz are within his episcopal jurisdiction; and to request that we would take these papers into our consideration, and favour your Lordship with our opinion on the subject.

We are also honoured with your Lordship's commands signified in Mr. Hammond's letter of the 25th of January ultimo, stating that, with reference to his letter of the 18th January, inclosing, for our consideration, papers respecting the extent of the jurisdiction of the Bishop of Gibraltar in foreign countries, he was directed by your Lordship to transmit to us therewith the accompanying correspondence which passed in the year 1850, respecting a claim advanced by the predecessor of the present Prelate to exercise spiritual control over the British congregation in Rome; a point which we should observe was at that time reported on by the Law Officers of the Crown.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That, if the words "episcopal jurisdiction" are to be understood in their strict and proper sense, we think that the Bishop of Gibraltar has no such jurisdiction, except in the City of Gibraltar and the Island of Malta, and their dependencies. The limits of his diocese or see are, by the operative part of the Letters-Patent creating it, expressly so defined. And, we think, the reason of this is plain, viz., because Her Majesty had no power to grant any jurisdiction in the territories of foreign Princes, except such as she derived from the Foreign Jurisdiction Act, or from the Jerusalem Bishopric Act (5 and 6 Vict., cap. 6); neither of which statutes would have enabled her to confer upon a Bishop of Malta or Gibraltar any legal authority beyond the limits of British territory. It is in this sense that we understand the Report of the Law Officers in 1850, with respect to the English chapel at Rome.

But if the question be whether it was intended by the Crown, when the See of Gibraltar was erected, that the Bishops of Gibraltar should exercise, at Cadiz and Tangier, that customary authority which had been previously exercised by the Bishops of London over British chapels, and the clergy ministering in them, upon the Continent of Europe, our answer is, that such appears to us to have been the wish and intention of the Crown.

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* Bishop of Gibraltar, November 24; Foreign Office Memorandum, December 20; to Colonial Office, December 31, 1864; Colonial Office, January 10, 1865.

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The submission of English congregations abroad to that authority is, and has always been, purely voluntary. We think it is apparent, both from the general tenor of the proposal of the Archbishop of Canterbury and the Bishop of London, recited in the Letters-Patent by which the See of Gibraltar was erected, and of Lord Aberdeen's Circular (which was directed, among others, to the British Consuls at Cadiz and Tangier), that the words "the islands and countries situated in and around the Mediterranean Sea" ought not to be taken in so narrow a sense as to exclude therefrom the countries situate on either side of the Straits of Gibraltar.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 186.

The Queen's Advocate to Earl Russell.—(*Received April* 4.)

Doctors' Commons, April 3, 1865.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 28th ultimo, stating that he was directed by your Lordship to transmit to me the accompanying note, dated the 10th ultimo, and its inclosure, from M. Comyn, the Spanish Minister at this Court, protesting against the condemnation by the British and Spanish Mixed Commission Court at Sierra Leone of the Spanish ship "America," on a charge of being equipped for the Slave Trade, and claiming reparation from Her Majesty's Government for the owners of the "America" on account of the losses sustained by them in consequence of the condemnation of their vessel. A despatch and its inclosure from the Acting British Judge at Sierra Leone (No. 8, Spain, September 17, 1864), reporting the particulars of the trial and condemnation of the "America," was also inclosed; and Mr. Layard was pleased to request that I would take these papers into consideration, and furnish your Lordship with my opinion as to the answer which should be returned to the Spanish Minister's note.

With regard to the objection taken by the Spanish Minister to the jurisdiction of the Court, in consequence of judgment not having been pronounced within the period of two months as stipulated by the provisions of Article III of Annex B to the Treaty of 1835, between this country and Spain, for the suppression of the Slave Trade, Mr. Layard was pleased to transmit the volumes containing the cases referred to by the British Arbitrator, in his judgment, as bearing upon the objection taken by the Spanish Minister in this case.

In obedience to your Lordship's commands I have the honour to report—

That after a careful perusal of all the papers in this case I am of opinion that an answer should be returned to the Spanish Minister to the following effect:—That your Lordship agrees with that portion of the Spanish Minister's letter which states that, after a full trial of all the circumstances before a properly constituted tribunal, to call upon Her Majesty's Government to consider the force of arguments and proofs which had been unsuccessfully urged by the claimant before the Judge, "would be equivalent to instituting a new trial, or making an appeal, which the Treaty of 1835 does not admit."

That your Lordship, indeed, thinks that such a course of proceeding would rob the Treaty of much of its efficacy, and ought not, except in very extraordinary circumstances, to be resorted to; and that certainly no such circumstances exist in the present case. On the contrary, an attentive consideration of all the facts brought forward at the trial seems to lead to the judicial conclusion that, so far as the merits of the case are concerned, the vessel was rightly condemned.

It is to be remembered that Article X of the Treaty enumerates nine classes or categories of things relating to equipment, which, being found on board a vessel, shall raise the legal presumption that she is a slaver; and the Article provides that "any one or more of these several circumstances, if proved, shall be considered as *primâ facie* evidence of the actual employment of the vessel in the Slave Trade, and the vessel shall thereupon be condemned and declared lawful prize, unless satisfactory evidence upon the part of the master or owners shall establish that such vessel was, at the time of her detention or capture, employed in some legal pursuit."

Now, not to dwell on various other circumstances which also had their due weight with the Judges, there was found on board this vessel a large quantity of rough rice. The subject of the ninth category in the Treaty is, "an extraordinary quantity of rice, &c., such rice, &c., not being entered on the manifest as part of the cargo for trade." Of this rice no mention whatever was made in the manifest; for the presence of the rice and the absence of the manifest the excuses were equally unsatisfactory.

It was said that the rice was not fit for immediate use, and that the manifest was refused at the place where the rice was put on board; but neither the manifest nor any copy of it, which it was alleged had been tendered and refused, was ever produced before the Court, and it was clear both that the rice might have been made fit for use by the use of the rudest materials in the hands of the simplest native, and also that at the place where the slaves were to have been put on board, a more elaborate machinery might have existed for the purpose of rendering it immediately fit for consumption. Though this appears to have been a prominent feature in the case, there are many others to which reference is not now made, because it seems to be admitted that neither the Spanish nor the British Governments are Courts of Appeal from sentences upon the merits of the cases properly tried before the tribunals constituted by the Treaty. The words of the Treaty (Article III of Annex B) are express:—"These Courts shall adjudge definitively and without appeal *all questions* which shall arise out of the capture and detention of these vessels."

Passing therefore from the consideration of the merits of the case, the formal technical objections raised by his Excellency remain to be noticed.

His Excellency contends, first, that the capture of the "America" was unlawful, on the ground that cruizers are not allowed to make more than one examination of a vessel suspected to be a slaver; and this position is founded upon the language of the third rule in the IVth Article of the Treaty, which provides, among other things, that "if it appears from the search that the papers of the vessel are in regular order, and that it is employed on licit objects, the officer shall enter in the log-book of the vessel that the search has been made in pursuance of the aforesaid special orders, and the vessel shall be left at liberty to pursue its voyage."

His Excellency contends that by this provision the British officer having once searched the "America," and allowed her to pursue her voyage, was not at liberty in any circumstances to visit her again and detain her. Your Lordship is unable to see the force of this argument: it appears to be neither warranted by the language of the Treaty, nor founded in reason, nor supported by analogy. There are no words which directly prohibit the making of a second search; and while, on the one hand, it could not have been, upon any principle of reason, intended that if subsequent suspicion, from whatever circumstances, arose that the vessel was a slaver, she should be allowed to escape; on the other hand, such second search and consequent detention would be made at the risk of costs and damages to the Government of the captor (under Article VI), should he fail in establishing the guilt of the vessel. Indeed, the judgment in this very case, assuming it, as we are bound to do, to be correct upon the merits, shows that the narrow construction of the Treaty contended for might defeat its object.

To this construction analogy is equally adverse. The captor, in time of war, not unfrequently visits and detains upon a second occasion the vessel which, on a former and more imperfect examination, he had released. He does so, as the captor of the slaver does, at the risk of costs and damages. This argument was, indeed, not advanced at the hearing by the legal agent of the claimant, and it is one in which Her Majesty's Government cannot concur.

The other objection, also of a formal and technical character, urged by his Excellency, is founded upon the language of the IIIrd Article of Annex B of the Treaty, which provides that the final sentence shall not "in any case be delayed beyond the period of two months," and "that as far as may be practicable" it shall be decided within twenty days. The sentence which condemned the "America" was passed eleven days after the two months, therefore his Excellency says the Court had no jurisdiction. But this position rests, in the first place, on a confusion of two distinct principles of jurisprudence or rules of law: the rule of law which directs and that which prohibits the jurisdiction of a tribunal. The rule in question is a directory, not a prohibitory, law. The matter itself, namely, the question whether the vessel be a slaver or not, is always subject to the jurisdiction, properly speaking, of the Court. Though the delay which exceeds the prescribed term may (unless accounted for by unavoidable necessity, which must be considered in all human laws) be such as to give just ground for remonstrance from either the Spanish or British Government, leading, if the circumstances require it, to the removal of the offending Judge.

This would be the true remedy for the evil complained of, which is distinct, in kind, from that of the Court exercising jurisdiction over a matter like that of murder, for instance, never subject to its jurisdiction.

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An irregularity of procedure and a nullity of jurisdiction are very different things. Moreover, and independently of this principle of jurisprudence, the Treaty must be construed, according to well-known principles, liberally and as a contract of good faith between the Contracting Parties, so as to further, not defeat, the end in view, namely, the suppression of the Slave Trade; and the words, "the proceedings of these Courts shall take place as summarily as possible," which precede the limitations of twenty days and two months, indicate the true intention of the parties to the contract, which never could have been, that if a Judge, or a necessary witness became ill, or a proctor, either, on the one hand, deserted his client, or, on the other, wilfully delayed the proceedings of the cause till two months and one second had elapsed, that the Court, from which there is no appeal, should be obliged either to do an injustice or should cease to have jurisdiction, and let the slaver go free.

In accordance with the view which is here taken was that of Her Majesty's Government in the case of the "Fabiana" in 1824 (following the advice of my predecessor in office); the "Conchita," 1835 (in December), a few months after the conclusion of the present Treaty (28th June, 1835); and in the "Rosarita," February 1836, where the point was directly raised and overruled. But in the other cases, especially the "Fabiana," the difference between an irregular act and one which deprives the Court of power to adjudicate is established. The delay in this case appears to have arisen from wholly unavoidable causes—a doubt about the authority of the Spanish Judge, the illness of one of the Surveyors, the necessity of unpacking the rice in bad weather, and of measuring every gallon of water.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 187.

The Law Officers of the Crown to Earl Russell.—(Received April 6.)

My Lord, *Lincoln's Inn, April 5, 1865.*

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 14th ultimo, stating that, with reference to our Report of the 10th February respecting the Bishop of Gibraltar's episcopal jurisdiction, he was directed by your Lordship to transmit to us a further letter from the Bishop, and to request that we would favour your Lordship with any observations we might have to make thereupon.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That we think some confusion may have arisen from a misunderstanding of the term "jurisdiction." That term carries with it in its legal sense a power of carrying into effect the decree or order of the Judge, by coercive measures if necessary ("cui jurisdictio data est, ei quoque concessa esse videntur sine quibus jurisdictio explicari non potest." Dig. 1, 2, t. 1, 2). Such jurisdiction the Crown has no power to give in foreign States without their permission.

It would be a mistake to suppose that the Bishop of London possesses any *such* jurisdiction, even "by custom," in places out of Her Majesty's dominions. The words "customary jurisdiction" can only import that the Crown had desired the Bishop of London to perform the functions of his episcopal office over such British subjects professing the religion of the Church of England as might be in certain foreign places, and had desired those subjects to recognize his episcopal authority and character. The word "jurisdiction" must of necessity be understood, therefore, in a popular sense, of the performance of episcopal functions in relation to those who voluntarily (though out of a sense of duty to their Church and their Sovereign) submit themselves to such authority. The language of the Bishop of Gibraltar's Patent in its narrative part refers to Her Majesty's subjects resident in Gibraltar, Malta, and "in divers places within the island and countries situated in and around the Mediterranean Sea;" and we think that it does result, both from this preamble and from a consideration of the Circular of Lord Aberdeen of October 20, 1840, and of all the circumstances connected with the history of the foundation of the see, that it was the intention of the Crown that the moral support of Her Majesty's Government should be given to the exercise of spiritual functions by the Bishop of Gibraltar over those of Her Majesty's subjects in the countries washed by the Mediterranean and on both sides of the Straits of Gibraltar, who, previously to the institution of this see, were by custom and by the desire of the Crown subject to the spiritual superintendence of the Bishop of London. This arrangement was made with the full and express consent of the then Bishop of London; and we have no reason to doubt that it is continued with the approbation of the present Prelate of that see.

We see no reason why the Bishop of Gibraltar should not be apprised (if your Lordship should so think fit) that it has not been, and is not, the intention of Her Majesty's Government (as his Lordship appears somewhat too hastily to have supposed) to "discourage" or "put difficulties in the way" of his discharging his episcopal functions over the particular congregations to whom his letter refers; but that Her Majesty's Government desire to inform his Lordship that they cannot do more than afford to him (having due regard to the circumstances of any particular case as to which any question may arise) such moral support as was contemplated by the Circular of Lord Aberdeen. It must be for the Bishop of Gibraltar to consider whether his object might in any respect be furthered by a communication with the Bishop of London, and by a joint action with his Lordship in this matter.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 188.

The Queen's Advocate to Earl Russell.—(Received April 20.)

My Lord, *Doctors' Commons, April 20, 1865.*

I AM honoured with your Lordship's commands signified in Mr. Murray's letter of the 13th instant, stating that he was directed by your Lordship to transmit to me a letter, dated the 12th instant, from the Colonial Office, relative to the claim put forward by the owner of the British schooner "I O U" against the Spanish Government, in consequence of the seizure of that vessel by the Spanish naval forces at San Domingo for an alleged violation of blockade. A copy of the notice relative to the blockade of San Domingo issued by the Governor of Turks Islands, and referred to in the letter from the Colonial Office, was also inclosed; and Mr. Murray was pleased to request that I would take these papers into consideration, and furnish your Lordship with my opinion whether this is a case which calls for any interference on the part of Her Majesty's Government.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I do not think that this is a case which necessarily calls for interference on the part of Her Majesty's Government. The Spanish blockade was recognized by Her Majesty, and the question of its sufficiency is one which properly should be tried in the Prize Court of the belligerent. If, indeed, from any circumstances this investigation has become now impossible, it would, I think, be proper that the claim of the owner of the "I O U" should be submitted to the consideration of the Spanish Government through the intervention of Her Majesty's Government.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 189.

The Queen's Advocate to Earl Russell.—(Received May 8.)

My Lord, *Doctors' Commons, May 5, 1865.*

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 26th ultimo, stating that with reference to my Report of the 17th of August last, respecting the claim of Mrs. Good for compensation for the death of her son, who was killed by a shot from the Spanish soldiery in August 1863, whilst taking refuge in the house of the British Vice-Consul at Puerto Plata, he was directed by your Lordship to transmit to me a despatch from Her Majesty's Minister at Madrid (No. 40, March 28), inclosing the reply to his representation which he has received from the Spanish Government, declining to award any compensation, on the ground that it is impossible to ascertain whether the shot which struck George Good was fired by the Spanish troops or by the Dominican insurgents.

No. 188*.

The Queen's Advocate to Earl Russell.—(Received May 5.)

My Lord, *Doctors' Commons, May 4, 1865.*

I AM honoured with your Lordship's commands signified in Mr. Murray's letter of the 22nd ultimo, stating that he was directed by your Lordship to transmit to me a letter dated 17th March ultimo, from Lord Howden, formerly Her Majesty's Minister in Spain, calling attention to an alleged intended alteration of a Spanish judicial procedure entitled the "Fuero de Estrangeria," under which British subjects have had the right to seek justice in Spain. A despatch from Sir J. Crampton, the present Minister at Madrid, to whom Lord Howden's statement was referred, explaining how the matter stands, was also inclosed; and Mr. Murray was pleased to request that I would report to your Lordship my opinion whether there is any call for action on the part of Her Majesty's Government in this matter in its present stage. For my information two volumes of correspondence relating to the "Fuero de Estrangeria" was also inclosed.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report:—

That I am of opinion that Her Majesty's Government are not called upon in the present state of things to take any action in this matter. And here, perhaps, my Report should end, but as the question is one of importance, and which has been treated as such in the two volumes of despatches submitted to me, I have thought it right to make the following additional observations:—

The practical importance of this question really depends upon the consideration whether Spanish justice be best administered in the case of British subjects by the Military or the Civil Judges. At first sight, indeed, it would appear that the question must almost necessarily be answered, for obvious reasons, in favour of the civil jurisdiction; but the great experience and authority of Lord Howden is opposed to this opinion, and I collect from the despatch of Her Majesty's present Representative at Madrid that he agrees with Lord Howden. At the same time it is to be observed that the statement of Señor Arguelles, in whose counsel he places, no doubt justly, great confidence, leads to the opposite conclusion.

I gather from the opinion of that learned and eminent person that with respect to various matters this privilege of the "Fuero de Estrangeria" has already been withdrawn from British subjects; and that with respect to those matters which are still subject to it, it is proposed not to suppress but to administer the "Fuero" by a particular Civil Judge, to be selected, as I understand, by the Crown of Spain from the ordinary Judges of Common Law, and from that Judge there is to be an appeal, whereas the sentence of the present Tribunal is final.

Two questions seem to arise: first, whether it is expedient that Her Majesty's Government should remonstrate against any alterations; and secondly, to what extent that remonstrance can be carried.

With respect to the first question I must repeat that it is one to be decided by practical knowledge of the administration of Spanish law in the ordinary Civil Tribunals. The language of Lord Howden upon this point is certainly most remarkable:—"A vehement desire," his Lordship says, "to be tried by Military Tribunals, instead of ordinary Civil ones, seems strange to English ears; but no general theory will hold good against the local experience of celerity, cheapness, publicity, and comparative uprightness, on one side, and every sort of delay, expense, mystery, and venality, on the other." Perhaps, however, the state of things may be remedied by the general reform of the law which appears now to be contemplated.

With respect to the second question I think that the interference of Her Majesty's Government would probably be limited to a remonstrance, and that it could not reasonably deny the right of the Government of Spain to include in a great measure for the reformation of the law, that part of it which relates to the administration of justice between British subjects resident in Spain, more especially if that peculiar Tribunal to which, by Treaty stipulations and long usage, they may be considered entitled, be preserved to them in substance, though under a different form and appellation. Lord Howden himself (in his last despatch, No. 53, Madrid, 19th February, 1858), observes, "To be fair and look practically at things as they are, it seems impossible to expect, or to ask, that Spain can allow a Tribunal to be retained merely for the convenience or preference of foreigners, while it is by law suppressed for their own subjects."

I must observe in conclusion that the whole subject of the privileges of foreigners in Spain concerns all foreign States; but that it appears from the papers in the volumes which accompany the case, that the battle of this particular question is now fought by England almost single-handed.

I have, &c.
(Signed) ROBERT PHILLIMORE.

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Mr. Hammond was also pleased to transmit the three accompanying volumes in which the papers are marked that refer to this case, and to request that I would take the inclosed correspondence into consideration, and report to your Lordship my opinion as to the course which should now be taken by Her Majesty's Government in this matter.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That looking back to the history of the whole case, it is difficult to deny the possibility of the fact under cover of which the Spanish Government now refuse compensation in this case. It cannot, I think, be positively asserted that the shot which caused the death of Good was certainly fired by a Spanish soldier, though I have little doubt that such was the case. I am, therefore, afraid that no other course is now open to Her Majesty's Government than to express their regret that when it is admitted to be doubtful whether the death of a subject of a State in alliance and amity with Spain was not caused by the firing of Spanish soldiers upon the house of the Consul of that State, the Spanish Government should not have been anxious to award some compensation to the widowed mother of the person so killed.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 190.

The Queen's Advocate to Earl Russell.—(Received May 17.)

My Lord, *Doctors' Commons, May* 16, 1865.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 12th instant, stating that he was directed by your Lordship to transmit to me a letter dated the 10th instant, and its inclosure, from the Colonial Office, respecting the claim of Mr. Andrew Barclay against the Spanish Government for the seizure of his vessels the "Dart" and "Scat" at San Domingo.

A despatch from Her Majesty's Chargé d'Affaires in Haiti (No. 1) relating to the capture of the "Dart" was also inclosed, and Mr. Hammond was to acquaint me that beyond the papers therewith transmitted no information has been received at the Foreign Office respecting the capture of these vessels; and he was pleased to request that I would take these papers into consideration, and furnish your Lordship with my opinion thereupon.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That it would seem to be most probable, indeed almost admitted by their owner, that these vessels were engaged in running the blockade at San Domingo during the recent war between Spain and the Dominicans, and captured in the attempt by the Spanish forces; and if so I see no reason for the interference of Her Majesty's Government, and I advise that an answer to this effect be returned to Mr. Barclay.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 191.

The Queen's Advocate to Earl Russell.—(Received May 18.)

My Lord, *Doctors' Commons, May* 17, 1865.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 12th instant, stating that with reference to my Report of the 19th December last upon the case of the "Eliza," he was directed by your Lordship to transmit to me a letter dated the 9th instant, with its inclosure, from the Colonial Office, stating that Mr. Murray, the owner of the vessel in question, claims 490*l.* on account of her seizure by the Spanish authorities; and to request that I would take these papers into consideration, and furnish your Lordship with my opinion as to whether application may be made to the Spanish Government for the payment of the amount claimed by Mr. Murray. The previous correspondence was inclosed for convenience of reference.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I think an application should be made to the Spanish Government for demurrage compensation to the owner of the "Eliza." I see that this is estimated for 160 days at 160*l.* I do not know whether this amount be correct or not. It seems excessive for a vessel of six tons. The amount of demand for compensation to the three men appears to me very extravagant; but some small sum might be reasonably asked for on this account also. It is of course to be recollected that the Spanish Government may have a defence to offer for the detention of this vessel, for which at present there appears to be no justification.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 192.

The Law Officers of the Crown to Earl Russell.—(Received September 13.)

My Lord, *Lincoln's Inn, September* 13, 1865.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 31st ultimo, stating that he was directed by your Lordship to transmit to us, with reference to the Report of Her Majesty's Advocate-General of the 4th of January last, and to previous correspondence, regarding the injuries done to various British vessels by shots fired from the Spanish forts of Tarifa and Ceuta, a despatch, and its inclosures, from Her Majesty's Chargé d'Affaires at Madrid, together with three volumes, as well as further correspondence, of which a list was inclosed, upon this subject; and Mr. Layard was pleased to request that we would take the same into consideration, and furnish your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That the abolition, by the concurrence of Her Majesty's Government with that of Spain, of the custom which has too long prevailed of firing on merchant-vessels not showing their colours within a certain distance of forts in the Straits of Gibraltar is a subject of much satisfaction. That with respect to the case of the "Mermaid," we think Her Majesty's Government justified in acting upon the statement of her captain and crew (against whom the imputation of scuttling the vessel appears wholly unwarranted), to the effect that after the warning shot the British flag was hoisted, though probably not seen from the fort, whereupon a shot was wrongfully fired from the fort which sank the vessel. This affords a clear case for compensation, on which we think that Her Majesty's Government may properly insist, and the proposition to refer it to a Mixed Commission or the arbitration of a friendly Power appears to us a reasonable one. We are not sufficiently informed by the papers relating to the case of the "Mountaineer" of the precise circumstances under which that vessel was fired at to enable us to say more than that we concur in the suggestion that if a Mixed Commission were appointed to investigate the case of the "Mermaid," that of the "Mountaineer," and the question whether compensation should be paid to the persons who have suffered by the death of Hocken, might also be referred to it. It affords matter of regret and of some surprise (considering the reception which it is said to have before met with) that M. de Castro should, in his letter to Mr. West of the 12th August, 1865, peremptorily decline the proposition of a Mixed Commission.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

SPAIN.

No. 191*.

The Law Officers of the Crown to Earl Russell.—(Received July 24.)

My Lord,

Lincoln's Inn, July 22, 1865.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 21st ultimo, stating that he was directed by your Lordship to transmit to us two despatches from Her Majesty's Minister at Madrid (Nos. 91 and 95), reporting upon the existing state of the law in Spain, called the "Fuere de Estrangeria," as regards the privileges of foreigners, as well as upon the alleged intention of the Spanish Government to alter that law.

Mr. Hammond was also pleased to state that, for convenience of reference, he was also to transmit to us the previous papers upon this subject, as marked in the margin,* comprising a Report from Her Majesty's Advocate-General, to whom the matter was referred, together with two volumes, in which the papers referred to in Sir John Crampton's despatches have been marked, accompanied by a copy of the Consular Convention which was concluded between France and Spain in 1862.† And to request that we would take all these papers into our consideration, and favour your Lordship with any observations which we might have to offer thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That, after a mature consideration of the papers submitted to us, we are led substantially to the same conclusions as those which are expressed in the despatch of Her Majesty's Representative at Madrid; namely, first, "that the interests of Her Majesty's subjects would not be seriously affected by the passage of the proposed law;" and, secondly, we do not think that it would be proper or expedient that Her Majesty's Government should offer a resistance to the improvement of the Spanish Municipal law on account of the peculiar privileges of Her Majesty's subjects in that country. Moreover, we are of opinion that the alteration proposed would not be a violation of the Treaty engagements upon this subject of Spain with this country, and that the resistance of Her Majesty's Government, if offered, could not in the end be effectively maintained.

We have, &c.

(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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* Lord Howden, March 17; to Sir J. Crampton, No. 43, March 20; Sir J. Crampton, No. 48, April 5; Queen's Advocate, May 4, 1865. Two volumes.

† Earl Cowley, No. 457, April 4, 1862.

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No. 193.

The Queen's Advocate to Earl Russell.—(Received September 14.)

My Lord, *Doctors' Commons, September* 14, 1865.

I AM honoured with your Lordship's commands signified in Mr. Murray's letter of the 4th instant, stating that he was directed by your Lordship to transmit to me a despatch with its inclosures from Her Majesty's Chargé d'Affaires at Madrid (No. 44), respecting a demand which has been made by the Spanish authorities at Cadiz to the Acting British Consul at that place for the surrender of the mate of a British vessel, the "Evelyn," who is accused of having inflicted personal injury on one of the crew, a Spaniard, on the high seas; and to request that I would take these papers into consideration and furnish your Lordship with my opinion as to the instructions which should be addressed to Mr. West in the matter. A further despatch and its inclosures from Mr. West upon the same subject was also inclosed (No. 54).

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That it appears that this Spaniard was one of the crew of a British vessel and wounded by another of the crew while on board this vessel on the high seas. I am of opinion that this offence, in these circumstances, was not properly cognizable by the Spanish tribunal, and that the captain was justified in refusing to deliver up the person alleged to have been guilty of the offence. The offence was not committed, it is to be carefully observed, in a Spanish port, but within a place subject to the jurisdiction of Her Majesty. Of course, if the Spanish Government desired it, proper measures should be taken for causing the matter to be investigated before the British tribunal. I humbly think that instructions to this effect should be sent to Mr. West.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 194.

The Queen's Advocate to the Earl of Clarendon.—(Received November 24.)

My Lord, *Doctors' Commons, November* 24, 1865.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 21st instant, stating that the pressure of time under which your Lordship was obliged to request my opinion on the state of things arising out of the rupture between Chile and Spain, as reported in the despatches received on the 16th instant from Her Majesty's Chargé d'Affaires and Consul-General in the former country, coupled with the fact that many of the papers were not accompanied with translations, had induced your Lordship to direct him (Mr. Hammond) to send back to me for more leisurely perusal the various despatches which were transmitted to me with his letter of the 16th (Nos. 31 to 42); and he was to request me to furnish your Lordship with any further observations which may occur to me on the matters treated in them.

Mr. Hammond was specifically to call my attention to the answer returned by Mr. Thomson, as reported in his despatch No. 37, in regard to the intention announced by the Chilean Government of issuing letters of marque; and to the Memorial of the Commercial body and the replies of the Diplomatic body, inclosed in his despatch No. 38.

Mr. Hammond at the same time inclosed a copy of the instruction sent to Mr. Thomson (No. 2) after the receipt of my Report of the 17th instant.

In obedience to your Lordship's commands I have again taken these papers into consideration, and have the honour to report—

That my last Report was, owing to the pressure of time, principally concerned with the course which Her Majesty's Government ought to pursue with reference to the blockade proclaimed by the Spanish Admiral; and I have now the honour to offer some additional observations upon the general subject of these papers, and upon the points to which my attention is more particularly drawn.

The more the grounds alleged by Spain for this war upon Chile are considered, the more unjust, unusual, and frivolous they appear; charges which the particular circumstances in which this war has been declared tend greatly to aggravate.

Chile had recently made explanations which completely satisfied the Representative of Spain then accredited to her; and if it be true that this Representative exceeded the powers conferred on him, and was disobedient to his instructions, it is most justly said by Chile that she could not be aware of that fact, and certainly she was, on account of it, not the less but the more entitled to the observance, on the part of Spain, of the ordinary international usages which precede, except in cases of urgent necessity, the declaration of war between two Christian States.

The course pursued by the Spanish Admiral, whose commission it appears allowed him to negotiate, in peremptorily declaring that unless certain propositions (one of which was derogatory to the honour of an independent State) were complied with within a very limited period of time, he would enter upon immediate hostilities with Chile, is a course which could, even assuming the justice of the Spanish complaint, only be warranted by the previous refusal of Chile to entertain or satisfy remonstrances made through the usual channels of diplomacy; whereas the exact reverse had happened in this case: Chile had satisfied the Minister of Spain accredited to her, and, nevertheless, was treated as if she had refused all peaceable means of reconciliation and redress.

These remarks bring me to the consideration of despatch No. 38 (to which my attention is requested by your Lordship), containing the Memorial of the Commercial and the reply of the Diplomatic body at Santiago.

All members of the great community of independent States are of course interested in the observance of international justice and the maintenance of international right; but, in addition to this general interest, they are particularly entitled to expect that their subjects, peaceably and lawfully resident and carrying on legitimate commerce in a foreign State, shall not be subjected, except in cases of extreme urgency, to the severe distress which hostilities, enforced by a sudden blockade, inflict, without at least receiving the ordinary warning which is conveyed by the observance of international usages. This warning is the more due to the neutral resident when the belligerent imposing the blockade alleges reasons for hostilities so manifestly frivolous and unjust as those put forward on this occasion by the Spanish Admiral.

Having made these remarks upon the general character of the war and the peculiar injury which it inflicts upon the neutral States, I turn to the consideration of the manner in which the belligerent is about to exercise his rights, that is, to the consideration of the instructions issued by the Spanish Admiral.

In my former Report I observed that these were favourable to the neutral, and I retain that opinion. In truth, they are much more favourable to neutrals than those which this country and America are in the habit of issuing upon a like occasion. There is, however, one observation of great importance which a reconsideration of them induces me to make.

Directions are given to the Spanish cruizers how to visit and treat neutral vessels. These directions afford no ground for complaint if they are intended to be limited to the objects of visitation, search, and detention; but I perceive there is no mention of the duty of the belligerent to bring the captured property of the neutral into the Court of the Law of Nations, usually termed the Prize Court, in order that a sentence may be passed confirming in favour of the captors, or setting aside in favour of the captured, the act of seizure and detention.

It is the clear duty of the belligerent to furnish such a Court, as it is the clear right of the neutral to have recourse to it.

It may therefore be expedient that Her Majesty's Government should signify in the proper manner, through the proper channels, to the Spanish Government, their expectation that all captured property of the neutral will be submitted to proper adjudication by a properly constituted tribunal.

With respect to the despatch No. 37, and the intended use of privateers by Chile, to which your Lordship also desired my attention to be directed, so far as this question affects the belligerents in this war, I perceive that the Spanish Admiral's instructions contemplate the use of privateers by Chile (No. 9), and contain special orders as to the examination of their papers, directing that if a privateer be *without* the proper letters of marque ("patente de corso") she is to be treated as a pirate.

As Spain declined to sign the Ist Article of the Declaration of Paris, she has, of course, no right whatever to complain of the use of privateers by Chile, and I much doubt whether she is entitled to insist, as the Spanish Admiral has done in the Article referred to, that letters of marque shall specify the "time and places in which the privateer may make war with the enemy."

With respect to neutral States, assuming that in ordinary cases they would be entitled to object to the use of privateers by Chile, because she has signed the Ist Article

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of the Declaration of Paris, nevertheless the answer of Chile that she is now at war with a State which has not subscribed that Article appears to me sufficient.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 195.

The Queen's Advocate to the Earl of Clarendon.—(*Received November* 30.)

My Lord, *Doctors' Commons, November* 30, 1865.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 29th instant, stating that he was directed by your Lordship to transmit to me a despatch with its inclosures which have been received from Her Majesty's Chargé d'Affaires at Chile (No. 49), reporting the circumstances connected with the capture of the British vessel "Mattias Cousino" by one of the Spanish vessels of war blockading the Chilean coast; and Mr. Hammond was pleased to request that I would take these papers into consideration, and furnish your Lordship with my opinion as to the instructions which should be addressed to Mr. Thomson upon this subject, or to Her Majesty's Minister at Madrid.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That Mr. Taylour Thomson appears to have pursued upon the whole a judicious course of conduct.

The capture of the "Mattias Cousino" appears upon the statement before me to have been justifiable. She had very recently belonged to a subject of the enemy, not improbably after the declaration of war. The title of the owner was fairly questionable in a Prize Court. She had not her proper papers on board. She was on her way to a blockaded port, and was captured after several shots had been fired to make her bring to by a blockading ship. It certainly was a case which, according to the general principles of international law and the exposition of them given in British Prize Courts, warranted the captor in bringing in the vessel for proper adjudication.

I think it has been the usual practice of captors to hoist the flag of their country upon the captured ship; during the period which elapses between capture and release or adjudication, the vessel is under the jurisdiction of the captor or the captor's Court.

The attempt to set up a Prize Court on board the Admiral's ship is novel, inadmissible, and contrary to the principles of international law which regulate the reciprocal rights and duties of belligerents and neutrals in maritime war.

The neutral has a right to be tried before a properly constituted Court in the country of the captor, with all the forms as well as the substance of justice; he has a right to agents, Counsel, a proper forum, and a proper Appellate Tribunal; the deck of the Admiral's blockading ship contains none of these indispensable requisitions of international justice, upon the presumption of supplying which the belligerent's right to detain the neutral vessel upon the high seas is founded.

It would, of course, be most expedient that the captor should be induced by informal remonstrance and explanation to restore the vessel, but he has a strict right to send her for trial before a proper tribunal.

I would only further add that the question of blockade or no blockade is a matter of mixed fact and law to be tried before the Prize Court; but as I understand this case, the "Mattias Cousino" was seized rather on the suspicion that she was an enemy's vessel than that she was attempting to break the blockade.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 196.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received November* 30.)

My Lord, *Lincoln's Inn, November* 30, 1865.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 29th instant, stating that with reference to our Report of the 27th instant he was directed by your Lordship to transmit to us a letter with its inclosures from the Board of Treasury respecting a vessel called the "Eagle," formerly a Prussian war steamer now lying in the Victoria Docks, and which appears to be adapted for privateering purposes; and Mr. Hammond was to request that we would take these papers into consideration, and furnish your Lordship with our opinion as to whether Her Majesty's Government have any right to call upon the owner of that vessel for information as to the purposes for which she is destined.

In obedience to the commands of your Lordship we have perused and considered these papers, and have the honour to report—

That Her Majesty's Government have no legal power or authority to call upon the owner of this vessel for information as to the purposes for which she is destined; but if it is thought desirable to inquire from him whether he is willing to give such information (as has been done in some other cases), we see no objection to that course.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
(In the absence of the Queen's Advocate.)

No. 197.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received December* 1.)

My Lord, *Lincoln's Inn, December* 1, 1865.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 30th ultimo, stating that he was directed by your Lordship to call our special attention to the 9th Article respecting privateers of the instruction sent therewith for Spanish cruizers in the present war with Chile, and to the interpretation or extension stated to be given to that Article of the instruction* by a circular of the Spanish Minister of Marine, ordering the Commanders of Spanish ships to treat as pirates all vessels of which the captain, the officers, and the majority of the crew are not Chileans, or who may not have received their commission direct from the Chilean Government.

And Mr. Hammond was pleased to request that we would acquaint your Lordship, at our earliest convenience, whether such instructions as are stated to have been issued by the Spanish Minister of Marine, as well as those issued by the Spanish Admiral, are consistent with the law of nations, and therefore to be acquiesced in by foreign Governments, any of whose subjects may render themselves liable to be proceeded against as pirates.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That we think both these instructions are inconsistent with the law of nations, which has never regarded the enlistment of the subjects of one nation in the war service of another as piracy, and which draws no distinction between commissions given direct by a belligerent Government, and commissions given by persons acting as its agents for that purpose, by its authority.

We think, therefore, that these instructions cannot properly be acquiesced in by foreign Governments, any of whose subjects may, under them, be proceeded against as pirates.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 198.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received December* 1.)

My Lord, *Lincoln's Inn, December* 1, 1865.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of this day's date, stating that, with reference to our Report of the 27th instant, and to his letter of the 29th instant, he was directed by your Lordship to transmit to us two notes from the Spanish Minister at this Court, dated the 28th and 29th ultimo, containing particulars relative to certain vessels which are supposed to be fitting out in this country to act as privateers in the war between Chile and Spain.

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* See the "Times" of November 29, page 12.

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And Mr. Hammond was to acquaint us that copies of these notes had been sent to the Home Office and to the Board of Treasury, calling their attention to the statements made by the Spanish Minister; and was to request that we would take these papers into consideration, and furnish your Lordship, at our earliest convenience, with our opinion as to whether, on the information now sent by M. de Molins, any further, and what, steps can be taken by Her Majesty's Government, to prevent a violation of the laws of this country.

And Mr. Hammond was to add that, in accordance with the suggestion contained in our Report of the 27th instant, the Lord Advocate of Scotland had been communicated with in respect to the vessels said to be fitting out in the Clyde.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That in order to enable Her Majesty's Government to take any measures of prevention in these cases, it is necessary that some evidence of an illegal purpose or destination of the ships in question should be obtained; and at present no such evidence has been obtained or offered.

We think the proper course will be to inform the Spanish Minister that such evidence is necessary, and that the mere suspicion or belief of the Agents of the Spanish Government (however probable it may appear to be) is insufficient to supply its want; that Her Majesty's Government will direct all the means in their power to be used, for the purpose of obtaining correct information as to these suspected vessels, and evidence of any contemplated violation of the law, if such there should be; and that they will also give prompt attention to any evidence which the Spanish Minister may cause to be laid before them, but that, without some evidence, they cannot prevent the owners of those ships from dealing with their own property in a way which (for aught that now appears) may be perfectly legal; nor have they, at present, any facts on which they can proceed as to the suggested illegal intention to enlist sailors for the war service of the Chilean Government.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 199.

The Queen's Advocate to the Earl of Clarendon.—(Received December 1.)

My Lord, *Doctors' Commons, December* 1, 1865.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 15th ultimo, stating that with reference to my Report of the 3rd April last upon a note from the Spanish Minister at this Court, protesting against the condemnation by the Mixed Commission Court at Sierra Leone of the Spanish ship "America," upon a charge of being equipped for the Slave Trade, he was directed by your Lordship to transmit to me a translation of a further note from the Spanish Minister relating to this case; and Mr. Hammond was pleased to request that I would furnish your Lordship with my opinion as to the reply which it will be proper to return to the Spanish Minister's application.

I am also honoured with Mr. Hammond's letter of the 21st ultimo, transmitting, together with the former papers, the volumes containing the decisions in the cases of the "Fabiana," the "Conchita," the "Rosarita," and the "Mosca," condemned in the Mixed Commission Court at Sierra Leone.

In obedience to your Lordship's commands I have taken these papers again into consideration, and have the honour to report—

That I observe the Spanish Government have now abandoned all the objections but one to the lawfulness of this sentence.

That having regard to the reply of the Spanish Government with respect to the objection which they still maintain, and to the present position of this case, it seems to me expedient to enter into a full consideration of the Treaties, of the peculiar character of the tribunals created by them, of the course, practice, and usage by which the provisions of these Treaties have hitherto been carried into effect, in order to arrive at the true construction of the language of the Covenant entered into by the two Contracting Parties—England and Spain.

The first Treaty was concluded at Madrid, the 23rd September, 1817 (2 Hertslet,

p. 272). The second and last Treaty was signed at Madrid, 23rd June, 1835 (4 Hertslet, p. 440). This Treaty recites that the King of England and the Queen of Spain "being desirous of rendering the means taken for abolishing the inhuman Traffic in Slaves more effective, have, in order to obtain this important object, resolved to conclude a new Convention in the spirit of the Treaty contracted between both Powers on the 23rd September, 1817;" and I observe that Lord Palmerston, in his despatch to the English Commissioners, dated 15th October, 1836 (Slave Trade, vol. ix, p. 38), after consulting with Her Majesty's Advocate-General, informs them that "the Treaty of the 28th June, 1835, neither annuls nor supersedes the Treaty of the 23rd September, 1817, but, on the contrary, it extends the power given by the latter instrument to suppress the Slave Trade."

Now the 3rd section of the Regulation for the Mixed Commissioners of the first Treaty is identical in substance with the 3rd section of Annex B, for the regulation of Mixed Courts of the Treaty of the 23rd June, 1835. The difference in the language is immaterial, both in the Spanish and in the English Treaty. The clause in both Treaties provides that the final sentence shall not be delayed beyond the period of two months.

In my former Report I stated my reasons for thinking that these words, however stringent in themselves, were directory; and that whatever punishment the neglect of the order contained in them might entail upon the Judge, such neglect would not necessarily render null and void a sentence passed after the expiration of the two months.

I think it right to restate and reinforce this opinion. And first, it is obvious that the construction which would render null and void all sentences passed, in whatever circumstances of overwhelming necessity, directly after that period had expired, would defeat "the spirit of the Treaty" referred to in the citation which I have already made from the preamble. And the answer of the Spanish Minister to my observation on this point is unsatisfactory, and the cases which he puts are really not founded upon any analogy to the present. The case of the minor and of the criminal, of whose acts the law takes no cognizance until they have arrived at a certain age, are cases in which their authority and power has not begun, or ever been vested in them, and are in principle unlike the case of the Judge in whom the authority is vested, and who is in the course of rightfully exercising it at the time when the particular hour arrives at which it is said that his authority ceases; not because, like the minor, he never possessed it, but because he had not exercised it in the particular instance with sufficient dispatch. It is manifest that the illness of a Judge, or other unavoidable cause, might render the delivery of the Judgment within the two months impossible. The Treaty is not to be construed upon the technical principles of a criminal statute, but upon the broadest principles of good faith, and with a view of carrying the object of it into effect.

There is no doubt that the object was to compel all proceedings "to take place as summarily as possible," according to the words in the earlier part of the section, and the period of two months was fixed upon as the period in which all causes should be concluded, and all sentences given.

But the question is, whether it was the intention of the Treaty that the delivery of the sentence after the expiration of two months should render the sentence, which would be fully warranted by the evidence, null, or that it should render the Judge liable to censure or removal as the case may be.

I think the latter is the true construction of the words, "shall not be delayed beyond the period of two months." While, on the one hand, there are no words (and this is to be carefully remarked) expressly providing that the sentence shall be null; on the other hand, in the original Treaty of 1817, which is still to be considered in force, it is provided, by clause 10 of the Regulation (2 Hertslet, page 305), "when the parties interested shall imagine they have cause to complain of any evident injustice on the part of the Mixed Commissioners they may represent it to their respective Governments, who reserve to themselves the right of mutual correspondence for the purpose of removing, when they think fit, the individuals who compose these Commissions." Such being the construction of the words, which the reason of the thing would suggest, it becomes very important to see whether previous authority has so construed them, and also whether both the Contracting Parties to the Treaty have by their practice and usage (which are the best interpreters of the Treaty) acquiesced in this construction. It appears to me that with respect to both these points the ground is very firm. I find that the question as to the directory character of the words of the Treaty was first raised in the case of the "Fabiana" in the year 1823.

I find that in the month of November in that year the Commissioners reported to the Secretary of State for Foreign Affairs as follows:—

"Upon a consideration of the facts disclosed in Mr. Batt's affidavit that the

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'Fabiana' was sent hither for adjudication at the discretion of a subordinate officer of the 'Owen Glendower,' we are of opinion that such a sending in for adjudication was irregular, inasmuch as it appeared to be opposed to the letter and the spirit of the Treaty with Spain. We conceived that that Treaty solely vested in the Commander of a ship of the Royal navy, properly authorized to make seizures of vessels suspected to be engaged in the Traffic of Slaves, the discretion to send in for adjudication vessels detained by him, or under his authority, by boats of his ship.

"The limitations to the right of search are such under the Treaty that it appears to be the very foundation of that right that it should be exercised with the greatest precaution by the Commanders of ships of war to whom the instructions under the Treaty are issued: that consequently the more important right of sending in a vessel for adjudication should only be exercised by those Commanders in order that the Powers concerned in the Treaty may be fully assured that such right will not be exercised but upon a mature consideration of the reasons for her detention, and upon a proper reference to the Commissioners' instructions." (Slave Trade, vol. vii, page 66.)

But to this despatch Mr. Canning replied as follows:—

"The King's Advocate has reported that the detention having been made by a competent officer, and the declaration which was omitted, not being enjoined to be given in all cases, but only where held to be necessary, the circumstance that the captured vessel was sent in for adjudication by the subordinate officer, though an irregular act, was not so irregular but that you might have proceeded to adjudication.

"And the King's Advocate further points out, as what he holds out to be the sound construction of the Treaty, that although the Government may be answerable for losses occasioned by deviations from the Treaty, still every deviation does not necessarily invalidate a capture.

"Under these circumstances, and in this view of the case, *it appears to me that you should have rather proceeded to adjudication, than have suspended your proceedings, and ordered the 'Fabiana' to be sold; and you will, therefore, act upon this opinion in this case, so far as the circumstances will allow of it, and on similar occasions.*" (Slave Trade, vol. iii, page 27.)

It is true that in this case the particular section of the Treaty now in dispute was not decided upon, but it is valuable as deciding the principle by which deviations from the Treaty are to be governed.

It appears to me that the "Conchita"* was captured on the 10th June, 1823; her papers brought into Registry of the Court on the 29th August (vol. ii, Class A, p. 61); and the case was brought before the Court on the 9th February, 1824, but no sentence was given till the 20th July, 1835, when the Court adjudicated upon the case in obedience to orders from the Foreign Office.

The following is the extract from Lord Palmerston's letter to the Commissioners:—

"The King's Advocate reports it to be his opinion that the irregularities which occurred in respect to the conduct of the captors of the 'Conchita' appear to have been in great measure explained by the Declaration transmitted to the Mixed Commission by Sir Robert Mends; that the Spanish character of the vessel, and the fact of her having been fitted out for the Traffic in Slaves, were satisfactorily established, and that the facts detailed leave no doubt that the captured vessel had been engaged in the Slave Trade, and that she actually had slaves on board of her immediately she was captured, *and that as the 'Fabiana' was condemned after the expiration of the limited period, the same course may and ought to be pursued on the present occasion.*" "*I have therefore to desire that you will now proceed to the final adjudication* of the 'Conchita.'" (See pp. 32, 66, and 83, vol. viii, Class A.)

In the case of the "Rosarita" the vessel arrived on the 1st February, 1836, and was condemned on the 23rd July. In this case, I find in the account of the proceedings (p. 65, vol. ix, Class A), the following paragraph:—"Two months having elapsed since the filing of the claim, the claimant's Proctor, on the 25th April, deemed it right to petition the Court to be allowed to record a protest for his client against the fact of no judgment having been pronounced upon the detained vessel within two months, as stipulated in the IIIrd Article of Annex B.

"A formal protest, under notarial seal, accompanied the Petition. The Court, however, under the peculiar circumstances of the case, did not consider it right to permit a protest to be recorded against its proceedings, and upon this view rejected the Petition of the claimant's Proctors."

Moreover, I find upon the perusal of a list supplied to me by the Chief Justice of Sierra Leone (which I have appended to this Report), the following number of cases upon which sentences of condemnation were passed, after the lapse of two months, by the Court, namely, one in 1824, one in 1835, twenty-three in 1836, and one in 1840.

In all these cases the Commissioner of the Spanish Government must have consented to the sentence, and I presume, but I am not certain, that the Spanish Government received its share of the proceeds; and a question may arise whether both the Spanish and English Governments would not be bound, upon the Spanish construction of the Treaty, to make compensation to the owners of all these vessels.

With regard to the delay in this particular case, it appears not to have extended beyond eleven days (many of the cases in the list referred to show a delay of months and years).

It appears to have arisen from a claim of the Spanish Judge to act under an authority which, it is said, "had not been previously preferred," and from the illness of the Surveyor, which retarded the landing of the rice, a necessary preliminary to the examination of the vessel.

It is, of course, for Her Majesty's Government to say, having regard to this long list of precedents and to the observations which I have had the honour to make, whether it will now, and for the future, construe the words in the section of the Treaty as invalidating altogether all sentences passed after the lapse of the period of two months.

I think it right, however, to observe that I do not see how the English Judge and Arbitrator could have done otherwise than consider these precedents as binding upon him.

The character of the Court is very peculiar, as it appears, unlike any regular tribunal, to be bound by instructions given from time to time by Her Majesty's Government, as to the incidents of any particular case which may be brought before it.

I have only one more observation to make, that if, as contended by the Spanish Minister, the expiration of the period deprives the Court of authority, it will have no power to release or restore the vessel which has been duly arrested and placed under proper custody.

Perhaps, however, having regard to the peculiarity of the tribunals which I have mentioned, your Lordship might send an order for the release of the vessel which the Court would obey.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 200.

The Queen's Advocate to the Earl of Clarendon.—(Received December 6.)

My Lord,
Doctors' Commons, December 6, 1865.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 4th instant, stating that he was directed by your Lordship to transmit to me a despatch from Her Majesty's Minister at Madrid (No. 29), inclosing an extract from the Official Gazette stating that orders have been issued to the commanders of Spanish vessels to treat as pirates all vessels cruizing in Chilean waters whose captains, officers, and a majority of the crew are not Chilean subjects, and who have not received letters of marque directly from the Chilean Government; and Mr. Hammond was to request that we would take these papers into consideration, and furnish your Lordship with my opinion as to whether such vessels, if unprovided with letters of marque, would not come under the denomination of pirates. A copy of a despatch which has been addressed to Her Majesty's Minister at Madrid on the Report of the Law Officers of the 1st instant was also inclosed.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I am not sure whether I quite understand the expression in these orders, "directly from the Chilean Government."

It is competent to the Chilean Government either to issue letters of marque directly or to invest some agent with authority to issue in their name such letters of marque; but if these orders refer not to public vessels of war duly commissioned, whatever may be the composition of their crew, but to private vessels making war as privateers, and direct that if they have not letters of marque granted by the authorities of the Chilean Government they are to be treated as pirates, such orders are not in my opinion at variance with international law. "Qui autem nullius Principis auctoritate, sive mari, sive terrâ, piratarum prædonumque vocabulo intelliguntur." (Bynkershoek, Q. I. P., l. i, c. 17.)

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* The Queen's Advocate's Report on this case appears in Slave Trade, 185 , page 141.

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As the question is put to me I understand that the order in relation to the manning of the vessel is not in the disjunctive, but applies only to cases where there are also no proper letters of marque.

But assuming it to be otherwise, viz., that the order means that the crew are to be treated as pirates *either* in the case of the vessel having no letters of marque, *or* in the case mentioned as to the manning of the vessel, then I think that Her Majesty's Government cannot admit the right of the Spanish Government to treat as pirates either duly commissioned public vessels of war or vessels with letters of marque from the Chilean Government, because the officers or the majority of the crew are not subjects of Chile.

Such a doctrine is indeed maintained with respect to privateers by certain French writers, and the recent work, Pistoye et Duverdy (t. i, p. 279), treats it as a recognized position of international law; but he refers only to Ortolan (l. i, c. 3), who is himself a modern writer of no high authority, and who cites no authority for the position. While, on the other hand, M. Masse ("Droit Commercial," t. i, No. 165), a very high authority on French law and general jurisprudence, distinctly lays down the doctrine that a neutral who takes a commission from a belligerent thereby denationalizes himself and becomes the subject of the State whose commission he bears. This must of course be understood only with reference to the other belligerent, who has a right to treat such person as a subject of his enemy. No such position as that now asserted in the Spanish Orders is maintained by Bynkershoek (Q. I. P.), or by Martens ("Essai sur les Armatures"). It may be well also to mention that no such doctrine is laid down by the last Spanish writer of international authority, Pando ("Elementos del Derecho Internacional," p. 424, sec. 173), who in his chapter on privateers does consider the question in what circumstances the privateer is to be treated as a pirate;* nor have I been able to find the position maintained in the older and well-known work of Abreu on the same subject. I believe no such restriction has been imposed by the orders with respect to privateers issued by England, or by the United States of America.

There are indeed many Treaties in which it has been agreed that if the subjects of either of the Contracting Parties take letters of marque from the enemy of the other they may be treated as pirates, but there is no authority for saying that the subjects of a foreign State which is not a party to any such Treaty can be so treated, if they are found on board a privateer regularly commissioned by the belligerent It is quite another consideration whether the State to which these subjects belong will prohibit its own subjects from taking part in a contest in which the State is neutral, and will by a municipal law enact that if they serve on board a belligerent privateer except under certain conditions relative to the number of the crew they shall be guilty of piracy. There have been various provisions both as to the general question and as to the proportion which foreign sailors may bear to the whole crew of the privateer in the laws of different States at different periods of history; the very fact of this variety showing that there is no fixed international rule on the subject. For instance, in the famous Ordonnance de la Marine, the subjects of Louis XIV who took letters of marque from a foreign State *without the permission of their Sovereign* were to be treated as pirates, and *two-thirds* of the crew were to be Frenchmen.

By a "règlement sur les armements en course" of May 1803 (c. 2, sec. 10), privateers were authorized to employ foreign sailors "jusqu'aux *deux cinquièmes* de la totalité de l'équipage." But these are only municipal regulations; and even if it be conceded for the sake of argument that these Ordinances gave a right to the belligerent to treat the subjects of the State who issued them as pirates, the right could not be extended to the subjects of other States which have no such law and issued no such provisions.

I have entered perhaps unnecessarily upon this topic, but it is one of grave importance, and which seemed to be raised in the former papers submitted to me on this subject.

I have, &c.
(Signed) ROBERT PHILLIMORE.

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* *e.g.*, "El corsario que cruza con dos o mas patentes de diversos Potencias debe ser considerado como pirata."

No. 201.

The Law Officers of the Crown to the Earl of Clarendon.—(Received December 8.)

My Lord, *Lincoln's Inn, December 8, 1865.*

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 5th instant, stating that with reference to our previous Reports in regard to vessels said to be fitting out in this country to act as privateers in the war between Spain and Chile, he was directed by your Lordship to transmit to us a further letter from the Board of Treasury,* inclosing a Report from the Custom-house Commissioners relative to three vessels which are being fitted out at Liverpool; and Mr. Hammond was to request that we would take these papers into our consideration, and furnish your Lordship with our opinion as to whether any steps can be taken by Her Majesty's Government in the matter. Mr. Hammond was also to add a letter (then) just received from the Treasury respecting an application which had been made for a British registry for one of these vessels (the "Minerva").

We are also honoured with Mr. Hammond's further letters of the 6th, 6th, 6th, 7th, and 7th instant, on the subject of these vessels,* and other like vessels said to be fitting out in the Clyde and the Victoria Docks,† and inclosing Reports of the Customs and other officers respecting them; and also as to the enlistment by one John Seymour, a lodging-house keeper in Wellclose-square, of sailors to be employed in the service of the Chilean Government.

In obedience to your Lordship's commands we have taken these several papers into consideration, and have the honour to report—

That there does not appear to us, at present, any legal evidence which would justify Her Majesty's Government in detaining any of the vessels referred to in the various sets of papers which have been sent to us, nor in instituting criminal proceedings against Seymour for enlisting seamen in contravention of the Foreign Enlistment Act.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 202.

The Queen's Advocate to the Earl of Clarendon.—(Received December 8.)

My Lord, *Doctors' Commons, December 8, 1865.*

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 6th instant, stating that with reference to my letter of the 17th ultimo, transmitting for insertion in the "London Gazette" a form of notification of the blockade of the ports of Chile by the Spanish naval forces, he was directed by your Lordship to transmit to me the accompanying despatch from Sir John Crampton (No. 34), inclosing a copy of the official "Gazette" of Madrid announcing the state of affairs between Spain and Chile; and to request that I would take the same into consideration, and inform your Lordship whether I consider that any further notice of the blockade should in consequence be inserted in the "London Gazette," and that if I should consider this necessary I would draw up and transmit to your Lordship a draft of the notification which I might consider it desirable to be made public.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I am of opinion it is not expedient at present that any further notice of this blockade should be inserted in the "London Gazette."

I have, &c.
(Signed) ROBERT PHILLIMORE.

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* Dated December 2. As to two vessels in Messrs. Laird's yard at Liverpool (the "Minerva" and another). Also vessel in Mr. Miller's yard.

† As to two vessels fitting out in the Clyde (the "Tornado" and the "Cyclone"). As to the "Mary Augusta" and the "Helen Denny," in Victoria Docks. Vessels at Liverpool, &c.

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No. 203.

The Queen's Advocate to the Earl of Clarendon.—(*Received December* 9.)

My Lord, *Doctors' Commons, December* 9, 1865.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 8th instant, stating that he was directed by your Lordship to acknowledge the receipt of my Report of the 6th instant with regard to the notification issued by the Spanish Government of their intention to treat Chilean privateers as pirates except under certain circumstances, and to state that your Lordship gathers therefrom that a vessel unprovided with letters of marque, and acting as a privateer, would be lawfully treated as a pirate, but that if such vessel carried letters of marque she would be protected by them whether the belligerent Government delivered them to the captain in its own country, or sent to its agents for delivery in a foreign country, which latter course your Lordship believes has constantly and without impeachment been resorted to.

Mr. Hammond was pleased to transmit to me, with reference to the above paragraph and to my Report of the 6th instant, a copy of an instruction which your Lordship addressed on the subject to Her Majesty's Minister at Madrid, and to request that I would inform your Lordship whether I consider it advisable that any addition should be made to that instruction, in order to warn the Spanish Government against the commission of such breaches of international law as it would be the duty of Her Majesty's Government to resent.

In obedience to your Lordship's commands I have the honour to report—

That it does not appear to me necessary to make any addition to the letter which your Lordship has already addressed to Her Majesty's Minister at Madrid.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 204.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received December* 16.)

My Lord, *Lincoln's Inn, December* 16, 1865.

WE are honoured with Mr. Hammond's letter of the 15th instant, stating that with reference to his previous letter of the same date, he was directed by your Lordship to forward to us a letter, with its inclosure, which has been received from the Home Department, relative to the departure of the "Eagle" from the Victoria Docks.

In obedience to your Lordship's commands we have the honour to report—

That these further papers do not require any alteration to be made in the Report which we had the honour to submit to your Lordship this morning.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 205.

The Queen's Advocate to the Earl of Clarendon.—(*Received December* 18.)

My Lord, *Doctors' Commons, December* 18, 1865.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 16th instant, stating that with reference to my Report of the 30th ultimo, in regard to the Prize Court established by Admiral Pareja on board his flag-ship for the trial of prizes captured by his blockading squadron in Chilean waters, he was directed by your Lordship to transmit to me a despatch from Her Majesty's Minister at Madrid (No. 55), inclosing a translation of the reply which he has received to the note he addressed to the Spanish Government upon this subject.

And Mr. Hammond was pleased to request that I would take these papers into consideration, and furnish your Lordship, at my earliest convenience, with my opinion thereupon, and as to whether the captured prize should have the option of being tried on board the Admiral's flag-ship, or being taken to a Spanish port for trial.

In obedience to your Lordship's commands I have the honour to report—

That I observe that Señor Bermudez de Castro does not pretend that there is any precedent for establishing a Prize Court on board the deck of a belligerent ship; while his attempt to palliate the evil and injustice necessarily incident to such a proceeding does not appear to me successful.

What the neutral has by international law a right to expect is, that a Civil Judge, of no mean legal experience and ability, and wholly disinterested in the issue, shall try the question whether his ship has been lawfully seized or not; whereas the Spanish Government propose that the captor himself, who is the other party in the suit, who, moreover, has no pretension to any legal qualification whatever, shall occupy the judgment seat. And, as I have before observed, the neutral is also thereby deprived of his right to obtain the best legal advice to defend his interests, and argue questions often requiring great legal knowledge and acumen, before the Court. It is a poor compensation for the absence of all these essential elements of justice, to be told that his captor will decide the question, of his own right to take the neutral ship, with great expedition.

The argument that a man-of-war is a part of the State to which it belongs is an undeniable premise of international law, but it does not warrant the conclusion that a Prize Court on board a man-of-war, presided over by the Admiral, is the same as a Prize Court on mainland, presided over by a Civil Judge.

Such an argument is, for the reasons I have alleged, wholly unsatisfactory; and I venture to assert that it is one which no publicist of authority (to borrow Señor de Castro's phrase) ever maintained. It may be that it is inconvenient to Spain to establish a Prize Court at Cuba or elsewhere, and that she has no ships to spare to conduct prizes there; but that is a reason why she should leave the ships of the neutral alone, and not why the neutral should suffer.

With respect to what Señor Bermudez de Castro says as to the right of the belligerent to destroy enemy's ships, and therefore as to his right, *à fortiori*, to try them in any way he pleases, it is to be observed that Her Majesty's Government do not dispute that right; but what they do dispute is, that a belligerent has a right to destroy a ship claimed by one of Her Majesty's subjects, because he (the belligerent) declares it to be the ship of an enemy, without trying the question at issue by law, which national justice and international usage alike prescribe to him.

I cannot advise your Lordship that it would be expedient, having regard to the extreme mischief of such a precedent, to suggest to the neutral owner that he has the option of having his case tried on board the Admiral's deck. It is a private arrangement which it would be competent to him to adopt if he thought proper.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 206.

The Queen's Advocate to the Earl of Clarendon.—(*Received December* 18.)

My Lord, *Doctors' Commons, December* 18, 1865.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 16th instant, stating that he was directed by your Lordship to transmit to me two letters, dated the 15th instant, which have been received from the Board of Admiralty, inclosing Reports from Commodore Harvey in regard to the blockade of the Chilean coast by the Spanish naval forces; and Mr. Hammond was to request that I would take these papers into consideration, and furnish your Lordship with my opinion thereupon, and as to whether it would not be advisable that the arrangement entered into by Commodore Harvey in respect to mail-packets should be made public in this country; and if so, he (Mr. Hammond) was to request that I would prepare a notice to that effect for insertion in the "London Gazette."

In obedience to your Lordship's commands I have the honour to report—

That I am of opinion that it would be expedient both to notify the arrangements as to the mail-packets, and also the specification of the Chilean harbours under blockade, and the provisions as to the unlading and lading of cargo by neutral ships in blockaded ports,—mentioned by Admiral Harvey (paragraph 13 of his letter of the 25th October, 1865), and I have prepared a notice for the "Gazette" accordingly.

I have, &c.
(Signed) ROBERT PHILLIMORE.

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Inclosure in No. 206.

Notification for the "London Gazette."

Foreign Office, December 19, 1865.

IT is hereby notified that the Earl of Clarendon, K.G., Her Majesty's Principal Secretary of State for Foreign Affairs, has received through the Secretary of the Admiralty the following intelligence, dated Valparaiso, the 25th October and the 1st of November, 1865, from Commodore Harvey, of Her Majesty's ship "Leander," relative to the blockade of the coast of Chile by the Spanish squadron:—

That the Commander of the Spanish naval forces has declared "that the harbours at present blockaded are Tonce, Talcahuano, Valparaiso, Herradura (Guayacan), Coquimbo, Caldera.

"Notice will be given of any other ports to be blockaded, and neutral vessels will be permitted a certain time to discharge cargo and leave in ballast; and also those loading to complete cargo.

"The following are the terms on which the Pacific Steam Navigation Company's packets are now permitted to resume running:—

"That the Company's packets can convey to and from Valparaiso, calling at Coquimbo and Caldera, both official and ordinary correspondence, and also passengers. That the correspondence of the Spanish squadron will be conveyed in the Company's steamers, either in charge of a person appointed by the Admiral or in sealed bags under the receipt of the commander or purser of the steamer, and that the same will be delivered at any or all of the ports touched at by the steamers to the person or persons to whom it may be directed.

"That the Company's steamers will admit as passengers persons belonging to the Spanish squadron. That, in view of the neutrality which the Company is bound to maintain, the conditions are applicable to both belligerents, it being understood that, for either of the same can be taken officers, soldiers, sailors, or public functionaries, in number not exceeding six at any one time. That the packets will be allowed to take sufficient coal at Caldera.

"These conditions, of course, can be withdrawn should Admiral Pareja find it necessary.

"The Vice-Admiral has further granted permission for the vessels consigned to the Company with coal for Caldera to discharge them, provided that the names of the expected vessels are sent by the Manager of the Company to the Captain of the blockading squadron, and also that these steamers may embark specie."

R. P.

No. 207.

The Queen's Advocate to the Earl of Clarendon.—(Received December 23.)

Doctors' Commons, December 23, 1865.

My Lord,

I AM honoured by your Lordship's commands signified in Mr. Hammond's letter of the 18th instant, stating that he was directed by your Lordship to transmit to transmit to me two despatches from Her Majesty's Minister at Madrid,* together with previous correspondence† relating to the instructions issued to the commanders of Spanish ships of war for the treatment of Chilean privateers; and to request that I would take these papers into consideration, and furnish your Lordship with my opinion on this subject, more particularly with reference to the answer of the Spanish Government to the representations which Sir J. Crampton was instructed to make respecting the treatment as pirates of persons found on board privateers.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I crave leave to refer very particularly to my Report of the 6th instant, the latter part of which contains, by anticipation, a detailed examination of the arguments now alleged by the Spanish Minister. I will venture to recapitulate the principal portions of that Report.

As to authority of Jurists: I referred to the very passages from De Pistoye et Duverdy and Ortolan, now cited by the Spanish Minister as the only authorities which would probably be put forward as maintaining the doctrine that international law, as

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* Sir J. Crampton, Nos. 53 and 56.

† Sir J. Crampton, Nos. 29 and 42; to Sir J. Crampton, No. 38.

distinguished from municipal law, treated privateers duly commissioned, but manned in part by foreigners, as pirates. I expressed my opinion that these recent and not high authorities could not outweigh the opinion of other more numerous and more celebrated authorities, including in the number the Spanish writers the old Abreu and the modern Pando, among the German and Dutch, Martens and Bynkershoek. That the modern French writers relied upon were not supported, but contradicted, by the standard writers, ancient and modern, of the same country. That an examination of the authorities clearly showed that the *municipal* law of a State which treated as pirates the subjects of it who engaged in foreign service as the crew of privateers, could not and did not create an *international* law on the subject, although it might authorize a belligerent to treat as pirates the subject of a State which had enacted such a law.

As to Treaties: that those which referred to the subject, while they tended to establish that there did not exist a general international law with relation to it, could only bind the contracting parties to them.

The Treaty referred to between England and the United States of America in 1794, had for its object to prevent privateering altogether, and as long as it was in force (which was not long, I think) it was of course obligatory on these two countries, but on no other.

That as to usage,—England and the United States, who employed at one time an immense number of privateers, never to the best of my knowledge issued any instructions of this kind as to foreign privateers; that I did not believe in practice any instance could be found of a foreign subject serving on board a duly commissioned privateer being put to death, or treated as a pirate.

I am not aware of the circumstances in which Admiral Bondin made the declaration of 1839 which is adverted to by the Spanish Admiral, but there can be no doubt that England would not then have allowed her subjects to be treated as pirates because they served on board a duly commissioned privateer. And the doctrine that an arbitrary declaration by the commander of the naval forces of a single State can alter the law of nations because another State, at the time unaffected by it, does not protest against it, is inadmissible.

As to the hypothesis that France and England during the Crimean war would have treated American subjects on board Russian privateers as pirates, it is an hypothesis, I should suppose, wholly without foundation. That there being no foundation for the position upon authority, usage, or precedent, there was none in *principle.*

The characteer of the privateer is determined by her commission. If a lawful Sovereign Power issues that commission to the captain of that vessel, it cannot be treated as a pirate. It is said that your Lordship, speaking generally of privateering, called it "that scourge of humanity, and legal and organized piracy." The very words, if they were uttered, denote the existing legality of privateering, as well as the desire to render it illegal for the future; but Spain refused to be a party to the Declaration by which it was to be rendered so, and the words afford no pretence whatever for the proposition that those States which did not abandon privateering were to be at liberty to retain the practice, and introduce a new law respecting it affecting the subjects of other States, without their consent.

The Spanish Minister asks upon what principle the English Government rely: the answer is that Her Majesty's Government think the true and sound doctrine to be that a foreigner who serves a State by enlisting himself in her military or naval forces subjects himself to be treated by the belligerent of that State as an *enemy,* but not as a *pirate*; and that no advantage, but great evil to the welfare of the community of civilized States would spring from a confusion of the distinct characters belonging to each.

The reference to the Foreign Enlistment Act weakens instead of supports the Spanish argument. In the first place, Spain knows (by no very distant experience) that it is in Her Majesty's power to formally relax all the provisions of that Act without being at war. In the next place it is a Municipal Act for the purpose of enabling the Government of this country to prevent Her Majesty's subjects from taking part in the wars of other countries; but neither England nor the United States of America (which has a similar Act) ever held that it was lawful for other States to treat British or American subjects, taken by a belligerent, as pirates. And it is to be remembered that the argument of the Spanish Minister, as well as his citation from Hautefeuille, goes the full length of asserting that foreign subjects serving on board men-of-war, as well as on board privateers, are pirates. Not only are the consequences of such a proposition monstrous, but the practical difficulties attending upon it are infinite.

What uniform rule is to be adopted for determining when a sailor, who is perpetually changing his domicil, has become the subject of a foreign State?

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M. Massé (see my former Report) and other jurists hold that the very act of serving in the army or navy of a foreign State renders the person so serving a subject, with reference to other countries, of that State.

Others hold a certain period of domicil or residence, others naturalization, to be necessary.

A Chilean subject, fifty years of age, who had been in Chile since he was three months old, having been born in England would be a British subject. Is he to be hung at the yard-arm for defending his real country Chile against an enemy who has made (most unjustifiable) war upon her? What authority has a foreign State to say how many of the privateer's crew shall be natives? The very limitation concedes that there is no principle in the demand. The truth is, that the claim to issue such a decree is built upon a confusion of municipal and international law. It is competent to Spain to treat her own subjects serving on board Chilean privateers as pirates; but it is not competent to her to extend the crime of piracy by a new definition which is to affect the lives of the subjects of other States. It is competent, however, to her to treat them as *pro hac vice* subjects of the State which they serve, and to deal with them as enemies.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 208.

The Queen's Advocate to the Earl of Clarendon.—(Received December 29.)

Doctors' Commons, December 29, 1865.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 26th instant, stating that he was directed by your Lordship to transmit to me a despatch from Her Majesty's Minister at Madrid (No. 62), respecting a request which has been made to Her Majesty's Consul at Bilbao, by a Spanish merchant at Santander, that a certificate should be given to him certifying that a cargo of flour shipped at that port on account of a British firm is the property of British subjects, to protect it from seizure by Chilean cruizers; and to request that I would take this despatch and its inclosures into consideration, and furnish your Lordship with my opinion as to what answer should be returned to this application.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I am clearly of opinion that the request made to Her Majesty's Consul ought to be in this and all like cases refused. It is no part of the duty of the Consul to grant such certificates; nor has he adequate means of ascertaining the truth of the fact which he is asked to guarantee. Such a course of action would often lead (not improbably in the present case) to his being unintentionally the abettor of a fraud upon belligerent rights.

Lastly, the belligerent would not be bound to recognize the certificate as in any way restricting his right of visitation, search, and capture, according to the circumstances of suspicion which arose in each case.

I have, &c.
(Signed) ROBERT PHILLIMORE.

Sweden.

No. 209.

The Queen's Advocate to Earl Russell.—(Received May 1.)

Doctors' Commons, April 29, 1865.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Murray's letter of the 25th instant, stating that he was directed by your Lordship to transmit to me a despatch from Her Majesty's Consul at Stockholm (No. 10), requesting to be informed whether he can properly accede to the request made to him by Mr. Fairman, who has applied to be furnished with a certificate to the effect that the Chancery of the Governor of Stockholm is an Executive Court, not legally empowered to try cases that are not clear and indisputable; and Mr. Murray was pleased to request that I would furnish your Lordship with my opinion as to the answer which should be given to Mr. Hunt on this subject.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That it does not appear to me that to certify as to the character of the jurisdiction of this Court at Stockholm is within the province of the duties of Her Majesty's Consul at that place.

I have, &c.
(Signed) ROBERT PHILLIMORE.

Switzerland.

No. 210.

The Law Officers of the Crown to Earl Russell.—(Received February 3.)

Lincoln's Inn, February 2, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 19th ultimo, stating that he was directed by your Lordship to transmit to us a correspondence, as marked in the margin,[*] respecting a question which has originated in the Swiss Federal Council of authorizing the use of the Swiss National flag afloat, and the desire of the Federal Government to ascertain on what footing vessels carrying the Swiss flag would be received in British ports; but that before addressing any instructions to Admiral Harris on this subject, your Lordship would be glad to be furnished with our opinion on the proposed measure, and as to the answer which it would appear expedient to return to the Swiss Government on this subject.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That although the proposal is novel, and although the Swiss Marine must necessarily be dependent upon the use of the ports of other countries which may be permitted to them by the Powers to which those ports belong, we know no principle of international law which ought to lead other countries to refuse to recognize the flag of an inland State, when used either by public ships belonging to that State, or by the ships of its subjects under the authority of its Government upon the high seas; and it appears to us (while concurring in the practical reasons suggested by Admiral Harris for doubting the policy of this measure on the part of Switzerland) that the answer of Her Majesty's Government to the application of the Swiss Federal Council may well be in accordance with the views of the Lords of the Admiralty, as expressed in Mr. Romaine's letter to Mr. Hammond of the 23rd December last, with the substance of which we concur.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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[*] Admiral Harris, Nos. 125, 126, and 131 of 1864; No. 5 of 1865; Admiralty, December 23, 1864.

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No. 211.

The Queen's Advocate to the Earl of Clarendon.—(*Received November 15.*)

My Lord, *Doctors' Commons, November* 15, 1865.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 9th instant, stating that he was directed by your Lordship to transmit to me a despatch and its inclosures received from Her Majesty's Minister in Switzerland (No. 91), respecting the position and privileges of an English company styling themselves "The European Central Railway Company," who have obtained from the Swiss Government a concession for a line of railway in the Valley of the Tessin, but whose Act of Concession is expected to become the subject of debate in the Federal Assembly, the President having, as it appears, assumed the position that an English Company, from the fact of their Direction being located in the Canton of Tessin and of their having an agent there, are not entitled to claim the support of the British Legation in regard to the privileges accorded to them by the Act of Concession; and Mr. Hammond was pleased to request that I would take these papers into consideration, and furnish your Lordship with my opinion on the particular point in question, and as to the instructions which it may be desirable to address to Admiral Harris upon this subject.

The previous papers were also inclosed for convenience of reference.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I am of opinion that this English Company has not forfeited its right to the protection of the British Legation, because in the Act of Concession the technical domicil of the Company,—"la direction technique du chemin de fer," as the President terms it (letter to Admiral Harris, October 18, 1865, Inclosure 2 in No. 91 of Admiral Harris' despatch), is to be considered as being in the Canton where the Board or Administration of the Company is situated. The distinction between different kinds of domicil is familiar to all jurists; the domicil which incorporates a foreign citizen into the State in which he is resident is wholly distinct in its character and consequences from the domicil which is assigned by the State to a foreign subject with relation to certain legal acts or liabilities. Such a domicil is for the purpose of founding jurisdiction in the event of legal proceedings being taken either by him or against him in the country in which he is resident. The domicil specified in the Concession for the Company is of this nature, and falls under this category; but it does not affect the right of the Company to the intervention of its Government for the purpose of preventing an act of injustice being done to it by the foreign Government. The intervention, however, of the British Legation in Switzerland should be strictly confined to such a case, and should not attempt to interfere with the ordinary course of the municipal law in its operation upon the rights and liabilities of the Company.

I humbly advise that instructions to this effect be sent to Admiral Harris.

We have, &c.
(Signed) ROBERT PHILLIMORE.

Tripoli.

No. 212.

The Law Officers of the Crown to Earl Russell.—(*Received January 25.*)

My Lord, *Lincoln's Inn, January 24,* 1865.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 9th instant, stating that with reference to our Report of the 25th of August of last year, he was directed by your Lordship to transmit to us a despatch dated the 30th November ultimo, from Mr. Reade, Her Majesty's Consul at Scutari, relative to the complaint made against him, whilst holding the post of British Vice-Consul at Bengazi, by M. de Bacquerie, the French Vice-Consul at that place, with reference—1st, to the course pursued by Mr. Reade on the occasion of Madame de Bacquerie applying to him for protection against her husband, and afterwards taking shelter in the house of a Maltese; and 2ndly, in connection with a disturbance which took place among the Maltese in the Catholic church at Bengazi; and to request that we would take these papers into our consideration, and favour your Lordship with our opinion thereon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That it appears to us that the defence of Mr. Consul Reade, upon both the charges, is satisfactory and sufficient.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

Tunis.

No. 213.

The Law Officers of the Crown to Earl Russell.—(*Received June 27.*)

My Lord, *Lincoln's Inn, June* 26, 1865.

WE are honoured with your Lordship's commands signified in Mr. Murray's letter of the 3rd instant, stating that he was directed by your Lordship to transmit to us the accompanying despatch, together with its inclosures, from Her Majesty's Agent and Consul-General at Tunis (No. 14, May 17), reporting the proceedings which have taken place in consequence of the death in September last of a British subject named Marcello Schembri from injuries inflicted upon him by two other British subjects, named Giuseppe Curmi and Antonio Bagada, and an Italian named Antonio Bussetta; and to request that we would take these papers into consideration, and favour your Lordship with any observations which we might have to make thereon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That it appears that this unfortunate man, Marcello Schembri, was killed in a drunken brawl, in which he appears himself to have taken part. It is true that the evidence taken at Tunis points to the Italian, Antonio Bussetta, as having been a principal in the act of manslaughter which caused the death of Marcello. But it by no means follows that the Court of Genoa may not have been fully justified, on the evidence laid before them, in acquitting him. Probably, also, that evidence may have undergone a much closer sifting than it appears to have undergone at Tunis, where the Court must necessarily have been without the legal aid which the Court at Genoa possessed. On the other hand, Her Majesty's Consul at Tunis appears to us to have acted with caution and propriety, and to have arrived at a just conclusion upon the facts as they were proved before him, and to have inflicted a just sentence on the Maltese criminals. We do not see that any further steps can be taken in this matter.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 214.

The Law Officers of the Crown to Earl Russell.—(*Received July 1.*)

My Lord, *Lincoln's Inn, June* 30, 1865.

WE are honoured with your Lordship's commands signified in Mr. Murray's letter of the 5th instant, stating that he was directed by your Lordship to transmit to us the

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accompanying despatch from Her Majesty's Agent and Consul-General at Tunis, requesting instructions as to the course which he should pursue with regard to a sum of money deposited in his office belonging to a Mr. Smythe of London, being the dividend due to him out of a bankrupt estate, but which is now claimed by a Mr. Bensammon, on account of a debt of 134*l.* 16*s.* 10*d.* which he alleges to be owing to him by Mr. Smythe; and to request that we would take this despatch into our consideration and favour your Lordship with our opinion as to the instructions which should be addressed to Consul-General Wood.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That we think that Her Majesty's Consul-General at Tunis cannot lawfully adopt the course which he proposes to follow with respect to this sum of money.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 215.

The Queen's Advocate to the Earl of Clarendon.—(Received December 30.)

My Lord, *Doctors' Commons, December* 29, 1865.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 23rd instant, stating that he was directed by your Lordship to transmit to me the accompanying despatch from Her Majesty's Agent and Consul-General in Tunis (No. 73), reporting the course he has adopted in regard to a Maltese family who had been compelled by distress to embrace the Mahometan religion; and Mr. Hammond was pleased to request that I would furnish your Lordship with my opinion in regard to the legality of Mr. Wood's proceedings.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That the history of this transaction is rather vague; what the distress was which compelled the woman to become a Mahometan, and who made the application on behalf of the minor children, do not appear. The children of the Maltese father are, at least during their minority, British subjects; and assuming that the application on their behalf was made from a proper quarter, *e. g.*, the next relation or friend of the children, and that the mother accompanied them of her own accord, I think that the conduct of the Consul-General in sending them to Malta was legal and proper.

I suppose that when he desired that means should be taken for preventing their return to Tunis, he meant during the continuance of their minority.

I have, &c.
(Signed) ROBERT PHILLIMORE.

Turkey.

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No. 216.

The Queen's Advocate to Earl Russell.—(Received January 14.)

My Lord, *Doctors' Commons, January* 13, 1865.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 10th instant, stating that he was directed by your Lordship to transmit to me the accompanying papers, as marked in the margin,* relative to an application made by an Ionian named Demetrius Micrulachi, a partner in a mercantile firm at Manchester, that British protection may be continued to be afforded to him so long as he remains a partner in the said firm, and that your Lordship proposes to instruct Her Majesty's Chargé d'Affaires at Constantinople to protect Mr. Micrulachi so far as regards the commercial concerns of the house in England, but, as he is a Greek subject, not to extend to him general protection; but that before doing so, however, your Lordship would be glad to be furnished with my opinion as to the course your Lordship proposes to pursue in this matter.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That having regard to the fact that the domicil of this firm, of which Demetrius Micrulachi is a member, is British, and to the peculiar circumstances of the case, I think that your Lordship would be warranted in acceding to the petitioner's prayer with the limitations which your Lordship proposes, namely, to allow the British protection, which this gentleman now enjoys, within the Turkish dominions, to be continued to him, and so far only as the commercial interests of that firm in England are concerned, and while he remains a member of that firm.

I have, &c.
(Signed) ROBERT PHILLIMORE.

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* Mr. Kent, January 3; to Mr. Kent, January 5; Mr. Kent, January 7, 1865.

No. 217.

The Queen's Advocate to Earl Russell.—(Received January 14.)

My Lord, *Doctors' Commons, January* 13, 1865.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 10th instant, stating that with reference to my Report of the 26th of August, 1863, he was directed by your Lordship to transmit to me the accompanying extract of a despatch from Her Majesty's Chargé d'Affaires at Constantinople (No. 25, January 19, 1864), respecting the course which the Turkish Government propose should be pursued with a view to the settlement of the claim of Mr. Hippodimatopulo against the Turkish War Department; and to request that I would take the same into consideration, and furnish your Lordship with my opinion as to the instructions which should be given to Her Majesty's Chargé d'Affaires at Constantinople on the subject. The previous papers were also annexed for information.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I am of opinion that Her Majesty's Chargé d'Affaires at Constantinople should be instructed not to assent to the proposal of Aali Pasha, which, I agree with Mr. Erskine in thinking, would be a mockery of justice. I adhere to the opinion which I had the honour to express in my last Report upon this subject, and I think that the Turkish Government should be pressed either to abide by the decision of the Commission, or to issue a supplemental Commission limited and restrained to the two points mentioned in my last Report.

It is of course obvious that the continued and systematic delay on the part of the Porte, as to the adjustment of this claim, is matter of just and grave complaint.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 218.

The Law Officers of the Crown to Earl Russell.—(Received January 27.)

My Lord, *Lincoln's Inn, January* 26, 1865.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 9th of January instant, stating that with reference to our Report of the 11th of May last, upon the subject of Consular jurisdiction in Tripoli, he was directed by your Lordship to transmit to us therewith a despatch which, on the receipt of that Report, your Lordship addressed to Sir Henry Bulwer, together with two despatches which have since been received from Her Majesty's Embassy at Constantinople,* from the latter of which we should perceive that the jurisdiction claimed by the Consul-General in Tripoli had again been called in question by the Turkish Government, arising out of a case in

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* Sir H. Bulwer, No. 211; Mr. Stuart, No. 159, 1864.

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which a British subject was accused of wounding an officer in the Turkish army; and to request that we would take these despatches, together with the former papers, which were thereto annexed, into our consideration, and that we would favour your Lordship with our opinion as to the course which Her Majesty's Government should pursue in the matter.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we adhere to the opinion expressed in our former Report, that the claim of jurisdiction by the British Consul at Tripoli, in cases such as that now in question, is not justified by the terms of the Capitulations. And, as far as we can judge upon the materials submitted to us, no usage is proved of sufficient strength to found a claim, on the part of Her Majesty's Government, that it shall override these Capitulations in any material point.

On the whole, we very much incline to the opinion expressed in the despatch of his Excellency Sir Henry Bulwer; nevertheless, we think it most expedient that there should be a common resolution arrived at, and a common action taken, by all the Christian Powers, on this delicate and important question.

In the meanwhile we think the demand of Aali Pasha in this particular case should be acceded to.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 219.

The Law Officers of the Crown to Earl Russell.—(Received February 2.)

Lincoln's Inn, January 31, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 19th instant, stating that he was directed by your Lordship to transmit to us a despatch from Her Majesty's Consul-General at Bucharest, calling attention to a circular note from the Government of the Principalities, as to a patent tax on wholesale foreign merchants.

And Mr. Hammond was also pleased to inclose a Report from the Board of Trade on this subject, and was to request that we would report to your Lordship such observations as we may have to make on the matter.

In obedience to your Lordship's commands we have taken this matter into consideration. and have the honour to report—

That we agree with the opinion expressed in the Report from the Board of Trade, that if the tax in question be equally levied on native merchants, and on merchants of other foreign countries engaged in the same branch of trade, that it is competent to the proper authority to levy this tax on British subjects exercising the trade of wholesale merchants in the Principalities, or in any other part of the Ottoman dominions.

Whether the Government of Prince Couza be or be not the proper authority, or whether this is a matter which the Porte ought to regulate, is a question upon which our opinion is not directly asked, and as to which (having regard to the papers now before us) we are not in a situation to form a correct opinion.

Since, however, it appears from Consul Green's despatch to Mr. Stuart that the foreign Consuls at Bucharest generally look upon the resolution taken by the Government of Prince Couza on this subject as inconsistent with the rights hitherto admitted to belong to foreign traders in the Principalities, we think it may be expedient to obtain from the Consul a more exact statement of the grounds of that opinion, and also to ascertain the view taken of this matter by Her Majesty's Representative at Constantinople.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 220.

The Law Officers of the Crown to Earl Russell.—(Received February 8.)

Lincoln's Inn, February 7, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 1st February instant, requesting that we would have the goodness to take the inclosed despatch into our consideration, and favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken this despatch into consideration, and have the honour to report—

That it appears to us very expedient that Mr. Green should be authorized to join in any notes which his colleagues may unanimously decide upon addressing to the Moldo-Wallachian Government upon questions affecting the interests of foreigners, provided he is himself satisfied that the ground taken up in such notes is tenable and consistent with the Capitulations between this country and the Porte.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 221.

The Law Officers of the Crown to Earl Russell.—(Received February 8.)

Lincoln's Inn, February 7, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 31st January, stating that, with reference to our Report of the 24th of November last, respecting the question of exclusive jurisdiction claimed by the British Consulate at Alexandria, in cases where British subjects are accused of having committed crimes or offences against subjects of the Porte, he was directed by your Lordship to transmit to us a despatch from Sir E. Hornby, dated the 7th ultimo, to whom the substance of our Report was communicated in a despatch of which the draft was inclosed therewith, stating the grounds on which his view of this matter rests; and to request that we would favour your Lordship with our opinion with regard to the view taken by Sir E. Hornby of this question.

Mr. Hammond was also pleased to inclose the former papers.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That the question (as we conceive) is not as to the effect of any usage consistent with and additional to Treaty stipulations, but as to the validity of a usage contrary to and inconsistent with them. A great part of Sir E. Hornby's despatch seems to relate to the advantage which has resulted to British subjects from a non-observance of the provisions of the Capitulations of 1809. This may be very true, but it is no answer to the opinion expressed in our former Report that the Ottoman Porte has a right to insist, whenever it pleases, upon the strict fulfilment, and to complain of and obtain redress for the violation of the terms of an existing and binding Treaty. It is said that the Ottoman authorities have themselves, in a recent case happening in Turkey, substituted an alleged local usage for the Treaty, in their trial of a British subject. If this be so (as we believe it to be), there is, in our opinion, grave cause for remonstrance on the part of Her Majesty's Government; and this very fact furnishes an additional reason why the violation of the Capitulations by the British authorities in Egypt should not supply the Ottoman authorities with precedents for pursuing themselves a similar course in Turkey.

If, indeed (as we have already had the honour to report), other Christian States are allowed to avail themselves of any usage distinct from and over-riding the Capitulations, then the British Consuls may fairly and justly claim a similar liberty on behalf of Her Majesty's subjects. But the evidence of such permission, accorded to other Christian States, should be incontrovertible. Whether it might not be expedient to place this whole question on a better and more distinct foundation by fresh negotiation, in common with other Christian Governments, is a question which we venture to think well worthy of the attention of Her Majesty's Government.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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No. 222.

The Law Officers of the Crown to Earl Russell.—(Received February 15.)

My Lord, *Lincoln's Inn, February* 14, 1865.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 1st of February instant, stating that he was directed by your Lordship to transmit to us the accompanying despatches from Her Majesty's Chargé d'Affaires at Constantinople (Nos. 7 and 21), on the subject of a new law on the Press in Turkey, which appeared to your Lordship to impose conditions upon British subjects owning journals incompatible with their privileges under the Capitulations; and to request that we would take this question into our consideration, and report to your Lordship our opinion thereupon.

We are also honoured with your Lordship's commands signified in Mr. Hammond's letter of the 6th of February instant, stating that he was directed by your Lordship to transmit to us the accompanying despatch and its inclosures from Her Majesty's Chargé d'Affaires at Constantinople (No. 43), on the subject of the new Law on the Press in Turkey; and to request that we would take these papers, together the despatches referred to us in his letter of the 1st instant, into our consideration, and report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we are of opinion that it is competent to the Turkish Government either to prohibit absolutely the publication of any newspaper by a British subject, or to authorize it on any conditions it pleases, provided always that those conditions are not contrary to the Treaty engagements of Turkey with this country.

If, for instance, the Turkish Government should grant a licence, determinable on the non-observance of certain rules, or revocable arbitrarily at the pleasure of the Porte, of those measures Her Majesty's Government could not complain. But if the Turkish Government goes on, as it proposes to do, to make certain offences of the press criminal, those offences must be dealt with in a manner consistent with the rules laid down by the Capitulations as to the trial of British subjects for other criminal offences in Turkey.

The Treaty engagements, it must be remembered, are with the Government of Great Britain, not with its individual subjects. Consequently it is not competent for individual British subjects to renounce the benefit of those engagements; and any attempt by the Porte to exercise any criminal jurisdiction over British subjects licensed to publish newspapers in Turkey, by their own consent, in a manner different from that prescribed by the Capitulations, would be contrary to the Treaty engagements of Turkey with this country.

We think, for these reasons, that Mr. Stuart's objections to the new law (by which we understand the presence or intervention of any British authority at criminal trials of British subjects for offences of the press to be practically excluded) are well founded; and that they are not removed by the answer of Aali Pasha to Mr. Stuart, dated the 18th of January this year.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 223.

The Queen's Advocate to Earl Russell.—(Received March 15.)

My Lord, *Doctors' Commons, March* 14, 1865.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 24th ultimo, stating that he was directed by your Lordship to transmit to me the accompanying despatch and its inclosures from Her Majesty's Agent and Consul-General at Bucharest (No. 12), calling attention to the official declaration of the Prefect of Ibraila, relative to the exercise of Consular jurisdiction in Moldo-Wallachia; and Mr. Hammond was to request that I would take these papers into consideration and report to your Lordship my opinion thereupon.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That according to the general principles of international law, the exercise of coercive jurisdiction within the territories of a foreign Christian State by the Consul of another State cannot be claimed as a matter of right. The State which places the authority, in this respect, of the Consuls of all foreign States upon an equal footing, furnishes no ground for a complaint that strict international law has been violated; though, if the limitation imposed be contrary to the usages of comity, there is ground for a remonstrance from the Government to which the Consul belongs.

In the Ottoman dominions, by Capitulations embodied in a Treaty, and by usage, a different practice has prevailed, and, as I am instructed, the local authorities in these dominions have never interfered in the administration of justice in civil suits in which foreigners, the subjects of Christian States, alone are concerned, and the respective Consuls of these foreign Christian States have been allowed to take the measures for enforcing the Decrees which in such civil suits they have made.

I presume, though I have no distinct evidence on the point, that not only while Moldavia and Wallachia were incorporated in the Turkish dominions in the same manner as any other portion of the Ottoman territory, but even after the Hatti-Sheriff of 1834, the foreign Christian Consuls enjoyed the same privileges in these provinces as in Turkey.

Assuming that this statement is correct, the question arises whether the Treaty for the re-establishment of peace with Russia, signed at Paris, March 30, 1856, or the Convention signed at Paris, August 19, 1858, between the principal Christian States relative to the organization of the Principalities of Moldavia and Wallachia, has made any difference in this respect.

By the XXIInd Article of the Treaty of 1856 it was provided that "the Principalities of Wallachia and Moldavia shall continue to enjoy, under the suzerainty of the Porte and under the guarantee of the Contracting Parties, the privileges and immunities of which they are in possession. No exclusive protection shall be exercised over them by any of the guaranteeing Powers. There shall be no separate right of interference in their internal affairs."

And by the XXIIIrd Article the Porte engages that the Principalities shall enjoy an independent national administration, and full liberty as to worship, legislation, commerce, and navigation. The existing laws and statutes are to be revised under a special Commission of the High Contracting Powers and a Commissioner of the Porte.

The Convention of 1858 had for its object the adjustment of the future relations between these provinces and the Porte; it provided, as follows, by the IInd Article:—

"Consequently, the Principalities shall carry on their own administration freely and exempt from any interference of the Sublime Porte, within the limits stipulated by the agreement of the guaranteeing Powers with the Suzerain Court;" and by the latter section of Article VIII it is provided as follows:—

"As hitherto, the international Treaties which shall be concluded by the Suzerain Court with foreign Powers shall be applicable to the Principalities in all that shall not prejudice their immunities."

I can find no other Articles, either in the Treaty or the Convention, which appear to me to affect, directly or indirectly, this question.

Assuming, therefore, that the foreign Consuls exercised previously to this Treaty and Convention the same privileges in these Principalities as in Turkey, I do not think that they have been abrogated by any provisions in these instruments; although it may be contended, with considerable plausibility, that the general effect of these Treaties is to place these Principalities, saving the suzerainty of the Porte, upon the same footing as other independent Christian States, and that such States have always a right to deny to the officer of a foreign State the exercise of jurisdiction over any person, of whatever country he may be, within their territories.

It seems to me a matter of much importance that the High Contracting Powers who signed the Treaty should arrive at a common determination as to whether their Consuls are, or are not, since the passing of that Treaty and Convention, entitled to exercise the same jurisdiction as they now exercise in the Ottoman dominions properly so called.

I have, &c.
(Signed) ROBERT PHILLIMORE.

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No. 224.

The Law Officers of the Crown to Earl Russell.—(Received March 20.)

Lincoln's Inn, March 18, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 7th ultimo, stating that he was directed by your Lordship to transmit to us the accompanying despatch and its inclosures from Her Majesty's Minister at Athens (No. 22), reporting the result of his endeavours, in conjunction with his French and Russian colleagues, to effect a settlement of the long-pending claims of Turkish subjects to certain lands near Thebes.

And Mr. Hammond was also pleased to state that we should perceive that M. Photiades, in his note of the 3rd of January, questions the opinion of the Law Officers of the Crown upon this matter; and he was directed by your Lordship to request that we would again take this case into our consideration, together with the former papers, and report to your Lordship any observations we might have to offer thereupon.

We are also honoured with your Lordship's commands signified in Mr. Hammond's letter of the 15th ultimo, stating that he was directed by your Lordship to transmit to us the accompanying note, with its inclosures, from the Turkish Ambassador at this Court, respecting the course pursued by the Representatives of England, France, and Russia at Athens, with reference to the claim of certain Turkish subjects to lands near Thebes; and to request that we would take these papers into our consideration, together with those referred to us on the 7th February, and report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we think the Turkish Government makes out no case for the intervention of the Protecting Powers. The Rapport of January 23, 1865, by the Representatives of the three Protecting Powers, appears to us to be perfectly just and clear.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 225.

The Law Officers of the Crown to Earl Russell.—(Received March 25.)

Lincoln's Inn, March 24, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 25th of February ultimo, stating that, with reference to that part of our Report of the 10th of October last which relates to the project of a system of procedure to be observed in judging offences committed against the regulations of the European Commission of the Danube, he was directed by your Lordship to transmit to us the accompanying despatch and its inclosure from Major Stokes (No. 2), relative to the alterations proposed to be made in the original project; and to request that we would take these papers into our consideration, and report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we see no reason to object to the alterations proposed by Major Stokes to be made in the original project; but without knowing more than we do at present about the nature of the Public Act to which Major Stokes refers as about to be signed, we are unable to judge whether such Public Act will suffice to give the necessary validity to this and the former regulations; all which should, in our opinion, be incorporated in or confirmed by some proper legislative Act of the authority competent to make laws for that part of the Principalities in which the River Danube below Isaktcha is situate.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 226.

The Queen's Advocate to Earl Russell.—(Received May 1.)

Doctors' Commons, April 29, 1865.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Murray's letter of the 11th instant, stating that he was directed by your Lordship to transmit to me the correspondence which has passed between Sir Henry Bulwer, Her Majesty's Ambassador at Constantinople, who is now in Egypt, and the Foreign Office, relative to the Traffic in Slaves which is carried on in the Soudan, and from the Turkish ports in the Red Sea to Egypt; and Mr. Murray was pleased to request that I would take these papers into consideration, and furnish your Lordship with my opinion whether the measures which the Egyptian Government proposes to enforce for putting a stop to the Traffic in Slaves from Soudan, and which are embodied in a note from Cherif Pasha, inclosed in Sir H. Bulwer's despatch No. 30 of the 23rd ultimo, are such as can be approved by Her Majesty's Government.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That it is, of course, most desirable that every facility should be given by European Powers to the honest endeavours of the Egyptian Government to suppress the Traffic in Slaves carried on from the Soudan through the White River. The real difficulty of the case consists in giving this facility without surrendering any of the privileges which at present protect Europeans from being subject to the administration of Mahometan criminal law.

To that part of the Cherif Pasha's proposal which relates to seizing vessels which come from the White River laden with slaves, I see no objection in theory; though upon this, as upon the other proposals of his Excellency, it would be expedient that Her Majesty's Government should have an opinion from some Consular officer or person of practical experience, more especially as Sir H. Bulwer expresses no opinion of his own upon the project of Cherif Pasha,

With respect to the jurisdiction over European persons contained in these proposals, it seems to me reasonable that a foreigner who is not placed under the protection of any European State should not be allowed to claim, so far as any question of property which may arise out of the seizure of one of these slavers is concerned, the protection of a European State on the sole ground that he is a foreigner. I think also that no foreign Agent should be allowed to place an Egyptian subject under his protection except in the capacity of dragoman or cawas. I think also that the demand of the Pasha with respect to the restriction of arms on board of boats ascending the river ought to be conceded.

With respect to Europeans whom the Pasha describes as "résidant au Soudan ou s'y trouvant en voyage," &c., who commit acts of violence against the property or persons of Egyptian subjects in these regions, it also appears to me that the demand of the Pasha is reasonable, which in substance I understand to be that they shall be subject, in the first instance, to measures of prevention or arrest by the Egyptian local authorities, provided that these authorities so acting place themselves in immediate communication with the Agent or Consul of the State to which the accused person belongs, and that all measures relating to his trial or punishment be taken in accordance with usage and Treaty Capitulations subsisting between the Porte and Christian States.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 227.

The Queen's Advocate to Earl Russell.—(Received May 16.)

Doctors' Commons, May 13, 1865.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 11th instant, stating that he was directed by your Lordship to transmit to me the accompanying letter from Mr. Watkin (dated the 11th instant), together with a letter from the party therein referred to, requesting, under the circumstances, and for the purposes stated by him, that he may be furnished with a letter of introduction to the Turkish Ambassador; and Mr. Hammond was pleased to request that I would take these papers into consideration, and report to your Lordship my opinion thereupon.

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In obedience to your Lordship's commands I have the honour to report—

That I see no reason why a simple letter of introduction to the Turkish Ambassador should not be given to Mr. Norris Buckley.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 228.

The Law Officers of the Crown to Earl Russell.—(Received May 20.)

My Lord, *Lincoln's Inn, May* 19, 1865.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 8th of May instant, stating that he was directed by your Lordship to transmit to us therewith a correspondence which had passed between Her Majesty's Consul-General and Judge of the Supreme Consular Court at Constantinople, the Board of Trade, and the Foreign Office, relative to a judgment of the Ottoman Court of Admiralty against the steamer "Stella," for running down and sinking a Turkish vessel, and to request that we would take these papers into consideration and favour your Lordship with our opinion thereupon, with reference more especially to the proceedings of Mr. Robinson, the owner of the "Stella," in questioning the justice of the claim made against him, and expressing his intention of resisting its enforcement.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That it appears to be the opinion of Sir E. Hornby that the "Stella" was properly tried and condemned in damages for this collision. Assuming this to be the case (and we have no evidence whatever before us on the subject), the enforcement of the sentence of the Ottoman Court ought to be aided by any means in the power of Her Majesty's Government. But we are not aware of any means which are in their power. The case of the "Harold" is referred to, but we have no information respecting the proceedings of the Board of Trade in that case.

The proceeding against the "Stella" was what is technically called a proceeding *in rem*, and the vessel herself was liable to be seized and sold for the payment of the damages in which she was condemned, and the proper course to have pursued (according to the analogy of proceedings in the Admiralty Courts of this country) would have been to have detained her pending the trial, or to have taken bail for the proper amount of damages. As this was not done, there may probably be no other legal remedy than for the parties to whom the money is due under the judgment of the Turkish Court, to bring an action for its recovery in the Courts of this country.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 229.

The Law Officers of the Crown to Earl Russell.—(Received May 31.)

My Lord, *Lincoln's Inn, May* 30, 1865.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 5th May instant, stating that he was directed by your Lordship to transmit to us the accompanying despatches from Sir Henry Bulwer, observing on Sir Edmund Hornby's despatch of January 7 and upon the instructions to Mr. Consul-General and Judge Logie of March 7, founded upon our Report of February 7.

Mr. Hammond was pleased to inclose these despatches, as well as the instructions to Mr. Consul-General Murray of February 9, 1848, and other papers, including despatches from Mr. Consul-General Colquhoun, No. 83 of August 12, 1861, and No. 24 of February 24, 1865, and a Report from Mr. Logie, No. 22 of April 11, 1865, and to state that the letter from Mr. Murray of August 5, 1862, referred to by Mr. Colquhoun, unfortunately cannot be found.

Mr. Hammond was also pleased to state that these papers were now sent to us with reference to the question raised by Sir Henry Bulwer, and the recommendations which he has made to the Pasha of Egypt with respect to the improvement of the judicial system in Egypt; and Mr. Hammond was further pleased to add, for convenience of reference, a copy of the Capitulations with the Porte and of the late Order in Council, and to request that having considered these papers we would report to your Lordship our opinion as to the propriety of sending any instructions to Sir Henry Bulwer as to the question raised by him whether those questions are to be treated with the Porte at Constantinople or with the Pasha in Egypt.

We are also honoured with your Lordship's commands signified in Mr. Hammond's letter of the 17th of May instant, stating that with reference to his letter to us of the 5th instant, inclosing various despatches and papers respecting criminal jurisdiction in Egypt, he was directed by your Lordship to transmit therewith some further papers on the same subject, and to request that we would take these papers into our consideration, together with the papers then before us.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That the suggestions of his Excellency Sir Henry Bulwer for the improvement of the judicial system in Egypt appear to us in every respect proper to be adopted.

We have the honour to express, in accordance with our former Reports upon this subject, our entire agreement with the opinion expressed by Sir Henry Bulwer as to the principle upon which our Consular jurisdiction should be exercised in the Ottoman dominions, namely, that it should be exercised in strict accordance with the provisions of the Treaty Capitulations between Great Britain and the Porte; though, at the same time, we adhere to the opinion expressed in our last Report, that we should have a right to be placed on the same footing as other Christian States with respect to the practical interpretation of these provisions by the Ottoman authorities. We are of opinion that instructions should be sent to Sir Henry Bulwer to endeavour to procure by negotiation the introduction into the judicial system of Egypt of those improvements which he suggests. It would appear to us that this negotiation should be carried on, in the first instance at all events, with the Pasha of Egypt, and that the assistance of the Porte at Constantinople should not be invoked, unless in case of necessity. We venture, however, to suggest that great latitude of discretion should be left to Sir Henry Bulwer, as to the mode and manner in which he should endeavour to carry into effect the general instructions of Her Majesty's Government on this important subject. His Excellency seems to be fully impressed with what appears to us to be the true doctrine relative to the whole question, namely, that it should be the object of the British authorities in the Ottoman dominions to endeavour by co-operation, as far as it is practicable, with the Ottoman authorities to raise the tone and improve the principles upon which the administration of justice is carried on by those authorities, and not to use the privileges conceded to Christian States as a means of enabling their subjects who have committed offences or crimes to escape, in the conflict of two jurisdictions, from the punishment which is their due.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 230.

The Queen's Advocate to Earl Russell.—(Received June 6.)

My Lord, *Doctors' Commons, June* 6, 1865.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 5th instant, stating that he was directed by your Lordship to transmit to me the accompanying telegram, dated the 3rd instant, received from Her Majesty's Ambassador Constantinople, requesting to be informed as to whether British authority has the power to take and deliver up a Venetian seaman on board a British vessel, deserted from the Austrian navy; and to request that I would furnish your Lordship with my opinion as to what answer should be returned to Sir Henry Bulwer.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I am of opinion that the British authority at Constantinople has not the power to deliver up this deserter from the Austrian ship of war.

The only power which a British authority can have in this matter must be derived

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from the 15th and 16th Vict., cap. 26, and the Order in Council of October 16, 1852, passed in consequence of that statute (9 Hertslet, 134).

The Statute and the Order in Council apply only to deserters from Austrian *merchant*-ships, and also "when such ships are within Her Majesty's dominions or the territories of the East India Company."

The deserter in this case is from an Austrian man of war in a foreign port.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 231.

The Law Officers of the Crown to Earl Russell.—(*Received June* 8.)

Lincoln's Inn, June 6, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 13th ultimo, stating that he was directed by your Lordship to transmit to us the accompanying despatch and its inclosures from Her Majesty's Chargé d'Affaires at Constantinople (No. 252), containing observations respecting the proceedings of the Representatives of the Great Powers at a Conference held at Constantinople on the subject of the observance of the Capitulations and Treaty engagements in the Danubian Principalities; and to request that we would take these papers into our consideration, and report to your Lordship our opinion on the view taken by Mr. Stuart on the question referred to in point No. 5 of the Internuncio's Report, viz., the delivery of foreigners to their Consuls after conviction.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report.

That we are clearly of opinion that the view taken by Mr. Stuart with respect to the delivery of foreigners to their Consuls after conviction for offences against the local law of the Principalities was correct as regards British subjects.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 232.

The Queen's Advocate to Earl Russell.—(*Received June* 22.)

Doctors' Commons, June 21, 1865.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 17th instant, stating that he was directed by your Lordship to transmit to me a letter, dated the 3rd ultimo, from Mr. Elmslie, setting forth the grounds on which Mr. de Mattos prefers a claim against the Porte for interest on a sum of 2,876*l.* 16*s.*, being the amount paid to him by the Turkish Government for coals supplied to the Imperial Gas Works at Constantinople in the year 1859. A despatch from Sir H. Bulwer relative to this claim was also transmitted; and Mr. Hammond was pleased to request that I would take these papers into consideration, and report to your Lordship my opinion as to the instructions which should be addressed to Sir H. Bulwer with regard to this matter.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I am of opinion that, upon the facts stated in these papers, Mr. de Mattos is entitled to interest during the interval which occurred between his giving notice to the Porte that he would demand it and his receiving the principal sum.

Mr. de Mattos contracted with the Porte to deliver a certain quantity of coals at a certain price, on the express condition that they were paid for within twenty-one days from the date of their delivery. Mr. de Mattos faithfully fulfilled his part of the contract. The Porte did not, however, fulfil their part. They took the coals, but refused to pay, and on the express ground that they had no money. After repeated and ineffectual applications for his principal, Mr. de Mattos gave the Porte notice that he should claim

interest. It required the intervention of Her Majesty's Representative to obtain the bare price of the coals for Mr. de Mattos.

None of these facts are denied, and it is only consistent with the elementary principles of justice that reasonable interest should, in these circumstances, be paid to Mr. de Mattos; principles, moreover, which it appears are recognized by the *lex loci contractûs*, by the commercial tribunals of Constantinople in the case of the contracts of private individuals.

The question of the amount is more difficult, and though the rate of interest current at the time in the country furnishes, strictly speaking, perhaps the proper legal standard, Her Majesty's Government are not obliged to demand that amount on behalf of Mr. de Mattos; and probably it would be expedient to require a less sum than that of 12 per cent., however true it may be that this was the current rate of interest at the time at Constantinople.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 233.

The Law Officers of the Crown to Earl Russell.—(*Received June* 23.)

Lincoln's Inn, June 22, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 19th instant, stating, with reference to the opinion given by us in November last on the draft Order in Council respecting jurisdiction in the Levant, that to prevent question, a Bill should be brought into Parliament to declare and enact that in the Foreign Jurisdiction Act, the term "British Colony" includes all Her Majesty's possessions abroad, he was directed by your Lordship to transmit to us therewith the draft of a Bill for that object which has been prepared under the direction of the Solicitor of the Treasury; and to request that we would take the same into our early consideration, and report whether the Bill may be introduced into Parliament.

In obedience to your Lordship's commands we have taken this matter into our consideration, and we have the honour to report—

That we think it will be proper and desirable that this Bill should be introduced and passed.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 234.

The Law Officers of the Crown to Earl Russell.—(*Received August* 14.)

Lincoln's Inn, August 14, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Murray's letter of the 1st instant, stating that he was directed by your Lordship to transmit to us therewith, a correspondence with Messrs. Cavan, Lubbock, and Co., of Leadenhall-street, and with Her Majesty's Consul-General and Judge at Constantinople,* relative to the request preferred by that firm for the interference of Her Majesty's Government in the matter of a fraud alleged to have been practised upon them by a Mr. James Gout, a merchant at Smyrna; and Mr. Murray was to request that we would take these papers into consideration, and furnish your Lordship with our opinion thereupon.

In obedience to the directions and commands of your Lordship we have taken these papers into consideration, and have the honour to report—

That there can be little doubt that Mr. Gout is endeavouring to perpetrate a gross fraud, through the medium of a fraudulent bankruptcy, upon the Messrs. Lubbock; and upon a consideration of the whole case, and of the facilities afforded for such frauds by the usage and practice of acquiring and holding landed property in Turkey by Europeans, so clearly stated by Her Majesty's Judge at Constantinople, we think that Her Majesty's

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* Messrs. Cavan, Lubbock and Co., June 12; to Consul-General Logie, No. 12, Judicial; Consul-General Logie, No. 41, Judicial, 1865.

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Government may properly, and in aid of justice, support an application made by the Messrs. Lubbock to the authorities at Constantinople to obtain what is termed an Imperial Iradé on the report of the Supreme Council of Justice, by means of which a valid sale of the machineries and factories may be effected for the benefit of the general body of the creditors, without the consent of the nominal owner.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 235.

The Law Officers of the Crown to Earl Russell.—(Received September 20.)

My Lord, *Lincoln's Inn, September 20, 1865.*

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 1st of September instant, stating that he was directed by your Lordship to transmit to us the accompanying despatches as noted in the margin,[*] on the subject of the objectionable conditions introduced by the Moldo-Wallachian Government into contracts with foreigners for the sale of timber, the produce of the forests belonging to the public domains; and to request that we would take these papers into our consideration, and report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That it appears to us that this 12th Article of the conditions of the sale of timber justifies the kind of remonstrance against it which Mr. Green, acting under the directions of Sir H. Bulwer, has made to the Moldo-Wallachian Government; at the same time, it would be difficult to deny the abstract right of that Government to attach to the sale of timber belonging to the State a condition of this kind, however harsh and discourteous to the foreigner.

It must be observed, also, that this question is one of the many which seem to be perpetually occurring, in which it is not easy to pronounce how far the Moldo-Wallachian Government is autonomous, and even acts irrespectively of the authority of the Porte.

We venture to think that it would be very expedient that, in matters like this, which call for remonstrance, the Representatives of the great European Powers should act together and jointly complain to the Moldo-Wallachian Government or to the Porte, or both, as the case may require.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 236.

The Queen's Advocate to Earl Russell.—(Received November 7.)

My Lord, *Doctors' Commons, November 6, 1865.*

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 27th ultimo, stating that with reference to my Report of the 19th of September, 1864, relative to a claim preferred by M. Condopoulo, a Russian subject, for compensation on account of losses sustained by him owing to the manner in which the British Vice Consul at Toultcha has disposed of a vessel and cargo belonging to him which had been run down in the Danube by Her Majesty's ship "Weser," he was directed by your Lordship to transmit to me, together with the previous papers[†] the subsequent correspondence[‡] which has taken place in regard to this case. That the last despatch from Sir H. Bulwer, No. 174 of the 13th instant, incloses a copy of the award of the arbitrators who were appointed in accordance with my suggestion to decide various questions arising out of this case; and Mr. Hammond was pleased to request that I would take the inclosed correspondence into consideration, and report to your Lordship with my opinion thereupon.

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[*] Mr. Green, No. 46, May 24, and No. 67, August 14; Sir H. Bulwer, No. 99, July 22, 1865.

[†] Sir H. Bulwer, No. 21, March 24, and No 264, August 27, 1864.

[‡] To Mr. Stuart, No. 2, September 26, 1864; Mr. Stuart, No. 50, January 28; Sir H. Bulwer, No. 174, October 13, 1865.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That it is much to be lamented that the questions put were not answered categorically, and in their order, by the Arbitrators. They have in part mistaken their duty, which was not to give a judgment, but to find facts upon which Her Majesty's Government was afterwards to decide.

If, however, they had in their judgment substantially answered the questions propounded to them, the form of their doing so would be of comparatively small importance. A very material question, however, appears to me unanswered; the question in substance was, What would an intelligent and properly appointed agent for the Russian owner have done in the circumstances, which the Consul, acting as self-appointed agent, did not do? Because the measure of this difference ought to furnish, in some degree at least, the measure of the compensation which this unnecessary intermeddling of the Consul has entailed upon Her Majesty's Government.

If it is meant to be said that the award of 428*l.* 3*s.* expresses that difference, that is, that a proper intelligent agent would have saved that sum to the Russian owner by measures which the Consul ought to have taken, but did not take, then I am afraid it will be difficult to escape from the conclusion that this sum should be paid to Condopoulo.

I think the arbiters should be required to give a clear answer to the question to which I have adverted.

I have, &c.
(Signed) ROBERT PHILLIMORE.

United States.

No. 237.

The Law Officers of the Crown to Earl Russell.—(Received January 6.)

My Lord, *Lincoln's Inn, January 6, 1865.*

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 3rd January instant, stating that he was directed by your Lordship to transmit to us a letter from the Colonial Office, dated the 2nd instant, with a despatch and private letter from Lord Monck, dated December 15, 1864, respecting the measures which might be adopted in Canada for restraining persons who seek an asylum in that country from the commission of acts calculated to compromise the neutrality of Her Majesty's dominions; and to request that we would take these papers into our immediate consideration and favour your Lordship at our earliest convenience, and at all events before next Saturday, with our opinion on Lord Monck's suggestions; and that we would state whether it occurred to us to suggest the enactment of any laws, or the grant of any powers to the Governor-General, which would be more effectual for the purpose than those which Lord Monck appears to contemplate.

Mr. Hammond was also pleased to add that your Lordship is inclined to think that the preparation of chemical materials, to be used for the purpose of burning any property of a friendly and neighbouring State, should also be made subject to penalty; and, further, that your Lordship would wish to be informed whether it would not be right for you to address a letter to Mr. Mason, the Agent for the Confederate States, who is now at Paris, complaining of the conduct of the Confederate Government in projecting hostile expeditions from Canada.

Mr. Hammond was further pleased to state, that if, however, we should consider

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the St. Albans raiders as guilty of robbery and murder, such a letter might not be expedient.

In obedience to your Lordship's commands we have taken these papers into our consideration and have the honour to report—

That we retain the opinion expressed in our last Report on this subject, that it is most expedient that the Governor-General of Canada should be armed, with as little delay as possible, with such extraordinary powers as may enable him to deal promptly and effectually with the difficulties incident to the present emergency.

And we are clearly of opinion that he should be furnished with these extraordinary powers by an Act of the Provincial Legislature, and not of the Imperial Parliament.

It appears to us that these powers should embrace two objects; viz., the sending of suspected aliens out of the province, and the seizure of suspected vessels on the British lakes, and munitions of war of every kind; in which category we think (according to your Lordship's suggestions) might be included chemical materials adapted to and prepared for the burning of property.

For the first object, we agree with his Excellency Lord Monck that the 11 Vict., cap. 20, contains provisions which the Law Officers of Canada could easily adapt to the exigencies of the present emergency; and for the latter object, we think the Act of Congress referred to by Lord Monck, as well as that of March 10, 1838 (to which we referred in our former Report), passed for the purpose of strengthening the hands of the United States' Government, during the Canadian rebellion, to prevent the invasion of Canada by subjects of the United States, would furnish a very proper precedent and model; and we think it especially desirable that the operation of the proposed Canadian statute should be limited either to a short period of two or three years (as the United States' statute was) or to the duration of the present civil war in America.

We cannot safely advise your Lordship that the persons termed the "St. Albans raiders," if they possessed (as they professed to do) commissions from the Confederate Government authorising what they did, could be legally treated as guilty of robbery and murder; but as this is a question which must depend, in every particular case, upon the evidence which may be produced for the purpose of giving to the act done the character of a warlike operation, we think it would scarcely be expedient for your Lordship, on the present occasion, to address a letter of remonstrance to Mr. Mason, founded upon the assumption that the recent outrage was perpetrated under the instructions of his Government.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 238.

The Law Officers of the Crown to Earl Russell.—(*Received January* 7.)

Lincoln's Inn, January 7, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 29th ultimo, stating that with reference to our Report of the 24th ultimo (? 29th June, 1864), he was directed to transmit to us, together with the previous papers,* a letter from the Colonial Office, inclosing copies of further correspondence respecting the Hong Kong Neutrality Ordinance; and to request that we would take the same into consideration, and furnish your Lordship with our opinion whether the Ordinance as now amended is right and proper.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we think the Ordinance as now amended is right and proper.

With deference to Mr. Justice Ball, we think it ought to appear on the face of the Ordinance, and not be left to be inferred only upon the principle of necessary implication, that the offence created is one which must be committed within the limits of the Colonial jurisdiction. We agree that in many cases this would be apparent, although not expressed; but we hesitate to assume that the present is one of those cases—the peculiar nature of the subject matter of legislation, and the express mention of a ship within five miles from the Colony being duly considered. There is no necessary legal presumption against an inadvertent excess of its powers by a Colonial Legislature.

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* Colonial Office, June 1; to Colonial Office, July 4, 1864.

We entertain no doubt at all that the Ordinance will be valid and effectual in law if passed in the form now proposed, although a ship lying within five miles of the Colony is still mentioned.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 239.

The Law Officers of the Crown to Earl Russell.—(*Received January* 11.)

Lincoln's Inn, January 11, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 10th instant, stating that he was directed to transmit to us a copy of a letter from the Treasury, dated the 10th instant, respecting the shipment to New York of certain steam-launches for the service of the Government of the United States; and to request that we would take this paper into consideration, and furnish your Lordship with our opinion as to whether any, and what, steps should be taken by Her Majesty's Government in this matter.

In obedience to your Lordship's commands we have taken this paper into consideration, and have the honour to report—

That as we understand the facts stated in the letter from the Board of Customs to the Treasury, the present case is simply one of an intended importation into New York from this country, of certain wooden boats capable of being used for warlike operations (though not, we suppose, capable of being used for cruizing on the high seas), and which we assume, from their construction and denomination as "launches," to be intended by their importers to be so used, these boats being shipped like ordinary merchandize on board a steamer or merchant-vessel bound for New York.

Assuming (according to the information given to the officer of the Board of Customs though it does not at present appear whether that information rests upon legal evidence), that these boats have been ordered by the Federal Government from an English firm, and are being shipped to New York on account of that Government, it does not appear to us that Her Majesty's Government have at present any evidence, or even information, of an "equipment, furnishing, fitting out, or arming," as distinguished from building and sale, which acts (*i. e.* building or sale) alone were held by all the Judges in the "Alexandra" case to constitute no offence against the Foreign Enlistment Act.

The case therefore seems to resolve itself into the mere importation of articles, contraband of war, by the United States' Government into their own territory from this country, and we do not think that any steps can at present properly be taken in the matter by Her Majesty's Government.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 240.

The Law Officers of the Crown to Earl Russell.—(*Received January* 13.)

Lincoln's Inn, January 12, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 9th instant, stating that he was directed by your Lordship to transmit to us the

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accompanying letter from the Colonial Office, dated the 9th instant, and its inclosures, respecting the seizure of the steamer "Mary" (formerly called the "Alexandra"), on the ground that she was being equipped as a vessel of war for the service of the so-styled Confederate States; and to request that we would take the same into consideration, and furnish your Lordship with our opinion thereupon as soon as we conveniently can, and at all events before Saturday next, when the mail is dispatched for the Bahamas.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we think the Governor of the Bahamas has acted properly in seizing the "Mary" (or "Alexandra"), which we understand to be a vessel still navigated under British papers.

There seems little, if any, room for doubt that the 7th section of the Foreign Enlistment Act has been violated by the shipment of arms, &c., in this vessel at Bermuda; and we incline to agree with the Attorney-General of the Bahamas, that even if the only act of equipment or fitting-out, done in that Colony, should prove to be the preparation of additional sleeping-berths for the crew (the United States' Consul, in his letter of the 5th of December, 1864, alleged that several boxes of shell had been put on board in the harbour of Nassau, but of this we do not at present find any evidence), such preparation of sleeping-berths ought to be held a further violation of the statute in the Bahamas. The vessel, both when she left Bermuda and when at Nassau, was (as we understand the facts) so equipped and armed as to be capable of cruizing with effect against merchant-vessels; and the Confederate flag, &c., and the commission in blank, and forms of seamen's pay-receipt, and muster-rolls, &c., found on board her, with the card and effects of Lieutenant Hamilton, appear to us to be quite sufficient (unless otherwise explained, which we think most improbable) to prove an actual destination for the war-service of the Confederate States.

We think it will be proper to allege and prove, as a distinct and separate charge, "equipment," "fitting-out," and "arming," within Her Majesty's dominions *at Bermuda*, as well as further equipment, &c., in the Bahamas. The ruling of Judge Lees, in the case of the "Oreto," that no evidence could be given of acts done elsewhere than in the Bahamas, except for the purpose of explaining acts done within that Colony, seems to us to be incorrect, and to have arisen from a confusion between a criminal proceeding *in personam* (which, under the 4th section of the Act, must be taken before a Court having local jurisdiction where the offence was committed) and a proceeding for condemnation *in rem*, which, under the 7th section, seems to us to be competent, wherever the ship, previously forfeited by any act working a forfeiture under that section, may happen to be found within Her Majesty's dominions. The question to be tried in such a case is, the title of the Crown by forfeiture, which, under the Imperial statute, is perfect, if the prohibited act has been done in any part of Her Majesty's dominions. It is not said in the 7th section (and we think it would be unreasonable to imply) that the subsequent seizure, &c., must take place in *the same* part of Her Majesty's dominions in which the act making the forfeiture was done; and still less that the Court which has to try the question of title to the vessel between the Crown and any claimant who may come forward, is not at liberty to receive allegations or evidence of such acts, wherever done, as, under the Imperial statute, would vest in the Crown an actual title by forfeiture at the time of seizure. The effect of such a construction would be, that a ship forfeited in law to the Crown would be delivered for ever from all the effects of that forfeiture, if she could once pass from one part of Her Majesty's dominions to another, without afterwards returning to the place from whence she came. If such a doctrine should still be adhered to by the learned Judge at Nassau, we think it would be necessary to appeal from his Judgment to Her Majesty in Council; but if an adverse decision should be pronounced upon the general merits, it must be left to the Colonial Attorney-General, who will have the evidence before him, to determine whether an appeal should be prosecuted or not.

We think that the course of proceeding which the Attorney-General of the Bahamas proposes to follow is judicious and proper.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 241.

The Law Officers of the Crown to Earl Russell.—(Received January 13.)

Lincoln's Inn, January 12, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 5th instant, stating that with reference to his letter of the 3rd instant he was directed by your Lordship to transmit to us therewith a further letter from the Colonial Office, dated the 4th instant, inclosing a despatch from Viscount Monck, suggesting whether an Order in Council should not be passed, suspending the operation of the Imperial Act respecting the extradition of offenders.

Mr. Hammond was also pleased to state that we should observe that while sending for consideration the draft of such order, Mr. Secretary Cardwell suggests certain doubts as to the effect which it would have on the measures now taking by Viscount Monck in the matter of the St. Albans raiders.

Mr. Hammond was also pleased to state that he was directed by your Lordship to request that we would take this letter and its inclosures into our immediate consideration, and to state that, as Her Majesty would hold a Council at Osborne on Saturday then next, the Order in Council might then be submitted for Her Majesty's sanction, if we should be of opinion that it would be advisable that such an Order should be at once passed.

We are also honoured with your Lordship's commands signified in Mr. Hammond's further letter of the 5th instant, stating that with reference to his letter of that morning, he was directed by your Lordship to transmit to us for reference the accompanying volumes (Laws of Canada, vol. viii; Consolidated Statutes, Canada; Statutes of Canada, 1861), containing the Acts alluded to in Lord Monck's despatch No. 196 of December 15; and to request that these volumes might be returned as soon as done with.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That, if it were necessary for us to express a positive opinion upon the question whether the decision of Judge Coursal was right or wrong, we should desire to take further time for consideration. It may (perhaps) be a tenable view (though certainly not free from difficulty), that the suspension of the Imperial Statute (6 and 7 Vict., cap 76), effected by the Order in Council of 8th January, 1850, consequent on the passing of the Canadian Statute 12 Vict., cap. 19 (30th May, 1849), is still in operation, notwithstanding the passing of the Act 22 Vict., cap. 29 (or cap. 89 of the Consolidated Statutes of 1859), and 24 Vict., cap. 6 (18th May, 1861); which two Statutes may, perhaps, be regarded as consistent with the "continuance in force" of the Act of 1849, though, by the former of them, it was converted into a chapter of the Consolidated Statutes, and by the latter amended, in certain not important particulars: otherwise we should have great difficulty in arriving at the conclusion that the Canadian Statute 24 Vict., cap. 6, could be regarded as being in concurrent operation with the Imperial statute 6 and 7 Vict., cap. 76, on the ground that it was merely subsidiary and auxiliary to that Statute. Taking, however, into consideration the doubts which may be felt upon these points, and all the other circumstances of the case, we have thought it, on the whole, most expedient that a new Order in Council should be made, to take effect from the time of its promulgation, by his Excellency the Governor-General of Canada, in Canada. With this view, we have taken the liberty of making some alterations in the draft Order submitted to us, which (so altered) we approve.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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No. 242.

The Attorney-General to Mr. Hammond.—(Received January 12.)

Dear Sir, *Lincoln's Inn, January 12, 1865.*

THE Solicitor-General and myself have been talking over the case of the steam-launches said to be ordered by the United States' Government from a firm at Millwall, several of which were stated to be now on their way to America on board a British ship in the Channel, in a letter from you (marked Most pressing), on which the Law Officers reported yesterday.

The Solicitor-General suggests (and I agree with him) that although we did not find, in the facts stated, any *primâ facie* case of violation of the Foreign Enlistment Act, the facts may nevertheless deserve some *notice* from the Government (if true), having regard more especially to the tone assumed by the United States' authorities towards this country as to similar matters. Perhaps Lord Russell might not think it inexpedient to write to Mr. Adams, stating what the facts reported to Her Majesty's Government are, and inquiring whether these steam-launches have been really ordered by his Government, and if so, for what purpose.

Believe me, &c.
(Signed) ROUNDELL PALMER.

No. 243.

The Law Officers of the Crown to Earl Russell.—(Received January 15.)

My Lord, *Lincoln's Inn, January 14, 1865.*

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 12th of January instant, stating that, with reference to his letter of the 9th instant, he was directed by your Lordship to transmit to us a letter dated the 11th instant from Mr. Lafone, owner of the "Mary" (or "Alexandra"), and to request that your Lordship might be favoured with our opinion as to the answer which should be returned to it.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That an answer should be sent to Mr. Lafone, to the effect that the "Mary" (or "Alexandra") has been seized at Nassau, under the authority of the Colonial Government, on the ground of her having violated the provisions of the Foreign Enlistment Act, and that the validity of the seizure will be tried in the ordinary course of law.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 244.

The Law Officers of the Crown to Earl Russell.—(Received January 16.)

My Lord, *Lincoln's Inn, January 14, 1865.*

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 5th of January instant, stating that, with reference to our Report of the 31st of October, he was directed by your Lordship to transmit to us, together with the previous papers,* a letter from Mr. Heslop,† claiming compensation from the Government of the United States for his imprisonment at Baltimore, and to request that we would take the same into our consideration, and inform your Lordship whether we see any reason to alter the opinion which we had previously come to with regard to this case.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That the letter of Mr. Heslop (who, we observe, was tried and acquitted as a *citizen* of the United States) does not furnish us with any reason to alter the opinion which we had the honour to express in our former Report; on the contrary, it strengthens the main ground of that opinion, namely, that Mr. Heslop has so completely domiciled himself in the territory of the United States as to place him, with respect to any injuries committed upon his property, in the same category as that of any subject of the United States. It makes no difference, in that respect, whether the place where he is settled is part of the territory in the actual possession (as we before supposed) of the Confederates, or (as Mr. Heslop now states it to be) of their opponents.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 245.

The Law Officers of the Crown to Earl Russell.—(Received January 16.)

My Lord, *Lincoln's Inn, January 14, 1865.*

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 27th of December, 1864, stating that he was directed by your Lordship to transmit to us the accompanying despatches from Lord Lyons and Mr. Burnley* respecting the regulations recently issued by the United States' Treasury Department for "the purchase of products of the insurrectionary States on Government account;" and to request that we would take the same into our consideration, and favour your Lordship with any observations we might have to offer thereupon.

We are also honoured with Mr. Hammond's letter of the 9th January instant, stating that with reference to Mr. Layard's letter of the 27th ultimo he was directed by your Lordship to transmit to us, for our consideration, a further despatch and its inclosure from Mr. Burnley† respecting the regulations for trade with Southern ports.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we are not sure that we fully understand the purpose and scope of these regulations.

If it be intended by them to effect a relaxation of the belligerent's right of blockade, the benefit of which relaxation is to extend equally to neutrals and belligerents, we see no reason for any objection to them on the part of Her Majesty's Government.

The language of Article 5 of the Executive Order, and of the General Order No. 42 of the Navy Department, at the foot of it, gives rise to an apprehension that these instruments may be construed or acted upon so as to enable persons residing in Confederate ports, which are blockaded, to carry on, under a system of licences, a trade with the specified ports and places in the United States, from which trade neutrals will (by the continued operation of the blockade) at the same time be excluded. Such a system could not lawfully be introduced and acted upon by a belligerent without vitiating the blockade; and any attempt to do so (maintaining the blockade) would be in fraud of neutral rights.

It may be, however, that these regulations are intended to apply only to ports which are, in law, not blockaded, being in the possession of the United States' forces; but as to which they have, nevertheless, declared that they are still to be regarded as under blockade (using that term in an improper and inaccurate sense), and with which they only permit a limited and restricted trade.

We have already had the honour to report, that though it is competent to the United States' Government to make what regulations they please with respect to the trade of the ports in their possession, it is not competent to them to enforce such orders

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* Lord Zetland, September 5; to Lord Lyons, No. 423, September 7; Mr. Burnley, No. 77, September 30; to Lord Zetland, November 10; to Mr. Burnley, No. 507, November 10; Lord Lyons, No. 697, November 29, 1864.

† Mr. Heslop, December 6, 1864.

* Lord Lyons, No. 533, July 26; Mr. Burnley, No. 129, December 9, 1864.

† Mr. Burnley, No. 158, December 23, 1864.

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by the exercise of the belligerent right of blockade; inasmuch as it is inconsistent with the nature of a blockade that it should be applied to ports or places under the control, and in the actual possession, of the blockading Power. Upon the whole, we think that Her Majesty's Representative at Washington should be instructed to ascertain, exercising his own discretion as to the means of doing so, whether these Regulations and Executive Order are or are not intended to have the effect of opening to the belligerent a trade from which the neutral is to be shut out.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 246.

The Law Officers of the Crown to Earl Russell.—(*Received January* 17.)

Lincoln's Inn, January 16, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 12th instant, stating that he was directed by your Lordship to transmit to us the accompanying Memorial from Mr. E. E. Sewell, complaining of his having been improperly enlisted into the United States' army; and to request that we would take the same into our consideration, and favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That the story is so strange, if not incredible, that the United States' Government could hardly be expected to recognize any claim founded upon it, in the absence of the person making it, whom they ought to have an opportunity of examining.

We think that this person should have made application to Her Majesty's Representative at Washington, who might have procured an inquiry to be instituted into the alleged facts of the case; and we do not understand why Mr. Webb, a merchant at New York, and the employer of Sewell at the time when he says he was so strangely kidnapped, has taken no steps on his behalf.

We do not advise Her Majesty's Government now to make any claim upon the United States' Government in consequence of this petition.

We have, &c.
Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 247.

The Law Officers of the Crown to Earl Russell.—(*Received January* 17.)

Lincoln's Inn, January 17, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 12th instant, stating that with reference to the various questions arising out of the St. Albans raid, he was directed by your Lordship to transmit to us the accompanying letter from the Home Office dated the 10th instant, and its inclosures, respecting the case of Thomas Kain, whose extradition was refused by the Government of the United States; and to request that we would take the same into our consideration, and favour your Lordship with any observations we might have to offer thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That the case of Kain does not appear to us to call for any material observations, in addition to those we had the honour to offer in our former Reports on the subject of these Canadian "raiders."

But it certainly furnishes historical proof that the United States' Judge, in 1852, thought himself bound to construe the Treaty and the Act of Congress quite as strictly and as technically as the Canadian Judge, in 1864, has construed the British Statute in the instance of these Canadian "raiders." Nor can the offence of these men possibly be put higher than that of Kain, who, in consequence of a technical error, escaped trial (and perhaps execution) as a murderer.

So far, the case may perhaps be useful hereafter, in future diplomatic communications with the Government of the United States, but at present it does not occur to us that any official use can be made of it.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 248.

The Law Officers of the Crown to Earl Russell.—(*Received January* 23.)

Lincoln's Inn, January 20, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 19th instant, stating that he was directed to transmit to us two letters dated the 14th instant from Mr. Adams, calling the attention of Her Majesty's Government to the proceedings of the "Hawk" and the "City of Richmond," vessels alleged to be employed in the Confederate service, and also as to certain alleged Confederate enlistments. Mr. Hammond was also pleased to transmit to us a letter from the Home Office inclosing a copy of a police report relative to the "City of Richmond;" and to request that we would take these papers into immediate consideration, and furnish your Lordship with such observations as we may have to offer thereupon.

We are also honoured with Mr. Hammond's further letter of the 19th instant, transmitting a further letter from the Home Office, and its inclosures, respecting the "Hawk."

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we are unable to find in these papers any such evidence of a violation of the Foreign Enlistment Act, either by the equipment or fitting out of the ships "City of Richmond" and "Hawk, or either of them, or by the enlistment or procurement of men in this country for the Confederate war service, as would justify us in advising Her Majesty's Government to take any steps in consequence of the representations now made to your Lordship by Mr. Adams.

It does not at present appear that either the "Hawk" or the "City of Richmond" is intended for the war-service of the Confederate States; still less that there has been any illegal equipment, &c., in this country of either vessel.

As to the men (the greater part of whom have already sailed for Nassau by the "City of Richmond"), it seems to be probable that they came together for some purpose connected with the war service of the belligerents. But it is not shown, either that any particular persons among them, being natural-born subjects of Her Majesty, have enlisted in that service, or have left this country with a view to such enlistment, or that any of them (whether natural-born subjects of Her Majesty or not) have been induced to enlist in this country, or to go from hence for the purpose of enlistment, by any particular person or persons now amenable to Her Majesty's jurisdiction.

The facts stated, with regard to such of these men as belonged to the "Florida," rather lead us to the conclusion that, when they arrived in this country from Bahia, they were already (whether subjects of Her Majesty or not) in the Confederate service; and that no new enlistment or engagement in this country need be supposed, in order to account for their coming together, and going out to a port, from whence they may be able to proceed to the Confederate States.

It will be remembered that when the particular facts relative to the engagement of the crew of the "Florida" were formerly brought before us, on the occasion of the presence of some of them at Liverpool, it was found that they had been engaged and shipped at Mobile, in the Confederate States, under circumstances which did not seem to us to justify the expectation that they could be successfully prosecuted for any offence against the Foreign Enlistment Act. Whether the men now in question were part of the same

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crew, or were enlisted for the "Florida" at some other place and under different circumstances, does not at all appear.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 249.

The Law Officers of the Crown to Earl Russell.—(*Received January* 26.)

Lincoln's Inn, January 25, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 12th instant, stating that he was directed by your Lordship to transmit to us the accompanying papers,* respecting the case of Mr. Rawson, who alleges that he has been subjected to the most cruel ill-usage by officers of the United States' Government; and to request that we would take the same into our consideration, and favour your Lordship with our opinion whether, under the circumstances therein set forth, anything can properly be done on Mr. Rawson's behalf.

In obedience to your Lordship's commands we have taken this matter into our consideration and have the honour to report—

That, as the strong presumption of insanity which arises from a persual of this poor man's petition is confirmed by the deliberate opinion of Mr. Consul Archibald, we can only advise your Lordship that Her Majesty's Government ought to take no steps in this matter.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 250.

The Law Officers of the Crown to Earl Russell.—(*Received January* 27.)

Lincoln's Inn, January 26, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 16th instant, stating that he was directed by your Lordship to transmit to us the inclosed paper dated the 24th December, 1864, purporting to be a Proclamation of the President of the so-called Confederate States of America, acknowledging and claiming as a belligerent operation on behalf of the Confederate States the act of Bennett G. Burley, in attempting in 1864 to capture the steamer "Michigan," with a view to release numerous Confederate prisoners detained in captivity on Johnson's Island in Lake Erie. That no official account has been received at the Foreign Office of the attack on the "Michigan;" but that we should see by the inclosed despatches that the extradition of Burley and others has been demanded in consequence of their participation in an attack on two other American steamers on Lake Erie, the "Philo-Parsons" and "Island Queen." But that supposing the Court in Canada to consider the attack in question as an act of robbery, and not of war, the offence of the Confederate Government towards a neutral Power seems to remain an act tending to involve Her Majesty in hostility with the United States.

Mr. Hammond was also pleased to transmit what purports to be a despatch from the Confederate Secretary of State to the Confederate Secretary of the Navy, which was published in the "Index" newspaper on the 29th of December last, containing instructions for the guidance of the Commanders of Confederate cruizers; and to state that these instructions are nearly identical with those contained in the paper received from the French Ambassador, which was submitted for our consideration on the 8th December, and called forth the instruction to Her Majesty's Ambassador at Paris contained in the inclosed despatch (No. 806), which was founded on our Report of the 15th December.

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* Mr. Rawson, August 30; to Home Office, September 1; Home Office, September 20; to Mr. Burnley, No. 455; Lord Lyons, No. 710; Mr. Rawson, December 29, 1864; to Mr. Rawson, January 3; Mr. Rawson, January 6, 1865.

That, as we are aware of the numerous attempts made by the Confederate Government to evade the provisions of the municipal law of this country, in regard to procuring and fitting out, directly or indirectly, from British ports, vessels destined to carry on belligerent operations against the United States, Mr. Hammond was to request that we would take these matters into consideration and inform your Lordship whether they do not furnish sufficient grounds for making to the Confederate Government through their Agent, Mr. Mason, who is now at Paris, a strong remonstrance against the conduct of that Government in these matters, and the wrong which it thereby does towards this country, and if we should be of opinion that such remonstrance may properly be addressed to the Confederate Government, Mr. Hammond was further to request that we would advise your Lordship as to the specific demands which should be made by Her Majesty's Government.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we are of opinion that the matters referred to in Mr. Hammond's letter do furnish sufficient grounds for making to the Confederate Government a strong remonstrance against, first, the authority avowed to be given by them (if the inclosed Proclamation is genuine) for acts which, notwithstanding the profession made of respect for the neutrality of this country, rendered necessary the use of British territory as a point of departure for the expeditions thereby contemplated; secondly, the conduct of officers and men commissioned by them in using British territory and British waters as a means of enabling them to carry on hostilities against a country with which Her Majesty is at peace; thirdly, the gross disregard of neutral rights contemplated by the instructions to the Captains of Confederate cruizers, which were the subject of your Lordship's despatch to Earl Cowley of the 21st December last; and, fourthly, the systematic violation and evasions of the laws of Great Britain, made for the protection of her neutrality, which have been practised by persons acting in Her Majesty's dominions as agents for the naval service of the Confederate States by fitting out vessels for that service in Her Majesty's ports, and manning them (to a great extent) with subjects of Her Majesty.

With respect to the two first mentioned grounds of remonstrance, the offence appears to us to be much aggravated by the character of the hostilities, and the contiguity of Her Majesty's territories with those of the United States, both those circumstances tending to implicate the Canadian Government in the consequences of these proceedings, and to give occasion for complaints and claims against them by the United States' Government for the injuries inflicted by attacks resembling those of banditti, and not of a regular military force, upon the lives and property of the subjects of a neighbouring Power in amity with Her Majesty.

We are, therefore, clearly of opinion that ample cause has been furnished by these "raids," and by the other circumstances above referred to, for a remonstrance of the gravest character to the Confederate Government; and we think that if such a remonstrance is made it will be proper for Her Majesty's Government to demand an assurance that, for the future, all practices similar to those which form the first, second, and third grounds of complaint shall be discontinued, and neither authorized nor countenanced or permitted (so far as their power extends) by the Confederate Government; and also that the instructions to cruizers above referred to shall not be put in force as to British shipping or other British property.

We doubt, however, very much whether the remonstrance should be addressed to Mr. Mason, at all events without first endeavouring to make it directly to the Confederate Government. That gentleman has not been recognized as a Diplomatic or accredited Agent of the Confederate Government in this country; and it seems to us that the effect of the remonstrance would be much increased if it were directed at once to the Government at Richmond. It is true that the blockade of the Southern coasts presents (and has on a former occasion presented) a difficulty in the way of taking this course; but we think it is one which another attempt should be made to overcome. If a formal demand were made to the United States' Government to allow the passage of a Special Commissioner for the express and avowed purpose of making this remonstrance, and were refused, we think that Her Majesty's Government would have serious reason to complain of such refusal; at all events such a refusal would weaken the force of any complaint directed against Her Majesty's Government on the ground of the abuse of Her Majesty's territorial rights by the Confederates.

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Moreover, such a refusal might go far to render necessary a more formal recognition of Mr. Mason than has hitherto taken place, and thereby to lighten the increasing inconvenience which Her Majesty's Government experience from the absence of any proper channel of communication with the Confederate Government.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 251.

The Law Officers of the Crown to Earl Russell.—(Received January 23.)

My Lord, *Lincoln's Inn, January* 28, 1865.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 26th instant, stating that he was directed to transmit to us two letters dated the 21st and 25th instant, and their inclosures, from the Home Office, relative to a steam-vessel named the "Ajax," then at Kingstown, and supposed to be intended for the Confederate service; and to request that we would take these papers into consideration, and furnish your Lordship at our early convenience with our opinion whether this vessel can be detained either at Kingstown, or at Nassau, the alleged port of her destination.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That the statements made by the men who were summoned before the Magistrate at Kingstown, as reported in the letter of Superintendent Armstrong of the 18th January, 1865, do not seem to amount to any legal evidence of the matters alleged by them; but they certainly appear to us to be calculated to excite suspicion, and would (if the ship had remained in British waters) have justified further inquiry. The conclusion, however, of the Government surveyors, who on the same day examined the vessel, appears to have been, that she was not properly fitted out for a ship of war or gun-boat. Their Report was accepted as satisfactory by the Collector of Customs at Dublin; and the Law Adviser of the Lord Lieutenant considered that there was nothing to warrant any steps being taken by the Executive in the matter. In this opinion we concur, there being in fact no evidence either of an illegal destination of the "Ajax" for the war service of the Confederates, or for any equipment, &c., within this realm, with a view to that service.

The ship having now sailed, all that can be done is, to report the circumstances connected with her to the Governor of the Bahamas, in order that she may be observed on her arrival there; and that if she should there receive any warlike equipments (and if there should be sufficient reason to believe those equipments to be for the service of the Confederate States) such proper measures may be taken as to the Governor and his legal advisers may seem necessary.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 252.

The Law Officers of the Crown to Earl Russell.—(Received February 1.)

My Lord, *Lincoln's Inn, January* 31, 1865.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 27th instant, stating that he was directed by your Lordship to transmit to us a letter dated the 21st instant, and its inclosures, from the Colonial Office, relative to the course which the Lieutenant-Governor of New Brunswick should pursue in regard to the arrest, with a view to their extradition, of persons charged with having taken part in the St. Alban's raid; and Mr. Hammond was to request that we would take this matter into early consideration, and furnish your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we think the Lieutenant-Governor of New Brunswick and his advisers have taken a correct view of the requirements of the law, and of the duty of the Lieutenant-Governor in this case.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 253.

The Law Officers of the Crown to Earl Russell.—(Received February 1.)

My Lord, *Lincoln's Inn, January* 31, 1865.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 14th instant, stating that, with reference to that part of our Report of the 13th ultimo, respecting the St. Alban's raiders, in which we stated that "Lord Monck should be instructed to take the opinion of his legal advisers whether, upon the evidence and other information in possession of the Canadian Government, these persons may not properly be put upon their trial on a charge of misprision and violation of the Royal prerogative, by levying war from Her Majesty's dominions upon a friendly Power," he was directed by your Lordship to transmit to us, together with the previous correspondence and depositions, a letter from the Colonial Office, and its inclosures, from which we should see that, on the 29th of December, the Canadian Attorney and Solicitor-General reported to Lord Monck that they had "failed to find in the evidence anything to justify the arrest of the said parties for the violation of the Neutrality Law, or of any law of Canada;" and Mr. Hammond was to request that we would take the same into consideration, and furnish your Lordship with an explanation as to our views on the matter.

We are also honoured with Mr. Hammond's further letter of the 14th instant, transmitting the accompanying despatch from Mr. Burnley (No. 139, December 15), inclosing, with other documents, a Report of the proceedings before Judge Coursal in the case of the St. Alban's raid; and requesting that we would furnish your Lordship with our opinion as to the ground on which the prisoners were discharged.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we agree with the opinion of the Canadian Law Officers, that there was nothing in the evidence produced before Mr. Coursal to justify the arrest of the parties whose extradition was demanded, or any of them, for the violation of any Imperial or other law in force in Canada. The depositions before Mr. Coursal were all exclusively directed to the proof of acts, alleged to be criminal, done at St. Albans, in the United States. It was not the object of the prosecutors to prove any offence (if any had been committed) against the laws of Canada; and no evidence was given of any act whatever done in Canada (except the arrests of the prisoners after their return from St. Albans); nor was any admission which could supply the want of such evidence made by the prisoners themselves.

It does not so much as appear from any part of this evidence that the "raiders" were ever in Canada before this attack upon the banks, &c., at St. Albans, much less that they had organized any military expedition there, or had proceeded from thence into the United States for the purpose of invading or making war upon the latter country.

We entertain no doubt (although direct authority, applicable to the precise case, may not be found in the books), that it is a misprision and a high misdemeanour at common law for any persons within the Queen's dominions (whether owing to Her Majesty a permanent or only a temporary allegiance) to conspire to invade from those dominions, and make war upon, the territories of a neighbouring friendly Power with whom Her Majesty is at peace, especially when Her Majesty has, by her Royal Proclamation, declared her Royal intention to be neutral in a war in which that friendly Power is engaged, and has commanded and warned all her subjects to abstain from taking any part in that war.

"The power," says Sir Mathew Hale" (1 P. C., 159), "of making war or peace is *inter jura summa imperii;* and, in England, is lodged singly in the King." Serjeant Hawkins (1 P. C., cap. 6, parts ii and iii) says, "It is also a high crime to disobey the King's

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lawful commands or prohibitions," of which he gives several examples, and "all contempts against the King's person or Government are very highly criminal, and punishable with fine and imprisonment," &c.; adding that "it is generally obvious to common sense in what cases, and to what degree, a man is guilty of this offence; and it would be endless to enumerate all the particulars." The general principle of law does not seem to us doubtful; but the proof of the facts necessary for its application to the circumstances of this case is at present wanting.

We agree with the opinion of your Lordship, intimated in Mr. Hammond's letter (23rd December, 1864*) to Sir F. Rogers, that, for this purpose, everything depends on the precise facts. If, as alleged by the prisoners, the expedition was not organized in Canada; if Mr. Young acted under instructions received by him in August 1864, while at Chicago; and if it is not shown that the persons accused ever entered Canada before going to St. Albans, there can be no ground for imputing to them an offence against Canadian or Imperial law.

With reference to the grounds on which the prisoners were discharged by Judge Coursal, we have not arrived at entirely the same conclusions. We all agree that, as the Canadian Extradition Acts were passed "in lieu of" and "in substitution for" the "Imperial statute" (under the provision for that purpose made by the Imperial statute itself) they cannot properly be held to have a *concurrent* operation with the Imperial statute in Canada. The question, therefore, appears to us to be whether the suspension of the Imperial statute, by the Order in Council made on the passing of the Canadian Act of 1849, is still in force. And this depends upon the further question, whether the present Canadian Extradition Act ought to be regarded in law as identical with, and a continuance of, the Act of 1849, of which the three first clauses were repealed (and others, differing in substance, substituted for them) by later legislation. The Attorney-General, after much consideration, thinks that Judge Coursal's decision upon this point was correct; the Solicitor-General and Queen's Advocate incline to think that the contrary view, though not free from difficulty, may be maintained.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

P.S.—Since the above Report was copied, we have received Mr. Hammond's further letter, of this day's date, with its inclosures, which appear to show that Mr. Justice Smith has arrived, in Canada, at the conclusion to which two of us incline, but which do not require from us any other remark.

R. P.
R. P. C.
R. J. P.

No. 254.

The Law Officers of the Crown to Earl Russell.—(*Received February* 2.)

Lincoln's Inn, January 31, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 7th instant, stating that he was directed by your Lordship to transmit to us, together with the previous papers, the accompanying letter from Mr. Nicol, dated the 28th ultimo, claiming compensation from the United States' Government on account of the detention of two apprentices who deserted from on board his vessel "Cuzio" at Valparaiso, and were received on board the United States' ship of war "St. Mary's." That we should perceive from the despatches of Mr. Burnley, No. 82 of the 30th of September, and from Lord Lyons, No. 673 of the 18th November, that it was at one time intended that these apprentices should be given up, but that it now appears from a despatch recently received from Mr. Burnley (No. 145, December 16), that the United States' Government have come to the determination to refuse either to grant compensation, or to deliver up the apprentices, alleging, as grounds for this refusal, the proceedings of Her Majesty's Government in the case of the United States' ship "Iroquois," the papers concerning which were also inclosed; and Mr. Hammond was pleased to request that we would take these papers into consideration, and furnish your Lordship with our opinion as to the steps, if any, which should now be adopted in Mr. Nicol's behalf.

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* See printed Confidential Papers, page 59.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we are unable to follow the principle or reason of the resolution taken by the United States' Government to depart from their previously announced intention to deliver up the apprentices who deserted from the ship "Cuzio," on the ground that certain deserters from the United States' ship "Iroquois," when claimed before a magistrate at Dover, were not delivered up.

Mr. Seward must have been well aware when he met the former application of Lord Lyons concerning the deserters from the "Cuzio," by the liberal and satisfactory answer which he gave to it, that the delivery up of those deserters was not, and could not be, claimed by Her Majesty's Government as of right, but could only be asked from the comity and good-will of the United States' Government. It is in the power of the naval officers of the United States (as it would be in that of Her Majesty's naval officers in a like case) to deliver up on the high seas, or in any foreign port, under the instructions of their Government, deserters from foreign vessels, who may without lawful authority be found on board one of the ships of war of the United States. This was all that was asked from Mr. Seward, and this he agreed to do. But when a foreign deserter is *on shore* in Great Britain (and we presume the case would be the same in the United States) the power of Her Majesty's naval officers, and of Her Majesty's Government itself, over him, is at an end; he can then only be detained or delivered up for some cause authorized by the law of the land.

The case of the seamen from the "Iroquois" fell under the latter category; and Mr. Seward, when he agreed to give up the deserters from the "Cuzio," cannot well have supposed that desertion from a foreign vessel was an offence cognizable by the laws of Great Britain, so as to warrant the interference of any magistrate in this kingdom with the personal liberty of such a deserter, the case being clearly not provided for by the Extradition Treaty between Great Britain and the United States.

Her Majesty's Representative at Washington asked for a thing which the United States' Government was legally competent to grant in a matter not falling within the local jurisdiction of any Court or Magistrate of the United States, and the request was promptly and liberally acceded to.

The application to the magistrate at Dover was one which he was incompetent by law to grant; it was made in a matter which could only be dealt with in the ordinary course of law; and it was refused, not from any want of comity towards the Government of the United States, but from mere legal necessity.

It is, of course, for the Government of the United States to judge what conduct is most suitable for their own dignity and honour; but we cannot for a moment imagine that Her Majesty's Government, under similar circumstances, or for a like cause, would have retracted a lawful promise previously given. There is of course no question at all of compensation in this case.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 255.

The Law Officers of the Crown to Earl Russell.—(*Received February* 7.)

Lincoln's Inn, February 6, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 27th ultimo, stating that he was directed by your Lordship to transmit to us a letter dated the 25th ultimo from Messrs. Gregory and Rowcliffe, applying for permission to inspect the depositions made by some of the crew of the "Sea King" before Her Majesty's Consul at Teneriffe; and Mr. Hammond was to request that we would take Messrs. Gregory and Rowcliffe's letter into consideration, and furnish your Lordship with our opinion as to the answer which should be returned thereto.

Mr. Hammond was also pleased to inform us that the depositions in question were sent on the 15th of November to the Board of Treasury.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That we see no reason why Messrs. Gregory and Rowcliffe should not be allowed to

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inspect the depositions made by some of the crew of the "Sea King" before Her Majesty's Consul at Teneriffe.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 256.

The Law Officers of the Crown to Earl Russell.—(Received February 8.)

Lincoln's Inn, February 7, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 1st of February instant, stating that he was directed by your Lordship to transmit to us a letter, dated the 18th ultimo, and its inclosures, from Mr. Adams, respecting the proceedings of Confederate agents in this country.

Mr. Hammond was also pleased to transmit to us a draft of the answer which it is proposed to return to Mr. Adams, and to request that we would take this proposed answer into our consideration, and favour your Lordship with our opinion whether it is right and proper to be sent.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we are of opinion that the proposed draft answer of your Lordship to Mr. Adams is proper to be sent. The documents inclosed in Mr. Adams' letter (of which the most recent is dated February 5, 1864, just a year ago) appear to us rather to show the probable efficacy of the measures taken by Her Majesty's Government to prevent a continuance of illegal acts in violation of British neutrality, than to furnish evidence of the continuance of such acts in this country, down to the present time.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 257.

The Queen's Advocate to Earl Russell.—(Received February 8.)

Doctors' Commons, February 8, 1865.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 2nd instant, stating that he was directed by your Lordship to transmit to me a copy of the Convention of Washington of July 1, 1863, providing for the establishment of a Mixed Commission to settle the claims of the Hudson's Bay and Puget Sound Companies upon the United States, under the Treaty of Washington of June 15, 1846; and to request that I would furnish your Lordship with my opinion whether Her Majesty's Government would be borne out in calling upon the Governor and Council of the Hudson's Bay Company, with which the Puget Sound Company is believed now to be amalgamated, to provide funds for defraying the expenses of the British portion of the Commission. A despatch, and its inclosures, and a private letter from Her Majesty's Chargé d'Affaires at Washington, respecting the expense of the Commission were also inclosed.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I observe that in the IIIrd Article of the Treaty, it is expressly provided as follows: "The salaries of the Commissioners and of the clerk or clerks shall be paid by their respective Governments. The salary of the arbitrator, or umpire, and the contingent expenses shall be defrayed in equal moieties by the two Governments." And I think that unless there are some circumstances, of which I am not apprized, tending to show that there was an understanding between Her Majesty's Government and these Companies, now amalgamated, that they were to defray all or part of the expenses, that Her Majesty's Government would not now be warranted in requiring them to furnish all or any part of the funds requisite for the execution of this Treaty between the United States and Great Britain.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 258.

The Law Officers of the Crown to Earl Russell.—(Received February 11.)

Lincoln's Inn, February 10, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 27th of January ultimo, stating that he was directed by your Lordship to transmit to us a letter from Mr. R. A. Westbrook, stating, with reference to the case of his son, the grounds on which he considers that the Regulations, of which a copy was therewith inclosed, issued by the United States' Government, respecting the discharge of minors from the military service of the United States, do not apply to the cases of such minors as are British subjects; and to request that we would take Mr. Westbrook's letter into consideration, and favour your Lordship with our opinion as to the answer which should be returned thereto.

Mr. Hammond was likewise pleased to transmit for our information a previous letter from Mr. Westbrook, stating the circumstance of his son's enlistment; and to state that no report on this case had yet been received from Mr. Burnley.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That in the absence of a Report from Mr. Burnley we are unable to advise your Lordship satisfactorily on this matter.

Assuming that the first letter of Mr. Westbrook contained an accurate narrative of his son's enlistment, we should be disposed to agree with his position that the unlawful enlistment of a foreigner, who was a minor, was not a case contemplated by the United States' Regulations, which must be taken, *primâ facie* at least, to refer to subjects of the United States. Probably, however, the United States' authorities would deny that Mr. Westbrook's son was made drunk, and enlisted, and would procure testimony to the effect that he voluntarily enlisted. In that case we think Mr. Westbrook would be ill-advised not to procure the release of his son by the payment of the sum required.

It is to be observed that, in order to lay any foundation for the argument that this young man was enlisted by wrong (unless his enlistment was involuntary), it must be shown that the United States' Government, or their recruiting officers, were aware, at the time of his enlistment, that he was a minor and a British subject. Being at New York as an ordinary seaman, there could be no presumption that he was not a subject of the United States, free from disability.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 259.

The Queen's Advocate to Earl Russell.—(Received February 11.)

Doctors' Commons, February 11, 1865.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 10th instant, stating that he was directed by your Lordship to transmit to me a letter, dated the 9th instant, from Mr. Henry Lafone, of Liverpool, asking for the interposition of Her Majesty's Government to enable him to save a quantity of cotton which is deposited at Savannah.

A despatch and its inclosures from Mr. Burnley* relative to the question of the cotton at Savannah was also annexed, and Mr. Hammond was to request that I would take this matter into consideration, and furnish your Lordship, at my earliest possible convenience, with my opinion as to any instructions which it will be proper to address to Mr. Burnley by to-day's mail with reference to the general question, or to that of Mr. Lafone's cotton in particular.

In obedience to your Lordship's commands I have taken this matter into consideration, and have the honour to report—

That in this case it appears that certain bales of cotton, claimed as belonging to a subject of a neutral State, are found by the belligerent in a town which he has obtained by conquest from his enemy.

It is an uncontroverted proposition of international law that if the neutral subject has a just title to this property, it is not liable to confiscation. The principle is simple

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* Mr. Burnley, No. 56, January 24, 1865.

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and intelligible. War gives the belligerent a perfect right to capture the goods of his enemy, but none to capture the goods of his friend. The principle does not depend upon the element on which the goods of the neutral happen to be in company with the goods of the enemy.

The obligation of the belligerent to restore to the neutral owner his goods is equally binding upon the belligerent whether he captures them in the ship or in the town of his enemy. This is the general principle of law applicable to this case. It is, however, not inconsistent with the observance of this principle on the part of the belligerent, to require clear proof that the goods in question are *bonâ fide* the property of the neutral, and that the neutral has not so conducted himself during the war as to have impressed upon himself the character of an enemy. The belligerent, therefore, would be justified, in cases of real doubt and uncertainty, in submitting the question of property to the investigation of the proper authority.

In cases of naval prize, or of *mixed* naval and military prize, there is a recognized Court which administers the Law of Nations on the subject.

It depends upon the constitution of the belligerent State what authority shall determine the question of military prize *alone*, but it must of course be an authority which is capable of doing and which does justice to the neutral claimant.

To apply these observations to the facts of the present case. If there be fair and reasonable doubt whether the bales of cotton belong to a *bonâ fide* neutral, if they be not plainly distinguishable from the cotton of the enemy, it does not appear to me an excess of the *jus victoris* to submit these questions to the consideration of the proper authority at home. It is certainly a hardship on a neutral owner to send the cotton from Savannah to New York for this purpose. It is certainly an unfriendly act on the part of the United States' Executive to do so, unless there be a real well-founded apprehension that they may be subject to recapture by the enemy at Savannah, while the question as to their ownership is pending and undecided.

If, on the other hand, there be really no doubt that these bales of cotton do belong to a neutral owner, and they can be distinguished on the spot by ordinary measures, the arbitrary transfer of them to New York is a subject of legitimate complaint on the part of the Government of the neutral owner.

It seems to me that Mr. Burnley should be instructed to act upon these principles of law, applying them, according to his discretion and his knowledge of the circumstances, to the facts of the case.

If these bales of cotton be transferred, it will probably be necessary to send further instructions to Mr. Burnley when the course which the United States' Government intend to take with respect to them has been clearly ascertained.

In the meanwhile, and until he receives further instructions, Mr. Burnley should protest against any compulsory sale of the cotton claimed by British owners.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 260.

The Law Officers of the Crown to Earl Russell.—(Received February 16.)

Lincoln's Inn, February 15, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 9th instant, stating that with reference to his letter of the 27th ultimo, he was directed by your Lordship to transmit to us, for our consideration, a despatch from Mr. Burnley respecting the case of Mr. H. C. Westbrook (No. 51, January 24).

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we think Her Majesty's Government cannot interfere in this matter. The Report of the American Secretary of the Navy, as we had anticipated in our last Report, directly contradicts the statement of Westbrook.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 261.

The Attorney and Solicitor-General to Earl Russell.—(Received February 25.)

Lincoln's Inn, February 25, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of this day's date, stating that he was directed by your Lordship to transmit to us therewith a letter from Mr. Dalglish, dated the 24th instant, respecting the apprehension entertained lest Mr. Burley, who has been given over by the Canadian authorities to the United States' Government under the Extradition Act, on a charge of robbery, should be tried on a charge of piracy; and to request, as the mail goes to-day, our immediate opinion, whether, if Burley has been given up on a demand founded on a charge of theft or robbery, he can be lawfully tried on a charge of piracy.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That we think that if the United States' Government, having obtained the extradition of Burley on the charge of robbery, do not put him on his trial upon this charge, but upon another, viz., piracy (which, if it had been made before the Canadian authorities, they might have held not sufficiently established to warrant his extradition), this would be a breach of good faith against which Her Majesty's Government might justly remonstrate. If, however, the United States' Government do *bonâ fide* put him on his trial for the offence in respect of which he was given up, it seems difficult to question their right to put him upon his trial also for piracy, or any other offence which he may be accused of having committed within their territory; whether or not such offence was a ground of extradition or even within the Treaty. We do not see that Her Majesty's Government can do more than protest against any attempt to change the ground of accusation upon which Burley was surrendered in pursuance of the Treaty.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.

No. 262.

The Queen's Advocate to Earl Russell.—(Received February 28.)

Doctors' Commons, February 28, 1865.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 24th instant, stating that he was directed by your Lordship to transmit to me a correspondence, as marked in the margin,* which has taken place relative to an application made by a Mr. James Slattery for the assistance of Her Majesty's Government to enable him to recover certain effects belonging to his deceased son, Michael Slattery; and Mr. Hammond was pleased to request that I would take this application into consideration, and report to your Lordship my opinion thereupon.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I am clearly of opinion that no case is made out by Mr. James Slattery for the official intervention of Her Majesty's Government in his private affairs. The directions contained in the letter to Mr. Slattery from the Foreign Office, dated February 8, 1865, appear to me perfectly proper.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 263.

The Law Officers of the Crown to Earl Russell.—(Received March 2.)

Lincoln's Inn, March 2, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 23rd ultimo, stating that with reference to our Report of the 14th of November last (that being our latest Report), respecting the case of the "Peterhoff," he

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* Mr. Slattery, December 17; to Mr. Slattery, December 23; to Mr. Burnley, No. 570; Mr. Burnley, No. 29, 1864; to Mr. Slattery, February 8; Mr. Slattery, February 14, 1865.

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was directed by your Lordship to transmit to us a letter, dated the 20th ultimo, from Messrs. Reed and Phelps, drawing your Lordship's attention to a Judgment pronounced in the Court of Common Pleas, establishing, as they contend, the illegality of the capture of the vessel and cargo, and the consequent impropriety of the arrest of their client, Mr. Bowden; and that Messrs. Reed and Phelps requested that your Lordship would take some step on behalf of Mr. Bowden towards obtaining for him the compensation he asks for from the United States' Government, and with regard to which they were told on the 28th November, 1863, in conformity with the advice tendered in our Report of the 10th of that month, that Her Majesty's Government could not make any representation to the United States' Government respecting claims arising out of the capture of the "Peterhoff," until the case shall have been decided in the Supreme Court; and Mr. Hammond was pleased to request that we would take Messrs. Reed and Phelps' present communication into consideration, and report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That the Judgment of the Court of Common Pleas (with the general doctrines of which we entirely agree) does not induce us to alter or vary the advice which we have had the honour to offer to Her Majesty's Government in our last Report. That Judgment was given in an action brought on a policy of insurance, by the assured party, the owner of the captured goods, against the insurer. The insurer pleaded certain defences to the action; the assured demurred to the legal validity of these defences as pleaded, which, in substance, setting aside technicalities, were as follows:—

First. That the assured owner concealed, at the time of effecting the insurance, material facts from the insurer. But the facts, as alleged by the plea, were consistent with a *boná fide* and final destination of the ship and her cargo to Matamoros, a neutral port, coupled with a mere mental intention on the part of the shippers of the goods that they should afterwards find their way from Matamoros to some Confederate port or place. The Court so construing this plea properly held that it did not necessarily show any lawful ground of capture; and that, as the insurance was "against the capture lawful and unlawful," the record, which was all they had before them, did not show any such concealment as, according to the authorities, would vacate such a policy.

Secondly. The insurer pleaded the Judgment of the Prize Court as an estoppel; that is, as offering proof, not examinable by any other Court, of the *facts* recited in the Judgment of the Prize Court.

The owner in his demurrer contended—

1. That the Judgment did not clearly decide *the precise matter of fact* on which the insurer relied.

2. That if it had so decided the matter of fact, still the Judgment could not be pleaded as an estoppel.

The Court held that the owner was right on both points. On the first point, the learned Judge (though not professing to give any opinion upon the question whether the decision of the Prize Court was right or wrong) criticized the language of the Judgment as pleaded, and found it to be consistent with an actual destination of the ship and cargo to Matamoros, which was, *primâ facie*, sufficient to support the policy. And, although the Judgment of the Prize Court went on to declare that "the said ship with the said cargo was not truly destined to Matamoros, a neutral port, but was destined for some other port or place in aid and for the use of the enemy, and in violation of the law of nations, and that the ship's papers were simulated and false," the Court of Common Pleas held (and we think quite correctly) that the grounds of that conclusion were not set forth with such distinctness as necessarily to show that they were such as (if true) would avoid the policy. On the second point the Court held that although this Judgment of the Prize Court might be admitted on the footing of evidence in the course of the trial, it was not admissible as an estoppel or absolute bar to any trial taking place.

This decision appears to us to have been in all points right; but we think it furnishes no ground whatever for the official interference of Her Majesty's Government with the United States' Government on behalf of the owners of the goods captured on board the "Peterhoff," or of Mr. Bowden.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 264.

The Law Officers of the Crown to Earl Russell.—(Received March 4.)

Lincoln's Inn, March 4, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 27th of February ultimo, stating that he was directed by your Lordship to transmit to us a letter from the Colonial Office, inclosing a copy of an Act passed by the Canadian Legislature for the prevention and repression of outrages on the frontier of Canada; and to request that we would take this Act into consideration, and favour your Lordship, at our earliest convenience, with any observations which we might have to offer thereupon.

Mr. Hammond was at the same time to request that we would report to your Lordship our opinion whether it is necessary that similar Acts should be passed by the Legislatures of Nova Scotia and New Brunswick.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we are of opinion that the Statute is properly framed, and that it would be expedient that a Statute with the like provisions should be passed by each of the Legislatures of Nova Scotia and New Brunswick.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 265.

The Law Officers of the Crown to Earl Russell.—(Received March 8.)

Lincoln's Inn, March 8, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 22nd ultimo, stating that he was directed by your Lordship to transmit to us the papers as marked in the margin* (including therein a Report from Her Majesty's Advocate-General), on the subject of cotton, asserted to be the property of neutrals, which has been seized by the Federal authorities at Savannah since the occupation of that city by the Federal forces; and to request that we would take this matter into our consideration, and report to your Lordship our opinion thereupon.

We are also honoured with your Lordship's commands signified in Mr. Hammond's two further letters, dated respectively the 25th and 28th ultimo, transmitting further despatches from Mr. Burnley respecting the question of cotton at Savannah (No. 95, February 10, No. 101, February 13, 1865).

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That the Attorney and Solicitor-General express their entire concurrence with the former Report of the Queen's Advocate, and with the despatch which was founded upon that Report. That we are all of opinion that we are not at present sufficiently apprised of the particular circumstances in which the cotton stood at the time of the capture, to enable us materially to add to the suggestions contained in that Report. It would seem to us that the cotton of British subjects must either have been deposited in places under their own custody, or in storehouses belonging to other persons. That, in the former case (in which indeed the seizure would appear to be *primâ facie* wrongful, and a ground for remonstrance), it is to be presumed that the owners would possess sufficient means of identifying their property before it was taken away. That, in the latter case, the British owners must be in possession of vouchers of some kind tending to establish their property in the bales. Nevertheless there may be circumstances which would render proper and reasonable the request of British owners to be allowed, by some additional means, to provide themselves with the proof necessary for establishing their title, at least to the quantity and description of cotton which they claim, and especially in cases where such cotton has been deposited with the cotton of other owners in public warehouses.

In the absence of more precise information, we are unable to give further advice upon this subject; but we think that Mr. Burnley should be instructed to express

* Mr. Lafone, February 9; Mr. Burnley, No. 56; Queen's Advocate, February 11; to Mr. Lafone, February 11; to Mr. Burnley, No. 50; Mr. Burnley, No. 90, 1865.

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generally to the United States' Government the confident hope which Her Majesty's Government entertain that no obstacle will be interposed to prevent the subjects of Her Majesty from establishing their just claim to their own property.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 266.

The Queen's Advocate to Earl Russell.—(*Received March* 11.)

Doctors' Commons, March 10, 1865.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 21st ultimo, stating that he was directed by your Lordship to transmit to me therewith the accompanying volumes containing a despatch from Mr. Burnley (No. 70, January 30), and the correspondence therein referred to, respecting the case of a British subject named T. W. Benson, who has been tried at Louisville, Kentucky, on charges of fraud in carrying out contracts with the United States' Government; and to request that I would take this case into consideration, and furnish your Lordship with my opinion thereupon.

I am also honoured with Mr. Hammond's letter of the 27th ultimo, transmitting a further despatch from Mr. Burnley respecting this case (No. 98, February 10).

In obedience to your Lordship's commands I have the honour to report—

That upon a careful perusal of the voluminous papers in this case, the following questions appear to me to present themselves for solution:—

1. Was Dr. Benson subject to the jurisdiction of the United States' Courts in this matter?

2. Was he subject to the exceptional jurisdiction of the United States' court-martial?

3. Was his case fully and fairly tried, and were all the means of defence which the rules of natural justice require, and the usage of civilized States concede to a person so accused, afforded to him?

4. Was the sentence of the court-martial manifestly unjust as being at variance with the evidence of the facts or the principle of law applicable to the facts?

If these questions be answered in the affirmative there will remain no ground for the official intervention of Her Majesty's Government in this case.

With respect to the first question, it appears that Dr. Benson was a native of Canada, educated for the medical profession in New York, where he married, and that he afterwards became a medical professor in the State of Georgia; that he afterwards went to Chicago; that about six years ago he settled at Louisville, and was appointed to a chair in the Medical College of that city. The breaking out of the civil war in Kentucky caused the Medical College to be closed, and compelled Dr. Benson to seek for some other mode of subsistence. He accordingly entered into partnership with a Mr. M. B. Taylor and a Mr. Lycurgus Black, on the 18th November, 1862.

The contributions of money among the partners were unequal, but the partners were to receive equal dividends. The object of the co-partnership is described in the deed (Exhibit D, fol. 172) as being "for the purpose of carrying on the business of Government contracting in the city of Louisville, State of Kentucky, under the style and name of 'M. B. Taylor,' from date until the 1st day of April, 1863."

The firm so constituted entered into a contract with the United States' Government, whereby they agreed to furnish "such quantities of *good merchantable hay, corn, and oats* as should be required for the public animals, from day to day at the Government stables, in the city of Louisville, Kentucky, at the Oakland Race Course, and at the fair ground near said Louisville, to be delivered at such stables, to commence on the 18th day of November, 1862, and terminate on the 1st day of April, 1853."

Upon this state of facts I am clearly of opinion that Dr. Benson was subject, both by reason of his domicil and of his contract, to the jurisdiction of the United States' Government.

With respect to the second question, it is one purely of American law, and I see no reason to doubt the soundness of Mr. Carlisle's opinion that the Act of Congress had made a contractor to the army liable to jurisdiction of the Court-martial, though I think it is to be regretted the case was not submitted to the ordinary civil and commercial tribunals to whose cognizance such a case properly belongs, and who would be far better able to deal with the mixed questions of mercantile law and fact which arose than a military tribunal; but I answer this question also in the affirmative.

With respect to the third question Dr. Benson was defended by two zealous, and, as it appears, eminent advocates, who certainly appear to have manifested no undue obsequiousness to the Court, and to have been allowed the fullest latitude accorded to Counsel in such cases. Ample time and ample means for the defence were, in my opinion, afforded to Dr. Benson, and I answer this question also in the affirmative.

With respect to the fourth question the undertaking of the firm, of which Dr. Benson was partner, was to supply the Government with "good merchantable hay, corn, and oats." It was clearly proved at the trial that instead of pure oats, a mixture composed of rye, other more worthless articles, and oats (though the latter largely preponderated), was intentionally and deliberately prepared under the positive orders of Dr. Benson, and sold to the United States' Government.

A defence was, indeed, attempted to be set up that this mixture constituted as good feed for horses and mules as good merchantable oats, but this defence was in my opinion rightly rejected by the Court. It was proved also that damaged corn was mixed with sound corn.

A further defence was set up that no concealment was practised upon the United States' Government, and, therefore, that there was no fraud; this defence was also considered but did not avail, and this, after reading the letter of Dr. Benson to his agent, Mr. Priesttes, is not to be wondered at. In one of them occurs a remonstrance with some person under a sort of sub-contract with Dr. Benson to supply grain, in these words —"If his disposition is to be punctilious there, it will be our duty to be so here; *instead of labouring for the passage of large quantities of trash through the Inspector's hands, we will in future look to our own interests*." (Exhibit K, p. 189.)

Questions, indeed, of grave importance in mercantile jurisprudence arose, such as whether grain which was termed "rejected" at Chicago might not, nevertheless, be legally "merchantable" at Louisville; and as to the substitution of what are called "burlaps" for what are called "gunny bags," and some other questions of the same character involving the true construction of commercial terms. And it is possible that a civil tribunal might have taken a view of these matters more favourable to Dr. Benson than that which was taken by the military tribunal: but I am certainly of opinion that there was no such miscarriage of justice—if there was any at all, which I do not allege—as to call for any interference on this ground on behalf of Dr. Benson from Her Majesty's Government.

Entertaining, therefore, no doubt that the answer to all these questions must be in the affirmative, I am led to the clear conclusion that Her Majesty's Government cannot with propriety address any remonstrance on the subject of Dr. Benson's conviction to the United States' Government. I think, however, that the long delay and imprisonment (though this latter was in great measure the fault of Dr. Benson) which preceded the trial, does furnish Her Majesty's Government with a ground for suggesting, through Her Majesty's Representative at Washington, that it would be reasonable to allow the consideration of this previous endurance of punishment to abridge the other term of imprisonment inflicted by the sentence.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 267.

The Law Officers of the Crown to Earl Russell.—(*Received March* 15.)

Lincoln's Inn, March 14, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 27th February ultimo, stating that he was directed by your Lordship to transmit to us a despatch from Her Majesty's Chargé d'Affaires at Washington (No. 4), in which your Lordship's attention is called to the form of agreement entered into between the Agent of the United States' Government and certain other parties for the purchase of products of the insurrectionary States.

Mr. Layard was also pleased to state that Mr. Burnley's despatch (No. 129) was also returned to us, and that he was directed by your Lordship to request that we would take these papers into our consideration, and report to your Lordship such observations as we might have to offer on the matter to which they relate.

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In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we beg leave to refer to our former Report on this important subject.

That the practical importance to neutral States of the question raised by these regulations is, at the present moment, not very great, inasmuch as the United States are in possession of the towns on the sea coasts as to which a vigorous blockade has been hitherto maintained; and the only practical question which could arise out of these regulations is, whether the commerce permitted under them would, or would not, have the effect of vitiating the blockade. Nevertheless, we think it right to state that we entertain very grave doubts as to the competency of the United States' Government to authorise this commerce with the belligerent on their own behalf, and on account of their own exigencies, while they debar the neutral from participating in it by a blockade, which it would seem from reference to Order V, and the General Order No. 42, is also to be partially relaxed in favour of the belligerent imposing it, but not of the neutral.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 268.

The Law Officers of the Crown to Earl Russell.—(Received March 16.)

Lincoln's Inn, March 16, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 2nd of March instant, stating that he was directed by your Lordship to transmit to us a letter from the Colonial Office dated the 25th ultimo, inclosing a copy of a despatch from the Lieutenant-Governor of Bermuda, reporting the arrival in St. George's Harbour, Bermuda, of the Confederate States' merchant steamer "Chameleon," formerly the Confederate States' war-steamer "Tallahassee," and to request that we would take these papers into consideration and favour your Lordship with our opinion on the points as affecting the "Chameleon" and vessels sailing under similar circumstances, with regard to which the Governor applied to be furnished with instructions.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That with respect to the first question contained in the despatch from the Lieutenant-Governor of Bermuda, we are of opinion that he exercised a sound discretion in treating the "Chameleon" (after he had satisfied himself of the truth of the representations made by her master), as a merchant-vessel belonging to the country of one of the belligerents. That it is competent to the Government of either belligerent to sell or transfer a ship of war to a private merchant, or to change the character of a vessel from that of a ship of war to that of a merchant-vessel, if the Government choose to trade on its own account.

To the second question we answer, that the merchant-vessels belonging to the citizens of both belligerents, and registered in their ports, ought to be admitted to the harbours of Her Majesty on the same footing. The absence of a formal recognition by Her Majesty of the Confederate States does not affect the principle of strict neutrality upon which the vessels of both belligerents are so admitted.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 269.

The Law Officers of the Crown to Earl Russell.—(Received March 16.)

Lincoln's Inn, March 16, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 15th March instant, stating that with reference to his letter of the 9th instant he was directed by your Lordship to transmit to us a letter from the Colonial Office dated the 14th instant, inclosing a copy of a despatch from the Lieutenant-Governor of New Brunswick reporting that he had signed the warrant for the apprehension of such of the St. Albans raiders as might be in the province, and adverting to the Report of the Provincial Solicitor-General pointing out defects in the requisition from Mr. Seward on which the warrant was issued, and to request that we would take this matter into our immediate consideration and favour your Lordship with our opinion thereupon in time to admit of instructions being addressed by Mr. Secretary Cardwell to the Lieutenant-Governor of New Brunswick by the mail of Saturday next.

Mr. Hammond was also pleased to add that no copy of the warrant had yet been received by Her Majesty's Government, and that the requisition mentioned by the Provincial Solicitor-General is to be found at page 82 of the papers (North America, No. 1) laid before Parliament this session.

In obedience to your Lordship's commands we have taken this matter into our consition, and have the honour to report—

That it does not appear to us to be expressly required, either by the terms of the Treaty of the 9th August, 1842, or under the Statute 6 and Vict., cap. 76, that the requisition to be made by the authority of the United States, for the delivery of any person charged with any of the offences therein specified, should be in any particular form, or that it should state upon the face of it the facts necessary to constitute the alleged offence, or the time when such offence was committed. All that appears to be expressly required is, that it should be, in substance, "a requisition for the delivery of any person charged with the crime of murder, &c., committed within the jurisdiction of the United States of America, who shall be found within the territories of Her Majesty." If, indeed, the Governor's warrant, issued upon this requisition, were itself sufficient to authorize the apprehension of the alleged offender, it might be reasonable and proper to construe these general words as involving the specification of everything requisite to show that such an offence has really been committed. But inasmuch as no step can be taken under the Governor's warrant, without the production before a Magistrate of "such evidence as, according to the laws of that part of Her Majesty's dominions, would justify the apprehension and committal for trial of the person so accused, if the crime of which he or she shall be so accused had been there committed," it does not seem to us that the purposes of justice necessarily require any such exactness in the statement of the charge on the face of the requisition; and the statute itself being silent on the subject, it seems to us to be the better opinion that the Magistrate, or the Judges on *habeas corpus*, would not be authorized to hold the Governor's warrant invalid for any defect in the specification of the facts necessary to constitute the alleged offence, on the face of the requisition, if before the Magistrate himself sufficient evidence of all these circumstances were produced, and if the Magistrate's warrant for the apprehension of the offender were itself in proper form.

We are, therefore, disposed to differ in this respect from the Solicitor-General of New Brunswick, and to think that Mr. Seward's requisition, addressed to the Governor of New Brunswick, through Mr. Burnley, on the 19th December last, ought not to be deemed insufficient to support the Governor's warrant issued under the same, merely on the ground that it does not name the persons on whom, or the time at which, the alleged offences of murder and robbery, &c., were committed.

We must, however, add that we think it highly inexpedient to depart from the usage which, we believe, has hitherto prevailed of making these requisitions in a more formal manner, and of accompanying them with depositions sufficient to satisfy the Governor, before he issues his warrant, that the case is *primâ facie* within the Extradition Treaty. The 2nd section of the Statute contemplates (if it does not by implication require) such depositions, which, we understand, were not offered in the present case. If, under these circumstances, the charge against the St. Albans raiders should eventually miscarry in New Brunswick, we cannot but think that the responsibility of such miscarriage will rest with the authorities of the United States.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 270.

The Law Officers of the Crown to Earl Russell.—(Received March 16.)

Lincoln's Inn, March 16, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 6th instant, stating that he was directed by your Lordship to transmit to us a

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letter from Mr. Robert Smith relative to his arrest and imprisonment, under the circumstances therein set forth, by the military authorities of the United States; and to request that we would take this case into consideration, and favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken this case into our consideration, and have the honour to report—

That it appears that Lord Lyons had addressed the Secretary of State of the United States on behalf of this person; but it does not appear how the application was received, or what the answer to it was. It is perhaps therefore premature to offer any decided opinion to your Lordship upon the case.

But, on our present information, we are not disposed to advise your Lordship to interfere in this matter. If one of Her Majesty's subjects chooses to disobey Her Majesty's Proclamation, and to place himself in or connect himself with the military service of either belligerent, he cannot, as a general rule, on the ground of alleged ill-usage in that service, claim the protection of Her Majesty's Government; and at present we see no exceptional circumstances in the case of Mr. Robert Smith.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 271.

The Law Officers of the Crown to Earl Russell.—(Received March 17.)

My Lord, *Lincoln's Inn, March* 16, 1865.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 27th ultimo, stating that with reference to the Report of the Attorney and Solicitor-General of the 25th ultimo, he was directed by your Lordship to transmit, for such observations as we may have to offer thereupon, a letter from the Colonial Office dated the 25th ultimo, inclosing copies of the Judgments delivered by the Judges in Canada in the case of Bennett Burley, together with copies of other legal proceedings in the matter.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That although this is a case of difficulty, we are unable to say that the decision of the Canadian Judges was incorrect, or that Burley was not rightly delivered up to the United States' authorities under the Extradition Treaty. We understand the Canadian Judges to have proceeded upon the ground that under the Ashburton Treaty, and the Statutes for carrying it into effect, extradition was due if such evidence of criminality was given as, according to the laws of Canada, "would justify the prisoner's *apprehension and committal for trial*" if the alleged offence had been committed in Canada; and that the duty of the magistrate, and of the Judges on *habeas corpus*, was not to discharge the office of a jury upon the trial, but simply to inquire whether a sufficient case was made on which (if the act had been done in Canada) the prisoner might properly have been committed for trial. We think this view is correct; and it appears to us that in weighing the effect of the evidence for this purpose, the Canadian Judges fairly followed the example set them by the Court of Queen's Bench in this country when examining the effect of the evidence in the somewhat similar case of Tionan* (24th and 25th May, 1864), to which they refer.

We think it unnecessary to repeat the observations made by the Canadian Judges, or their comparison of the acts which were proved to have been done by the prisoner, with the terms of the authority under which (as set forth in the Proclamation of President Davis) it was sought to ascribe to them a belligerent character.

We think there was great force in the observation that what is said to have been authorized was not attempted, and that what was done does not seem to have been authorized. The seizure of a merchant-vessel engaged in her usual peaceable occupation of carrying goods and passengers between the American and British borders of Lake Erie, and the abstraction of money from the person of one of the officers of that vessel, effected by a natural-born British subject previously residing as a civilian in the United States, by the aid of arms and a party of men taken on board from British territory in

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* Reported in 10 Law Times Reports (U. S.), p. 499.

British waters, are not acts which, consistently with the observance in good faith of the Extradition Treaty, can be dealt with in any way more favourable to the parties concerned in them than that which strict law demands; and upon a question of this kind, turning upon the effect of such evidence as that which was given, the decision of the Canadian Judges ought, in our opinion, to be held conclusive.

It must not, however, be supposed that the decision arrived at in this case *would rule the question* whether the extradition of Burley would have been justified if he had taken refuge in British territory after an attack made, under the warrant of his commission, upon the United States' war-steamer "Michigan," or upon the forces in Johnson's Island.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 272.

The Law Officers of the Crown to Earl Russell.—(Received March 18.)

Lincoln's Inn, March 17, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 9th instant, stating that, with reference to our Report of the 31st of January, he was directed by your Lordship to transmit to us, together with the previous papers,* a further letter and its inclosures from the Colonial Office,† on the subject of the issue by the Lieutenant-Governor of New Brunswick of his warrant for the extradition of certain of the St. Albans raiders; and to request that we would take these papers into consideration, and report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we infer, from the terms of Mr. Gordon's despatch of the 8th February last, that he had then actually issued his warrant under the Extradition Treaty, in compliance with the requisition of the United States' Government, although no depositions had been submitted to him, for the purpose of showing, either that there was any *primâ facie* ground for the charges of "murder, robbery, and assault with intent to commit murder, at St. Alban's, in the State of Vermont," made (somewhat indirectly) against the persons named in Mr. Seward's letter to Mr. Burnley of the 19th December, 1864, or that those persons, or any of them, were then in New Brunswick.

We are not prepared to say that, in this course, there was anything certainly illegal, but we adhere to the opinion formerly expressed by us (to which Mr. Gordon adverts in his letters to Mr. Burnley), that the safer and more proper course is for the Governor of a Colony, in all cases, to require and receive some *primâ facie* evidence of the commission of an offence within the Treaty, and of the existence within his jurisdiction of the persons charged, before issuing his warrant. It is true that the persons so charged cannot be apprehended under the Governor's warrant, without evidence to satisfy the Magistrate that the case comes *primâ facie* within the Statute; and there are no words expressly requiring the Governor to receive, or found his warrant upon, any evidence.

But the statute makes it a necessary condition that the persons charged "shall be found within the territories of Her Majesty" (*i.e.* within the particular territory over which the Governor's jurisdiction extends); and of this fact, at least, we think the Governor ought to have some evidence before issuing his warrant: and the second section of the statute shows that it was certainly within the contemplation of the Legislature (though it may not have been absolutely required) that there might or would be "depositions upon which the original warrant" (*i.e.* the Governor's warrrant) "was granted."

The Governor of New Brunswick has justly pointed out that the effect of granting the warrant prematurely, before any evidence is forthcoming, may be to frustrate, rather than to advance, the further proceedings; and on such a subject it seems to us very desirable to adhere, as far as possible, to the hitherto established practice.

At the same time we fully appreciate the motives which (in this particular case) have probably induced Mr. Gordon to deviate from the course suggested by his own good judgment, rather than allow the good faith of his Government to be for a moment brought in question by the Government of the United States.

We agree with his Excellency, and disagree with the Law Officers of New Brunswick,

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* Colonial Office, January 4, 1865.

† Colonial Office, March 8, 1865.

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as to the sufficiency of the letter of Mr. Seward to Mr. Burnley, before referred to, as a requisition from the United States' Government. Neither the Treaty nor the statute requires that such a requisition should be made in any particular form or manner; and it appears to us that such requisition need not be made directly by the authorities of the United States to the Governor of a British Province, but that it may competently be made by the United States' Government to the British Legation at Washington, and if duly certified to have been so made, may be acted upon as sufficient by a Provincial Governor.

Subject to the foregoing remarks, we think that his Excellency has rightly interpreted the requirements of the statute.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 273.

The Law Officers of the Crown to Earl Russell.—(*Received March* 18.)

My Lord,
Lincoln's Inn, March 18, 1865.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 1st of March instant, stating that with reference to our Report of the 1st of November last, respecting the case of Miss Hill, who was tried by the Federal authorities at New Orleans, and passed through the lines into the Southern States, he was directed by your Lordship to transmit to us, together with the previous papers,* a correspondence which had passed between that lady aud your Lordship,† since her arrival in England, from which we should perceive that your Lordship consented to receive any written statement of her case which she might desire to submit to you; and to request that we would take the letters from Miss Hill of the 18th and 26th ultimo into our consideration, and again report to your Lordship our opinion upon her case.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we see no reason whatever to vary the opinion which we expressed in our former Report on this case.

It is impossible to believe the statement of Miss Hill, that she was guiltless of any communication with the Confederates. The words in her letter (directed to the Confederate commanding officer), "communicate and state what you require, and I will do all in my power—I will be here until end of July;" are irreconcilable with her version of the letter having been sent to her by accident, and answered out of mere politeness. Her whole story is, moreover, extremely improbable. It is not true, as she says, that she was acquitted; she was found guilty and banished. It is certainly not improbable that she may have been rudely treated by the United States' authorities; but the British Consul and Lord Lyons appear to have done all that was in their power to save her from the consequences of her own (to say the least) very imprudent acts.

We are clearly of opinion that there is no ground for your Lordship's interference in this matter.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 274.

The Law Officers of the Crown to Earl Russell.—(*Received March* 18.)

My Lord,
Lincoln's Inn, March 18, 1865.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 9th instant, stating that he was directed by your Lordship to transmit to us a letter from the Colonial Office, dated the 7th instant, inclosing a copy of a despatch from the Lieutenant-Governor of New Brunswick, reporting the course which he had deemed it advisable to take with respect to the request of the United States' Government for the

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* Miss Hill, August 6; to Miss Hill, September 7; to Lord Lyons, No. 422; Mr. Burnley, No. 73; to Mr. Burnley, No. 509, 1864.

† Miss Hill, February 18 and 24; to Miss Hill, February 25; Miss Hill, February 26, 1865.

extradition, in the event of their arrest, of some of the persons concerned in the seizure of the steamer "Chesapeake," which case formed the subject of our Report of the 26th April, 1864, and of our previous Reports therein referred to; and Mr. Hammond was to request that we would take these papers into consideration, and report to your Lordship our opinion thereupon.

We are also honoured with Mr. Hammond's letter of the 15th instant, stating that he was directed by your Lordship to transmit to us a further letter and its inclosures from the Colonial Office, dated the 15th instant, from which it appears that Louis Seely, one of the persons named in the warrant of Mr. Justice Parker, has been arrested in St. John's, New Brunswick, and is now in gaol awaiting examination on the charge of being concerned in the seizure of the "Chesapeake;" and requesting us to take this matter into consideration together with the papers before referred to us.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we are of opinion that the course pursued by the Lieutenant-Governor of New Brunswick in the matter of the "Chesapeake" has been in every respect proper.

The opinion formerly expressed in that case by Mr. Justice Ritchie (though not at the time satisfactory to ourselves) has since been confirmed by the decision of the majority of the Judges of the Queen's Bench in England in the case of "Tionan and others" (10 Law Times Reports, new series, page 499); and we think that it must be now taken to be settled by that authority that piratical acts committed on the high seas on board a United States' vessel over which British Criminal or Admiralty Courts *can exercise* jurisdiction, do not constitute offences for which extradition is due under the Treaty between Great Britain and the United States.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 275.

The Law Officers of the Crown to Earl Russell.—(*Received March* 18.)

Lincoln's Inn, March 18, 1865.
My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 11th instant, stating that with reference to our Report of the 12th January last, respecting the seizure of the "Mary (" late "Alexandra") at Nassau, he was directed by your Lordship to transmit to us, together with the previous papers,* a note from Mr. Adams,† representing that the United States' Government is informed that that vessel, even if condemned and sold under judicial process for a violation of neutrality, may be bought in by the same parties first interested in her, and started again in the guise of a merchantman on her original errand to carry on war against the United States; and Mr. Adams states, that he is requested to remonstrate against giving permission to that vessel to depart from Nassau without abundant security that she is not to be used for the hostile purpose indicated.

Mr. Hammond also annexed a letter from the Colonial Office, from which it will be seen that, in consequence of the communication to that Department of a copy of Mr. Adams' note, the Governor of the Bahamas would be instructed by the mail of that evening not to sell the "Mary," until he shall receive further orders from Her Majesty's Government; and Mr. Hammond was accordingly to request that we would take this matter into consideration, and furnish your Lordship with our opinion what those further orders should be.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That it is, in our opinion, competent to Her Majesty's Government to direct, if they should think fit, an indefinite postponement of the sale of the "Mary," in the event of her condemnation, or (if it should be thought more expedient) permanently to retain that vessel for Her Majesty's service, unsold.

The only law upon the subject that we are aware of, is 16 and 17 Vict., cap. 107, sec. 228, under which the Commissioners of Customs would, we presume, always act upon such directions as they might receive, in any particular case, from the Lords of Her Majesty's Treasury.

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* Mr. Burnley, No. 9; Colonial Office, January 9, February 11, and February 17, 1865.

† Mr. Adams, March 7, 1865.

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Assuming that it might be desirable eventually to sell this vessel (in the supposed case of her condemnation), we should be disposed to recommend the postponement of any such sale, either till the termination of the present war, or (at least) until such a period shall have elapsed as to render it no longer probable that it would be the object of any person to purchase her for the war service of the Confederate States.

If, however, there should be any serious objection to this course, we think it ought to be made one of the conditions of any sale at Nassau, that the purchaser shall give substantial security against the use of this vessel, either by himself or by any person deriving title from him, in aid of the war service of the Coufederate States, within such a period of time from the sale as may be thought sufficient.

Such security was, we believe, required, and was given (not indeed by any purchaser, but by the owners, to whom the ship was restored), in the case of the "Pampero," seized last year in the Clyde.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 276.

The Law Officers of the Crown to Earl Russell.—(Received March 20.)

My Lord, *Lincoln's Inn, March* 20, 1865.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 2nd instant, stating that, with reference to our Report of the 17th of January, he was directed by your Lordship to transmit therewith, for our information, and for any observations which we might have to offer thereupon, a despatch from Mr. Burnley (No. 104, February 13), inclosing a copy of a letter from Mr. Consul Archibald, respecting the extradition of Kain and the general practice in the United States in extradition cases.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That the letter of Mr. Consul Archibald certainly throws a new light upon the case of Kain, though it leaves it "a mystery" (as the Consul truly says) how the discharge of Kain by Judge Nelson in 1853 is to be reconciled with the opinion of the Supreme Court in 1863.

It does not, however, occur to us that we can usefully offer at present any additional observations on the practice of the United States under the Treaty of Extradition. Substantially, the various modes adopted in the United States, in England, and Canada (which differ according to the particular legislation of each country), execute with equal good faith the provisions of the Treaty.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 277.

The Law Officers of the Crown to Earl Russell.—(Received March 22.)

My Lord, *Lincoln's Inn, March* 21, 1865.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 7th instant, stating that he was directed by your Lordship to transmit to us a despatch from Her Majesty's Consul at New Orleans (No. 12, February 10), inclosing a copy of the proceedings in the United States' Prize Court at that port in the case of the schooner "Louisa," and to request that we would take these papers into consideration, and favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That the evidence upon which this vessel was condemned seems to us slender; but as no defence was made, and no application for further proof preferred, it must be presumed that the owners were guilty of intending to break the blockade, and no ground is laid for the official interference of Her Majesty's Government.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 278.

The Law Officers of the Crown to Earl Russell.—(Received March 25.)

My Lord, *Lincoln's Inn, March* 24, 1865.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 3rd of March instant, stating that he was directed by your Lordship to transmit to us the accompanying correspondence, as marked in the margin,* relative to the imprisonment at Fort Warren, near Boston, of a British subject, named Thomas Saville, who was serving as boatswain on board the "Hope," a blockade-runner, when that vessel was captured by the United States' ship "Eblus;" and to request that we would take Thomas Saville's case into consideration, and report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That with respect to the general principles applicable to this case, we beg to refer to our former Reports, and especially to our Report sent in on the 5th of July, 1864.

We understand that Thomas Saville was one of the crew of a Confederate merchant-vessel engaged on a private enterprise, and not connected in any way with the service of the Confederate Government. Should this turn out to be the case, and should Saville be a British subject who has entered into no engagements whatever with the Confederate Government, we think that the good offices of Her Majesty's Representative at Washington should continue to be employed to obtain his release from prison, though we think that the circumstances in which he was seized do not render his imprisonment, until these facts have been ascertained, an illegal proceeding on the part of the United States' authorities.

We observe in the letter of the United States' Secretary of the Navy to Mr. Seward, the following passage:—

"If any of those captured in the 'Hope,' who claim to be British subjects, and to have been passengers only, having no interest in the vessel or cargo, and no connexion with the insurgent Government, will produce satisfactory proof on those points, the Department will give a favourable consideration to their applications for release."—November 23, 1864.

We desire to guard ourselves against expressing any agreement with the proposition herein implied, that an interest in the vessel or cargo would render a neutral subject liable to be treated as a belligerent.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 279.

The Law Officers of the Crown to Earl Russell.—(Received March 25.)

My Lord, *Lincoln's Inn, March* 24, 1865.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 16th March instant, stiting that he was directed by your Lordship to transmit to us a further letter from the Colonial Office, dated the 13th instant, respecting the case of the "Chameleon," late "Tallahassee," which formed the subject of his letter of the 2nd instant.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

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* Mr. Saville, January 12; to Mr. Saville, January 14; to Mr. Burnley, No. 19, January 14; Mr. Burnley, No. 78; Mr. Saville, February 25, 1865.

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That the conduct of the Governor of the Bahamas with respect to these two vessels, the "Rattlesnake" and the "Chameleon," appears to have been perfectly proper.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 280.

The Law Officers of the Crown to Earl Russell.—(Received March 25.)

Lincoln's Inn, March 24, 1865.

My Lord,

WE are hououred with your Lordship's commands signified in Mr. Hammond's letter of the 30th January, stating that, with reference to our Report of the 19th December, he was directed by your Lordship to transmit to us, together with the previous papers, a despatch from Mr. Burnley (No. 20), inclosing a copy of the record of the proceedings of a Naval Court of Inquiry held at Boston, in the case of the "Night Hawk," and containing observations respecting the long-continued detention in prison of the master and officers of that vessel, and also a letter from Messrs. Lawrence and Co., dated the 27th January ultimo, on the latter point; and Mr. Hammond was pleased to request that we would again take this case into consideration, and furnish your Lordship with our opinion thereupon.

We are also honoured with Mr. Hammond's letter of the 4th February, transmitting a further despatch from Mr. Burnley respecting the case of the "Night Hawk."

In obedience to your Lordship's commands we have taken this case again into consideration, and have the honour to report—

That we have perused with equal surprise and regret these papers, which, while they in no respect alter our former impressions as to the case of the "Night Hawk," or as to the treatment of the British subjects who constituted the crew of that vessel, furnish in themselves serious grounds of complaint, both with respect to the manner in which the Naval Court of Inquiry was conducted, and as to the continued detention in prison, while that inquiry was impending and in progress, of the officers of the "Night Hawk."

The Court of Inquiry appears to have been ordered by the Secretary of the Navy of the United States, "for the purpose of inquiry into the circumstances attending the capture and destruction of the steamer 'Night Hawk;'" and they were (most properly) instructed to direct their particular attention to "the treatment of her officers and crew at the time of, and subsequent to, her capture and destruction." When this inquiry was directed and held, the officers of the "Night Hawk" (seven, as we collect, in number) were still detained as prisoners, though her crew had been released, and the only ground which was, or could be, alleged for lengthening their imprisonment (originally in our opinion unjustifiable) was, that their evidence would be wanted before the Court of Inquiry.

How then was the inquiry conducted? The Judge Advocate called as witnesses all the officers and some of the crew of the "Niphon," whose conduct was the subject of investigation; among the rest, Mr. Seaman, the officer in charge of the boarding party, and the person most directly responsible for any wrong which might have been done. It appeared, even on their own evidence, that while the "Night Hawk" was lying aground, without any signs of armed resistance, some shots were fired into her by the boarding-party; that a passenger, Dr. Taylor, was wounded by one of those shots; and that Mr. Seaman used personal violence towards the chief engineer of the "Night Hawk," by striking him in the face, and knocking him down with the butt end of a pistol after he (Mr. Seaman) had set the ship on fire. Explanations of these occurrences (we cannot say to our minds satisfactory) were offered by the persons responsible for them. After which the Judge Advocate stated that he "*knew of no other person whom it was necessary to summon before the Court*," and "the testimony being finished," the Court found in accordance with the version of the facts given by these witnesses, and placed upon those facts (as might have been expected) the most favourable construction. All this time the officers of the "Night Hawk" (including, as we presume, the chief engineer, whom Mr. Seaman had knocked down) were kept in prison; their evidence was neither asked nor obtained; they had no opportunity of tendering it; and that detention, for which no justification could be alleged, except a *bonâ fide* intention to secure and make use of their testimony, resulted in its total suppression.

Comment upon such facts as these is superfluous. We are sure that the Government of the United States would never be satisfied with such an inquiry, or admit that

the imprisonment of their subjects was justified under such circumstances, if the case were their own. Nor can we forget the recent case of O'Neill, in which, after an *ex parte* inquiry had resulted in the exculpation of an officer of the United States' navy, by whom O'Neill had been causelessly wounded, a subsequent inquiry by court-martial, which the justice of the United States' Government induced them to direct, resulted in the condemnation and dismissal of that officer. We cannot but hope that upon a proper representation being made to the Government of Washington on this subject, it would appear that the course followed is not that which the Secretary of the Navy of the United States intended when he directed the inquiry; and that some satisfaction may yet be given to Her Majesty's Government in this case.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 281.

The Law Officers of the Crown to Earl Russell.—(Received March 25.)

Lincoln's Inn, March 24, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 3rd instant, stating that with reference to our Report of the 16th of January, he was directed by your Lordship to transmit to us, together with the previous papers, a further letter from Mr. Nottcutt respecting the case of Mr. Edward Sewell; and to reqnest that we would take Mr. Nottcutt's letter into consideration, and furnish your Lordship with our opinion as to the answer which should be returned thereto.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we think it may be proper for your Lordship to answer Mr. Nottcutt to the effect that it appears to your Lordship to be now far too late to propose to the United States' Government any inquiry into Mr. Sewell's case, Mr. Sewell himself having left the United States without asking for such an inquiry, either through the medium of Lord Lyons, or through that of his former employer at New York, Mr. Webb; and that it is not in the power of Her Majesty's Government to guarantee him protection in the event of his again visiting the United States.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 282.

The Law Officers of the Crown to Earl Russell.—(Received March 25.)

Lincoln's Inn, March 25, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 10th of March instant, stating that he was directed by your Lordship to transmit to us a note and its inclosures from Mr. Adams, together with a copy of the answer which your Lordship has returned thereto, as well as two letters and their inclosures from the Colonial Office,* respecting the steamer "Confederate States," late "Laurel," which had recently cleared from Nassau for Liverpool under the circumstances stated in the inclosed papers.

Mr. Hammond was also pleased to state that we should observe that Mr. Adams states that he was instructed to remonstrate against the receipt and clearance with mails of that vessel from Nassau; and to request that such measures might be adopted in regard to her as might prevent her from thus abusing the neutrality of Her Majesty's territory, for the purpose of facilitating the operations of the enemies of the United States.

Mr. Hammond was further pleased to request that we would take this matter into our consideration, and report our opinion thereupon.

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* Mr. Adams, March 7; Colonial Office, March 6 and March 9; to Mr. Adams, March 10, 1865.

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The papers showing the connection of this vessel with the case of the "Shenandoah," late "Sea King," were sent therewith for reference if required.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That it appears that the "Laurel," now the "Confederate States," being either a British or a Confederate merchant-vessel, took (under British colours, it is said) arms and munitions to the "Sea King," not at any place in Her Majesty's dominions, but at some place in the neighbourhood of Teneriffe; that she afterwards went to Charleston; after which she appeared at Nassau, still as a mere merchant-vessel, but under the new name of the "Confederate States;" that at Nassau a British mail-bag for Liverpool was put on board her, and of this Mr. Adams complains, but we think without just cause. This vessel, though liable to capture on the high seas by the cruizers of the United States, had committed no offence punishable by British law; and it was as competent to British authorities at Nassau to put a mail-bag on board of her as on board of any merchant-vessel of the United States, or of any other nation bound to England.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 283.

The Law Officers of the Crown to Earl Russell.—(Received March 30.)

My Lord, *Lincoln's Inn, March* 29, 1865.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 24th instant, stating that he was directed to transmit to us the papers, as marked in the margin,* relative to the landing of a boat at Nassau from the United States' ship of war "Honduras," without the permission of the Governor of the Bahamas and without having been admitted to pratique. That we should observe that Mr. Adams, under instructions from his Government, has made to your Lordship a representation respecting the proceedings of the Colonial authorities on the occasion in question, and has suggested, by Mr. Seward's orders, that Her Majesty's Government should no longer recognize the belligerent rights of the Confederate States upon the high seas.

A draft of answer which your Lordship proposes to return to Mr. Adams' note, and a correspondence with the Colonial Office, from which we should perceive that the draft has already been submitted to Mr. Secretary Cardwell, was also inclosed; and Mr. Hammond was pleased to request that we would take the same into consideration, and furnish your Lordship with such observations as we may have to offer thereupon.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That so far as relates to the question as to the United States' ship "Honduras," and the proceedings of the Governor of the Bahamas, we think the proposed despatch is right and proper to be sent.

With respect to the remainder of the despatch, we think it our duty to submit, for your Lordship's consideration, the following remarks:—

1. So far as relates to the paragraph which deals generally with the subject of breaches of blockade, we see no objection thereto; but if it is retained, we would suggest the addition of words at the end to the effect "that Mr. Adams must therefore see that no international duty has been violated by Her Majesty's Government in permitting the resort to the Bahamas, or other British possessions, of merchant-vessels of either belligerent, in whatever traffic they may have been engaged."

2. The last paragraph but one of the draft despatch (which we have inclosed within brackets and marked No. 1) relates to a Report of the Secretary of the Navy of the United States on the subject of the blockade of Wilmington, which Report we have not seen.

If that Report is such as really to amount to an admission by the United States that no legal blockade has been maintained at that port, it may be a matter for the serious consideration of Her Majesty's Government whether any steps ought to be taken by them for the vindication of the rights of any British subjects whose ships or cargoes may have been condemned for the alleged violation of such a blockade. But it is obvious that this would be an exceedingly grave matter, involving, possibly, the interests of many persons, and it would be absolutely necessary, in our judgment, before any safe opinion could be formed on such a point, that the effect of the letter containing the supposed admission should be very deliberately considered; and Her Majesty's Government would probably think it desirable, on such a subject, to have the assistance of the Law Officers of the Crown.

On the contrary supposition, viz., that the Report, when examined, would not be found clearly to amount to an admission that no legal blockade has been maintained at Wilmington (although it may have been therein stated that, owing to local circumstances, the blockade has been maintained there with greater difficulty and less efficiency than elsewhere), we venture to express our decided opinion that it would be very inexpedient to introduce into your Lordship's despatch any passage to the effect of that which we have bracketed and marked No. 1, or any other reference to the same subject. We found this opinion not merely upon the fact that the Declaration of Paris has not been understood by us to alter the previous law upon the subject of blockade (and if it had done so would not have been binding upon the United States), but also upon other and more important reasons. It seems to us obvious that the suggestion of the legal insufficiency of the blockade at Wilmington in a diplomatic communication, without reference to any practical consequences, is not desirable; and, in the event of such a despatch being made public (as would probably happen either in this country or in the United States), it might tend to raise very embarrassing questions, both as to the propriety of the acquiescence hitherto of Her Majesty's Government in the blockade, and as to the duty of advancing claims for restitution to private persons; which questions, at all events, ought not to be raised unless under some clear exigency of public duty.

We therefore respectfully suggest that, under any circumstances, this passage should be entirely omitted from the despatch.

3. With respect to the final paragraph of the draft (which we have also bracketed and marked No. 2), we would suggest the expediency of an alteration to the following effect: "With respect to the latter part of your letter, suggesting that certain consequences ought to arise from the present altered position of the seaports of the Confederates, I feel bound, in the same spirit of fairness and amity which has throughout this painful contest inspired Her Majesty's Government, to state to you that Her Majesty's Government are not aware of any principle of international law which would justify them, under the circumstances to which you refer, in making a distinction between the belligerent rights of either of the contending Powers, whether at sea or by land; though Her Majesty will, of course, continue, as she has heretofore done, to prevent, to the utmost of her power, the violation of her own rights and of her own neutrality."

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 284.

The Law Officers of the Crown to Earl Russell.—(Received April 1.)

My Lord, *Lincoln's Inn, March* 31, 1865.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 27th of February ultimo, stating that, with reference to our Report of the 31st of January, and to our previous Reports on the case of the persons charged with having committed the St. Alban's raid, he was directed by your Lordship to transmit to us, for such observations as we might have to offer thereupon, a letter from the Colonial Office, dated the 25th ultimo, inclosing copies of depositions and other evidence in this matter taken before Mr. Justice Smith at Montreal.

We are also honoured with your Lordship's commands signified in Mr. Hammond's letter of the 16th of March instant, stating that he was directed by your Lordship to transmit to us two further letters and their inclosures from the Colonial Office relative to the case of the St. Alban's raiders; and to request that we would take these papers into our consideration, together with those inclosed in his letter of the 27th ultimo, and report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That, without seeing all the documents proved on the part of the prisoners, for the

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* Mr. Adams, March 15; Colonial Office, March 16; Mr. Burnley, No. 138, 1865.

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purpose of showing that the St. Alban's raid was an expedition undertaken under express orders for that purpose from the authorities of the Confederate States (and especially the alleged instructions under the hand of the Honourable Clement C. Clay, which are not with the papers), we are unable to judge whether the *primâ facie* case of robbery, made out by the depositions on the part of the United States, has been sufficiently rebutted.

We collect, however, from the depositions that the Honourable Clement C. Clay, lately resident at St. Catherine's, in Upper Canada, was a Political Agent of the Confederate Government, said to be armed with the largest powers; and that it was the object of the prisoners' evidence (oral and documentary) to show that they, being Confederate officers and soldiers, were directed by their Government to take their instructions from this Mr. Clay as to the special service to be performed by them; and that they did accordingly receive from Mr. Clay, in Canada, instructions for the attack which they afterwards made upon St. Alban's, and were furnished by him, in Canada, with money for that purpose; and that they did, in fact, proceed from Canada to St. Alban's, on a belligerent expedition, under those instructions.

If this be so (and assuming the belligerent character of the acts done to be made out by the evidence), we think the Attorney-General of Canada is right in holding that the evidence discloses a gross and deliberate violation of the neutrality of this country: and that the prisoners, if discharged under the warrant for their extradition, ought (together with Mr. Clay, if he can be found within the jurisdiction) to be put upon their trial for such misdemeanour, either at common law, or under the Foreign Enlistment Act, as may appear to the Legal Advisers of the Canadian Government to be capable of being established by the evidence.

It is needless for us to add that the employment by the Confederate Government of a Political Agent resident in Canada for such purposes is a wilful offence by that Government against the neutrality of this country, for which no excuse or palliation can be suggested.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 285.

The Law Officers of the Crown to Earl Russell.—(*Received April* 6.)

Lincoln's Inn, April 5, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 30th of March ultimo, stating that he was directed by your Lordship to transmit to us therewith, for our information, and for any observations which we might have to offer thereupon, a despatch from Mr. Burnley (No. 161, March 13), inclosing a copy of an Enrolment Act lately passed by the United States' Congress.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That we are glad to see the penalties imposed by this Act against unlawful enlistment. It does not seem to us to require any further observation, as the subject matter is one entirely for the consideration of the United States' Government.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 286.

The Law Officers of the Crown to Earl Russell.—(*Received April* 7.)

Lincoln's Inn, April 7, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of yesterday's date, stating that he was directed by your Lordship to transmit to us the papers respecting the case of Vernon Locke, a person who while in command of the Confederate privateer "Retribution," captured in the year 1863, a United States' merchant-vessel, the "Hanover," and, taking her into a port of the Bahamas, disposed of her cargo, under circumstances which led to the arrest of Vernon Locke, and to an indictment being preferred against him for conspiracy and forgery.

Mr. Hammond was also pleased to state that we should observe that the offence being a bailable one, Vernon Locke was admitted to bail, to which however he did not answer, and his recognizances were forfeited. And that it further appears from the letter from the Colonial Office of the 5th instant, that Vernon Locke has been re-arrested, and lodged in gaol at Nassau, and that his trial will take place about or before the 25th of this month. And that he was accordingly directed to request that we would take this case into our consideration, and advise your Lordship as to any directions which it might be expedient to transmit to the Governor of the Bahamas for his guidance therein, and that, as we should observe that it would be necessary that those directions should be transmitted to the Governor by the mail of Saturday next, the matter is very pressing.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That the conduct of the trial of Vernon Locke for the offences with which he now stands charged, must necessarily be left to the Colonial Attorney-General, who seems fully alive to the importance of the case.

The only observation which it occurs to us to make (being in ignorance of the precise facts which the Attorney-General of the Bahamas expects to be able to prove at the trial, except so far as they may be inferred from the correspondence of 1863-64), is that we do not quite see why the prisoner should be charged with forgery, as a misdemeanour at common law only, and not as a felony; it being stated in the papers of 1863 that he forged the name of Washington Case to papers subscribed by him in his pretended character of master of the "Hanover," while she was at Long Cay. We presume that forgery of this description is a felony by the law of the Bahamas, as well as by that of England.

In the event of the present prosecution failing, we do not at present see what evidence there is of any other charge on which Vernon Locke could be detained.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 287.

The Law Officers of the Crown to Earl Russell.—(*Received April* 7.)

Lincoln's Inn, April 7, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 5th instant, stating that he was directed to transmit to us a letter dated the 4th instant from Baron Rothschild, forwarding two letters addressed to your Lordship by Mr. Samuel Pratt, in which he asks for the interference of Her Majesty's Government to obtain the release of his son, Mr. Ernest William Pratt, who has been arrested at New York, under the circumstances therein mentioned; and Mr. Hammond was pleased to request that we would take this case into consideration and report to your Lordship our opinion as to any steps which it may be practicable for Her Majesty's Government to instruct Sir Frederick Bruce to take on behalf of Mr. Ernest Pratt.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we think all that can be done at present is to forward copies of these papers to Sir F. Bruce, and to instruct him to use his good offices on behalf of Mr. Pratt, and endeavour to obtain his release if that be found practicable. It is manifest that the contemplated breach of blockade by the "City of Richmond" cannot be any justification for Mr. Pratt's arrest or imprisonment. But a much more serious question will arise if the cause of the arrest should prove to be Mr. Pratt's participation in the equipment for war of the ram "Stonewall Jackson."

If the Government of the United States should insist upon treating as enemies all persons who may have taken part in the equipment at sea of ships of war for the service of the Confederates, when such persons are found within United States' territory, and should claim the application of this principle to the case of Mr. Pratt, we should desire to give further consideration to this novel and important question.

In the meanwhile, we are of opinion that Mr. Pratt must be entitled to know upon

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what charge he is imprisoned, and to be allowed all necessary means for defending himself.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 288.

The Law Officers of the Crown to Earl Russell.—(*Received April* 8.)

My Lord, *Lincoln's Inn, April* 7, 1865.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 30th ultimo, stating that he was directed to transmit to us a despatch and its inclosures from Her Majesty's Chargé d'Affaires at Washington, respecting a Proclamation issued by the President of the United States, imposing the penalty of confinement as prisoners of war upon domiciled aliens and non-resident foreigners, who have been, or shall have been, engaged in violating the blockade of the Southern ports; and to request that we would take this Proclamation into consideration, and report to your Lordship our opinion thereupon.

We are also honoured with Mr. Hammond's letter of the 4th instant, transmitting a despatch from Mr. Burnley respecting this case.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we have the honour to express our entire agreement with the principles laid down in the Memorandum of Mr. Burnley to Mr. Seward. It is not necessary to dispute the right of the United States' Government to order any individual foreigner or foreigners, whom they may consider to be dangerous or hostile to the United States, to leave their territory upon reasonable notice. But this Proclamation cannot be justified on that principle. It is addressed to no particular individuals, but to all "non-resident foreigners who have been, or shall have been, *engaged* in violating the blockade of the insurgent ports," and it makes the continuance of any person, who may afterwards be decided by martial law to fall within this category, *for twelve days* in the United States, a ground for his imprisonment in military custody till the end of the war.

This cannot be called a reasonable warning to individuals to leave the United States' territory; it is nothing less than an enactment of an *ex post facto* criminal law, and an evasion of the restraints of international law under the colour of territorial rights.

It is obvious that such an edict may, if acted upon, be the occasion of most arbitrary injustice towards the subjects of neutral States, to which Her Majesty's Government cannot be expected to submit.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

P.S.—Since the above was written, we have received Mr. Hammond's further letter of the 6th instant, inclosing one from Mr. Manlove, calling your Lordship's attention to a Proclamation stated to have been issued by the President of the United States, ordering all Englishmen out of the States in twelve days, under pain of imprisonment; and Mr. Hammond stated that your Lordship presumed this Proclamation to be the same as that referred to in his former letters above reported upon, and requested that we would report to your Lordship as to the answer which should be returned to Mr. Manlove.

We have therefore the honour further to report—

That, with respect to Mr. Manlove's letter, we think your Lordship's answer should simply be that you are not aware of any such Proclamation having been issued as that which he describes, except one which applies exclusively to foreigners being in or coming into the United States, who may have been engaged in blockade-running; as to which Her Majesty's Government are now in communication with the Government of the United States.

R. P.
R. P. C.
R. J. P.

No. 289.

The Law Officers of the Crown to Earl Russell.—(*Received April* 15.)

My Lord, *Lincoln's Inn, April* 15, 1865.

WE are honoured with your Lordship's commands signified in Mr. Murray's letter of the 13th instant, stating that with reference to our Report of the 16th ultimo, upon the case of the "Tallahassee" or "Chameleon," he was directed by your Lordship to transmit to us, together with the previous papers, the accompanying letters and their inclosures,* from which we should see that this vessel has now arrived in the Mersey; and to request that we would take the same into consideration, and furnish your Lordship, at our earliest convenience, with our opinion as to the course which Her Majesty's Government should adopt in the matter.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That we find in these papers nothing to show either that the vessel now called the "Chameleon" is not what she is represented to be at the present time, namely, a merchant-vessel of the Confederate States (in which character she was received after a careful examination by the British authorities at the Bahamas), or that any part of her present cargo is prize taken from subjects of the United States.

We have on former occasions reported our opinion that it is competent to a belligerent (subject to the right of capture by the other belligerent) to sell, or to convert into a merchant-vessel, any ship which has been previously employed as a ship of war; and that a ship of which the character has been *bonâ fide* so changed, ought to be treated as a merchant-vessel by neutral States.

We think, therefore, that the "Chameleon" ought to be suffered to discharge and deliver her cargo without further delay at Liverpool; especially as in the two former cases of the "Sumter" and "Georgia," in which similar questions arose, nothing transpired after the alleged conversion of those ships into merchant-vessels to throw doubt upon the *bona fides* of such conversion.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 290.

The Law Officers of the Crown to Earl Russell.—(*Received April* 20.)

My Lord, *Lincoln's Inn, April* 19, 1865.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 7th April instant, stating that with reference to our Report of the 8th March ultimo, he was directed by your Lordship to transmit to us a despatch from Mr. Burnley (No. 186, March 21), inclosing a copy of a letter from Mr. Seward, in answer to the representation, founded on the Queen's Advocate's Report of the 11th of February, which he had addressed to the United States' Government respecting cotton, the property of British subjects, stored in Savannah at the time of the occupation of that city by the United States' forces.

Mr. Hammond was also pleased to state that the previous papers,† together with a subsequent despatch from Mr. Burnley and a despatch from the Acting British Consul at Charleston,‡ relative to cotton at that port owned by British subjects, were also inclosed, and that he was directed by your Lordship to request that we would again take this matter into consideration, and favour your Lordship with any further observations which we might have to offer thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That, with respect to the principal question, we have nothing to add to the considerations relating to it contained in our former Report.

* To Colonial Office, March 18; Admiralty, April 10; Treasury, April 11; to Treasury, April 11; Treasury, April 12; Admiralty, April 12; Colonial Office, April 12; Mr. Adams, April 12; Treasury, April 13, 1865.

† Mr. Burnley, No. 56, January 24; Mr. Lafone, February 9 and February 11; to Mr. Burnley, No. 50, February 11; Mr. Burnley, No. 90, February 7, and No. 101, February 13; to Mr. Burnley, No. 86, March 11, 1865.

‡ Mr. Burnley, No. 164, March 13; Mr. Walker, No. 22, February 27, 1865.

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We think that the British claimants of cotton should be apprised that they must be prepared to substantiate by proper legal proof their claims to the cotton which they allege to be their property, and to take whatever measures they may be advised by competent authority may be necessary for prosecuting those claims in a court of justice. It is to be presumed that the United States' Government will give due information to all parties interested, as to the tribunal before which such claims must be established.

Having regard to the despatch of Mr. Consul Walker (No. 22, Inclosure 1), it is necessary that the British claimants should be informed that they must not rely upon the Convention of Commerce (3rd July, 1815), inasmuch as the cotton has been seized *jure belli* in a town of the enemy, captured by the forces of the United States. It will, therefore, be incumbent upon them to show both that the cotton is their property and that they have not in any way impressed upon themselves, by their conduct, the character of belligerents.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 291.

The Law Officers of the Crown to Earl Russell.—(*Received April* 21.)

Lincoln's Inn, April 21, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 11th of April instant, stating that he was directed by your Lordship to transmit to us a despatch from Her Majesty's Consul at New Orleans (No. 14, February 23), inclosing a transcript of proceedings in the United States' Prize Court in that city in the case of the British schooner "Carrie Mair," and to request that we would take this case into consideration and favour your Lordship with any observations which we may have to offer thereupon.

Mr. Hammond was further pleased to state that Mr. Acting Consul Coppell's despatch referred to by Mr. Donohoe was likewise inclosed (No. 3, January 11).

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we have no copy of the Judgment *in extenso* which we presume was delivered in this case. The vessel appears to have been taken in blockaded waters, and as at present advised we see no reason for the interference of Her Majesty's Government on behalf of the owners.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 292.

The Law Officers of the Crown to Earl Russell.—(*Received April* 21.)

Lincoln's Inn, April 21, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 11th instant, stating that he was directed by your Lordship to transmit to us a letter from Mr. Wallace Foden, dated the 11th ultimo, stating the circumstances under which he has become a resident in the United States, and the grounds on which he seeks exemption from serving in the United States' army; and Mr. Hammond was pleased to request that we would take Mr. Foden's letter into consideration, and report to your Lordship our opinion as to the answer which should be returned thereto.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That we are of opinion that Mr. Foden cannot, in the circumstances which he states, be protected by Her Majesty's Government from serving in the United States' army.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 293.

The Law Officers of the Crown to Earl Russell.—(*Received April* 22.)

Lincoln's Inn, April 21, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Murray's letter of the 18th instant, stating that he was directed by your Lordship to transmit to us a letter from the Colonial Office, dated the 17th instant, inclosing copies of despatches from Governor Sir C. Darling, together with their several inclosures, relative to the visit to the port of Melbourne of the Confederate States' steamer "Shenandoah," and the alleged enlistment of British subjects there to serve on board that vessel; and to request that we would take these papers into our consideration, and favour your Lordship with any observations we may have to offer thereupon, and more particularly as to whether they seem to require any action on the part of Her Majesty's Government.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That it appears to us that, in the circumstances stated, his Excellency the Governor acted with propriety and discretion; and there does not appear to us, at present, to be a necessity for any action on the part of Her Majesty's Government.

With respect to his Excellency's request that he may receive instructions as to the propriety of executing any warrant under the Foreign Enlistment Act on board a Confederate (public) ship of war, we are of opinion that, in a case of strong suspicion, he ought to request the permission of the commander of the ship to execute the warrant; and that, if this request be refused, he ought not to attempt to enforce the execution: but that, in this case, the commander should be desired to leave the port as speedily as possible, and should be informed that he will not be re-admitted into it.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 294.

The Law Officers of the Crown to Earl Russell.—(*Received April* 25.)

Lincoln's Inn, April 25, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 7th instant, stating that with reference to our Reports of the 8th October and 9th May last, respecting the case of the "Scylla," he was directed by your Lordship to transmit to us a letter from Mr. Gustavus Heyn, dated the 29th ultimo, inclosing a statement by Mr. Francis D. Hamilton, master of the "Scylla," claiming compensation from the United States' Government on account of ill-treatment which he received when that vessel was seized by the United States' authorities. The previous correspondence was also inclosed; and Mr. Hammond was pleased to request that we would again take this case into consideration, and furnish your Lordship with our opinion as to the answer which should be returned to Mr. Heyn.

In obedience to your Lordship's commands we have taken this case again into consideration, and have the honour to report—

That we think it is not expedient, in answer to Mr. Heyn, to say more than that Her Majesty's Government have been in communication with the Government of the United States on the subject of the "Scylla," and have had reason to suppose that the question of the validity of the capture of that vessel had been, or would be, made the subject of judicial proceedings: and that they now propose to transmit a copy of Captain Hamilton's statement to Her Majesty's Minister at Washington, with a view to such further inquiries being made, or such other measures being taken, as may be proper, under the circumstances of the case; but that, until the facts as to the vessel and her cargo are more clearly understood, it would be premature to determine whether a claim for compensation to Captain Hamilton can be urged with any prospect of success. We desire to point out to your Lordship the inconsistency between Captain Hamilton's statements, as to the interference of General Canby to withdraw this case from the Prize Court, after the vessel had been libelled, and the representations contained in the inclosures sent by Mr. Seward to Lord Lyons in his letter of the 26th November last.

We cannot but add, that the circumstance of no representation having been made

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to Her Majesty's Government by or on the part of Mr. Mesnard, the alleged British owner of the "Scylla," while Captain Hamilton's case is recommended to their notice by Mr. Gustavus Heyn of Belfast (whom we do not understand to have had or to claim any interest in the vessel or her cargo), appear to us strange and suspicious; and that their apparent tendency is to corroborate Mr. Seward's assertion and belief, that the British ownership of the "Scylla" was colourable only.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 295.

The Law Officers of the Crown to Earl Russell.—(Received April 26.)

My Lord,
Lincoln's Inn, April 25, 1865.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 18th instant, stating that he was directed by your Lordship to transmit to us a letter from the Colonial Office, dated the 11th instant, and its inclosure, respecting the arrival at Nassau of the "City of Richmond," after having been engaged in conveying seamen, arms, and ammunition, to the "Stonewall;" and to request that we would take the same into our consideration, and favour your Lordship with our opinion whether the parties concerned in this transaction can be prosecuted on their return to this country for their proceedings at Greenhithe or elsewhere.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That there is not at present any evidence before us on which a successful prosecution of any of the parties could be conducted, if they should return to this country.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 296.

The Law Officers of the Crown to Earl Russell.—(Received April 26.)

My Lord,
Lincoln's Inn, April 25, 1865.

WE are honoured with your Lordship's commands signified in Mr. Murray's letter of the 18th instant, stating that he was directed by your Lordship to transmit to us a letter dated the 12th instant from the Colonial Office, and its inclosures, containing an account of the proceedings arising out of the wreck of the United States' ship "San Jacinto," off Abaco Island; and to request that we would take the same into our consideration, and favour your Lordship with our opinion as to the definition of British waters given in Governor Rawson's circular of the 27th of February, together with any other observations which a perusal of the papers might suggest to us.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we are of opinion that the circular of Governor Rawson is proper and in accordance with the principles of law applicable to the subject, and that his definition of the limits of Her Majesty's territory is substantially correct.

That we think that it would be expedient to grant the discretionary power which he desires to be conferred on the principal officers in the out-islands, with respect to permitting the anchorage of belligerent vessels in British waters, for the purpose of assisting other vessels of the same character which may have been werecked.

That the course pursued by his Excellency towards the "San Jacinto" and the United States' officers appears to us to have been in every respect judicious and proper.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 297.

The Law Officers of the Crown to Earl Russell.—(Received April 28.)

My Lord,
Lincoln's Inn, April 28, 1865.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 26th instant, stating that he was directed by your Lordship to transmit to us the draft of a letter which your Lordship proposes to address to Mr. Adams in answer to a letter received from him, dated the 7th instant (inclosed therewith), in which Mr. Adams, under instructions from his Government, renews, with reference to the case of the "Shenandoah," and the part lately taken by the "City of Richmond" steamer in taking supplies to the French-built steam-ram "Stonewall," the charge against this country of not properly checking hostile organizations against United States' commerce. Mr. Adams is instructed to maintain that this and the other evils of which he complains have had their origin in the fact of Her Majesty's Government having recognized the Confederates as belligerents; but as the Southern ports have now fallen into the hands of the United States, the United States' Government looks to that of Her Majesty for a removal of this ground of complaint. Finally, Mr. Adams expresses a hope that the ships of war of the United States will be welcomed in British waters in the same friendly manner as has been heretofore customary.

Mr. Hammond was also pleased to state that he was directed by your Lordship to request that we would take these papers into our consideration, and favour your Lordship at our earliest convenience with our opinion upon the answer which it is proposed to return to Mr. Adams' representation.

Mr. Hammond was further pleased to state that a printed memorandum drawn up in your Lordship's Department upon the conduct pursued by the United States towards Spain and Portugal during the revolt of the Spanish American Provinces was annexed for our information.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we have carefully perused and considered the draft of the letter which your Lordship proposes to address to Mr. Adams, and are humbly of opinion that, with certain additions and alterations which we have taken the liberty to suggest, it is proper to be sent.

(In the absence of the Queen's Advocate),
(Signed) ROUNDELL PALMER.
R. P. COLLIER.

No. 298.

The Law Officers of the Crown to Earl Russell.—(Received May 5.)

Lincoln's Inn, May 4, 1865.
My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 27th ultimo, stating that with reference to our Report of the 7th April he was directed by your Lordship to transmit to us, together with Mr. Menlove's previous letter and with a copy of the answer which was returned thereto[*] in conformity with our Report, a letter which has been received from that gentleman, dated the 22nd April, in which he again adverts to his claim against the United States' Government in reference to the closing by that Government of certain banks in the Southern States; and to request that we would take Mr. Menlove's letter into our consideration, and favour your Lordship with our opinion as to the reply which should be made thereto.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we think the proper answer to be sent to Mr. Menlove would be, to refer him to the answer returned, by your Lordship's direction, to his former letter; and to add, that your Lordship cannot interfere with respect to the proceedings of the United States' Government in closing the Banks at New Orleans.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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[*] Mr. Menlove, April 3; to Mr. Menlove, April 11, 1865.

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No. 299.

The Law Officers of the Crown to Earl Russell.—(*Received May* 5.)

Lincoln's Inn, May 4, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 27th ultimo, stating that he was directed by your Lordship to transmit to us a correspondence between Mr. Cornelius Noonan and your Lordship's Department,* upon the question whether he can claim protection for his property and that of his wife in New Orleans; and to request that we would take the same into our consideration, and favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken this matter into our consideration and have the honour to report—

That we are of opinion that Mr. Noonan is not entitled to claim British protection for his own property or that of his wife, at New Orleans.,

We have, &c.

(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 300.

The Law Officers of the Crown to Earl Russell.—(*Received May* 6.)

Lincoln's Inn, May 4, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Murray's letter of the 21st ultimo, stating that with reference to our Reports of the 25th of February and 16th ultimo, respecting the case of Bennett Burley, he was directed by your Lordship to transmit to us, together with the previous papers, a despatch from Her Majesty's Chargé d'Affaires at Washington (No. 196, March 24), inclosing copies of his correspondence with Mr. Seward on the suggested attempt to change the ground of accusation upon which Burley was surrendered by the Canadian authorities. A letter from the Colonial Office, containing observations upon this correspondence, was also inclosed; and Mr. Murray was pleased to request that we would take these papers into consideration and report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we retain our opinion that it would have been a breach of good faith to have put Burley upon his trial for the charge of piracy, which was not the ground of his extradition under the Treaty, unless he were, at all events, *bonâ fide* tried for robbery, for which offence he was given up. The same observation is equally applicable to the charge of assault with intent to commit murder; with which we do not understand him to have been charged before the Canadian authorities.

We adhere, however, to our former opinion as to the limited power of interference of Her Majesty's Government in this case, if Burley be really tried upon the charge for which he was delivered up, and upon other charges also. It appears now that, at all events, he will not be tried for piracy, as had been apprehended.

We have, &c.

(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 301.

The Law Officers of the Crown to Earl Russell.—(*Received May* 5.)

Lincoln's Inn, May 5, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 2nd instant, stating that with reference to our Report of the 7th ultimo, respecting the case of Verdon (or Vernon) Locke, he was directed by your Lordship to transmit to us, together with the previous papers, a letter, and its inclosures, from the Colonial Office dated the 2nd instant, on the subject of a requisition made by the United States' Government, through Her Majesty's Chargé d'Affaires at Washington, for the surrender of Locke on charges of piracy and murder, arising out of the case of the "Chesapeake;" and to request that we would take these papers into consideration, and furnish your Lordship with our opinion as to any instructions which it will be proper to send to the Governor of the Bahamas thereupon; and that we should observe that it is stated in the letter from the Colonial Office that the mail for the Bahamas will be dispatched on Saturday next.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That in our opinion the Governor of the Bahamas has taken a correct view of his immediate duty in this case.

When a demand is duly made for the extradition of a person who is himself already under arrest and about to be tried for an offence against British law, or who is undergoing his sentence after a conviction for any such offence, the trial for that offence ought to take place, and the sentence (if any) ought to be undergone, before it can be necessary or proper to deliver up such accused person to the foreign Government demanding his extradition; and the proceedings with a view to his extradition ought to be regulated by these considerations, though care should, of course, be taken to avoid any such delay as would enable such an accused person, who was in custody or within the power of the British authorities when the demand was made, afterwards to escape, before the necessary warrants for his detention under the charge made by the foreign Government were issued and executed.

With respect to the remarks of the Governor of the Bahamas upon the form of Mr. Seward's requisition of the 6th March, 1865, it is desirable, we think, to point out that the Statute 6 and 7 Vict., cap. 76, requires, in all cases of extradition by any British Colonial authorities, *two* warrants,* the first being the Governor's own warrant, which is necessary to enable any Justice of the Peace to deal with the case, but which is not itself sufficient to authorize the apprehension of the alleged offender, and the second being that of "a Justice of the Peace, or other person having power to commit for trial persons accused of crimes against the laws of that part of Her Majesty's dominions," under which alone the prisoner may be actually apprehended and committed to gaol.

The Statute authorizes the Governor to issue his preliminary warrant upon any request proceeding from the United States' Government which is, in substance, "a requisition for the delivery of any person charged with the crime of, *inter alia*, murder or piracy committed within the jurisdiction of the United States who shall be found within the territories of Her Majesty;" and although it is desirable that every such requisition should (as has been hitherto usual) be in such a form as upon the face of it to show all facts necessary for the commission of the alleged crime within the United States' jurisdiction, and though it is expedient, whenever opportunity offers, to call attention to the informality of any such requisition which may appear to deviate from that usual and desirable practice, we think (as we have before advised) that it is better for the Governor to issue his warrant upon a requisition defective in form, but not manifestly improper in substance, than to withhold it, because no final injustice can be done by his so granting it, and the responsibility for any risk of a failure of the subsequent proceedings on that account will rest with the United States' Government; while, on the other hand, the refusal of the Governor might, perhaps, frustrate the object of the demand, and (if grounded on reasons not clearly authorized by the terms of the Treaty) might lead to embarrassing questions between the Government of this country and that of the United States.

The same observations apply to the absence of depositions in support of the requisition. It has been usual to submit to the Governor, with the requisition, depositions verifying the charge; the 2nd section of the Statute seems to contemplate that there will, or at least may be, such depositions, and the practice is a very proper and convenient one, to which it is, in our judgment, desirable (whenever practicable) to adhere. But we do not find in the Statute any express provision which makes it absolutely necessary that there should be such depositions, in order to justify the Governor in issuing his preliminary warrant, and no injustice can be done to the person accused if he issues it without them, because no step can be taken under that warrant without the production before a Magistrate of "such evidence as, according to the laws of that part of Her Majesty's dominions, would justify the apprehension and committal for trial of the

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* Mr. Noonan, February ; to Mr. Noonan, February 25; Mr. Noonan, April 21, 1865.

* See on these subjects our Report of the 16th March last, on a despatch of the Lieutenant-Governor of New Brunswick as to the St. Alban's raiders.

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person so accused, if the crime of which he or she shall be so accused, had been there committed."

Our conclusion therefore is, that if, in the present case, the Government of the United States should think fit, at their own risk, to press the demand upon Mr. Seward's requisition of the 6th March, 1865, which states the crimes of piracy and murder to have been committed by "Vernon G. Locke," "on board the United States' merchant-steamer 'Chesapeake'" (not specifying *where* the "Chesapeake" then was), then the Governor of the Bahamas ought not to refuse to act upon this, as a sufficient requisition; and that if the United States' Government do not accompany or follow up the demand by proper depositions before such warrant is issued, they may be left, if they can, to make good that defect before the Magistrate to whom the application must then be made for the necessary warrant of arrest.

We may add that if the depositions should show (as we believe the fact to be) that the alleged "piracy" was committed on the high seas, the decision of the English Court of Queen's Bench in the case of the "Joseph Gerrity"* is a direct authority against the extradition of the accused upon that ground. But Mr. Seward's demand extends to murder also; and as the United States' Courts have *exclusive* jurisdiction to try charges of murder committed on board United States' merchant-ships on the high seas, we think that this part of the charge is not governed by the case of the "Joseph Gerrity."

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 302.

The Law Officers of the Crown to Earl Russell.—(Received May 8.)

Lincoln's Inn, May 8, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 27th ultimo, stating that with reference to our Report of the 19th ultimo, and to previous Reports upon the question of the cotton captured at Savannah, he was directed to transmit to us a despatch from Mr. Burnley (No. 216), inclosing copies of a Judgment delivered in the Supreme Court in December last, in the case of some cotton captured in the Red River, and a despatch from Her Majesty's Consul at New York, reporting that 391 bales of the captured cotton had been sold at auction; and to request that we would take these papers into consideration, and report to your Lordship our opinion as to the effect of the decision of Chief Justice Chase upon the property of neutrals.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we agree with Mr. Burnley in ascribing considerable importance to the decision of the Supreme Court delivered by Chief Justice Chase.

It appears by that decision that any claimant of property captured by the land forces of the United States may, at any time within two years after the suppression of the rebellion, on proof of ownership of the property, and that "he has never given aid or comfort to the rebellion," have a decree for the proceeds.

The doctrine that property seized upon the capture of a town in the enemy's country is, *primâ facie*, the property of an enemy, and liable to seizure and confiscation, is one the legal soundness of which Her Majesty's Government cannot (in our opinion) be advised to gainsay. We think that the burden of displacing this presumption lies upon each individual claimant, suing for his own right, in the Courts of justice of the captor; and it may be proper to add, that foreigners having a permanent, or a commercial, domicil in the enemy's country, are (generally speaking) regarded by the laws of war, in the same light as citizens of that country.

We think that the Government of the claimant might properly interfere in his behalf to obtain for him, if it were denied, access to a judicial remedy; but that it should not (except under exceptional circumstances) exceed this limit.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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* 10 Law Times' Reports (new series), p. 499.

No. 303.

The Law Officers of the Crown to Earl Russell.—(Received May 10.)

Lincoln's Inn, May 10, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 2nd instant, stating that he was directed by your Lordship to transmit to us a letter from Mr. Valentine O'Connor, dated the 22nd ultimo, with whose claims in respect of tobacco, both at Richmond and on board the "Hiawatha," we are familiar, requesting, now that Richmond is in the possession of the United States' Government, that Her Majesty's Government will take such measures as may lead to the recovery by Mr. O'Connor of the tobacco at Richmond bought and paid for by him; and Mr. Hammond was pleased to request that we would take Mr. O'Connor's application into consideration, and report to your Lordship our opinion thereupon.

Mr. Hammond also transmitted the volumes containing the case of the "Hiawatha," and previous correspondence, and further stated that we should observe that in Mr. O'Connor's letter of the 19th of September, 1861, he said he had about 360 hogsheads of tobacco in Richmond, whereas now he states the quantity to be 853 hogsheads.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we think that, having regard to the peculiar circumstances of this case, Her Majesty's Representative at Washington might properly be instructed to use his good offices with the United States' Government in order to procure, if possible, the delivery of this tobacco to Mr. O'Connor, on proof of his title thereto. He ought, however, first to be called upon to explain the discrepancies between his original statement (19th September, 1861) that he had 360 hogsheads at Richmond; his subsequent statement (13th May, 1862), that he had 667 hogsheads (the marks and numbers of which were inclosed in his letter of that date); and his present claim to 853 hogsheads. We assume that this tobacco was all so stored at Richmond as to be *primâ facie* identified as Mr. O'Connor's property. If it should turn out that all, or any part of it, has been ordered to be sold with other property seized at Richmond by the forces of the United States, or if the proofs of title offered are not satisfactory to the United States' authorities, Mr. O'Connor must unavoidably be left to substantiate and prosecute his claim like other persons under similar circumstances, before the proper tribunals of the United States.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

P.S.—Since the above Report was copied, we have received Mr. Hammond's letter of the 8th instant, with the further letter from Mr. O'Connor, dated the 6th instant, therein inclosed.

The only reply which can properly be given to that letter is, that the Government of the United States cannot be held answerable for tobacco burnt at Richmond by order of the Confederate Government; and that Her Majesty's Government cannot interfere, with a view to obtain from Mr. O'Connor any compensation for losses so sustained.

R. P.
R. P. C.
R. P.

No. 304.

The Law Officers of the Crown to Earl Russell.—(Received May 11.)

Lincoln's Inn, May 10, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 6th instant, stating that he was directed by your Lordship to transmit to us therewith the draft of the letter which was sent to Mr. Adams on the 4th of May, together with his letter to which it was a reply; and with reference to the concluding passage in that draft, wherein your Lordship states, "Her Majesty's Government are quite willing that vessels of war of the United States shall be treated in the ports of Her Majesty in

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the same manner as Her Majesty's vessels of war are treated in the ports of the United States, with this single exception, that if an enemy's vessel of war should come into the same port, the vessel which shall first leave the port shall not be pursued by its enemy till twenty-four hours shall have elapsed," Mr. Hammond was to request that we would prepare, at our earliest convenience, for the consideration of Her Majesty's Government, a draft of the instructions which should be issued by the Lords Commissioners of the Admiralty, and by Her Majesty's several Secretaries of State, in conformity with what your Lordship has stated to Mr. Adams. For convenience of reference, copies of the instructions of the 31st of January, 1862, and 15th of December, 1863, were also inclosed.

In obedience to your Lordship's commands we have the honour to report—

That we have prepared the draft instructions, which are appended to this Report.

It is hardly necessary for us to observe that so long as a state of war is recognized by Her Majesty's Government as continuing (Her Majesty being neutral therein), any orders which Her Majesty may think fit to issue as to the vessels of war of the one belligerent must apply equally to those of the other, unless, for special reasons, a distinction is thought proper to be made.

We are not in this case informed of any such special reasons; and we have assumed that no such distinction is intended to be made, as every such distinction (even if it were justified by special reasons) would be a departure, *pro tanto*, from that absolute neutrality which Her Majesty has hitherto observed in the present contest.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

Inclosure in No. 304.

Draft Instructions.

Sir,
May , 1865.

WHEREAS Her Majesty was pleased to command that certain rules which were set forth in a letter sent by Earl Russell, K.G., Her Majesty's Principal Secretary of State for Foreign Affairs, to the Lords Commissioners of the Admiralty, on the 31st January, 1860, and published in the "London Gazette" of the 15th December, 1863, should be enforced as Her Majesty's orders and directions relative to the admission into British waters of ships of war or privateers belonging to either of the belligerents during the continuance of hostilities between the Government of the United States of North America and the States calling themselves the Confederate States of America.

I have now to apprise you that it has pleased Her Majesty to recall the said orders and instructions, and to remove, with one exception, presently to be named, all restrictions relative to the admission into Her Majesty's ports and harbours of ships of war or privateers belonging to the aforesaid belligerents, and to substitute for the said orders and instructions the following order, which you will take care by all usual and proper means to make known and to enforce:—

All vessels of war belonging to either of the belligerents in the war between the Government of the United States of North America, and the States calling themselves the Confederate States of America, will be admitted into Her Majesty's ports and harbours with the same privileges and rights as the ships of war of all foreign States enjoy in time of peace, with the following exception (that is to say), "that in all cases in which there shall be any vessels (whether ships of war, privateers, or merchant ships) of both the said belligerent parties in the same port, roadstead, or waters within the territorial jurisdiction of Her Majesty, there shall be an interval of not less than twenty-four hours between the departure therefrom of any such vessel (whether a ship of war, a privateer, or merchant ship) of the one belligerent, and the subsequent departure therefrom of any ship of war or privateer of the other belligerent."

R. P.
R. P. C.
R. J. P.

No. 305.

The Law Officers of the Crown to Earl Russell.—(*Received May* 20.)

Lincoln's Inn, May 19, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 4th instant, stating that he was directed by your Lordship to transmit to us the accompanying papers* relating to an Act of Congress recently approved by the President of the United States, respecting the fees of Custom-house officers on the northern, north-eastern, and north-western frontiers of the Republic, and containing some observations made by the Commissioners of Her Majesty's Customs, upon the 13th clause of this Act; and Mr. Hammond was pleased to request that we would furnish your Lordship with our opinion whether there is anything contained in this Act which is contrary to existing Treaty stipulations between this country and the United States.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we do not think that the 13th clause of this new Act of Congress does necessarily conflict with the provisions of reciprocity contained in the Treaties and notifications referred to, all of which (with the exception of the special provisions in the Treaty of the 5th of June, 1854, as to the navigation of Lake Michigan) relate only to the direct trade between foreign ports and ports of the United States.

We understand that, under this clause, permission will be given to foreign vessels to which they are not strictly entitled, namely, a permission to carry on an internal or coasting trade in the United States, to which the Treaties did not apply. If this be so, if the United States have, or might consistently with their Treaty obligations establish the same law respecting their internal or coasting trade, which not long ago prevailed in Her Majesty's dominions, we are disposed to think that it may be competent to the United States' Government to relax that law on such conditions as they may think proper, and on such conditions only, in favour of foreigners. But while this is our view of the strict law involved in the case, we think it may very properly be represented to the Government of the United States that the imposition of differential charges of this kind upon British shipping, when no similar charges are imposed upon the shipping of the United States under like circumstances in Her Majesty's dominions, would be at variance with the spirit (if not with the letter, properly interpreted, of the IInd Article of the Convention of the 3rd July, 1815.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 306.

The Law Officers of the Crown to Earl Russell.—(*Received May* 20.)

Lincoln's Inn, May 19, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 12th May instant, stating that he was directed by your Lordship to transmit to us a letter from the Colonial Office dated the 8th May instant, inclosing a copy of the proceedings taken against the St. Albans' raiders before the Recorder of Toronto; a previous letter from the Colonial Office dated the 25th ultimo, inclosing a copy of Judge Smith's decision in this case, was likewise transmitted to us.

Mr. Hammond was also pleased to state that he was directed by your Lordship to request that we would take these papers into consideration, and that in reporting to your Lordship our opinion thereupon, we would inform your Lordship whether we consider the offence with which Lieutenant Young was charged was bailable.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we are of opinion that the offence with which Lieutenant Young was charged was a bailable offence. The papers laid before us do not appear to call for any observations in addition to those which are contained in our former Reports on this subject.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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* Mr. Burnley, No 181, March 17; Treasury, April 24, 1865.

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No. 307.

The Law Officers of the Crown to Earl Russell.—(Received May 20.)

My Lord, *Lincoln's Inn, May 20, 1865.*

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 17th instant, stating that he was directed by your Lordship to transmit to us a proclamation of the President of the United States dated May 2, offering rewards for the apprehension of sundry persons charged with being parties to the late assassination of President Lincoln, and that with reference to this document he was to request that we would report to your Lordship at our earliest convenience on the following point:—

Whether Confederate adherents found in Canada or in other British North American provinces, or elsewhere in Her Majesty's dominions, and who should be charged as accessories to the murder of President Lincoln, such charge being duly supported by evidence, could properly be given up to the United States on demand for their extradition being regularly made under the provisions of the Treaty between this country and the United States, it being presumed by your Lordship that, except under the Extradition Treaty, such persons could under no circumstances be given up.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we are of opinion that Confederate adherents found in any part of Her Majesty's dominions, charged with being accessories to the murder of President Lincoln, the extradition of whom is demanded by the United States' Government, must be treated exactly in the same manner as persons charged with the commission of any other murder within the territory of the United States, and dealt with according to the provisions of the Extradition Treaty between this country and the United States.

We are clearly of opinion that such persons cannot be given up except under the provisions of the Extradition Treaty.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 308.

The Law Officers of the Crown to Earl Russell.—(Received May 20.)

My Lord, *Lincoln's Inn, May 20, 1865.*

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 17th instant, stating that he was directed by your Lordship to request that we would consider and report to your Lordship, at our earliest convenience, our opinion upon the following points:—

Supposing the war on the American continent to cease, and all exercise of the right of blockade and of detention of neutrals on the high seas to be abandoned, what will be the situation of Confederate men-of-war entering British harbours or being found there?

Should Her Majesty's Government insist, in case of such vessels being found in British harbours, upon their disarming?

That Confederate vessels of war could not be allowed to continue to carry on the war at sea from British harbours: should Her Majesty's Government prohibit any vessel of war carrying a Confederate flag from entering British harbours?

Are there any precedents by which the course to be pursued by Her Majesty's Government in such cases, as stated, could be regulated.

In obedience to your Lordship's commands we have taken these questions into consideration, and have the honour to report—

That we are of opinion that whenever the Government of the United States shall formally communicate to Her Majesty's Government that they no longer claim to exercise any of the rights of a belligerent towards neutral States, it will be competent to Her Majesty's Government, having regard to the actual state of circumstances, to consider that the war between the late belligerents has *de facto* ceased, and to recognize the re-establishment of peace in the territory of the United States of North America. When this recognition has taken place, we are of opinion that Her Majesty's Government should not permit any vessel of war carrying a Confederate flag to enter any of the territorial waters, harbours, or ports belonging to Her Majesty. With respect to vessels of war actually being at the time of such recognition in the territorial waters, harbours, or ports of Her Majesty, we are of opinion that the most expedient course for Her Majesty's Government to pursue will be, upon receiving the formal communication above mentioned from the Government of the United States, to apprize, without delay, that Government, that while Her Majesty is willing to recognize the fact of the war being at an end in the territories of the United States, and all the consequences which according to the principles of international law are generally incident to such a recognition, there must of necessity be a certain class of special cases reserved from the immediate operation of this recognition; namely, the cases of Confederate vessels of war (if any such there should be) which, at the time of the above-mentioned communication and recognition, may have already entered British ports on the faith of Her Majesty's Proclamations of neutrality, and which, having complied with the provisions of those Proclamations, may be then actually within the territorial waters, ports, or harbours of Her Majesty. That with respect to any such vessels, Her Majesty's Government are of opinion that the course which a due regard for national good faith and honour would require them to follow is to order the immediate departure of these vessels from Her Majesty's territories, enforcing for the last time, with respect to them, the existing rules which Her Majesty has hitherto required to be followed by the belligerents.

We have arrived at the conclusion that we ought to tender this advice to Her Majesty's Government after a long and anxious consideration of the subject. The course which we recommend is one which we hope will obviate the necessity of a decision upon various questions of great nicety and difficulty in international law, and which might possibly lead to great practical embarrassment in the relations between Her Majesty's Government and that of the United States of North America.

In conclusion, we have to observe that we are not aware of any direct precedents by which the conduct of Her Majesty's Government can be guided in this matter; but we think that the general analogies and principle of international law are in favour of the advice which we have the honour to offer; and the reason of the thing itself suffices to show that a war like the present cannot, with regard to all its practical bearings upon the duties and rights of neutral States, be so immediately at an end as to replace at once, and by the mere announcement of the fact, exactly the state of things which existed previously to the war. The line of demarcation cannot, in practice, and without injustice, be so sharply drawn. The true rule of conduct appears to us to be that the neutral State should acknowledge, as promptly and as completely as the obligations of good faith towards the defeated belligerent will permit, the fact, with all its consequences, that the war is at an end, and that the victorious belligerent now represents the only Power within the limits of the Union which Her Majesty can any longer treat as entitled to international recognition, either for the purposes of war or otherwise.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 309.

The Law Officers of the Crown to Earl Russell.—(Received May 25.)

My Lord, *Lincoln's Inn, May 23, 1865.*

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 13th instant, stating that he was directed by your Lordship to transmit to us, for such observations as we might have to offer thereupon, a despatch from Sir Frederick Bruce (No. 256, April 25, 1865), inclosing a copy of an opinion of the Attorney-General of the United States on certain questions arising out of the terms of capitulation accorded to General Lee and the army of Virginia by General Grant.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That the answer of the Attorney-General of the United States would appear to us very important if there could be a serious question raised upon the subject to which it relates. It places the recognition of the Confederates as belligerents upon the most exact and formal footing, and deduces from it very strictly its rigorous consequences. If it were possible to suppose that any demands or complaints, founded on the recognition of the belligerent status of the Confederates by this country, would hereafter be pressed

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by the United States' Government, this document might advantageously be referred to in any answer which it might become necessary to return to such demands or complaints.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 310.

The Law Officers of the Crown to Earl Russell.—(Received May 26.)

Lincoln's Inn, May 24, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 18th of May instant, stating that he was directed by your Lordship to transmit to us a letter from Messrs. Laurie and Co., of Leith, dated the 15th instant, putting forward a claim against the United States' Government for the sum of 13,000*l.* on account of tobacco, the property of their firm, destroyed at Richmond by order of the Confederate authorities; and to request that we would take Messrs. Laurie's letter into consideration, and report to your Lordship our opinion as to the answer which should be returned thereto.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That the severe loss of Messrs. Laurie is very much to be regretted; but we must advise your Lordship that the proposition of law, uniformly, we believe, maintained by the Law Officers of the Crown upon principles of international law in similar cases, must be applied to the case of Messrs. Laurie, namely, that a foreigner whose goods are destroyed by the inevitable casualties of war in the place in which he is resident, or in which his property may be, cannot claim the official interference of his own Government to obtain compensation for his loss. He must seek the same remedy as the citizens of the place in which he is resident, or in which his property is, at the hands of the Government of that country.

We may add, that it is manifestly impossible for Her Majesty's Government, who have recognized the Confederate States as a belligerent Power, to hold the Government of the United States (the other belligerent) responsible in damages for injuries done by the Government of the Confederate States to property of British subjects at Richmond.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 311.

The Law Officers of the Crown to Earl Russell.—(Received May 26.)

Lincoln's Inn, May 24, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 19th of May instant, stating that he was directed by your Lordship to transmit to us a letter from Sir Frederick Bruce, dated the 2nd instant, relative to the treatment of foreigners accused of having run the blockade, and who have been employed by the Confederate Government; and to request that we would take this letter into immediate consideration, and favour your Lordship at our early convenience with our opinion on the matters therein referred to.

In obedience to your Lordship's commands we have taken this letter into consideration, and have the honour to report—

That we have often had the honour to state, in former reports, that the mere offence of blockade-running by neutrals cannot be visited by the belligerent with any severer punishment than the confiscation, after due judicial investigation in the proper Prize Court, of the vessel and cargo, one or both, according to the circumstances of each case; to that opinion we steadily adhere.

This simple question, however, becomes seriously complicated when the blockade-runner has entered, directly or indirectly, into engagements of any kind with the belligerent Government. He may have thereby rendered himself liable to be treated as an enemy; and whether he has done so or not must depend upon the circumstances of each individual case.

As to the general proposition, we desire to report that it cannot be too firmly maintained by Her Majesty's Government that the United States have no right, so far, at least, as neutral interests are concerned, to claim the privileges of belligerents, and, at the same time, by denying that there is an enemy or a war, to escape from the obligations of belligerents.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 312.

The Law Officers of the Crown to Earl Russell.—(Received May 26.)

Lincoln's Inn, May 24, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 19th instant, stating that he was directed by your Lordship to transmit to us a despatch from Sir F. Bruce (No. 272) inclosing a copy of a letter which he had addressed to the Acting Secretary of State of the United States, relative to a notice issued by the United States' military authorities at Boston, directing that vessels are not to be allowed to land passengers or cargo, if the passports of any of the passengers are not duly viséd; and Mr. Hammond was pleased to request that we would take this matter into immediate consideration, and report to your Lordship, at our earliest convenience, our opinion thereupon.

We are also honoured with Mr. Hammond's letter of the 20th instant, transmitting the accompanying despatch from Her Majesty's Consul at Boston (No. 23), inclosing a copy of the notice issued by the Provost Marshal at that port, which formed the subject of Sir F. Bruce's despatch No. 272 of the 2nd instant.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we are of opinion that the letter of Sir F. Bruce was very proper. We are not able to deny the strict right of the United States' authorities, in such critical times as the present, to make, for their own security, any reasonable passport regulations. But if a passenger duly provided with a passport were prevented from landing, merely on the ground that other passengers were not so provided, this would appear to us to be unreasonable, and, indeed, at variance with the tenor of the passport itself.

We cannot, therefore, but hope that the meaning of the Regulation in this respect may have been misapprehended by Sir F. Bruce; and we assume that, at all events, it is not meant to be applied to any vessels, which may have sailed from this country, or from the Continent of Europe, before they could receive notice that such passports would be required.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 313.

The Law Officers of the Crown to Earl Russell.—(Received May 26.)

Lincoln's Inn, May 24, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 19th instant, stating that he was directed by your Lordship to transmit to us a despatch from Sir F. Bruce (No. 271, May 2), inclosing a copy of a letter which he has addressed to the Acting Secretary of State of the United States, relative to an oath exacted from foreigners resident in the Southern States, and the steps taken by the United States' military authorities at Charleston to induce foreigners to leave that city; and Mr. Hammond was pleased to request that we would take this despatch into consideration, and furnish your Lordship at our early convenience with our opinion thereupon.

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In obedience to your Lordship's commands we have taken this case into our consideration, and have the honour to report—

That we adhere to the opinion expressed in our former Reports on this subject. We think it competent to the United States' authorities to forbid the trading of foreigners at Charleston, who do not withdraw themselves, for whatever reason, from that city, and who refuse to take any oath (not involving a renunciation of allegiance to their proper Sovereign) which the Government of the United States may think it necessary for its own security to tender to them.

At the same time the present measure appears to us to be of extraordinary rigour, and we trust that the letters of Sir F. Bruce may produce some mitigation of it in favour of British subjects.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 314.

The Law Officers of the Crown to Earl Russell.—(Received May 25.)

My Lord, *Lincoln's Inn, May* 25, 1865.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 18th May instant, stating that he was directed by your Lordship to transmit to us the draft of a letter, founded on our Report of the 10th instant, which your Lordship caused to be addressed to Mr. O'Connor on the 13th instant, respecting his tobacco at Richmond, together with the letter which has been received from that gentleman in reply, dated the 15th instant; and to request that we would again take this matter into consideration, and report to your Lordship our opinion as to the answer which should be returned to the letter from Mr. O'Connor.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we think an answer should be sent to Mr. O'Connor to the effect that Her Majesty's Government are advised that they ought not to make any application to the United States' Government for compensation to Mr. O'Connor for the loss which he alleges himself to have sustained.

That Mr. O'Connor must seek such remedy (if any) as may be competent to a citizen of the place in which his tobacco was destroyed, who had sustained a similar loss.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 315.

The Law Officers of the Crown to Earl Russell.—(Received May 25.)

My Lord, *Lincoln's Inn, May* 25, 1865.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 17th instant, stating that he was directed by your Lordship to transmit to us for such observations as we might have to offer thereupon, a letter from the Colonial Office dated the 11th instant, inclosing copies of a despatch and its inclosures from the Governor of the Bahamas, relative to certain vessels suspected by the United States' Government to be designed for the Confederate service.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That the despatch of his Excellency the Governor of the Bahama Islands does not appear to us to call for any special observations on our part. The course which his Excellency has pursued is in our opinion right and proper.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 316.

The Law Officers of the Crown to Earl Russell.—(Received May 27.)

My Lord, *Lincoln's Inn, May* 26, 1865.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 11th May instant, stating that with reference to our Report of the 8th instant he was directed by your Lordship to transmit to us a despatch from Sir Frederick Bruce (No. 255), relative to cotton in places captured by the United States' forces which is claimed by British subjects or other foreigners.

Mr. Hammond was also pleased to inclose the previous papers, together with a copy of the Act of the United States' Congress referred to by Sir Frederick Bruce; and to request that we would take this matter into consideration, and favour your Lordship with such observations as we might have to offer on Sir Frederick Bruce's despatch.

We are also honoured with your Lordship's commands signified in Mr. Hammond's letter of the 15th instant, stating that with reference to his letter of the 11th instant respecting cotton in places captured by the United States' forces belonging to British subjects, he was directed by your Lordship to transmit to us for consideration a despatch on this subject from Her Majesty's Consul at New Orleans (No. 20, April 14).

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we are of opinion that if the United States' Government treat the cotton of British subjects captured by the United States' forces in blockaded or besieged towns, in the same way as they treat the cotton so captured of their own subjects, their conduct in this respect furnishes no ground for complaint on the part of Her Majesty's Government.

The view of the case taken by Sir F. Bruce appears to us to be correct, and the course he has pursued to be right.

It is to be hoped that the suggestion contained in the opinion of Messrs. Sullivan, Billings, and Hughes (if founded on a correct view of the law and practice of the United States in these cases, on which point we do not feel ourselves by any means competent to offer an opinion) may be spontaneously adopted by British owners of cotton, and by this means many embarrassing questions avoided: but we do not think that Her Majesty's Government can take upon themselves the responsibility of advising the adoption of this or any other particular course by individuals; and at all events we see no reason at present for any interference on the part of Her Majesty's Government.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 317.

The Law Officers of the Crown to Earl Russell.—(Received May 27.)

My Lord, *Lincoln's Inn, May* 26, 1865.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 17th instant, stating that he was directed by your Lordship to transmit to us, for such observations as we may have to offer thereupon, a letter from the Colonial Office, dated the 11th instant, inclosing copies of a despatch and its inclosures from the Governor of the Bahamas, relative to the proceedings of the United States' vessels of war at Inagua.

We are also honoured with Mr. Hammond's letter of the 23rd instant, transmitting a further letter and its inclosure from the Colonial Office, dated the 22nd instant, respecting this case.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That the course pursued by the Governor of the Bahamas appears to us to have been in every respect right and proper.

With respect to his Excellency's suggestion, that United States' ships of war engaged in convoying mail-packets carrying passengers of all nations should, upon the conditions and under the limitations mentioned by him, be permitted to use the roadsteads at Mariguana and Inagua, we think that it may properly be acted upon if it should be

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considered necessary or expedient still to continue in force the general exclusion of ships of war of either belligerent from the ports and waters of the Bahamas.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 318.

The Law Officers of the Crown to Earl Russell.—(Received May 29.)

Lincoln's Inn, May 29, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 25th instant, stating that he was directed by your Lordship to transmit to us a despatch from Sir F. Bruce (No. 287, May 10), inclosing a Proclamation issued by the President of the United States with regard to Confederate cruizers. A draft of a despatch which your Lordship proposes to address to Sir F. Bruce on this subject was also inclosed; and Mr. Hammond was pleased to request that we would take the same into consideration, and furnish your Lordship, at our earliest convenience, with our opinion whether it is right and proper.

In obedience to your Lordship's commands we have the honour to report—

That in our opinion the proposed despatch is right and proper to be sent.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

Inclosure in No. 318.

Draft of Despatch to Sir F. Bruce.

Foreign Office, May , 1865.

Sir,

I HAVE received your despatch No. 287 of the 10th instant, and the Proclamation inclosed.

But neither in your despatch nor in the Proclamation do I find any answer to this question: Does the United States' Government renounce for the future the exercise of belligerent rights?

This consequence, indeed, may seem to follow from the words of the Proclamation:—

"And whereas armed resistance to the authority of the Government in the said insurrectionary States may be regarded as virtually at an end, and the persons by whom that resistance, as well as the operations of insurgent cruizers, were directed, are fugitives or captives."

It would seem, I say, to follow from these words that the United States' Government renounced for the future those rights of search, detention, and capture of the merchant-vessels of friendly Powers which belong to a state of war.

For the United States cannot, at the same moment, declare that peace exists and exercise rights which belong only to a state of war.

Still the matter is not quite clear, and until either Mr. Adams, on the part of his Government here, or the Secretary of State at Washington, shall declare that neutrals will no longer be subject to search and capture, Her Majesty's Government cannot act upon or publish the Proclamation of the 10th of May.

I am, &c.

No. 319.

The Law Officers of the Crown to Earl Russell.—(Received May 30.)

Lincoln's Inn, May 29, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 17th instant, stating that he was directed by your Lordship to transmit to us a letter from the Colonial Office, inclosing a copy of a despatch from the Governor of the Bahamas, dated the 11th instant, reporting the circumstances under which certain guns were permitted to be shipped at Nassau, for Havana, on board the screw-steamer "Louisa Ann Fanny." The previous correspondence respecting this vessel was also inclosed; and Mr. Hammond was pleased to request that we would take this case into consideration, and furnish your Lordship with our opinion with regard to the proceedings of Governor Rawson in this matter.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That the shipment of guns referred to in Mr. Hammond's letter appears to have taken place at Bermuda, and not at Nassau.

It is difficult for us to form an entirely satisfactory opinion upon the question, whether Lieutenant-Governor Hamley (not Governor Rawson) was well advised by his Privy Council, or not, when he permitted this shipment to take place. If it should hereafter appear that the guns were really shipped for the purpose of arming the "Louisa Ann Fanny," and that the Lieutenant-Governor of Bermuda was deceived by the representations of Major Walker and of the master of the vessel, the case might possibly lead to embarrassing discussions between Her Majesty's Government and the Government of the United States.

Considering the active interest shown in the shipment by Major Walker, a known or reported Confederate agent, it would, in our opinion, have been prudent for the Lieutenant-Governor to obtain, from competent naval authorities, a report upon the questions whether the guns proposed to be shipped were such as would be suitable for the purpose of arming that particular vessel, and whether there were or were not in the structure or fittings of the ship herself any indications of an intention to use her for any warlike purpose. And as Major Walker had expressly offered to give security in six times the value of the freight, that "no belligerent act should be attempted by the steamer," we think it would have been proper, at all events, to take that security before waiving the objection originally made to the shipment of the guns. It is possible that both these precautions may have been actually taken; but it is not expressly so stated in Lieutenant-Governor Hamley's despatch of the 13th of April last.

Subject to these observations, it appears to us that the Lieutenant-Governor intended to do, and to the best of his judgment did, his duty in this case. The shipment of articles contraband of war for purposes of trade on board a merchant-vessel in a British port cannot be prohibited or interfered with, unless under a Royal Proclamation, prohibiting their exportation by virtue of the powers entrusted to Her Majesty by the Customs Laws Consolidation Act, which powers have not been exercised by Her Majesty during the present war. And it cannot be presumed, without evidence, that guns proposed to be shipped as cargo on board a seeming merchant-vessel are not really intended as such cargo, but are meant for an illegal armament contrary to the Foreign Enlistment Act.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 320.

The Law Officers of the Crown to Earl Russell.—(Received June 2.)

Lincoln's Inn, June 1, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 30th of May ultimo, stating that with reference to our Report of the 20th of that month, therewith returned to us in copy for convenience of reference, he was directed by your Lordship to transmit to us a copy of a despatch which your Lordship had that day addressed to Her Majesty's Ambassador at Paris (No. 432, May 30), instructing him to propose to the French Government to concur with that of Her Majesty in declaring that the belligerent rights of the so-called Confederate States are no longer recognized by them.

Mr. Hammond was also pleased to send us a copy of a letter which your Lordship had that day addressed to Mr. Adams, in reply to a letter from him, also inclosed,* forwarding a Proclamation issued by the President of the United States respecting

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* To Mr. Adams, May 30; Mr. Adams, May 29, 1865.

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insurgent cruizers; and to request that we would take your Lordship's despatch and letter into our immediate consideration, and report to your Lordship, at our earliest convenience, any observations which might occur to us in their perusal, so that your Lordship might be prepared, if the French Government concur, to give effect to the views of Her Majesty's Government, thus set forth, with the least possible delay.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That your Lordship's despatch to Earl Cowley itself indicates, with sufficient clearness, the course proposed to be taken in the event of the French Government concurring in the views therein expressed.

We presume that, before sending that despatch, and the letter to Mr. Adams, your Lordship had satisfactory grounds for believing that the indispensable condition of the renunciation of the further exercise of belligerent rights against neutrals would be readily accepted by the United States' Government, although no formal declaration had been as yet received from them to that effect.

Assuming this to be the case, we concur in the views expressed in that despatch; and we think that the line of conduct therein mentioned may be properly pursued.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 321.

The Law Officers of the Crown to Earl Russell.—(Received June 2.)

My Lord,
Lincoln's Inn, June 2, 1865.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 31st ultimo, stating that with reference to his letter of the previous day, he was directed by your Lordship to transmit to us therewith the draft of a letter to be addressed to the Lords Commissioners of the Admiralty and of the Treasury, and to the Secretaries of State for the Home, Colonial, War, and India Offices, requesting that instructions might be issued to the several authorities under their control, in conformity with the decision of Her Majesty's Government to recognize the civil war in North America as *de facto* at an end.

Mr. Hammond was also pleased to state that we should observe in this despatch a paragraph which does not appear in your Lordship's despatch to Lord Cowley, a copy of which was inclosed in his letter of yesterday, providing for the contingency of the Commander of a Confederate vessel of war found within British territorial jurisdiction desiring to divest his vessel of a warlike character.

And Mr. Hammond was further pleased to state that a paragraph in this sense is inserted in the draft at the suggestion of the French Government; and he was to request our earnest attention to this reference, and in addition to state to us that your Lordship was most anxious to receive our opinion upon it at latest on Friday morning, so that the matter might be considered by the Cabinet to be held on that day.

We are also honoured with Mr. Hammond's letter of the 1st instant, transmitting a copy of a despatch received yesterday from Lord Cowley (No. 631), reporting a conversation with M. Drouyn de Lhuys, on communicating to him your Lordship's despatch of the 30th of May.

That we should see raised in this conversation a question as to the right of the United States' Government to claim as their property any Confederate cruizers which may be found in neutral ports.

And Mr. Hammond was further to request that we would report to your Lordship our opinion on the point in whom the property in such cruizers legally vests, and whether there is any objection to the adoption by Her Majesty's Government of the proposal originally made by the French Government in regard to the manner in which such Confederate cruizers should be dealt with.

In obedience to your Lordship's commands we have the honour to report—

That we think the proposed instructions mentioned in Mr. Hammond's letter of the 31st May should be modified in the manner suggested by us in the margin of the accompanying draft; and that with such modifications they may properly be sent.

With regard to the subject of Mr. Hammond's second letter (of the 1st instant), we conceive it to be a correct proposition of law, that if any ships are, upon the complete cessation of hostilities, found within Her Majesty's territories, which at the time of such cessation were the property of the Confederate Government, and have not been lawfully

transferred to any other owner, such ships may be claimed as public property by the Government of the United States.

But every such claim, if made and resisted by any counter claimant, must be decided in the ordinary course of law by the Civil tribunals: each such case may depend upon mixed questions of law and of fact, and we do not think it would be necessary or expedient for Her Majesty's Government, in any of their public acts, to refer to the possible occurrence of questions of this nature.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 322.

The Law Officers of the Crown to Earl Russell.—(Received June 3.)

My Lord,
Lincoln's Inn, June 2, 1865.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 1st instant, stating that he was directed by your Lordship to transmit to us a letter from the Colonial Office, dated the 30th ultimo, inclosing copies of two despatches from the Governor of the Bahamas, relating to the arrival at Nassau of the unarmed Confederate prize schooner "St. Mary;" and to request that we would take these papers into consideration, and favour your Lordship with our opinion as to any instructions which it may be desirable to transmit to the Governor of the Bahamas; and that he was directed by your Lordship to point out to us that it is stated in the letter from the Colonial Office that the mail for the Bahamas would be made up on Saturday next, the 3rd instant.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we cannot think that the Governor of the Bahamas exercised a sound judgment in permitting the "St. Mary" to remain within Her Majesty's waters, even for the purpose of obtaining necessary repairs and supplies, under the circumstances disclosed by these papers.

Her Majesty's orders as to the exclusion of prizes captured by either belligerent during the present (or late) war, were, as we understand them, general and positive; and we do not conceive that they were intended to be relaxed in any case, unless a prize vessel should be driven into British waters by mere stress of weather, or by some other *vis major* of a different kind from the want of supplies and ordinary repairs, which existed in the present case.

The "St. Mary" was described, by the officer himself who was in command of her, as a "*prize schooner.*" She had no papers, and it was not alleged that she had been in any way commissioned as a public ship of war of the Confederate States. In what manner she was captured does not clearly appear; the only evidence produced by Mr. Brain, tending to relieve him even from the imputation of piracy, was a letter from the Secretary of the Navy of the Confederate States, addressed to him as a "Lieutenant of the *volunteer navy*" of those States (whatever that might mean), acceding to his request for authority "to capture" some particular vessel (not named), at some place (also not named). It does not appear that he was, or had been, in command of, or serving in, any public ship of war, or even any privateer, of the Confederate States. If facts, not appearing by admission or proof in these papers, can properly be taken notice of, it was matter of general notoriety that he had captured the "Chesapeake" and the "Roanoake," not by any regular or ordinary means of warfare, but by a mode of proceeding which made the application of the most rigorous rule of exclusion, on the part of neutral States, to prizes so captured extremely necessary. We think the most proper mode of dealing with this person, so found in possession of the "St. Mary," would have been to order his instant departure, as soon as his presence within British waters became known. If the want of provisions and repairs were admitted as a plea for exceptional indulgence in such a case, neutral Powers would be instrumental in relieving adventurers of this description from the principal risks and difficulties incident to such fraudulent enterprises, and would practically encourage deviations from the recognized course of honourable warfare which it is the interest of all civilized nations to discountenance.

In declining to act upon the demand of extradition presented to him by the United States' Consul, Governor Rawson has again been influenced by the same erroneous interpretation of the Act of Parliament which we have pointed out and explained in former Reports. He seems to confound the Governor's preliminary warrant, on which

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the jurisdiction of the magistrate to inquire into the case is founded (and for which the statute does not make any evidence strictly necessary), with the magistrate's own subsequent warrant, which can only be founded upon sufficient *primâ facie* evidence of the actual commission of the offence alleged. As, however, in the present instance, the demand was based only upon the charge of "*an act of piracy*, in seizing unlawfully the steamer 'Chesapeake,' an American steamer, off Cape Cod, and causing, while so seizing illegally, the death of Owen Shaffer, second engineer of the said ship, by shooting him"* (which appears to us to be a charge of piracy committed on the high seas, and not also a charge of murder as distinct from piracy), the Governor of the Bahamas was, in our opinion, justified in declining to issue his warrant upon that charge; the Court of Queen's Bench in England having determined, in the case of the "Gerrity," that piracy committed on the high seas, on board a United States' vessel, is not a ground for extradition under the Act.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 323.

The Law Officers of the Crown to Earl Russell.—(*Received June* 3.)

Lincoln's Inn, June 3, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 27th day of May ultimo, stating that with reference to our Report of the 4th of that month, he was directed by your Lordship to transmit to us a further letter from Mr. Noonan, dated the 25th instant, relative to his nationality.

Mr. Hammond was also pleased to inclose the previous correspondence;† and he was to request that we would take these papers into consideration, and report to your Lordship our opinion as to the answer which should be returned to Mr. Noonan's letter referred to us.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we advise that an answer be sent to Mr. Noonan to the following effect: that his natural allegiance to the Crown is indelible, and that he is still a British subject; but that these positions are quite consistent with the refusal of Her Majesty's Government to interfere in his behalf with the Government of another country in which he has voluntarily sought and acquired the rights of citizenship.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 324.

The Law Officers of the Crown to Earl Russell.—(*Received June* 3.)

Lincoln's Inn, June 3, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 26th ultimo, stating that, with reference to our Report of the 4th of May, he was directed by your Lordship to transmit to us a further letter from Mr. Burley, dated the 19th ultimo, respecting the case of his son, in answer to a letter addressed to him from your Lordship's Department on the 9th, the draft of which, together with the previous papers, was therewith transmitted to us, and to request that we would again take this case into our consideration and report to your Lordship our opinion thereupon.

We are also honoured with your Lordship's commands signified in Mr. Hammond's letter of the 29th ultimo, stating that with reference to his letter of the 26th May, he was directed by your Lordship to transmit to us a further letter from the Colonial Office, relative to the case of Bennet G. Burley.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we do not think that the letter of Mr. Burley (senior) furnishes any adequate reason for the interference of Her Majesty's Government. We have nothing to add to the opinion expressed in our former Reports on this subject.

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* See Mr. Kirkpatrick's Requisition (April 18, 1865).

† Mr. Noonan, February   ; to Mr. Noonan, February 25; Mr. Noonan, April 21; to Mr. Noonan, May 13, 1863.

We think, however, that Her Majesty's Representative at Washington might be instructed to use his good offices with the United States' Government in order to procure the immediate trial of Burley, and to call the attention of the United States' Government to the length of the imprisonment which this person has already undergone. It is scarcely necessary to say that neither the Canadian Government nor any member or members of it can be required to give bail for this person, as suggested in the letter of Mr. Burley.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 325.

The Law Officers of the Crown to Earl Russell.—(*Received June* 6.)

Lincoln's Inn, June 6, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 20th ultimo, stating that, with reference to our Report of the 7th May, he was directed by your Lordship to transmit to us the accompanying further correspondence respecting the case of Mr. E. W. Pratt,* together with the previous papers, and to request that we would again take this case into consideration, and favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That it appears to us that every step has been taken on behalf of Mr. Pratt which is likely to be of service to him. The circumstances which seem the most favourable in his case are the passport (or what was alleged to be equivalent to a passport) granted to him by the United States' Consul at Nassau, and the presumption of innocence which arises from his having relied upon this security, and having gone voluntarily into the territory of the United States. Nevertheless, we think that it would be expedient to leave this matter to the unfettered discretion of Sir F. Bruce, in order to avoid, if possible, the discussion (which would be at present premature) of some questions of much difficulty and nicety, to which the circumstances of the case may not improbably give rise.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 326.

The Law Officers of the Crown to Earl Russell.—(*Received June* 12.)

Lincoln's Inn, June 12, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 29th of May ultimo, stating that with reference to our Report of the 21st of November last respecting the case of the "Dashing Wave" and other vessels seized in the Rio Grande, he was directed by your Lordship to transmit to us, together with the previous papers, the correspondence which the Foreign Office has since had on the subject with Her Majesty's Legation at Washington, and with Messrs. Gallichan and Messrs. Dean and Co.,* the owners respectively of the "Volant" and "Dashing Wave."

Mr. Hammond was also pleased to call our special attention to Messrs. Dean and Co.'s letter of the 26th instant, and to request that we would favour your Lordship with our opinion as to any steps which it would be competent for Her Majesty's Government to take with a view of pressing these cases forward to a conclusion.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we adhere to the opinions expressed in our former Reports as to these vessels.

We think that although the abstract right of the District Attorney to appeal in any case from the sentence of the Prize Court in favour of the owners of a captured vessel

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* Sir F. Bruce, No. 246, April 21; Mr. Pratt, May 18; to Sir F. Bruce, No. 198; to Mr. Pratt, May 20, 1865.

† Messrs. Dean, May 26; Mr. Horsfall, May 27; to Messrs. Dean, May 29; three volumes; other papers.

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cannot be denied, the exercise of that right in the case of the "Dashing Wave" was harsh and oppressive, no valid ground for the capture of that vessel having ever been alleged; and the ground apparently relied on being one so contrary to the principles of international law as to warrant Her Majesty's Government in declining to acquiesce in it, even if it could be conceived possible that it might receive the sanction of a Court of Appeal. It does not seem to be now controverted that it always was, and is still, competent to the Executive Government of the United States to put a stop to these oppressive proceedings; no right having been vested in the captor which was not subject to the exercise of such a discretion on the part of the Executive. The sale of a ship and cargo which have never been condemned (unless to prevent otherwise unavoidable deterioration, *pendente lite*), is, in our opinion, incapable of being justified, and the enormous delay which, according to the statement in Messrs. Dean and Co.'s letter of the 26th of May last, appears likely to occur before the case of the "Dashing Wave" can be disposed of by the Court of Appeal, aggravates the hardship inflicted, and would of itself justify earnest expostulation with the United States' Government.

We think, therefore, that Sir F. Bruce may be properly instructed to bring the whole circumstances of these very exceptional cases again before the United States' Government, and to suggest that, even if the right of Her Majesty's Government to demand the restitution of these vessels on grounds of strict justice is not admitted, it would at least be an act of comity of a kind not unusual between friendly States at the close of a war, to restore them and their cargoes to their owners, who have succeeded in the Prize Court of first instance, without further litigation, or (as to such of the ships and cargoes as may have been already sold) to pay over the proceeds, and make a liberal compensation for the losses and damages which the owners have incurred.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 327.

The Law Officers of the Crown to Earl Russell.—(Received June 15.)

Lincoln's Inn, June 15, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 13th instant, stating that he was directed by your Lordship to transmit to us the accompanying despatch from Sir F. Bruce (No. 313, May 26) inclosing a copy of a Proclamation issued by the President of the United States declaring the ports of the Southern States, with the exception of those in Texas, open to foreign commerce; and stating that all persons trading or attempting to trade in any ports of the United States, in violation of the laws thereof, "will be held and dealt with as pirates."

The draft of an answer which your Lordship proposes to return to this despatch was also inclosed, and Mr. Hammond was pleased to request that we would take these papers into consideration, and furnish your Lordship with our opinion, at our earliest convenience, whether this draft is right and proper to be sent.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we think the proposed despatch is fit and proper to be sent.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 328.

The Law Officers of the Crown to Earl Russell.—(Received June 21.)

Lincoln's Inn, June 20, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 8th instant, stating that, with reference to our Report of the 19th ultimo, he was directed by your Lordship to transmit to us a letter from the Colonial Office, dated the 1st instant, inclosing copies of the indictments against Jacob Thompson and others, charged with having conspired in Canada to levy war against the United States; and to request that we would favour your Lordship with any observations we might have to offer thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That the indictments appear to us to have been properly drawn in these cases; and the perusal of them does not suggest to us the necessity of making any further observations upon the general subject to which they relate, and as to which we have already had the honour to make several Reports to your Lordship.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 329.

The Law Officers of the Crown to Earl Russell.—(Received June 21.)

Lincoln's Inn, June 20, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 12th instant, stating that he was directed by your Lordship to transmit to us, together with the previous papers,[*] a letter from the Colonial Office,[†] and its inclosures, respecting the case of two vessels which have been constructed at Montreal, and which were suspected of having been intended for the Confederate service; and to request that we would take the same into our consideration, and favour your Lordship with any observations which we might have to offer thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we are of opinion that his Excellency the Governor of Canada was rightly advised that there were no circumstances connected with the "Pinero" which would have warranted him in ordering the Collector of Customs at Montreal to refuse a clearance to that vessel.

With respect to the other vessel, "El Almandaris," which appears to have long since left Montreal, there seems to be no reason to doubt that she was *bonâ fide* intended for a passenger boat.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 330.

The Law Officers of the Crown to Earl Russell.—(Received June 24.)

Lincoln's Inn, June 24, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 17th instant, stating that he was directed by your Lordship to transmit to us the accompanying correspondence[‡] respecting the imprisonment and trial in the United States, of Colonel St. Leger Grenfell, a British subject, who is accused of having been concerned in a conspiracy for the release of certain Confederate prisoners, and an attack on the city of Chicago; and to request that we would take the same into our consideration, and favour your Lordship with any observations we might have to offer thereupon.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That in the absence of any copy of the evidence admitted against Colonel Grenfell, we can only form an imperfect opinion as to the justice of the conviction founded upon it. Deriving our knowledge of it only from the references made to it in the Memorial of Mr. Hervey, Colonel Grenfell's counsel, we are at present rather at a loss to understand why certain portions of it were admitted at all, relating apparently to conversations at which the accused was not present, and with a person not proved to have been a conspirator with, or an agent of, Colonel Grenfell; or why evidence was received of the

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[*] Colonial Office, February 6, February 14, and March 21; to Colonial Office, March 25; Colonial Office April 24, 1865.

[†] Colonial Office, June 1, 1865.

[‡] Sir F. Bruce, No. 328, June 2; to Sir F. Bruce, No. 245, June 17, 1865.

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conduct of Colonel Grenfell when in the Confederate service, having no bearing on the charge on which he was tried. It appears to us that the Memorial or Petition of Mr. Hervey embodies all that could be usefully urged on behalf of Colonel Grenfell, and that the instructions already sent by your Lordship to Sir F. Bruce are in every respect right and proper. We have only to add that, distressing as the case is, it is impossible to deny the unqualified right of the United States' authorities to deal with it, in all its bearings and consequences.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 331.

The Law Officers of the Crown to Earl Russell.—(Received June 27.)

My Lord, *Lincoln's Inn, June* 26, 1865.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 10th instant, stating that, with reference to our Report of the 6th of December last, respecting the Judgment pronounced in the District Court of New Jersey in the case of the schooner "Etta," or "Retribution," he was directed by your Lordship to transmit to us a despatch from Her Majesty's Consul at New York (No. 43, May 26), inclosing a printed copy of the Report of proceedings in the case of this vessel; and to request that we would take the same into consideration, and favour your Lordship with such observations as we might have to offer thereupon.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That this, as we had the honour to state in our last Report, is a case of the first impression; but we are of opinion that, upon the principles of maritime international law applicable to such a case, the vessel was lawfully and rightly condemned. This opinion, of course, involves our assent to the very important position of law, that the ship of an enemy, which has been a commissioned ship of war, cannot, during the continuance of the war, be relieved from the risk of capture and condemnation in the Prize Court of the other belligerent by any sale or transfer to a neutral, although such neutral may purchase her with the *bonâ fide* intention of using her for his own benefit in lawful commerce, and may, to the utmost of his power, divest her of her warlike character, and convert her into, and use her as, a merchant-vessel.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 332.

The Law Officers of the Crown to Earl Russell.—(Received June 28.)

My Lord, *Lincoln's Inn, June* 27, 1865.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 6th instant, stating that he was directed by your Lordship to transmit to us a letter from the Colonial Office, dated the 29th ultimo, inclosing a copy of a despatch from the Governor of Nova Scotia, requesting instructions as to the course which is to be adopted towards American cruizers entering the ports of the province, or towards vessels to which Mexican letters of marque may have been issued; and to request that we would take this matter into our consideration, and report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That with respect to the treatment of vessels of war belonging to the United States and the Confederates, we presume that a copy of your Lordship's recent letter on this subject will have been sent to the Governor of Nova Scotia, as containing all necessary instructions relating to it. With respect to vessels carrying Mexican letters of marque from Juarez, we advise that the Governor be instructed that such vessels are not to be admitted or allowed to remain in Her Majesty's ports or harbours.

Her Majesty has not recognized any *de facto* Government of any part of Mexico other than that which is also the *de jure* Government of that Kingdom, namely, the Government of the Emperor of Mexico, at whose Court Her Majesty has an accredited representative; nor has it, since the recognition of the Emperor, recognized Juarez as a belligerent.

We have, &c.
(For the Solicitor-General and myself),
(Signed) ROUNDELL PALMER.
ROBERT PHILLIMORE.

No. 333.

The Law Officers of the Crown to Earl Russell.—(Received July 1.)

My Lord, *Lincoln's Inn, June* 30, 1865.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 10th instant, stating that he was directed by your Lordship to transmit to us two despatches from Her Majesty's Consul at New Orleans (Nos. 23 and 28), inclosing copies of proceedings in the Prize Court in that city, in the cases of certain British vessels captured for breach of blockade; and to request that we would take these papers into consideration, and favour your Lordship with any observations which we might have to offer thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we have perused the record of these proceedings in the United States' Prize Court, and have now the honour to offer a specific report upon the case of each vessel condemned by this Prize Court of the United States.

1. That the "Julia" and cargo (No. 7,944) appear to have been rightly condemned, on the grounds of contraband cargo and a breach of blockade.

2. That as to the "Morris" and cargo (No. 7,959), the ship appears to have belonged to a British subject, though the crew were from New York, and her captain was a United States' citizen. A large portion of the cotton on board seems to have belonged to American owners resident at New Orleans, some to British owners; in this case the Court decreed restitution to the claimants, and all right to damages was waived.

3. The "Mary Ellen" and cargo (No. 7,976). The ship belonged to a British subject, resident in Canada; she had been an American ship, and had a United States' as well as an English flag on board. The crew were all foreigners, the vessel was in ballast, bound from Matamoros to New Orleans. She was seized near a blockaded coast, but in distress. She had a "permit" from the United States' Consul at Matamoros. She was condemned, "for reasons assigned orally by the Court;" what they were we do not know. In the absence of this information we think the grounds for this condemnation must have been very slender.

4. The "Flash" and cargo (No. 7,958). Owner of vessel and cargo resident in Galveston, Texas, from whence the captain came. She was bound for Tampico from Galveston. She had run the blockade at Galveston. No claimants appeared. She was rightly condemned.

5. The "Cora" and cargo (No. 7,961). No claimants appeared. She was captured while breaking the blockade at Galveston, and was rightly condemned.

6. The "Belle" and cargo (No. 7,962), captured in Galveston harbour. No claimant appeared. She was rightly condemned.

7. The "Matilda" and cargo (No. 8,002), sailed under British colours. The captain, a Spanish subject, was owner of vessel and cargo. This vessel was captured in the attempt to break the blockade near Pass Cavallo, coast of Texas. No claimant appeared. The vessel was rightly condemned.

8. The "Pet" and cargo (No. 8,001). This vessel was captured in the harbour of Galveston, to enter which she had run the blockade, and was preparing to run it again when seized at anchor in Galveston Bay, but outside of the harbour. Half of the cargo was owned by the Confederate Government. The reasons for her condemnation were delivered orally by the Court; they are not before us, but we are not prepared to say that this vessel was not rightly condemned.

9. The "Ben Willis" and cargo (No. 7,992). This vessel was illegally captured. The Court decreed restitution. The claimant of vessel and cargo waived all claim to damages. An appeal had been instituted by captors, which was also waived.

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10. The "Anne Sophia" and cargo (No. 8000). This vessel was captured in circumstances precisely similar to those of the "Pet" and cargo (8). No claimant appeared. We have not the reasons of the Judgment; in their absence we are not prepared to say that the vessel was unlawfully condemned.

11. The "Albert Edward" and cargo (No. 7,925). No claimant appeared. The vessel was captured for breach of blockade, and was rightly condemned.

12. The "Cora Smyser" and cargo (No. 7,928). This vessel was captured for breach of blockade. No claimant appeared. In the absence of any written Judgment we are unable to say that this vessel was unlawfully condemned.

13. The "Lone" and cargo (No. 7,930). This vessel was captured for breach of blockade. No claimant appeared, and she was rightly condemned.

14. The "Alabama" and cargo (No. 7,956). This vessel was captured for breach of blockade; she was deserted by her crew as soon as the captors fired a shot to bring her to. No claimant appeared. She was rightly condemned.

We have now expressed our opinion upon each separate and individual case, and have the honour to close our Report.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 334.

The Law Officers of the Crown to Earl Russell.—(*Received July* 5.)

Lincoln's Inn, July 4, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 23rd of June ultimo, stating that he was directed by your Lordship to transmit to us the accompanying letters from Mrs. Molyneux,* widow of Her Majesty's late Consul at Savannah, complaining of the injuries done to her property in North Carolina and at Savannah, and the outrages committed on the persons in charge of it, by certain detachments of United States' troops, and to request that we would take the same into our consideration, and favour your Lordship with our opinion as to whether any representation and demand for compensation can properly be addressed to the United States' Government with regard to this case.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we understand that the house which was subjected to this alleged outrage and plunder was the official residence of Her Majesty's Consul, duly accredited to the United States' Government. If the facts stated by Mrs. Molyneux are true, we think that the outrage, which began by pulling down the British flag, and ended by pillaging the house, with circumstances of personal violence to the inmates, is one which Her Majesty's Representative at Washington ought to bring to the notice of the United States' Government, and for which he ought to request compensation.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 335.

The Law Officers of the Crown to Earl Russell.—(*Received July* 5.)

Lincoln's Inn, July 4, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 10th June ultimo, stating that he was directed by your Lordship to transmit to us a despatch from the Acting British Consul at Mobile (No. 4), reporting what had passed at an interview between General Canby, the Commander of the Army of West Mississippi, and himself and the Consuls of other Powers at Mobile, respecting the course which would be pursued by the United States' authorities at that port with regard to cotton, tobacco, and naval stores, the property of foreigners.

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* Mrs. Molyneux, January 24, March 8, March 16, April 3, and June 15, 1865.

Mr. Hammond was also pleased to inclose a copy of an order issued by General Canby on the subject of the disposition of property found in captured cities, and to request that we would take this matter into consideration, and report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we do not think that the official order printed in the newspaper, which is among the papers submitted to us, furnishes any ground for immediate action on the part of Her Majesty's Government or of other foreign Governments, with whom Her Majesty's Government would probably think it expedient to act in concert on this occasion.

The general principles laid down in this order, if fairly carried into effect, would not give rise to any legitimate complaint on the part of neutral States.

We observe the use of the term "blockade" in the fourth paragraph of this Order, which, if strictly construed, would lead to the conclusion that the United States' Government had not yet (at its date, 22nd April) abandoned the rights of belligerents. This, however (we presume), has since been done.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 336.

The Law Officers of the Crown to Earl Russell.—(*Received July* 5.)

Lincoln's Inn, July 5, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 24th of June ultimo, stating that, with reference to our Report of the 14th of January, he was directed by your Lordship to transmit to us a further letter, and its inclosures, from Mr. Heslop, respecting his imprisonment, and to request that we would take the same into our consideration, and favour your Lordship with our opinion thereupon.

The previous papers* were also inclosed for reference, if required.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That the further papers laid before us in this case do not induce us to alter the opinion with respect to it which we have already had the honour to express in our former Report.

We are clearly of opinion that no ground is laid for the interference of Her Majesty's Government on behalf of Mr. Heslop with the Government of the United States.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 337.

The Law Officers of the Crown to Earl Russell.—(*Received July* 5.)

Lincoln's Inn, July 5, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 23rd of June ultimo, stating that he was directed by your Lordship to transmit to us the accompanying letter from Mr. A. Barclay, dated the 9th ultimo, formerly Her Majesty's Consul at New York, forwarding various papers in support of a claim preferred by him against the Government of the United States on account of damage inflicted on his property near Savannah by United States' troops, and to request that we would take the same into our consideration, and favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

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* Mr. Heslop, December 6, 1864; to Mr. Heslop, January 21; to Mr. Burnley, No. 27, 865.

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That the true question which the application of Mr. Barclay raises is not whether he is not justly entitled (as it would appear that he is) to ample compensation for gross and wanton injuries inflicted without provocation upon his house and landed property, but whether he must not seek redress for these injuries on the same footing and in the same manner as any other loyal and peaceable resident or settler in the United States, whose landed property has been subjected to such damage.

Having ceased to be Her Majesty's Consul, he made his home in Savannah, engaged in the cultivation of lands which he had purchased, and became practically a citizen of the country in which he had so settled himself and his family; and, in these circumstances, he derived no right of protection from hoisting the British flag over his dwelling, or from the fact that he had formerly been Her Majesty's Consul.

We are of opinion that Mr. Barclay should prefer his petition for redress to the United States' Government in the same manner as any subject of that Government, but that Her Majesty's Representative at Washington may be properly instructed to support, as far as he is able (without making a positive demand for compensation), the application of Mr. Barclay.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 338.

The Law Officers of the Crown to Earl Russell.—(Received July 7.)

My Lord, *Doctors' Commons, July 7*, 1865.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 6th instant, stating that he was directed to transmit to us the accompanying despatches from Sir F. Bruce (Nos. 355 and 357), inclosing copies of a correspondence with the United States' Government, respecting the orders issued by Her Majesty's Government on the 2nd ultimo with regard to the treatment of Confederate cruizers in British ports, together with a draft of a despatch which your Lordship proposes to address to Sir F. Bruce on this subject; and Mr. Hammond was to request that we would take the same into immediate consideration, and furnish your Lordship with our opinion thereupon. The previous papers were also inclosed for convenience of reference.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we think your Lordship's proposed despatch is fit and proper to be sent.

We have, &c.
(Signed) ROBERT PHILLIMORE.
(Also for Attorney and Solicitor-General.)

No. 339.

The Law Officers of the Crown to Earl Russell.—(Received July 11.)

My Lord, *Lincoln's Inn, July* 11, 1865.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 24th ultimo, stating that he was directed by your Lordship to transmit to us the accompanying letter from the Colonial Office, dated the 21st ultimo, and its inclosures, respecting the case of Dr. Blackburn, who is accused of having conspired with others to send infected clothing into the United States; and to request that we would take these papers into our consideration, and favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we agree with the opinion expressed by the Solicitor-General for Canada, that Dr. Blackburn is triable in Canada for the conspiracy to commit murder in the United States. We do not at present understand how Dr. Blackburn can be indicted upon the same facts for what is termed a breach of the "neutrality laws."

We have, &c.
(Signed) ROBERT PHILLIMORE.
(Also for Attorney and Solicitor-General.)

No. 340.

The Law Officers of the Crown to Earl Russell.—(Received July 11.)

My Lord, *Lincoln's Inn, July* 11, 1865.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 27th ultimo, stating that, with reference to our Report of the 6th of December, he was directed by your Lordship to transmit to us, together with the previous papers,* a letter from the Colonial Office,† inclosing a further representation from Mr. Roach respecting his claim on the Government of the United States on account of his vessel the "Madeira," having been run down by the United States' ship of war "Clyde;" and, to request that we would take the same into our consideration, and favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That as we now understand that a ship of war belonging to the United States' Government cannot be proceeded against in any Admiralty Court of the United States for collision, we think that your Lordship should instruct Sir F. Bruce to submit the case of the "Madeira" to the United States' Government, as one proper to be investigated; and to state that if the culpability of the "Clyde" should be established, he does not doubt the owners of the "Madeira" will receive from that Government such compensation as may cover the damage which she has wrongfully sustained.

We have, &c.
(Signed) ROBERT PHILLIMORE.
(Also for Attorney and Solicitor-General.)

No. 341.

The Law Officers of the Crown to Earl Russell.—(Received July 12.)

My Lord, *Lincoln's Inn, July* 12, 1865.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 30th of June ultimo, stating that, with reference to our Report of the 4th instant, he was directed by your Lordship to transmit to us, together with the previous papers,† the accompanying further letter from Mr. Noonan dated the 28th ultimo, respecting his position as a naturalized citizen of the United States; and to request that we would take the same into our consideration, and favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we advise that an answer to the following effect be sent to Mr. Noonan: That Her Majesty's Government cannot undertake to promise that they will accord to Mr. Noonan any exceptional protection as a British subject in that particular country of which he has voluntarily become a citizen, so making himself, while within the territory of that country, liable to all the effects and consequences of citizenship within its jurisdiction; and that the principle which they thus apply to his case is the same on which Her Majesty's Government invariably act in all similar cases.

We have, &c.
(Signed) ROBERT PHILLIMORE.
(Also for Attorney and Solicitor-General.)

No. 342.

The Law Officers of the Crown to Earl Russell.—(Received July 12.)

My Lord, *Lincoln's Inn, July* 12, 1865.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 27th day of June ultimo, stating that he was directed by your Lordship to transmit to us the accompanying despatch from Sir Frederick Bruce (No. 343, June 10), inclosing

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* Colonial Office, November 23; to Colonial Office, December 13, 1864.

† Colonial Office, June 26, 1865; Mr. Roach, October 22, 1864.

‡ Mr. Noonan, February 22; to Mr. Noonan, February 25; Mr. Noonan, April 21; to Mr. Noonan, May 13; Mr. Noonan, May 25; to Mr. Noonan, June 9, 1865.

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a printed copy of an opinion delivered by Judge Daly with regard to the seizure of cotton at Savannah by the United States' authorities; and to request that we would take the same into our consideration, and favour your Lordship with any observations we might have to offer thereupon.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we agree with the opinion of Judge Daly, that the particular case of Messrs. Bernheimer presents strong claims to the equitable consideration of the United States' Government, and that it may be reasonably expected that this Government will restore the captured cotton to its owners.

With respect to the general principles of international law applicable to the subject, we are of opinion that property captured in an enemy's town is *primâ facie* enemy's property, but that on proof of neutral ownership it ought to be restored by the Government of the captors to the owners. This obligation, to the fulfilment of which the neutral owner has a right, is not dependent on the question as to the particular channel or form through which restitution is made. It may be either through the medium of a regular Court, or through a commission issued by the Government, or directly by the Executive itself.

We have, &c.
(Signed) ROBERT PHILLIMORE.
(Also for Attorney and Solicitor-General.)

No. 343.

The Law Officers of the Crown to Earl Russell.—(Received July 20.)

Lincoln's Inn, July 19, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 23rd of June ultimo, stating that with reference to our Report of 18th of March and our previous Reports on the case of the "Chesapeake," he was directed by your Lordship to transmit to us, together with the previous papers,* a letter dated the 21st instant from the Colonial Office, and its inclosures, respecting the trial and acquittal of Lieutenant Seely before an Admiralty Court in New Brunswick, on a charge of piracy; and to request that we would take the same into our consideration, and favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That as far as we can form any opinion from the meagre report of this important trial contained in the extract of the newspaper which is submitted to us, we are of opinion that the Judge rightly laid down the law to the jury; and we see no reason to doubt that the verdict which, after ten hours' consideration, the jury found, was under the circumstances right and proper.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 344.

The Queen's Advocate to Earl Russell.—(Received July 23.)

Doctors' Commons, July 23, 1865.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 22nd ultimo, stating that he was directed by your Lordship to transmit to me a despatch from Her Majesty's Consul at Calais reporting that the Confederate steam-sloop "Rappahannock," formerly Her Majesty's ship "Victor," has been sold to an English shipowner; and Mr. Hammond was pleased to request that I would report to your Lordship at my earliest convenience my opinion whether there is any reason for Her Majesty's Consul withholding from the vessel a provisional certificate of registration under the Merchant Shipping Act.

In obedience to your Lordship's commands I have the honour to report—

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* Colonial Office, March 7 and March 15; Mr. Burnley, No. 131, 1865.

That I think Her Majesty's Consul may grant the provisional certificate of registration. I advise, however, that he at the same time distinctly apprise the purchaser of the ship who applies for it that he must not consider the grant of such certificate as necessarily protecting the vessel against any claims which the United States' Government may hereafter put forward against her, or any action which that Government may take with respect to her in consequence of her previous history, conduct, and ownership.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 345.

The Law Officers of the Crown to Earl Russell.—(Received July 27.)

Lincoln's Inn, July 25, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 19th ultimo, stating that he was directed by your Lordship to transmit to us the accompanying despatch from Sir F. Bruce (No. 301, May 19, 1865), and its inclosure, together with a letter dated the 13th ultimo from the Hudson's Bay Company, respecting a question which has been raised as to the right of navigation on the Columbian River; and to request that we would take the same into consideration, and furnish your Lordship with our opinion thereupon. Copies of the Treaties bearing upon this subject, as well as certain correspondence which has passed regarding it, were also inclosed for reference, if required.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That having regard to the fact that the specific powers of the Commissioners are limited to the decision of claims arising only out of the IIIrd and IVth Articles of the Treaty of Oregon; looking to the correspondence between Her Majesty's Government and Her Majesty's Representative at Washington (referred to in the despatch of Mr. Rose), contemporaneous with the making of that Treaty, and especially the letter from the Foreign Office to Mr. Pakenham, June 29, 1846, in Volume 1 of the volumes submitted to us; and also to the fact that by the language of the IInd Article of the Treaty of Oregon the Columbia is opened to "all British subjects" trading with the Hudson's Bay Company,—we are of opinion that the Commissioners ought not to consider the right to navigate the Columbia as an item of property belonging to the Company which is to be made the subject of specific and separate valuation; though they will, of course, be at liberty to take into consideration, among the other elements which give value to the territory which the Company is about to abandon, the advantages which all or any part of that territory may possess in the hands of the Company as situated upon a great river, navigable, as of right, by the Company, and by British subjects trading with them.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 346.

The Law Officers of the Crown to Earl Russell.—(Received July 28.)

Lincoln's Inn, July 27, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 4th of July instant, stating that he was directed by your Lordship to transmit to us, together with the former papers,* the accompanying despatch from Sir Frederick Bruce (No. 356, June 19), inclosing copies of a correspondence with the United States' Secretary of State, respecting the notice given by Mr. Adams of the intended abrogation of the Agreement of 1817, regulating the employment of armed vessels on the North American Lakes; and to request that we would take the same into our consideration, and favour your Lordship with our opinion thereupon.

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* Mr. Adams, November 23; Lord Lyons, No. 634; to Lord Lyons, No. 528, 1864; to Mr. Burnley, No. 69; Mr. Burnley, No. 153, March 9; Colonial Office, April 6; to Colonial Office, April 10; to Sir F. Bruce, No. 230, 1865.

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In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we are clearly of opinion that the letter of Mr. Seward (dated June 16, 1865) to Sir F. Bruce replaces the agreement as to the limitation of the naval forces to be employed by the Government of Her Majesty and the United States in the waters of the North American Lakes upon its original basis; that the notice of the abrogation of that agreement is entirely cancelled; and that no further diplomatic measures as to this matter are necessary, beyond such an acknowledgment of Mr. Seward's reply as will place on record the understanding of Her Majesty's Government that the notice is absolutely withdrawn, and that the Convention of 1817 will continue in force, unless it should be hereafter terminated by a new six months' notice to be given by either of the parties thereto.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 347.

The Law Officers of the Crown to Earl Russell.—(Received August 1.)

Lincoln's Inn, July 31, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 10th instant, stating that, with reference to our Report of the 18th of March, he was directed by your Lordship to transmit to us, together with the previous papers, a further letter from the Colonial Office, dated the 5th instant, and its inclosures, respecting the case of the "Mary" or "Alexandra;" and to request that we would take the same into consideration, and furnish your Lordship with our opinion thereupon.

We are also honoured with Mr. Hammond's further letter of the 12th instant, inclosing further papers relative to the matter.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we are of opinion that the Attorney-General may have exercised a sound discretion (having regard to all the circumstances) in declining to appeal from the sentence of the Judge in this case; but we desire not to be understood as expressing our agreement either with the general reasoning of the Judgment, or with the construction placed by it on the word "intent" in the Foreign Enlistment Act.

We do not clearly collect from the papers whether the Judge has or has not certified that there was in this case reasonable cause for seizure: but we assume, from his refusing costs to the claimants, that he would be prepared so to certify; and we think it desirable that he should do so, in order to protect the Crown in the event of any action being brought for damages on account of the seizure.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 348.

The Law Officers of the Crown to Earl Russell.—(Received August 2.)

Lincoln's Inn, July 31, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 17th of July instant, stating that he was directed by your Lordship to transmit to us the accompanying despatch from Her Majesty's Consul at New York (No. 49, June 20), and its inclosures, respecting the case of the "Wren," a vessel which, while sailing under British colours between Havana and Nova Scotia, was forcibly taken possession of by certain of her crew, and carried into Key West, where she has been libelled in the Prize Court as prize of war; and to request that we would take these papers into our consideration, and favour your Lordship with our opinion thereupon.

Mr. Hammond was pleased to add that your Lordship presumes that the case is one which should be left to the decision of the Prize Court.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we think it would be expedient, before determining whether any representation should be made to the United States' Government in this case, that a communication should be made to Mr. Laird in order to ascertain whether he does or does not claim the "Wren," of which he is the alleged owner, as his property.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 349.

The Law Officers of the Crown to Earl Russell.—(Received August 2.)

Lincoln's Inn, August 1, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 19th ultimo, stating that he was directed to transmit to us the accompanying letter from the Colonial Office, dated the 17th ultimo, and its inclosures, respecting a supposed Confederate prize schooner, the "St. Mary's," which had put into the port of Kingston, Jamaica, to obtain supplies; and to request that we would take these papers into consideration, and furnish your Lordship with our opinion whether this vessel should have been detained, and with any other observations we may have to offer on the case.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That we presume the visit of the ship in question to Jamaica occurred before Her Majesty's orders, consequent upon the cessation of the war between the United States and the Confederate States, were or could be known in that Colony.

Under these circumstances, and bearing in mind the previous revocation of the Rules of January 1862 (except the twenty-four hours' rule), we are not prepared to say that any blame can be thrown upon Governor Eyre for the hospitality which he extended to this vessel under circumstances of distress; although the course previously pursued with respect to the same vessel in the Bahamas (as to which see our Report of the 2nd June last) was, in our judgment, improper, whether the character which she then assumed was that of a Confederate ship of war or of a prize only. All future cases of this kind (if any such should occur) will of course be governed by the orders recently issued by your Lordship.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 350.

The Law Officers of the Crown to Earl Russell.—(Received August 14.)

Lincoln's Inn, August 12, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 27th ultimo, stating that, with reference to our Report of the 11th of August, 1864, he was directed by your Lordship to transmit to us, together with the previous papers, a letter from Mr. J. B. Lafitte, dated the 21st ultimo, respecting the case of the "Margaret and Jessie;" and to request that we would take the same into our consideration, and favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That Mr. Lafitte's letter appears to us to call for no notice beyond a simple acknowledgment, and a statement that Her Majesty's Government, being satisfied with the manner in which their representations upon this subject have been met by the Government of the United States, wholly decline to recognize the existence of any claim against this country on the part of the owner of the "Margaret and Jessie," or to carry on any further correspondence upon the subject.

While we consider this answer sufficient for Mr. Lafitte, we think it expedient to

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observe that he seems to forget, or at least omits to state, that the "Margaret and Jessie" was an enemy's vessel, chased by and flying from a pursuing vessel. Shots would, of course, be fired at her till the last moment of her entering the territorial waters of a neutral. We thought, and we continue to think, that no shot was intentionally, if at all, fired at the "Margaret and Jessie" after she was within three miles of the shore. We do not find in these papers any answer from the United States' Government as to the complaint of Her Majesty's Government that shots were fired from the United States' vessel from guns carrying five miles, which reached the shore and endangered the lives and property of Her Majesty's subjects. We venture to suggest that the return of peace offers an opportunity for communications with foreign Governments, having for their object either to extend the distance of three miles from the shores as the limit of territorial rights, which became a part of the customary law of nations when cannon-shots did not reach beyond that distance, or at least to establish a general rule against the firing of shot or shell in any naval action so near to any neutral territory or waters as to be capable of falling and doing damage within such territory or waters.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 351.

The Law Officers of the Crown to Earl Russell.—(Received August 15.)

Lincoln's Inn, August 15, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 31st ultimo, stating that he was directed by your Lordship to transmit to us the accompanying letter from Messrs. Aitken, Rodger, and Co., dated the 27th ultimo, respecting a claim preferred by them upon the United States' Government on account of certain bales of cotton belonging to them having been destroyed by General Sherman's army; and Mr. Layard was to request that we would take the same into consideration, and furnish your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That it appears from the extract of the letter of Messrs. Aitken, Rodger, and Co.'s correspondent that their cotton "shared the fate of all that fell into his (General Sherman's) hands;" that is, it was destroyed by him, in common with all the property which he met with in his march through the enemy's country. In causing this destruction General Sherman exercised the right—though the very extreme right—of a belligerent. His object was so to weaken the enemy by the destruction of private as well as public property, and especially of cotton as a main aliment of the defence, as to put an end to the war; and this end he accomplished.

The question arises whether in this march through the interior of an enemy's country, he was bound to distinguish and respect this particular property, consisting of bales of cotton belonging to a neutral; or whether the neutral was not, so far as such property was concerned, in the same condition as the innocent native, passive and not active in the war, subject to the same risks, and protected by the same remedies, if any?

Clearly this would be so if the cotton had been destroyed in a town taken by siege.

Is there, then, any difference in principle if the case be that the cotton which has been destroyed lay in the path of the advancing belligerent?

We think that there is no such difference; unless, at all events, it can be shown that property known at the time to belong to a neutral, and the destruction of which was not rendered imperatively necessary by any military exigency, was wantonly destroyed; the existence of which state of facts (so far as relates to knowledge of the neutral ownership of the property) is not so much as suggested in this case.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 352.

The Law Officers of the Crown to Earl Russell.—(Received August 25.)

Lincoln's Inn, August 25, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 15th instant, stating that he was directed by your Lordship to transmit to us the draft of a note which your Lordship proposes to address to Mr. Adams in reply to his note of the 20th of May last, claiming compensation from Her Majesty's Government on account of injuries sustained by United States' commerce through the "Alabama" and other vessels, and to request that we would take this draft note into our consideration, and favour your Lordship at our earliest convenience with such observations as we may have to offer thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we have ventured in the accompanying copy of your Lordship's draft to suggest certain alterations (the reasons for which will be found explained in some marginal remarks by the Attorney-General, in which we are all to be understood as concurring).

Subject to these alterations and remarks, we think the proposed despatch is right and proper to be sent.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 353.

The Law Officers of the Crown to Earl Russell.—(Received August 29.)

Lincoln's Inn, August 25, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 14th instant, stating that he was directed by your Lordship to transmit to us a letter and its inclosure from Mr. Miller, the Secretary of the Glasgow and West of Scotland Guardian Society for the Protection of Trade, which has been forwarded to the Foreign Office by Mr. Daglish, the member for Glasgow, calling attention to the case of Jeremiah Townsend, who lately robbed a savings' bank at Newhaven, Connecticut, of upwards of 100,000 dollars, and who, after escaping to this country, has been forcibly taken back to the United States under circumstances which, it is stated, involve a total disregard of the existing Treaty of Extradition between the two countries; and to request that we would take this case into consideration, and report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That if the reports in the newspaper and the letter of Mr. Daglish be correct, there can be no doubt that Townsend was illegally taken back to America, and that the English policemen who aided in his capture and his abduction were guilty of a violation of the law.

Whether the Extradition Treaty with the United States of North America should be amended is a grave question, but at all events any such amendment must be founded upon an understanding previously established between Her Majesty's Government and the Government of the United States.

As it is stated that a police officer was sent by the United States to this country, and that Townsend was taken back by that officer from Liverpool to the United States, we think it would be proper and expedient that the attention of the Government of the United States should be called to the circumstances of this case, in order that such instructions may be given to their police authorities as may prevent the possibility of the repetition of similar proceedings.

And we presume that the conduct of the Liverpool policemen who aided in these proceedings will be the subject of due animadversion.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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No. 354.

The Law Officers of the Crown to Earl Russell.—(*Received August* 31.)

My Lord, *Lincoln's Inn, August* 31, 1865.

WE are honoured with your Lordship's commands signified in Mr. Murray's letter of the 15th August instant, stating that with reference to our Report of the 31st ultimo, he was directed by your Lordship to transmit to us, together with the previous papers, a letter from Mr. Laird, stating that the steamer "Wren" was built by Messrs. Laird Brothers, and registered in the name of Mr. John Laird, junior, a member of that firm, and by him transferred by bill of sale, on the 3rd of January, 1865, to Mr. C. K. Prioleau, of Liverpool; and to request that we would again take this case into our consideration, and report to your Lordship our opinion thereupon.

Mr. Murray was also pleased to state that we should observe from the accompanying despatch and its inclosures from the Acting British Consul at New York (No. 60, July 26), that the "Wren" has been condemned at Key West.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we see no reason why Her Majesty's Government should interfere in this matter. The "Wren" is, doubtless, the same with a vessel of that name, which, in some recent proceedings in the English Court of Chancery (in which the Attorney-General acted as Counsel for the United States), was stated by Mr. Prioleau to have been built for the blockade-running service of the Confederate States, under arrangements between his firm and the Confederate Government, and it may therefore be assumed that she was not a *bonâ fide* British vessel.

While we think, for this reason, that the case does not call for any interference by Her Majesty's Government, we cannot but observe that, in this instance, the United States' authorities have resorted to and sanctioned a method of capture similar to that which they denounced as piracy against the Law of Nations, when practised by the Confederates in the case of the "Chesapeake" and the "Roanoke."

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 355.

The Law Officers of the Crown to Earl Russell.—(*Received September* 4.)

My Lord, *Lincoln's Inn, September* 4, 1865.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 21st ultimo, stating that he was directed to transmit to us a letter from the Admiralty dated the 17th ultimo, together with the draft of answer which your Lordship proposes to return thereto, stating that Commodore Cockburn should be authorized to give up the "Tuscaloosa" to any officer duly authorized by the United States' Government to take possession of her; and Mr. Layard was pleased to request that we would take this draft of answer into consideration, and report to your Lordship our opinion whether it is right and proper to be sent.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That we are of opinion that the proposed answer is fit and proper to be sent.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 356.

The Law Officers of the Crown to Earl Russell.—(*Received September* 5.)

My Lord, *Lincoln's Inn, September* 4, 1865.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 26th ultimo, stating that, with reference to Mr. Murray's letter of the 16th of July last, inclosing a copy of a letter which your Lordship had caused to be addressed to the Colonial Office, stating the course which your Lordship thought should be taken with regard to the "Shenandoah" in case that vessel should hereafter enter any British Colonial port, he was directed by your Lordship to transmit to us a letter from the Colonial Office, inclosing the draft of a circular which it is proposed to issue to all the Colonies on the subject of the "Shenandoah."

Mr. Layard was also pleased to state that, in conformity with the suggestion of Mr. Secretary Cardwell, he was directed by your Lordship to request that we would take this proposed circular into our consideration, and report to your Lordship, at our earliest convenience, our opinion thereupon.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That we think the proposed circular fit and proper to be sent.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 357.

The Law Officers of the Crown to Earl Russell.—(*Received September* 5.)

My Lord, *Lincoln's Inn, September* 5, 1865.

WE were honoured with your Lordship's commands signified in Mr. Layard's letter of the 22nd of August ultimo, in which he stated that he was directed by your Lordship to transmit to us a despatch from the Acting British Consul at Charleston (No. 54), inclosing a statement of all complaints filed at that Consulate relative to property belonging to British subjects which had been seized or destroyed either at Charleston or in its vicinity by the United States' forces; and Mr. Layard was pleased to request that we would take the statement into our consideration, and favour your Lordship with any observations we might have to offer thereupon.

In obedience to your Lordship's commands we have taken the statement submitted to us into our consideration, and have the honour to report—

That we presume these claims will be all submitted to the Court of Claims established by the Legislature of the United States. It is important that the claimants should be apprized that they must rely mainly upon their own exertions in support of their claims before the Court.

We observe that the duration of residence in the United States varies from five to thirty-five years; and it is of course possible that different principles may be applied to the consideration of the recent comer and the long-established resident, if any distinction be made by the Court between the foreigner and the native subject.

Two points it will be expressly necessary for the claimants to establish: 1, that they took no part, directly or indirectly, in the civil war; 2, that it was not in their power to remove their property from the country after the war began.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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No. 358.

The Law Officers of the Crown to Earl Russell.—(*Received September* 5.)

My Lord, *Lincoln's Inn, September* 5, 1865.

WE were honoured with your Lordship's commands signified in Mr. Layard's letter of the 18th of August ultimo, in which he stated that he was directed by your Lordship to transmit to us, for our information, and in case we should desire to offer any observations thereupon, a despatch from Sir Frederick Bruce (No. 397, July 31), inclosing an opinion of the Attorney-General of the United States of the operation of the Acts of Congress of March 12, 1863, and July 2, 1864, with respect to "captured and abandoned property" handed over by the United States' forces to the Treasury Department.

Mr. Layard was also pleased to add in a postscript to his letter, that we would observe from a subsequent despatch from Sir F. Bruce (No. 401, August 2), received since that letter was drawn up, that that opinion is accepted by the United States' Government as a guide in dealing with claims of this description.

In obedience to your Lordship's commands we have perused the papers submitted to us, and have the honour to report—

That this despatch of Sir Frederick Bruce, with its inclosures, does not appear to us to call at present for any special observations. There seems to be reason to expect that the Court of Claims when established will do justice with respect to any British interests which may be brought before it.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 359.

The Law Officers of the Crown to Earl Russell.—(*Received September* 5.)

My Lord, *Lincoln's Inn, September* 5, 1865.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 9th ultimo, stating that with reference to our Report of the 1st ultimo, he was directed by your Lordship to transmit to us, together with the previous papers, a further letter, with its inclosures, from the Colonial Office, dated the 5th ultimo, respecting the proceedings of the Confederate schooner "St. Mary's;" and he was to request that we would take the same into consideration, and furnish your Lordship with our opinion thereupon.

We are also honoured with Mr. Layard's letter of the 15th instant, transmitting a letter from Mr. Adams, requesting an investigation of this case.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That we see no reason to call in question the propriety of the course pursued by Governor Eyre with respect to this vessel, as detailed in his despatch to the Colonial Office of the 6th July last, and the inclosures therein referred to.

So far, therefore, as relates to Mr. Adams' suggestion in his letter of the 10th of August, that there has been an "attempt further to abuse the neutrality of Her Majesty's territory after all pretence of an insurgent authority had disappeared in America," it does not appear to us that there are any circumstances in this case requiring further investigation by Her Majesty's Government.

With respect, however, to the allegation that the "St. Mary's" schooner remained, at the period referred to by Mr. Adams, "abandoned" by her captors in Annotto Bay, it will in our opinion be proper that inquiry should be made into the truth of that allegation. If, instead of complying with the peremptory orders given by Governor Eyre for her departure within twenty-four hours (as reported in his despatch of the 6th July) this ship was left derelict by her captors in Annotto Bay, we think it would have been right, under the particular circumstances of the case, that the Custom-house authorities there who appear to have exercised some sort of surveillance over her from the time of her arrival in that port (see Vice-Consul Camp's letters of 19th and 27th June), should have detained her with a view to her restitution to her true owners; and that if any conflicting claims of ownership had been made requiring investigation in a court of law, all possible aid and facility for the due investigation of these claims in the local Courts of Vice-Admiralty, or before some other competent tribunal, should have been afforded by the Colonial Government; or if it had appeared after allowing reasonable time for any such claims to be made that there was in fact no other claim than that preferred by the Vice-Consul of the United States, we think the vessel might (under the circumstances supposed) properly have been given up to the persons on whose behalf that claim was preferred, or to the Vice-Consul, or any other agent authorized by these persons to receive delivery of her on their behalf.

If it should now appear on inquiry that the vessel still remains within the jurisdiction of the Government of Jamaica, in circumstances which admit of either of these courses being properly and legally taken (as to which the Governor must necessarily have recourse to the advice of his own Law Officers), we think it will be proper to act accordingly. But it is clear (the war being ended) that any disputed question of title to this or to any other ship within any part of Her Majesty's dominions must be determined by the proper legal tribunals, in the ordinary course of law, and cannot be withdrawn from those tribunals by any summary exercise of power on the part of the Executive Government.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 360.

The Law Officers of the Crown to Earl Russell.—(*Received September* 14.)

My Lord, *Lincoln's Inn, September* 13, 1865.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 2nd instant, stating that he was directed by your Lordship to transmit to us, together with the previous papers, and with the draft of an instruction which was addressed to Sir Frederick Bruce (No. 241), relative to the case of the "Dashing Wave" and other vessels captured in the Rio Grande, in conformity with the advice tendered in our Report of the 12th of June, a despatch and its inclosures from Sir Frederick Bruce (No. 410), stating the course he has pursued in this matter.

Mr. Layard was also pleased to state that he was directed by your Lordship to request that we would take these papers into our consideration, and report to your Lordship our opinion thereupon; it appearing to your Lordship to be worthy of consideration whether Her Majesty's Government ought not to pay the costs of the appeal on behalf of those who defend the former decision.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we can only express our regret at the course which the United States' Government has thought proper to adopt in this case, and state that the opinion which we have had the honour to express in former Reports upon this subject remains unchanged.

We think that the circumstances of the case do render it proper that Her Majesty's Government should defray the costs of the appeal if they should not be awarded by the Supreme Court.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 361.

The Law Officers of the Crown to Earl Russell.—(*Received September* 14.)

My Lord, *Lincoln's Inn, September* 13, 1865.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 18th ultimo, stating that he was directed by your Lordship to transmit to us the papers as marked in the margin,* relative to the forcible removal from a British vessel,

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* Admiralty, July 14; to Sir F. Bruce, No. 289, July 15; Admiralty, July 29; Admiralty, August 14, 1865.

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by the captain of the United States' corvette "St. Mary's," of a seaman who had deserted from his vessel; and to request that we would take these papers into our consideration, and report to your Lordship our opinion thereupon.

We are also honoured with your Lordship's commands signified in Mr. Layard's letter of the 30th ultimo, stating that, with reference to his letter of the 28th August, he was directed by your Lordship to inclose the despatch therein referred to (No. 408) respecting the disapproval of the United States' Government of the conduct of the captain of the United States' ship "St. Mary's."

We are also honoured with your Lordship's commands signified in Mr. Layard's letter of the 4th instant, stating that, with reference to his letter of the 30th ultimo, he was directed by your Lordship to inclose a further letter from the Admiralty, dated the 2nd instant, with its inclosures, respecting the deserter taken out of a British ship by the captain of the United States' ship "St. Mary's," and to request that we would take these papers into consideration, together with those already before us, and report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That the course which the United States' Government has taken in this matter seems to us perfectly satisfactory.

We agree with the opinion expressed by Mr. Wells that the conduct of Commodore Colocoresses, though very reprehensible and properly reprehended, was not without palliation in the particular circumstances of the case. His offence appears to have been shared by Her Majesty's Consul, whose conduct, if it be correctly reported, appears to us worthy of severe censure.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 362.

The Queen's Advocate to Earl Russell.—(Received September 14.)

Doctors' Commons, September 14, 1865.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 9th instant, stating that he was directed by your Lordship to transmit to me a despatch and its inclosures from Her Majesty's Acting Consul at Mobile (No. 9, July 22), respecting the claims of certain British subjects whose property was destroyed by an explosion of gunpowder in that city; and Mr. Layard was pleased to request that I would take this case into consideration, and report to your Lordship my opinion thereupon.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I think Mr. E. Jones and other claimants, whose property has been injured by this terrible accident, should be apprised that, though they must resort to the same remedies as subjects of the United States who are in a like predicament, and must rely mainly upon their own exertions for obtaining redress, Her Majesty's Government will instruct Her Majesty's Representative at Washington to forward, as far as he properly can, any memorial on the subject which they may think fit to address to the United States' authorities. The considerations which would justify such a modified intervention on their behalf are—first, that the owners were neutral subjects of Great Britain; secondly, and principally, that the custody of their property was forcibly taken out of their hands by the United States' authorities, and placed by them in the position of jeopardy in which it was afterwards destroyed.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 363.

The Queen's Advocate to Earl Russell.—(Received September 19.)

Doctors' Commons, September 14, 1865.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 12th instant, stating that he was directed by your Lordship to transmit to me a letter from Mr. Hutton, dated the 7th instant, stating that, after a residence of sixteen years in the United States, and after taking the oath of allegiance to that Government, he has returned to England, and that he is desirous of resuming his position as a British subject; and that Mr. Hutton begs to be informed whether any steps are necessary on his part with a view to that object. And Mr. Layard was pleased to request that I would take Mr. Hutton's letter into consideration, and report to your Lordship my opinion as to the answer which should be returned thereto.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I have the honour to advise that a letter should be written to Mr. Hutton to the following effect:—That his original allegiance to the Crown of England was indelible, and therefore that no legal steps are necessary to be taken in order to re-assume his position as a British subject in the dominions of Her Majesty; but that as he voluntarily enrolled himself among the citizens of the United States, if he should ever hereafter place himself within the territorial jurisdiction of the Government of the United States he must not rely upon the assistance of Her Majesty's Government to extricate him from any difficulties which his relation to the United States may lead him into.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 364.

The Law Officers of the Crown to Earl Russell.—(Received September 22.)

Lincoln's Inn, September 21, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 18th of September instant, stating that, with reference to our Report of the 4th instant, he was directed by your Lordship to transmit to us a letter from the Admiralty, dated the 14th instant, inclosing the draft of an instruction which the Lords Commissioners propose to address to Rear-Admiral Denman, directing him to treat the "Shenandoah" as a pirate; and to request that we would take this matter into our consideration, and favour your Lordship with our opinion whether, by the laws of this country, the "Shenandoah" could be treated in a British Court as a pirate.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That, having regard to the fact that the "Shenandoah" belongs, if she be a vessel of war, to the United States, and, in that case, is sailing and acting without a commission from that Government, and, if she be a merchant-vessel, is engaged in the seizure and destruction of other merchant-vessels, though such vessels only at present appertain to the country of the United States; and to the fact that the "Shenandoah" has been apprized that the Confederate flag has for some time ceased to be recognized by all nations, we think it is lawful to instruct the Commanders of Her Majesty's ships to forcibly detain such vessel if she comes into port, and also forcibly to seize her upon the high seas if she be found equipped as a vessel of war, and sailing without the commission of any State *de jure* or *de facto* recognized by Her Majesty's Government.

We think that, *primâ facie*, such a vessel would be liable to be treated in a British Court as a pirate.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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No. 365.

The Law Officers of the Crown to Earl Russell.—(*Received September* 26.)

Lincoln's Inn, September 25, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 9th instant, stating that, with reference to our Report of the 4th of July respecting the claim of Mr. Molyneux, he was directed by your Lordship to transmit to us, together with the previous papers, a despatch from Sir Frederick Bruce (No. 415, August 22), inclosing copies of his correspondence on the subject with the Acting British Consul at Savannah; and stating that, under the circumstances therein set forth, he has not felt justified in claiming the house in which Mr. Molyneux was living as an official residence, without submitting the point previously to your Lordship's consideration.

Mr. Layard was also pleased to state that he was therefore to request that we would again take this case into our consideration, and report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we now understand that the house of Mrs. Molyneux was a private house, and not one belonging officially to the Consul; at the same time, it contained the archives of the Consulate; there was no other Consular house; and, according to the previous statement, the British flag was hoisted over it, and pulled down by the United States' soldiers. It also appears that there was neither Consul nor Vice-Consul resident in Charleston at the time of its capture. Indeed, it is doubtful whether the office of British Consul at Charleston was at that time recognized by the *de facto* Government. It is, however, clear from the extract from the New York newspaper, that the United States' General was aware that the house had belonged to the British Consul, who was then in Europe.

We still think that the circumstances of this case sufficiently distinguish it from other cases in which the British subject must be considered, as far as his residence was concerned, as upon the same footing with an American, to render it expedient that Sir F. Bruce should bring them officially to the notice of the United States' Government.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 366.

The Law Officers of the Crown to Earl Russell.—(*Received September* 27.)

Lincoln's Inn, September 27, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 2nd instant, stating that he was directed by your Lordship to transmit to us the correspondence, as marked in the margin,* relative to a complaint made by the United States' Government, that the Government of Newfoundland had assisted some convicts to proceed from that Colony to the United States. That we should observe from the last letter of the series that an Act has been passed by the Legislature of Newfoundland, entitled "An Act to continue the punishment of banishment in certain cases;" and that with reference to the complaint above alluded to, Mr. Secretary Cardwell is anxious to learn your Lordship's opinion whether the Act may properly be submitted for the Queen's confirmation; and Mr. Layard was pleased to request that we would take this matter into consideration, and report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we think this Act, in its present shape, is not proper to be submitted for confirmation to Her Majesty.

Whether, in any cases of the class formerly punished by transportation, a mere sentence of banishment from a particular part of Her Majesty's dominions would be a sufficient penalty for the due vindication of the law, seems to us questionable.

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* Mr. Adams, October 31; to Colonial Office, November 3; Colonial Office, December 22; to Mr. Burnley, No. 580, 1864; Colonial Office, April 18; to Mr. Adams, April 24; Colonial Office, August 9, 1865.

But assuming that it might, in some cases, be expedient to arm the Courts of Newfoundland with power to pronounce such a sentence, and agreeing (as we do) with Mr. Cardwell that foreign Governments would have no just cause of complaint if persons so sentenced were simply left at liberty to go where they pleased, without the aid or intervention, in any shape, of the Colonial Government, we think the present Act objectionable, because it provides that such sentences shall be "carried into effect" by the Executive power of the Colony, without defining how that is to be done, and without introducing any securities for its being done, in such a manner as to avoid occasions of offence to foreign Governments. The Act does not even guard, by any penalties, against the voluntary continuance of a banished person in the Colony, except in the single case of his "return" thereto, after the sentence of banishment has been not only "pronounced," but "carried into effect." In order to render any such sentence effectual, and at the same time to avoid difficulties with other Powers, the Local Government ought, we think, to be authorized to cause any such banished persons to be forcibly deported to such places or place as Her Majesty, or the Governor (if so instructed by Her Majesty), may for that purpose direct and appoint. But no place ought to be appointed or authorized for such a purpose which is not either in Her Majesty's dominions, or in some country the Sovereign of which may be willing to consent thereto. It is further necessary to observe that no authority of this kind can be adequately conferred upon the Executive Government of Newfoundland, or any other Colony, without the concurrence of the Imperial Legislature, the coercive power of all persons acting under a merely Colonial Statute being of necessity limited to the Colony itself and its dependencies.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 367.

The Law Officers of the Crown to Earl Russell.—(*Received September* 27.)

Lincoln's Inn, September 27, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 6th instant, stating that, with reference to that part of our Report of the 12th ultimo respecting the case of the "Margaret and Jessie," in which it is suggested that the return of peace offers an opportunity for communications with foreign Governments having for their object either to extend the distance of three miles from the shore as the limit of territorial rights, or at least to establish a general rule against the firing of shot or shell in any naval action so near to any neutral territory or waters as to be capable of falling and doing damage within such territory or waters, he was directed by your Lordship to state to us that before acting upon that suggestion, your Lordship thought it would be desirable that we should have an opportunity of further considering that question in connexion with a correspondence on the subject which passed between the Foreign Office and the Admiralty, the War Office, and Board of Trade,* shortly after our Reports of the 29th October and the 3rd November, 1864, were received; and Mr. Layard was accordingly to request that we would take this matter again into our consideration, and furnish your Lordship with such further observations as may occur to us upon a perusal of the inclosed correspondence, and if we should continue of opinion that it would be desirable to enter into negotiations with foreign Governments on the subject, he (Mr. Layard) was to request that would furnish your Lordship with our views as to the precise form which the proposals should take.

The previous papers were returned to us for reference if required.

In obedience to your Lordship's commands we have taken this matter again into consideration, and have the honour to report—

That we agree generally with the views expressed in the Minutes of the Board of Trade and the Board of Admiralty upon this subject, except that we do not think it can be assumed as incontrovertible that any damage to life or property within neutral territory resulting from belligerent operations carried on (both as to the vessel attacking and as to the vessel attacked) beyond neutral limits, would, in the present state of international law, be wrongful.

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* To Admiralty, War Office, and Board of Trade, November 9; Admiralty, November 18; War Office November 18; Board of Trade, November 18, 1864. Observations by the Cabinet.

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It does, indeed, appear to us to be the better opinion, that a belligerent is absolutely bound to take care so to carry on his operations, wherever conducted, as to cause no such damage; but it might be contended, on the other hand (and we know no authority which can be referred to to decide the question), that if the act from which such damage accidentally results is done by a belligerent in the lawful exercise of his own rights against his enemy, and in a place where he is at liberty to carry on hostile operations without restraint, the case is one of *damnum absque injuriâ*, of which the neutral cannot strictly complain.

It appeared to us that the increased range of modern ordnance (a cause of permanent operation of which the influence must be expected to be felt in all future wars) had given to this question a greater degree of practical importance than it before possessed. We, therefore, ventured to suggest in our former Reports that this subject should be deliberately considered, with a view to arrive, if possible, at the general recognition, by all maritime Powers, of their absolute obligation in time of war so to conduct belligerent operations in the neighbourhood of neutral shores as to do no damage whatever to persons or property within neutral jurisdiction. And we continue to be of opinion that it would be for the general advantage of all nations that a clear common understanding to this effect should be arrived at and recognized as part of the established system of international law, although (in deference to the objections urged in the papers before us) we do not think it necessary now to press our former suggestions that an attempt should be made to define the precise distance from any neutral territory within which particular warlike operations may for the future be carried on. It is scarcely necessary to add that it has never been our intention to intimate an opinion favourable to the general extension of territorial sovereignty beyond the ordinary limit of three miles seaward; and we think that the reasons given by the Board of Trade are entirely conclusive against any such extension.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 368.

The Queen's Advocate to Earl Russell.—(Received October 7.)

My Lord, *Doctors' Commons, October* 7, 1865.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 28th ultimo, stating that he was directed to transmit to me a letter and its inclosures from the Colonial Office, dated the 19th ultimo, respecting the proceedings of a vessel called the "Maria," which having violated the provisions of the Chinese Passengers Act of 1855, had quitted the port of Victoria, Vancouver Island, leaving all her papers behind her, and without a proper clearance; and Mr. Hammond was pleased to request that I would take this matter into consideration, and report to your Lordship my opinion thereupon.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That no blame attaches to the authorities of the United States in this matter. They are of course bound by the law; and as their legal advisers tell them that the vessel cannot be given up, they are powerless to do so, but I should have thought that the vessel might have been placed under the authority of Her Majesty's Consul resident at the American port into which the vessel came.

The suggestion that cases of this sort should be made by Treaty the subject of extradition appears to be worthy of consideration. Meanwhile this vessel without papers on the high seas is, as Governor Evans states, not a pirate but outlawed, and may be seized and taken into port by one of Her Majesty's ships.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 369.

The Law Officers of the Crown to Earl Russell.—(Received October 21.)

My Lord, *Lincoln's Inn, October* 20, 1865.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 28th of September ultimo, stating that with reference to our Report of the 31st of July last he was directed by your Lordship to transmit to us therewith a despatch from Her Majesty's Consul at New York, inclosing a copy of the Decree of condemnation in the case of the "Wren," and to request that we would take the same into our consideration, and favour your Lordship with any observations which we might have to offer thereupon.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That looking to the various facts with relation to this vessel which were proved in the Prize Court of Florida, to the character of the person in command of the vessel, and to the general character and composition of the crew, to the papers which were found on board and the destruction of papers, and to the account given of those which were destroyed, to the absence of written instructions respecting the voyage, and to other circumstances, we are of opinion that the Prize Court was justified in holding the "Wren" to have been the property of a Confederate owner, and that, whether she was condemned as the ship of a belligerent taken during the war, or as a vessel belonging *jure belli* to the conqueror, after the war was over, no ground is laid for the interference of Her Majesty's Government on behalf of the unsuccessful claimants of this vessel in the Prize Court.

It is satisfactory, however, to know, from the facts which lately transpired in the English Chancery suit between the United States and Messrs. Trenholm, Fraser, and Co., that the "Wren" did, in point of fact, belong to the Confederate Government; so that there is no occasion to examine the evidence before the Prize Court with any minuteness.

We think it right to invite your Lordship's attention to a passage (marked by us in the margin) in the printed Judgment of the Prize Court in this case, in which substantially the same doctrine is laid down, as to the succession of the United States by right of conquest to the public property of the late Confederate Government, with that on which Vice-Chancellor Wood intimated his disposition to act in the Chancery suit above mentioned, and to which doctrine exception is understood to have been since taken by the United States' Government.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 370.

The Law Officers of the Crown to Earl Russell.—(Received October 31.)

My Lord, *Lincoln's Inn, October* 30, 1865.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 9th instant, stating that he was directed by your Lordship to transmit to us, together with the previous papers,* a letter from Mr. Ernest Pratt, dated the 2nd instant, claiming compensation for his having been imprisoned at New York, on account of his connection with the steamer "City of Richmond;" and Mr. Hammond was to request that we would take this case into consideration, and furnish your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That it appears from the statement of Mr. Ernest Pratt himself, that he was (whether innocently, so far as previous knowledge and intention is concerned, or not) mixed up with a transaction which had for its object to carry on belligerent operations

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* Baron Rothschild, April 4; Mr. Pratt, April 4; to Mr. Pratt, April 8; to Sir F. Bruce, No. 142, April 8; to Baron Rothschild, April 10; Sir F. Bruce, No. 246, April 21; Mr. Pratt, May 18; to Mr. Pratt, May 20; Sir F. Bruce, No. 198, May 20, and No. 238, June 10; to Mr. Pratt, June 10; Mr. Pratt, June 12; to Mr. Pratt, June 14; Mr. Pratt, June 15 and June 16; to Mr. Pratt, June 17; to Sir F. Bruce, No. 246, June 17; Sir F. Bruce, No. 360, June 27; Mr. Pratt, July 10; Sir F. Bruce, No. 367, 1865.

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against the United States; for the "City of Richmond," of which he was the chief officer, carried out a belligerent crew (so we understand the statement as to the passengers) and munitions of war, for the purpose of transhipping them on board a steam-ram, which we presume was intended, at all events, not merely to be employed in running the blockade, but in carrying on active hostilities against the United States.

It seems to us that, in its origin, this enterprise was not that of a mere commercial speculation connected with blockade-running (to which the dicta of the late Lord Chancellor, cited by Mr. Pratt, would apply), but of the graver character which we have stated.

It is also, we think, to be collected from these papers that the "City of Richmond" was in reality not a British vessel, but was owned either by the Government or by citizens of the Confederate States. She was avowedly a blockade-runner (see Mr. Pratt Senior's original letter to your Lordship, April 4, 1865); and Mr. Ernest Pratt, while taking part as her chief officer in the warlike equipment of the "Stonewall," does not appear to have been under any physical compulsion, nor to have offered any objection or remonstrance, although, as he says, he had been engaged for a quite different service.

The Government of the United States could hardly be expected to accept, as an excuse from personal responsibility for the part taken by him in such a hostile act, the argument offered in his letter of the 18th April, to Sir F. Bruce (inclosed in his father's letter to the Foreign Office of 18th May): "I contend that it was too late to remonstrate on the subject, and that I, as chief officer, was compelled to obey the orders of my superior, the master of the ship." A similar excuse for any illegal act would not be admitted in any British Court of Law.

It is true that at Nassau Mr. Pratt obtained from the American Consul an indorsement on his legal discharge from the "City of Richmond," which, he says, was represented to him as equivalent to an ordinary passport. But it does not appear that the Consul was apprized by Mr. Pratt of all the circumstances of the case, or that he had any authority to anticipate the opinion of his Government with respect to the character which they *primâ facie* impressed upon Mr. Pratt, or to secure him from arrest if liable to be treated as an enemy.

Shortly after his arrival at New Jersey, on the 17th of March, Mr. Pratt was arrested and imprisoned, on the grounds of the insufficiency of this document as a passport, and of his having been engaged in actively assisting the enemy of the United States. The latter must be regarded as the real and substantial charge against him.

On the 25th of June he obtained his release, not, as we read the papers, because the United States' Government was satisfied of his innocence, but because, after the termination of the war, there was no longer any necessity, or any reasonable cause, for his detention as a prisoner of war for a single act of hostility, even assuming that charge to be fully made out against him.

He now demands compensation for his detention and imprisonment during this time.

If his imprisonment had been enforced merely because of some previous intention or attempt to run the blockade in the "City of Richmond," we think that his claim for compensation would have been well founded. But we think it is impossible to contend that his connection with the "City of Richmond," of which he had been the chief officer (having regard to the service in which that vessel was actually employed), did not warrant a grave suspicion, to say the least, on the part of the United States' Government that he had impressed upon himself the character of an enemy and a belligerent.

We think, therefore, that the United States' Government were justified in his arrest, and in his imprisonment for such a period as was reasonably necessary for inquiring into the circumstances of the case; and although the actual length of his imprisonment without any trial or formal charge may have been greater than was necessary, or perhaps reasonable, yet, having regard to the situation of affairs at that time in the United States, to the warnings contained in Her Majesty's Proclamation of Neutrality, and to the questions which have been raised and discussed between the two Governments with respect to the equipment of Confederate war vessels by the aid of British subjects, we do not think it all advisable that this case should be taken up by Her Majesty's Government, or made the foundation of any demand or request for compensation from the Government of the United States.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 371.

The Law Officers of the Crown to Earl Russell.—(*Received November* 1.)

Lincoln's Inn, November 1, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of yesterday's date, stating that with reference to the complaints and claims of the United States' Government against that of Her Majesty, arising out of the course pursued by Great Britain during the late civil war in North America, he was directed by your Lordship to transmit to us the draft of a note which your Lordship proposes to address to Mr. Adams in continuation of the correspondence on this subject which was published in the Supplement to the "Gazette" of the 10th instant, and more particularly by way of rejoinder to Mr. Adams' note of the 18th ultimo, of which a copy was also inclosed; and to request that we would take this draft note into our consideration, and report to your Lordship, at our earliest possible convenience, whether in our opinion it is right and proper to be sent.

Mr. Hammond was also pleased to state that your Lordship would be glad if possible to be favoured with our Report in time to admit of his signing the note on Thursday next.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That we have taken the liberty of suggesting, in the body and margin of the draft note, and in four riders, marked A, B, C, and D, which we have appended to it, certain alterations and additions which we would humbly recommend as proper to be made therein; subject to which we think this draft note is right and proper to be sent.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 372.

The Law Officers of the Crown to Earl Russell.—(*Received November* 4.)

Lincoln's Inn, November 3, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 13th ultimo, stating that he was directed by your Lordship to transmit to us the accompanying despatch from Her Majesty's Consul at Boston (No. 40, September 25), inclosing copies of the decisions of the Prize Court in the cases of the "Ella," and "Annie," and "Wando;" and Mr. Hammond was also pleased to request that we would peruse the same, and, if we should have any observations to offer thereupon, that we would furnish your Lordship with them.

In obedience to your Lordship's commands we have the honour to report—

That we have perused the decisions in the "Sea Witch," the "John A. Hazard," the "Lote Hurley," the "Ella," the "Wando." The "Annie," referred to in the covering letter, is not among the papers sent to us.

With respect to the four first mentioned cases we see no reason for any interference on the part of Her Majesty's Government.

No written judgment, however, accompanies the three first cases.

The proceedings in the "Lote Hurley" seem to have been in some degree irregular, as the crew of the prize were, by an accident, not examined; but it appears that they escaped from examination, and that no claimant appeared for the vessel. The log too much favoured the suspicion that she was engaged at the time of capture in blockade-running.

In the "John A. Hazard" the vessel was restored. The circumstances justified her seizure.

In the "Sea Witch" the vessel was restored on payment of captor's costs; and both captor and claimant have appealed from the sentence.

In the "Ella" there appears to have been no claimant. The question decided by the Judge related to the conflicting rights of captors.

In the "Wando" the decision, so far as it affects the merits of the case before the Court, appears to us to be right.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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No. 373.

The Law Officers of the Crown to the Earl of Clarendon.—(Received November 6.)

My Lord, *Lincoln's Inn, November 6, 1865.*

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of this day's date, stating that, with reference to the instructions which, after communication with us, were sent to the Admiralty on the 6th of last month respecting the "Shenandoah," he was directed by your Lordship to state to us that it appears by a telegram received from the Senior Naval Officer at Liverpool this morning that the "Shenandoah" has just arrived at that port fully manned and armed, but with no colours flying; and to request that we would inform your Lordship, at our earliest convenience, what instructions should be sent to the naval and military authorities at Liverpool with regard to this vessel, and specifically whether they should be ordered to prevent the vessel, by force if necessary, from leaving the Mersey, in anticipation of any further steps to be taken in regard to her, supposing we were not at once prepared to report upon the latter point.

Mr. Hammond was also pleased to state that he was directed by your Lordship to add that, pending the receipt of our Report, the Board of Admiralty have ordered this vessel to be, if necessary, embargoed, in order to guard against any attempt being made by the vessel suddenly to leave the Mersey.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we think the proper mode of dealing with the "Shenandoah," under the circumstances in which she has now entered the Mersey, requires further and more deliberate consideration. Our former advice, and the instructions of Her Majesty's Government, founded upon it, must be understood to have proceeded upon the hypothesis of the ship, at the time when any question of this kind might arise, still retaining, or assuming, the character of a public ship of war. The circumstance of her being now fully manned and armed, though not flying any flag, may possibly not be conclusive upon that point. We think it will be clearly proper that she should not be suffered, under present circumstances, to leave the Mersey, at all events until the case shall have been further considered: and it seems to us desirable that inquiry should be made from her commander or other chief officer on board, as to the character in which he claims to have his vessel regarded, and the person or persons to whom he alleges her to belong, and by virtue of what title they claim. If it should appear that any question of private ownership by transfer to any persons in this country, or otherwise, is intended to be raised, it may, perhaps, become necessary for the Government of the United States, should they think fit to assert their title, to establish it by legal proceedings in the Court of Admiralty, which, of course, could only be done by the authority and with the concurrence of Mr. Adams, who is (we presume) informed of the ship's arrival in this country.

We have, &c.
(In the absence of the Queen's Advocate),
(Signed) ROUNDELL PALMER.
R. P. COLLIER.

No. 374.

The Law Officers of the Crown to the Earl of Clarendon.—(Received November 7.)

My Lord, *Lincoln's Inn, November 7, 1865.*

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of yesterday's date, stating that he was directed by your Lordship to acknowledge the receipt of our Report of that day in the case of the "Shenandoah," and to acquaint us that a further telegram had that afternoon been received from the Senior Naval Officer at Liverpool, stating that the Commander of the "Shenandoah" had given up the vessel to the Customs authorities, and that a party of men from Her Majesty's ship "Donegal" had, at the request of the Collector of Customs, been ordered to take charge of the vessel.

Mr. Hammond was also pleased to state that it appears that the Commander of the "Shenandoah" has forwarded a letter to Lord Russell which would doubtless be received to-day explanatory of his proceeding. And that the Board of Admiralty request to be informed what instructions are to be sent to Liverpool with regard to the treatment of the

officers and men of the "Shenandoah." But that your Lordship, however, concludes that it would be desirable to await the explanations of the Commander of the "Shenandoah" before taking any other steps; but that if we should be of a different opinion, he was to request that we would inform your Lordship what answer should be returned to the Board of Admiralty's inquiry.

We are also honoured with your Lordship's commands signified in Mr. Hammond's letter of this day's date, stating that, with reference to his letter of last evening, respecting the case of the "Shenandoah," he was directed by your Lordship to transmit to us a letter from the Admiralty, inclosing a telegram from Captain Paynter, of Her Majesty's ship "Donegal," stating that he has placed Her Majesty's gun-boat "Goshawk" alongside the "Shenandoah," and requesting to know whether Captain Waddell and some of the crew who have scurvy may be allowed to land, or whether the crew and officers are to be kept on board. And that Captain Paynter also recommends that the "Shenandoah" should be placed in the Birkenhead float so soon as possible.

Mr. Hammond was also pleased to state that he was directed by your Lordship to request that we would take this matter into consideration, and report to your Lordship at our earliest convenience our opinion as to the answer which should be sent to Captain Paynter.

We are also honoured with your Lordship's commands signified in Mr. Hammond's further letter of this day's date, stating that he was directed by your Lordship to transmit to us, with reference to his letters of yesterday evening and of this morning respecting the "Shenandoah," a copy of a letter from Captain Waddell, stating the circumstances under which he came to this country, and his surrender of the vessel to the Custom-house authorities.

Mr. Hammond was also pleased to state that no communication had yet been received from Mr. Adams on the subject, but that he had stated yesterday to your Lordship that he should address a note to your Lordship requesting the surrender of the vessel as having become the property of the United States; and that he was directed by your Lordship to request our opinion at our earliest convenience on the cases now before us, and as to the instructions which should be given to the naval authorities at Liverpool for the disposal of the vessel, her officers, and crew.

We are also honoured with your Lordship's commands signified in Mr. Hammond's further letter of this day's date, stating that, with reference to his previous letters of this day, he was directed by your Lordship to transmit to us therewith a letter just received from Mr. Adams claiming the "Shenandoah," requesting that any chronometers taken by her from captured American vessels may be delivered up on account of her owners, and alluding only to the disposal of her crew; and to request that we would take this letter into our immediate consideration with the papers already before us, and report to your Lordship our opinion as to the course which should be pursued in the matter, and as to the answer which should be returned to Mr. Adams.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we think it will be proper for Her Majesty's Government, in compliance with Mr. Adams' request, to deliver up to him, on behalf of the Government of the United States, the ship in question, with her tackle, apparel, &c., and all captured chronometers, or other property capable of being identified as prize of war which may be found on board her.

With respect to the officers and crew, we observe that Mr. Adams does not demand their surrender to the United States' Government, and that the only question suggested by him is whether they or any of them ought to be proceeded against, under the direction of Her Majesty's Government, for some offence or offences cognizable by British law. The only offence at which he distinctly points is that of violating the Foreign Enlistment Act, by taking part in hostilities on board of this ship; and as to this, we think it would be proper if some of these men are, as he says, British subjects (by which we understand him to mean natural-born British subjects, for none others are within those provisions of the Act which relate to enlistment or acts of war out of this country), and if evidence can be obtained of that fact, to direct proceedings to be taken against those persons under the 2nd section of the Foreign Enlistment Act, 59 Geo. III, cap. 59, before they have become dispersed, so as to escape from justice. If the facts stated by Captain Waddell are true, there is clearly no case for any prosecution, on the ground of piracy, in the Courts of this country; and we presume that Her Majesty's Government are not in possession of any evidence which could be produced before any Court or Magistrate, for the purpose of contravening that statement, or of showing that the crime of piracy has in fact been committed.

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We conceive that the substance of the foregoing observations may properly be embodied in the reply to be given to Mr. Adams, and we think it may not be amiss to add, that of course Mr. Adams and his Government must be well aware that any proceedings in this country against persons in the situation of the crew of the "Shenandoah" (as against all others) must be founded upon some definite charge of an offence cognizable by our laws, and supported by proper legal evidence; and that Her Majesty's Government are not at present in a position to say whether such a charge, supported by such evidence, can or cannot be brought against any of the persons in question.

With respect to any of the persons on board the "Shenandoah" who cannot be immediately proceeded against and detained under legal warrant upon any criminal charge, we are not aware of any ground on which they can properly be prevented from going on shore and disposing of themselves as they may think fit; and we cannot advise Her Majesty's Government to assume or exercise the power of keeping them under any kind of restraint.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 375.

The Queen's Advocate to Earl Russell.—(Received November 8.)

Doctors' Commons, November 7, 1865.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 31st ultimo, stating that with reference to my Report of the 15th April, 1864, and to previous Reports respecting the case of Mr. Crutchett, he was directed by your Lordship to transmit to me, together with the previous papers, two further letters, and their inclosures, which Mr. Crutchett has addressed to the Foreign Office in support of his claim to the interference of Her Majesty's Government; and Mr. Hammond was pleased to request that I would again take Mr. Crutchett's claim into consideration, and report to your Lordship my opinion thereupon.

In obedience to your Lordship's commands I have taken this case again into consideration, and have the honour to report—

That I adhere to the opinion which I have several times had the honour to express in this case. The only new fact is the alleged evidence that foreigners may hold real property in the United States, but this does not touch the principle upon which I have advised your Lordship not to interfere officially on behalf of Mr. Crutchett: that principle is, that a British subject, long resident and domiciled to all intents and purposes in a foreign State, acquiring real property in that State, must have recourse and submit, like a native subject, to the law of the land administered in the proper legal tribunals with respect to that property.

There may, of course, be exceptional cases of absolute refusal or flagrant violation of justice *in re minime dubiâ*, which would warrant the official interference of a foreign Government; but I am of opinion that Mr. Crutchett's case does not fall under this category. I therefore still humbly advise your Lordship not to direct Sir F. Bruce to make any official application to the United States' Government on behalf of this gentleman.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 376.

The Law Officers of the Crown to the Earl of Clarendon.—(Received November 8.)

Lincoln's Inn, November 8, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 7th instant, stating that with reference to his several letters of yesterday's date, on the subject of the "Shenandoah,"* he was directed by your Lordship to transmit to us the accompanying further letters from the Treasury, and also a letter and its inclosure from the Home Office, respecting this vessel and her officers and crew; and Mr. Hammond was pleased to request that we would take the same into consideration, and furnish your Lordship with our opinion thereupon. Two despatches from Her Majesty's Consul-General at the Havana (Nos. 18 and 20 of May 12 and 24) and also a letter dated the 29th July, and its inclosure, from the Admiralty, showing what took place at the Havana with reference to the surrender of the ram "Stonewall," was also inclosed for convenience of reference.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we do not conceive any question to arise in this case under the Xth Article of the Treaty of Washington. Mr. Adams has not demanded the surrender of any of the officers or crew of the "Shenandoah," under that Treaty or otherwise; and according to the decision of the majority of the Judges of the Court of Queen's Bench in the case of the "Joseph Gerrity" (10 Law Times Reports, new series, p. 499), the offence of piracy, mentioned in the Xth Article of the Treaty, does not extend to any piracy committed upon the high seas (though on board an United States' vessel) which, according to British law, would be triable in a British Court.

With respect to the question whether the officers and crew of the "Shenandoah" may now be permitted to leave the ship and to go on shore, we have only to repeat the opinion expressed in our Report of yesterday's date, namely, that these persons being now in this country, and entitled to the benefit of our laws, cannot be detained except under legal warrant upon some criminal charge duly preferred against them in the ordinary course of law. If Her Majesty's Government are now in possession, or consider it probable that if an information were laid before a Magistrate they would shortly be in possession, of evidence against any of these persons sufficient to justify their committal for trial, either upon any charge of misdemeanour under the Foreign Enlistment Act or upon the graver charge of piracy, we think it would be right and proper to take the necessary proceedings without delay, in order to have such charge duly investigated. But at the present time we are not informed of any evidence in the possession or power of Her Majesty's Government, by which such a charge would be likely to be established.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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* See Law Officers' Report, dated November 7, 1865; p. 87.

No. 377.

The Law Officers of the Crown to the Earl of Clarendon.—(Received November 9.)

Lincoln's Inn, November 9, 1865.

My Lord,

WE are honoured with the commands of Earl Russell signified in Mr. Hammond's letter of the 1st instant, stating that, with reference to our Report of the 31st of July last respecting the case of the "Mary" or "Alexandra," he was directed by Earl Russell to transmit to us a letter from the Colonial Office, dated the 25th ultimo, inclosing a copy of a despatch from the Governor of the Bahamas, in which he points out that the Judge's certificate of reasonable cause of seizure had already been sent home by him.

Mr. Hammond was also pleased to state that this statement was perfectly true; but that the Colonial Office letter, sending the certificate, was only dated the 24th of August, whereas our Report was dated the 31st of July; and that he was now directed by Earl Russell to inclose that letter, and to request that we would take these further papers into consideration, and favour his Lordship with any observations which we might have to offer thereupon.

In obedience to the commands of Earl Russell we have taken these papers into consideration, and have the honour to report—

That the only new fact in the papers now laid before us is, that the Judge has certified, as he thought it expedient that he should do, that there was reasonable cause of seizure. We are glad to find that this has been done, and we think it was quite right that it should be done; but beyond this, it does not occur to us to offer any remarks in addition to those which we have already had the honour to offer in this case.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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No. 378.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received November* 9.)

My Lord, *Lincoln's Inn, November* 9, 1865.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 8th instant, stating that he was directed by your Lordship to transmit to us a letter, dated the 8th instant, from Mr. Manley Hopkins, the Hawaiian Consul-General in London, stating that the Hawaiian Consul at Liverpool has written to him respecting the destruction by the "Shenandoah" of a ship under Hawaiian colours, and stating his wish to obtain from the English Government assistance to punish this act of piracy, and vindicate the honour of the Haiwaiian flag; and Mr. Hammond was to request that we would take Mr. Hopkins' letter into consideration, and furnish your Lordship, at our earliest convenience, with our opinion as to the answer which should be returned thereto.

In obedience to your Lordship's commands we have taken Mr. Hopkins' letter into consideration, and have the honour to report—

That we think it will be proper to inform Mr. Hopkins that it is competent for himself, or for any other person who may be in possession of information or evidence upon which a charge of piracy against the officers and crew of the "Shenandoah" can be supported, to lay an information before the magistrates at Liverpool, upon which a proper legal warrant may issue, and the charge may be duly investigated.

And we think it may properly be added that Her Majesty's Government, upon being placed in possession of information sufficient to satisfy them that such a charge is well-founded, and that proper legal evidence in proof of it is now forthcoming, or is likely to be obtained in sufficient time to support any proceedings which may be commenced, would be prepared themselves to direct such proceedings to be taken, and would, by all means in their power, promote the attainment of the ends of justice in this case.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 379.

The Attorney-General to Mr. Hammond.—(*Received November* 10.)

My dear Sir, *Lincoln's Inn, November* 10, 1865.

YOU will receive herewith our Report in answer to your letter of yesterday's date, as to Lord Clarendon's proposed reply to Mr. Adams' last letter about the "Shenandoah."

With reference to the concluding paragraph of your letter I had prepared the following Memorandum, which I send (though my colleagues have not seen, and, therefore, are not responsible for it), in case it should be useful to the Home Office.

I am, &c.
(Signed) ROUNDELL PALMER.

Inclosure in No. 379.

Memorandum by the Attorney-General.

I DO not find in the volume of documents forwarded by Mr. Adams, which accompanied Mr. Hammond's letter of the 25th October (now waiting for our Report), any evidence by which a charge of piracy against the officers or crew of the "Shenandoah" could be supported. All the actual captures of United States' ships which appear by those documents to have been made by the "Shenandoah" (except those of the barque "William C. Nye" and certain other whalers mentioned in the protest of the master of the "William C. Nye") were made before the actual termination of the war. The "William C. Nye" appears to have been captured in the Arctic seas on the 26th of June last (the other whalers had been captured before her, at other dates which do not appear). It is not stated in the protest of the master of the "William C. Nye" that, at the time of her capture, either he or any of the officers or men of the other captured vessels which he mentions, knew themselves, or informed their captors (or had any reason for supposing it to be otherwise known to those captors), that the war was at an end.

With respect to the other question, whether any of the men now at Liverpool who constituted the crew of the "Shenandoah," upon her arrival in this country, can be prosecuted under the Foreign Enlistment Act, the most material evidence which I have noticed in these documents seems to be in the depositions taken by the United States' Consul at Melbourne, of *George Silvester* and *Thomas Jackson* (Inclosures Nos. 17 and 31 in Consul Blanchard's despatch to Mr. Seward of the 23rd February, 1865). Silvester names four persons—"*Martin*, storekeeper; *Hutchinson*, engineer; *W. Clark*, coal-passer; and *Jones*, engineer-steward," as having (alone out of the crew who came from England in the "Sea King") enlisted under Captain Waddell in the "Shenandoah." He adds that "several from among the crew of the steamer 'Laurel,'" (whom he does not name, but of whom he seems himself to have been one), also enlisted. And he speaks of the destruction of various vessels by the "Shenandoah." *Thomas Jackson* states that he himself, being a native of Yorkshire, went out from Liverpool in the "Laurel," and afterwards enlisted in the "Shenandoah;" and that all the officers of the "Shenandoah," except the first lieutenant, also came from Liverpool in the "Laurel." He does not, however, state anything to show that those officers, or any of them, were natural-born subjects of Her Majesty, without which they would not be guilty of an offence against the 2nd section of the Foreign Enlistment Act.

R. P.

No. 380.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received November* 10.)

Lincoln's Inn, November 10, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of yesterday's date, stating that, with reference to our Reports of the 7th and 8th instant, respecting the case of the "Shenandoah," he was directed by your Lordship to transmit to us therewith, for our early consideration, the draft of a letter to Mr. Adams, founded on our former Report, and to request that we would state to your Lordship whether, in our opinion, it may safely and properly be addressed to him.

Mr. Hammond was, at the same time, to observe to us that your Lordship apprehends that some difficulty may eventually arise if the words at the bottom of the first page, and at the top of the following page, of the draft, "and other property capable of being identified as prize of war," should form part of the letter to Mr. Adams. And that difficulties may arise as to identification; and, moreover, that Mr. Adams only asks for chronometers; and that there is probably a great deal of property on board belonging to private individuals who are not here to claim it, and which may not properly be qualified as prize of war.

Mr. Hammond was also pleased to state that he was directed by your Lordship to add that the whole of the papers which have been before us, together with our Reports, have been transferred to the Home Department, in order that the case may now be dealt with by the Secretary of State for that Department.

Mr. Hammond was also pleased to state that we had still before us the documents connected with the proceedings of the "Shenandoah," which were a short time ago transmitted by Mr. Adams to your Lordship's Department, and which might contain matter to affect the proceedings to be taken against some of the crew of the vessel.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That we think the words "and other property, &c.," had better be omitted from the draft, as suggested by your Lordship. Subject to this variation, we think that an answer in the terms of this draft may properly be sent.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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No. 381.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received November* 11.)

My Lord, *Lincoln's Inn, November* 11, 1865.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of this day's date, stating that he was directed by your Lordship to state to us that in consequence of the receipt from the Admiralty of intelligence that the crew of the "Shenandoah" had been set at liberty, and that the vessel had been given over to the United States' Consul, it had become necessary to alter the draft of letter to Mr. Adams of which we yesterday signified our approval; and to transmit to us an amended draft, with which the papers referred to in it were tied up.

And to request that we would take this amended draft into our consideration, and, at our earliest convenience, report to your Lordship whether it is right and proper to be sent.

Mr. Hammond was also pleased to state that we should observe in Captain Paynter's letter of the 8th of November a statement that all the crew of the "Shenandoah" were shipped on the high seas, but that your Lordship apprehends that that fact would not have prevented proceedings under the second section of the Foreign Enlistment Act against any of those who might have turned out to be British subjects.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we think the amended draft letter is proper to be sent, and that your Lordship's impression as to the effect of the second section of the Foreign Enlistment Act (so far as relates to natural-born British subjects enlisting on the high seas or elsewhere beyond British territory) is perfectly correct.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 382.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received November* 14.)

My Lord, *Lincoln's Inn, November* 14, 1865.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 13th instant, stating that he was directed by your Lordship to transmit to us the draft of an instruction which your Lordship proposes to address to Sir F. Bruce, with reference to a conversation between that Minister and Mr. Seward respecting a threatened raid of Fenians into Canada from the United States.

Sir F. Bruce's despatch and other papers on the subject were also inclosed.

And Mr. Hammond was pleased to request that we would take the draft instruction into consideration, and report to your Lordship whether we can suggest any addition to it.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That subject to a slight alteration in the fifth page of the draft, which we have marked in the margin with our initials, we think the proposed letter is fit and proper to be sent, and we see no reason to suggest any addition to it.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 383.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received November* 14.)

My Lord, *Lincoln's Inn, November* 14, 1865.

WE have been honoured with Mr. Hammond's letter of the 25th ultimo, stating that with reference to his letter of the previous day's date, in which he forwarded to us a copy of the "London Gazette" of the 11th ultimo, containing a correspondence with Mr. Adams

on the subject of the "Alabama" and "Shenandoah" claims, he was then directed by Earl Russell to transmit to us a subsequent letter from Mr. Adams, dated the 21st ultimo, further representing the responsibility of Her Majesty's Government on account of the injuries inflicted on the commerce of the United States by the latter vessel.

Mr. Hammond was also pleased to inclose a draft of the commencement of a letter which Lord Russell proposed address to Mr. Adams in reply to this representation, and was to state to us that, as his Lordship was too much occupied to go through the voluminous documents which accompany Mr. Adams' letter, he would be much obliged by our taking the question into our consideration, and furnishing him with a Report upon which the answer to Mr. Adams can be framed.

The former papers relating to the case of the "Shenandoah" were annexed for reference, if required.*

We have been also honoured with Mr. Hammond's letter of the 31st ultimo, stating that he was directed by Earl Russell to request that we would return to him the draft commencement of letter to Mr. Adams respecting the case of the "Shenandoah," which was inclosed in Mr. Hammond's above-mentioned letter of the 25th ultimo, and that we would address to your Lordship as Secretary of State for Foreign Affairs, a Report upon Mr. Adams' note of the 21st ultimo, and its inclosures, which may form the groundwork of an answer to be returned by your Lordship to that representation.

In obedience to these commands we have taken into consideration Mr. Adams' letter of the 21st ultimo, and the voluminous documents which accompany it, and have the honour to report—

That Mr. Adams has omitted from the citation which he makes from Earl Russell's reply to Mr. Adams, respecting the conduct of the "Deerhound," the principal passage.

Earl Russell stated that, whether receiving part of the crew of the "Alabama" was a praiseworthy act or not, there existed no power in this country to deliver those men up after their arrival in this kingdom to any authority of the United States.

If, beyond the limits of the British territory, the Commander of the "Deerhound" had improperly interfered to protect them from the belligerent rights of the United States, it was for the Commander of the "Kearsarge" to use the means in his power for the prevention of such interference. Once upon British soil they were entitled to the protection of our laws, which they had in no respect violated; and Her Majesty's Government could not deprive them of that protection because of the possibility (whether afterwards realized or not) that they might again leave this country, and become engaged in further hostilities with the United States.

The demand for their delivery up by Mr. Adams was in fact identical with one which had at various times been made by foreign Governments for the extradition or expulsion of other foreign refugees, Poles, Hungarians, and others, and to which the invariable answer had been that the laws of this country did not empower the Government to take any such measure.

The answer to every such demand is found in our fundamental institutions, in the law of *habeas corpus*, and of trial by jury. If any evidence had been offered to Her Majesty's Government, identifying any of those persons as British subjects, who had unlawfully enlisted in the service of the Confederate States, or who were guilty of any other violation of our laws, they would have been duly prosecuted, but no such evidence was brought forward.

The case of the "Deerhound," therefore, furnishes, when examined, no materials for complaint against Her Majesty's Government.

The next subject of Mr. Adams' complaint appears to be, the conduct of Her Majesty's Government in not preventing the vessel called the "Sea King" from leaving the shores of England to join another vessel called the "Laurel," which was sent to meet her near Madeira with arms and ammunition.

It is not asserted that Her Majesty's Government had any power or jurisdiction over either of these vessels when beyond the limits of British territory; but unless that assertion be made or implied, the complaint falls to the ground. For, while these vessels where in British waters, no information was given (much less was any evidence offered) to Her Majesty's Government to show that any persons concerned in their outfit or equipment were guilty of, or were contemplating, any infringement of the Foreign Enlistment Act, or of any other law in force in the United Kingdom, nor even that they were suspected of being engaged in any design whatever hostile or dangerous to the United States.

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* Law Officers' Reports in "Shenandoah" case, November 15, December 1, and December 29, 1864; February 6, April 21, September 4, and September 24, 1865.

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Here again the complaint, if examined, is against the general laws of this country. The Executive power of the British Crown does not, nor does the Executive power, as we read the Act of Congress of 1818, of the United States, extend to the detention and seizure of an unarmed merchant-vessel, on the mere suspicion that she will or may be armed at sea in the waters of a foreign Power.

Under our own municipal law (which goes at least as far as any obligation which may be suppose to attach to us under the law of nations) we are enabled to detain and prosecute natural-born British subjects who may enter into the war service of a foreign Power without the licence of the Crown, or who, within Her Majesty's dominions, may fit out, arm, or equip (or attempt to fit out, &c.) vessels to cruize, or commit hostilities against any State in amity with Her Majesty. But our laws do not and cannot effectually reach subjects of Her Majesty who may go to a foreign State, and there enter into any kind of naval or military service. Mr. Adams is well aware that many subjects of Her Majesty have gone from hence to the United States, and have there, during the present war, entered into the military service of the United States, and fought against the armies of the Confederates, contrary to Her Majesty's Proclamation. Such occurrences as these the law of England (and, it is believed, the law of the United States) cannot prevent, and has very rarely the power to punish. It is obvious (as Mr. Adams himself admits) that the law which prohibits the equipment of vessels destined to make war on States with which Her Majesty is at peace, may, like most other human laws, be evaded. No human means can effectually prevent individuals from purchasing or otherwise acquiring a vessel with the secret intention of arming her beyond the territorial limits of the country, and then cruizing against a State with whom Her Majesty is at peace, or from successfully executing that intention. It is distinctly denied that the Government of any State is, upon any recognized principle of international law, responsible for such an event.

Mr. Adams, feeling that for the equipment and armament of the "Shenandoah" no original responsibility can reasonably be cast on Her Majesty's Government, represents it, however, as the main substance of this part of his complaint that this vessel, after she had been equipped and commissioned, was recognized by Her Majesty's Government as a public ship of war of a lawful belligerent, and was admitted as such into British ports. This is, in truth, nothing more than the old and often-repeated objection to the course adopted by Her Majesty's Government in recognizing both parties in the late war as belligerents, and (if belligerents at all) then, as belligerents, wherever they were found actually carrying on war, whether by sea or by land. Mr. Adams of course knows that the "Sea King" was transferred, when beyond the territory of Her Majesty, to the agents of the Confederate States, and from them (while still beyond Her Majesty's territory) received a commission as a ship of war, under the name of the "Shenandoah." It was a necessary consequence of the principle of neutrality, and of the recognition of the state of war (by virtue of which alone the blockade was enforced with so much severity against neutrals by the United States), that the validity, for the purposes of the war, of such a commission, should be recognized by the government of this country. The supplies given to this vessel, and the hospitality afforded to her in a British port during the continuance of the war, were merely the same which were always afforded to the vessels of war of the United States: to refuse them in such a case would have been not to vindicate, but to depart from, the neutrality declared by Her Majesty. If the fact were (as Mr. Adams suggests) that the supplies so afforded had the effect of enabling the "Shenandoah" to continue hostilities after the Confederate States had ceased to be belligerents, it is obvious that such an occurrence might equally take place in any other case in which a ship of war of any belligerent nation, having taken in ordinary supplies at a neutral port, might continue hostilities after the restoration of peace, either through ignorance of that fact, or from any less excusable motive.

Mr. Adams, while admitting that several prosecutions have been instituted by Her Majesty's Government against persons amenable to British law, who had been shown by probable evidence to have been guilty of violating the Foreign Enlistment Act (Captain Corbett, of the "Sea King," to whom he refers as having never been brought to trial, is awaiting his trial at the present moment), makes it nevertheless matter of complaint that no legal proceedings have been taken against any of the Confederate agents in this country, under whose direction and management various operations in abuse of Her Majesty's neutrality are said to have been conducted. The answer we apprehend to be, that no information supported by evidence on which a prosecution could be judiciously instituted or successfully maintained, has ever been laid before Her Majesty's Government for the purpose of showing that the laws of this country were in fact so violated by any of those persons. Mr. Adams is well aware of the extent to which, not only municipal but also international law permits either of two belligerents to avail themselves of the resources of a neutral country by mercantile agencies, by loans of money, and by the purchase and shipment of every kind of munitions of war, without giving to the other belligerent any cause of complaint against the country where such operations are carried on. Full advantage has been taken of this state of international law by the United States themselves during the recent contest. If, in addition to operations of this nature, the Confederate agents in this country superintended or directed other designs, involving the violation of our laws, they were careful (as it might be expected they would be) to keep their participation in any such illegal acts, as far as possible, out of sight. The agency of Captain Bullock for the Confederate Government was, indeed, to some extent, disclosed by parts of the evidence relating to ships which were the subject of actual or contemplated proceedings by Her Majesty's Government, but not in such a manner nor to such an extent as to make it probable in the judgment of Her Majesty's advisers that, if proceedings had been instituted against him personally, they would have been attended with a successful result. Mr. Adams, however (anticipating the probable answer of Her Majesty's Government upon this subject), refers to the recent transmission, under the orders of Her Majesty's Government, of Captain Bullock's letter to the commander of the "Shenandoah," directing him to cease from the further prosecution of hostilities as proof that Her Majesty's Government have, at least in one instance, considered themselves to be in possession of sufficient evidence of Captain Bullock's authority to control or prevent such hostilities.

It is not made clear to us that proof, even of the extent and kind of authority assumed in that letter over the "Shenandoah" when at sea, would have supplied the want of further evidence of any infringement alleged to have been committed by Captain Bullock of the laws of this country.

The surprise, however, stated by Mr. Adams to have been felt by him on hearing of that circumstance, as well as the inference which he draws from it, of the previous possession of evidence against Captain Bullock by Her Majesty's Government, will probably cease when he learns that this letter was transmitted by Her Majesty's Government in compliance with the request of Mr. Mason (the known accredited Agent in Europe of the Confederate States), made to Earl Russell in a letter dated the 20th June last, after the conclusion of the war. It will hardly be disputed that Earl Russell, whatever might have been the extent of his previous knowledge or ignorance with respect to the acts of Captain Bullock, was entitled to believe, on Mr. Mason's authority, that the letter sent by him for transmission would be effectual for its intended purpose, in which, being a purpose of humanity, especially beneficial to the United States, Her Majesty's Government felt they might safely endeavour so far to co-operate, without any risk of being misunderstood by the United States' Government.

It does not occur to us that it is necessary (having regard to the correspondence which has so recently passed between Earl Russell and Mr. Adams upon the general subject of the claims preferred against this country by the Government of the United States) to offer any further suggestions upon the subject of Mr. Adams' letter of the 21st ultimo.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 384.

The Law Officers of the Crown to the Earl of Clarendon.—(Received November 15.)

Lincoln's Inn, November 15, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 11th instant, stating that, with reference to his previous letter of that date, inclosing a draft of a letter to Mr. Adams, and to our Report of the 9th instant, on the application of the Hawaiian Consul in London, respecting the "Shenandoah," he was directed by your Lordship to transmit to us therewith, together with the previous correspondence with the Hawaiian Consul, a letter from the Admiralty, dated the 10th instant, inclosing correspondence on the same subject which has passed with the Hawaiian Consul at Liverpool; and Mr. Hammond was to request that we would take the same into consideration, and report our opinion to your Lordship, at our earliest convenience, whether there is anything in the communication from the Hawaiian Consul which need interfere with the proposed surrender of the "Shenandoah" to Mr. Adams.

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Mr. Adams was pleased further to state that he had written so far to us, when the inclosed letter, dated the 11th instant, was received at the Foreign Office from the Hawaiian Consul in London, with the documents annexed to it; and was therefore to request that we would also inform your Lordship what answer should be returned to it.

In obedience to your Lordship's commands we have taken the correspondence, and the subsequent letter from the Hawaiian Consul above referred to, into consideration, and have the honour to report—

That we are of opinion that an answer should be sent to the Hawaiian Consul to the following effect:—That Her Majesty's Government are unable to give any official assistance to the Hawaiian Government in this matter; that the act of the "Shenandoah" which is complained of was either that of a belligerent or of a pirate: in the former case it is obvious that it is not within the competence of any neutral Government to take measures against a belligerent for the capture or destruction of vessels belonging to a foreign State upon the high seas; in the latter case it would, no doubt, be competent to Her Majesty's Government to direct a criminal charge to be preferred, if they were in possession of any evidence by which it could be supported. But it is impossible to look upon the mere fact which is stated, of the destruction of a Hawaiian vessel in the month of April (either before the American war had ceased or before it could possibly be known to have ceased), by the "Shenandoah," as constituting a *primâ facie* case of piracy. If the Hawaiian Consul is otherwise advised, the magistracy and the Courts of Justice in this country are accessible to all parties who conceive that their property, or that of those whom they represent, has been piratically destroyed upon the high seas by persons who are now within the jurisdiction of Her Majesty.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 385.

The Law Officers of the Crown to the Earl of Clarendon.—(Received November 16.)

Lincoln's Inn, November 15, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of this day's date, stating that with reference to our letter of the 11th instant, reporting on the draft of a letter which your Lordship proposed to address to Mr. Adams respecting the "Shenandoah," he was directed by your Lordship to transmit to us therewith the reply received from Mr. Adams, and also a Report from the Senior Naval Officer at Liverpool, explaining the steps he took to satisfy himself that none of the crew of the "Shenandoah" were British subjects; and to request that we would take these papers into consideration, and report to your Lordship by 2 o'clock to-morrow afternoon our opinion as to whether there was any failure of justice in the proceedings taken by Her Majesty's Government in the case.

In obedience to your Lordship's commands we have the honour to report—

That although we do not entirely share the reliance which Captain Paynter appears to have felt in the replies of Captain Waddell and his officers to the questions which he addressed to them (and which in effect threw upon them the responsibility of becoming informers against any of their own crew who might happen to be natural-born British subjects), we still do not see how, in the absence of any legal warrant and of any evidence or information affecting particular individuals on which a warrant could be applied for, any of these men could have been justifiably detained.

Upon the question of piracy not only was there no evidence producible before a Magistrate at Liverpool in the possession of Her Majesty's Government, but even the documents, of which copies were lately communicated to Her Majesty's Government by Mr. Adams, did not, in our judgment, purport to show that any particular piratical act had been committed by Captain Waddell or by any of his crew.

We are not aware that Her Majesty's Government has had even any information beyond mere general rumours and newspaper statements (which although they might justify precautionary measures could not be made the foundation of any criminal charge) to the effect that the "Shenandoah" did ever, in fact, capture or destroy any vessel after she had notice of the cessation of the war.

We think, therefore, that there has been no failure in the proceedings taken by Her Majesty's Government in this case.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 386.

The Queen's Advocate to the Earl of Clarendon.—(Received November 17.)

Lincoln's Inn, November 17, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of this day's date, stating that he was directed by your Lordship to transmit to us therewith Mr. Adams' reply to your Lordship's note of the 11th instant respecting the "Shenandoah," together with the draft of a rejoinder which your Lordship proposes to make to it; and Mr. Hammond was to request that we would take this draft into our immediate consideration, and, at our earliest convenience, report to your Lordship whether it is right and proper to be sent.

In obedience to your Lordship's commands we have considered the papers submitted to us, and have the honour to report—

That we think the proposed reply to Mr. Adams is proper to be sent.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 387.

The Law Officers of the Crown to the Earl of Clarendon.—(Received November 20.)

Lincoln's Inn, November 18, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 15th instant stating that, with reference to our Report of the 13th of September, and to our previous Reports respecting the vessels captured in the Rio Grande, he was directed by your Lordship to transmit to us a despatch from the Acting British Consul at New Orleans (No. 47, October 14), inclosing the subsequent proceedings and Orders of Court in the cases of the "Sir W. Peel," "Jenny," "Science," and "Dashing Wave."

Mr. Hammond was also pleased to state that the Acting Consul also mentions that he had been informed by Mr. Briggs, the Counsel for the claimants, that in all cases in which restitution had been decreed, the decree was accompanied by a refusal to allow costs and damages, but that in each case that has been appealed, such costs and damages have been claimed in the appeal; and to request that we would take these further proceedings into our consideration, and report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That the formal proceedings which have intervened between the sentence of the Primary Court and the hearing in the Appellate Court do not seem to us to call for any opinion in addition to that which we have already expressed as to these cases, and that we think the issue of the Appeals must be ascertained before we can usefully express any further opinion.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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No. 388.

The Law Officers of the Crown to the Earl of Clarendon.—(Received November 20.)

My Lord, *Lincoln's Inn, November* 18, 1865.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 14th instant, stating that with reference to our Report of the 26th ultimo, and to our previous Reports respecting the case of the "Wren," he was directed by your Lordship to transmit to us a despatch and its inclosure from Her Majesty's Consul at New York (No. 73, October 30), containing a certified copy of the proceedings in the United States' Court at Key West, and to request that we would take the same into our consideration, and favour your Lordship with any remarks which we might have to offer upon this case.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That we find nothing in the papers now submitted to us to alter the opinion expressed in our former Report, that the "Wren" was rightly condemned as Confederate property.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 389.

The Law Officers of the Crown to the Earl of Clarendon.—(Received November 30.)

My Lord, *Lincoln's Inn, November* 23, 1865.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 22nd instant, stating that he was directed by your Lordship to transmit to us therewith a further letter received from Mr. Adams, together with the draft of answer which your Lordship proposes to return to it, and Mr. Hammond was to request that we would take the same into our immediate consideration, and furnish your Lordship with our opinion, if possible, by the meeting of the Cabinet appointed for 2 o'clock to-morrow (this day), whether the draft is safe and proper to be sent, and especially whether the principles laid down in Mr. Jefferson's and Mr. Adams' letters may safely be stated as being adopted by Her Majesty's Government.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we do not think it will be safe or advisable to refer to the principle laid down in Mr. Jefferson's letter to Mr. Hammond of the 13th May, 1797, as being adopted by Her Majesty's Government. We think that the statement is in itself liable to considerable exception, and that it would require much and careful qualification before it could be accepted as a rule proper and sufficient to govern any State in matters affecting its international relations with other Governments. Upon all former occasions when any passage to the like effect has occurred in any draft submitted for our approval, we have taken the liberty of suggesting its omission, and we feel it our duty now to suggest the omission, for similar reasons, of the passage referred to in the present draft.

We think that Her Majesty's Government may safely signify their adoption of the principle laid down in Mr. Adams' letter to M. Correa de Serra, of March 14, 1818.

We have ventured to suggest a slight change in the language of the 5th page of this draft, and we would also submit to your Lordship's better judgment whether it would or would not be desirable to add to it another paragraph to the effect of that suggested by us in the margin of page 7.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 390.

The Law Officers of the Crown to the Earl of Clarendon.—(Received November 27.)

My Lord, *Lincoln's Inn, November* 27, 1865.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 20th instant, stating that he was directed by your Lordship to transmit to us a letter from the Colonial Office dated the 18th instant, inclosing a copy of a letter from the Governor of the Bahamas, requesting instructions with regard to granting a British register to a steam-vessel, the "Kate Gregg," which having been built in England and sold during the late civil war to a resident of Charleston, was there registered under the flag of the Confederate Government; and to request that we would take this matter into our consideration, and report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That we agree with the opinion expressed by the Attorney-General of the Bahamas in this case.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 391.

The Law Officers of the Crown to the Earl of Clarendon.—(Received November 28.)

My Lord, *Lincoln's Inn, November* 28, 1865.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 27th instant, stating that with reference to our Report of the 23rd instant on the draft of a letter to Mr. Adams in reply to his letter of the 18th instant, he was directed by your Lordship to transmit to us therewith the draft of an instruction to Her Majesty's Minister at Washington, entering more in detail than in the draft to Mr. Adams into the statements of his letter; and Mr. Hammond was pleased to request that we would take this draft into consideration, and report to your Lordship our opinion whether the draft despatch is safe and proper to be sent, if possible before the meeting of the Cabinet fixed for 10 o'clock to-day. A copy of Mr. Adams' note and a copy of the draft to him, as approved by us, which is still under the consideration of Her Majesty's Government, together with our Report, was also inclosed.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That we have ventured to suggest some slight modifications of certain passages at pages 8 and 9 of the draft despatch, subject to which we think it may safely and properly be sent.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 392.

The Queen's Advocate to the Earl of Clarendon.—(Received December 6.)

My Lord, *Doctors' Commons, December* 5, 1865.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 22nd ultimo, stating that he was directed by your Lordship to transmit to me a further letter from Mr. Crutchett dated the 15th ultimo, in reply to the letter which was addressed to him in conformity with my Report of the 7th ultimo; and Mr. Hammond was to request that I would take the same into consideration, and report to your Lordship my opinion thereupon.

The previous papers were annexed for reference, if required.*

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* Mr. Crutchett, January 5; to Mr. Crutchett, January 6 and January 21; Mr. Crutchett, February 12; to Mr. Crutchett, February 26, 1864; Mr. Crutchett, October 12 and October 13; to Mr. Crutchett, November 14, 1865.

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In obedience to your Lordship's commands I have taken this matter into consideration, and have the honour to report—

That I venture to think that there is no reason for further correspondence with Mr. Crutchett.

It will be found, on referring to his first letter to Earl Russell (5th January, 1864) and the papers which accompanied it, that he distinctly claimed the intervention of Her Majesty's Government on the ground that the United States' troops had dispossessed him of his real estate as well as of the personal estate, which itself was principally machinery closely connected with the real estate.

In his petition (27th September, 1861) to President Lincoln, Mr. Crutchett states as follows: "That a little over seven years since I entered a business undertaking, in view of ultimately aiding the building of the Washington national monument, and also the purchase and restoration of the house of Washington. To carry out this undertaking, I purchased of John A. Washington, Esq., many thousand trees around the mansion and tomb, and all on the estate of the immortal George Washington, &c., to whom I felt the country owed the gratitude of a national monument and the preservation of his interesting homestead. The detail of my undertaking was the conversion of the said Mount Vernon wood into interesting mementos of Washington and his time," &c. He then goes on to state in detail how he built a manufactory and sawed up wood, in order to carry on this speculation, which was interrupted by the conversion of the place into military quarters of the United States' troops, and to ask for redress and compensation from the President.

He had an interview with the President's Secretary, and a violent quarrel with the Quartermaster; his title to the property and his statements as to quantum of damage being both controverted.

He was most wisely and kindly advised by Lord Lyons to employ an attorney, and, in fact, conduct his business legally, like any other person in the United States.

It will be seen that he did employ an attorney, and failed in his endeavour to procure what he considered redress. He again appealed to Lord Lyons, who, in substance, advised him to accept certain payments offered by the United States' Government, as a sort of compromise "until his title to the premises should be ascertained by judicial proceedings." He refused the advice, and demanded that his case should be laid before Her Majesty's Government.

It has always appeared to me that the case was one for the decision of the United States' Courts, just as much as that of a born American who had bought premises and speculated in selling memorials of Washington, and whose speculation had been interfered with by the military exigencies of the country.

Whatever remedy is open to the American citizen in such a case is open to him. There is no reason why Mr. Crutchett should be placed in a more favourable, and he is not placed by the law in any worse, position.

The proper answer, if your Lordship should think any further answer necessary, would be to this effect: That Her Majesty's Government have again examined the case of Mr. Crutchett; the result, briefly stated and in substance, is that he appears to have been domiciled in the United States; to have married and settled there; to have bought landed property and premises there; to have set up a manufactory for the purpose of erecting a national monument to President Washington, and for the purposes of restoring the house and fabricating and selling memorials, carved from Mount Vernon wood, of that distinguished person.

That Her Majesty's Government continue to be of opinion that if, as Mr. Crutchett alleges, this property has been injured and the speculation disturbed or put an end to by the military occupation of the United States' troops during the exigencies of the late war, that Mr. Crutchett must take the same steps, and have recourse to the same legal remedies, as any American citizen would adopt in the like circumstances.

That Her Majesty's Government see no reason to depart from this decision. It is founded upon a principle which they have acted upon in relation to complaints of a similar kind made by British subjects throughout the late American civil war.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 393.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received December* 13.)

Lincoln's Inn, December 11, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 1st instant, stating that he was directed by your Lordship to transmit to us a despatch and its inclosures, from Her Majesty's Minister at Washington (No. 458), respecting the claim of Mr. F. R. Reading, on account of his late imprisonment in the United States.

And Mr. Hammond was pleased to request that we would take this case into consideration, and report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That the oath stated by Mr. Reading to have been administered to him as the condition of his release (although not strictly speaking an oath of allegiance to the United States) appears to us to be one which ought not to have been exacted from any British subject who had not become a citizen of the United States; and we think it might be desirable (if there should be reason to apprehend that any similar oath may hereafter be exacted from other British subjects not having naturalized themselves or acquired the rights of citizenship in that country) to bring the objection entertained by Her Majesty's Government to the administration of such a form of oath under the notice of the Government of the United States.

So far, however, as relates to Mr. Reading's claim for compensation on account of his imprisonment, we agree in the opinion of Sir F. Bruce that no such claim can be made or supported by Her Majesty's Government. There seems good reason to believe that the punishment for which Mr. Reading was sentenced, and even that inflicted upon him, was disproportionate to the offence with which he stood charged, namely, that of uttering, in a moment of excitement, some seditious words, which were probably not seriously intended.

But we cannot say that the Government of the United States exceeded the rights belonging to them by international law, as against a British subject resident in their territory, in taikng cognizance of Mr. Reading's acts, and trying and punishing him according to their own law (whether civil or martial), as then administered by their tribunals.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 394.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received December* 29.)

Lincoln's Inn, December 29, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 12th instant, stating that with reference to our Report of the 27th ultimo, on the case of the "Kate Gregg," a vessel formerly belonging to a resident in the so-styled Confederate States, which had obtained a British register at Nassau, he was directed by your Lordship to transmit to us a despatch from Sir F. Bruce (No. 487, November 28), inclosing a copy of a note addressed to him by Mr. Seward, stating the intention of the United States' Government to give instructions for the capture of this and other similarly registered vessels.

And Mr. Hammond was pleased to request that we would take the same into consideration, and furnish your Lordship with our opinion thereupon.

The letter from the Colonial Office, dated the 18th ultimo, respecting the "Kate Gregg," previously referred to us, was also inclosed for convenience of reference.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That the letter of Mr. Seward, and the intimation which it contains, is of so grave and extraordinary a character as to make it necessary for us to state very distinctly our view of the law applicable to this subject.

First, with respect to the duty of the Registrar-General of Shipping at the port of Nassau:—Under the Merchant Shipping Act (17 & 18 Vict., cap. 104, sec. 42), it is the duty of that officer to register, as a British ship, any ship for which such registry may

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be claimed at his port, as soon as the requisites prescribed for that purpose by the Act shall have been complied with.

Those requisites are—

1. A declaration by the alleged owner or owners in terms of the 38th section of the Act, which must show that the owners are (to use a general expression) British subjects (see section 18), and that no person, not being a British subject, has any *legal or beneficial* share or interest in the ship.

2. If the title has been acquired by sale from a foreigner, the bill of sale under which the ship was vested in the person requiring to be registered as owner must be produced (see section 40); and

3. If a provisional certificate is given by a British Consular Officer as to a ship transferred to British subjects at a foreign port, such certificate must state, *inter alia*, the time and place of the purchase, and the names of the purchasers (see section 54).

If in the case of the "Kate Gregg," or in any similar case, these requisites have been duly complied with, the duty of the Registrar of Shipping (who is not a judicial, but a ministerial officer), is to grant the registry as desired. Such registry does not make any ship a British ship if the declaration be false, or the bill of sale fictitious, or if foreigners are in fact interested therein; but the Registrar is bound to act upon the supposition of the truth of those documents, and he has no authority to try or decide upon the validity of the title. If, on the other hand, the legal requisites are not duly complied with, the registry of course ought to be refused.

Next, as to Mr. Seward's intimation that the war vessels of the United States will be ordered to seize, as property of the United States, any ships which, at the end of the late war, had a Confederate registry, or (to use Mr. Seward's expression) "are supposed, upon probable evidence, to have belonged to rebels," and which, having since obtained at Nassau or elsewhere a British register, may hereafter be found upon the high seas sailing under the British flag.

If such orders are intended to be confined to ships which may have been registered as British *under false and fraudulent pretences, while really continuing to be owned in the United States*, no exception need be taken to them in point of principle, though in practice they might, and probably would, lead to dangerous and embarrassing questions between the two Governments, as it is obvious that the fact would be liable to be controverted in every case. If the fact were once admitted, or clearly established, the right of such ships to the use of the British name and flag would be thereby disproved, and the authority of the Government of the United States to deal with them as subject to its own laws on the high seas, as well as within United States' territory, could not, in that case, be further disputed.

But the case is wholly different if Mr. Seward really means to contend for so new and alarming a proposition as that a merchant-ship which, at or before the close of the war, was the private property of a citizen of the United States engaged in the rebellion, and which has been *bonâ fide* sold and delivered by such owner to a British subject, and brought (either before sale or after sale) into a British Colony, and there registered after such sale as a British ship, can be reclaimed and forcibly retaken from its British owner upon the high seas, on the ground that his vendor was, at the time of the sale, a rebel, and liable to the penalties of rebellion by the law of the United States. No foreign nation can for a moment be expected to admit that a question of title to private property so acquired by one of its subjects can be decided by force of arms in time of profound peace upon the high seas. This would not be endurable even if there were (which in our opinion there is not) the slightest pretext for the doctrine that the crime of rebellion divests all persons engaged in it of all title to all their private property, so as to incapacitate them from transferring any part of such property, although in their actual possession or power, by sale and delivery to a foreigner; or that the penalty of confiscation (to which the rebel in his own country may be subject) can be set up to invalidate in such a case the title of a foreign purchaser to any ship or other chattel, after the property which he has bought and paid for has been removed by him beyond the territory and jurisdiction of the vendor's Government. We do not hesitate to say that the seizure of any vessel so *bonâ fide* acquired and owned by British subjcts, for such a cause, and under such circumstances, would be a mere act of violence, and in fact *of war*, wholly indefensible upon any known principles of private or public international law.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

Venezuela.

No. 395.

The Law Officers of the Crown to Earl Russell.—(Received June 18.)

Lincoln's Inn, January 17, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 10th of January instant, stating that, with reference to our Report of the 19th of November last, relative to the seizure of the British vessel "Albion" by the Revolutionary authorities at Ciudad Bolivar, in which we expressed an opinion that the owners of the vessel in question should apply for redress to their employers, the Venezuelan Government, he was directed by your Lordship to transmit to us therewith a letter which had since been received from the Company to which the "Albion" belongs; and to request that we would take the same into our consideration, and inform your Lordship whether the statement now made alters the view of the case originally adopted by us.

The previous correspondence was therewith inclosed for convenience of reference.*

We are also honoured with Mr. Hammond's note of the 12th instant, stating that, with reference to his letter of the 10th instant, he was directed by your Lordship to inclose therewith for our consideration a letter from the Colonial Office, dated the 10th of December last, respecting the case of the "Albion."

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That there are no new facts in the papers now submitted to us which can induce us to alter the opinion expressed in our former Report.

We are still of opinion that the "Albion" was chartered and employed, *pro hâc vice* at least, as a Venezuelan vessel by the Venezuelan Government, during the civil war in that country, and that her owners must seek redress for any wrong they may have suffered, in the same manner as the owners of any other Venezuelan vessel. We do not understand that any different view is taken by the owners of the vessel; for the complaint in Messrs. Leech and Co.'s letter of the 5th January, 1865, appears to be that the Venezuelan Government had not, when their last advices were received, complied with an application for compensation which had been made to them.

We presume, from the tenour of the despatch of Governor Manners Sutton (7th November, 1864), that the Venezuelan Government do not dispute their obligation to award compensation to these owners; and we should therefore hope and expect that such compensation will in fact be made. If the arrangement of the owners' claim can be facilitated by the use of good offices on the part of Her Majesty's Chargé d'Affaires in Venezuela, we think that such good offices may properly be used for that purpose.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 396.

The Queen's Advocate to Earl Russell.—(Received January 20.)

Doctors' Commons, January 20, 1865.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 18th instant, stating that with reference to my Reports of the 21st and 28th of October last, relative to the recognition of the blockade of the coast of Guayana by the Government of Venezuela, he was directed by your Lordship to transmit to me therewith a despatch from Her Majesty's Chargé d'Affaires at Caracas, transmitting a Decree of that Government by which the blockade in question is raised; and Mr. Hammond was to request that I would inform your Lordship of my opinion whether a notification to this

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* Mr. Mathison, No. 28, September 20; Colonial Office, October 25; to Colonial Office, November 22, Queen's Advocate, October 21; Law Officers, November 19, 1864.

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effect should be published in the "London Gazette," and, if so, that I would furnish your Lordship with the form in which I consider this intelligence should be made public.

The previous papers were also inclosed to me for convenience of reference.

In obedience to your Lordship's commands I have perused and considered the further papers submitted to me, and have the honour to report—

That I think the notification of the raising of the blockade in question may be published in the "London Gazette;" and I have prepared and herewith transmit a form of such notice, proper, in my opinion, for the purpose.

I have, &c.
(Signed) ROBERT PHILLIMORE.

Inclosure in No. 396.

VENEZUELA AND GUAYANA.—RAISING OF BLOCKADE.

Notification.

Foreign Office, January , 1865.

IT is hereby notified that Earl Russell, K.G., Her Majesty's Principal Secretary of State for Foreign Affairs, has received from Her Majesty's Chargé d'Affaires at Caracas a despatch transmitting a communication which he had received from the Foreign Office of the Venezuelan Government, announcing that the blockade of the ports and coasts from the mouth of the Vagres to Navios, the canals formed by the Delta of the Orinoco, and the banks of that river to Ciudad Bolivar, had been raised, and also transmitting a copy and translation of a Decree of the Venezuelan Government raising the blockade of the said ports and places.

The following are copies of the communication addressed to Her Majesty's said Chargé d'Affaires from the Foreign Office at Caracas, and of the Decree of the Venezuelan Government, both above referred to:—

Letter from Foreign Office, Caracas, to Her Majesty's Chargé d'Affaires.

[Here insert copy of said letter and of the translation.]

Copy Decree of the Venezuelan Government.

[Here insert copy of the Decree and then of the translation]. R. P.

No. 397.

The Queen's Advocate to Earl Russell.—(Received January 27.)

Doctors' Commons, January 27, 1865.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 21st instant, stating that, with reference to my Report of the 9th ultimo respecting Mr. Daly's claim on the Government of Venezuela, he was directed by your Lordship to transmit to me therewith the reply which has been returned from Her Majesty's Chargé d'Affaires to the instruction which was thereupon addressed to him (No. 5), and also a further letter, dated the 24th ultimo, from Mr. Bernard Daly, relative to the disputed point of the amount of interest on the said claim; and Mr. Hammond was pleased to request that I would again take this question into consideration, and report to your Lordship my opinion as to any further steps which should be taken by Her Majesty's Government in this matter.

In obedience to your Lordship's commands I have taken this matter again into consideration, and have the honour to report—

That I am still of opinion that the directions given by Her Majesty's Government (founded on the Report of my predecessor in office, dated February 28, 1860), to Mr. Orme, dated March 30, 1860, namely, to insist upon the claim of Mr. Daly "being settled by prompt payment in cash of the sum of 57,113 dollars 78 cents, together with interest thereon at 9 per cent. per annum, as demanded in your note," should be adhered to as the final decision of Her Majesty's Government upon this intricate and long-protracted case.

The letter of Mr. Daly, December 24, 1864, to your Lordship, seems to establish that the payment of such interest as your Lordship has ordered to be enforced, is in accordance with the existing usage of the Venezuelan Government towards other creditors.

But I found my opinion in this, as in my former Report, upon the fact that the decision announced by Her Majesty's Government in 1860, and accepted by the Venezulan Government of that day, ought to be considered as final.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 398.

The Law Officers of the Crown to Earl Russell.—(Received February 11.)

Lincoln's Inn, February 10, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 24th of January ultimo, stating that he was directed by your Lordship to transmit to us a despatch from Her Majesty's Chargé d'Affaires at Caracas (No. 8), inclosing a copy of a letter from Mr. Chitty, requesting the support of Her Majesty's Legation in his claim to be indemnified by the Venezuelan Gouernment for the losses sustained by him as lessee of the estate called Obra Pia de Cata, in consequence of the emancipation of the slaves in that country in the year 1854; and to request that we would take these papers into our consideration, and report to your Lordship our opinion as to the answer which should be returned to Mr. Chitty's application.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we are of opinion that an answer should be sent to Mr. Chitty to the effect that Her Majesty's Government altogether decline to instruct Her Majesty's Representative at Caracas to interfere on his behalf in this matter.

With respect to injuries alleged to have been inflicted upon his landed property, Mr. Chitty has the same remedies, and is in the same condition, as any other person domiciled in the Caracas.

On general principles Her Majesty's Government are always much indisposed to attempt any interference with the ordinary course of law respecting landed property in a foreign State, on behalf of one of Her Majesty's subjects who has voluntarily domiciled himself in that State; and this general indisposition is greatly increased in this particular instance, by a consideration of the nature of the injury which Mr. Chitty alleges himself to have received. A British subject who was a slave-owner in any part of the world in the year 1854 ought to have known that he could obtain no assistance from the British Government, on the ground that his slaves had become, by the law of the State in which they were resident, free men.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 399.

The Queen's Advocate to Earl Russell.—(Received February 23.)

Doctors' Commons, February 22, 1865.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 16th instant, stating that he was directed by your Lordship to transmit to me therewith a despatch from Mr. Mathison, in charge of Her Majesty's Legation at Caracas (No. 18, July 23, 1864), announcing the arrangements which had been made for the settlement of certain recognized claims, whilst the sums amounting to about 137,117 dollars 95 cents, due to Messrs. Syers, Graf, Nocke Myer and Co., Andreal and Sprick, were to be paid with 20 per cent. out of the import duties of the firm of H. L. Boulton and Co., of La Guayra.

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Mr. Hammond was also pleased to transmit two despatches on the subject which have been received from Mr. Edwardes since his arrival at Caracas,* stating the circumstances under which the Venezuelan Government decline to carry out the proposed arrangement, and to request that I would take these, together with the former papers, into consideration, and inform your Lordship of our opinion as to the nature of the instructions which should be sent to Mr. Edwardes, in reply to the observations contained in his despatches Nos. 6 and 9.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That, as I understand the despatch of Mr. Edwardes, it appears that, with respect to these claims, two negotiations were contemporaneously, or nearly so, carried on: one by Mr. Mathison, under directions from Her Majesty's Government at Caracas, with the Venezuelan Government; the other, in London, with Mr. Orme, Don Guzman, acting then in what character it does not appear, but now the present Venezuelan Prime or Foreign Minister, and a Mr. Alexander Syers, who represented himself as the Agent of the claimants, but without any sanction from Her Majesty's Government. These two negotiations seem to have resulted in different arrangements, the one effected by Mr. Mathison being that of which Her Majesty's Government have signified their formal approbation.

The matter is still further complicated by a disavowal, on the part of the claimants, of Mr. Alexander Syers as their Agent in the other arrangement. The present Venezuelan Government repudiate the arrangement of their predecessors in office with Mr. Mathison, and also state that the penury of their Treasury will compel them to seize the proceeds of the Customs, placed in the hands of Mr. Boulton, as a security for the execution of Mr. Mathison's arrangement.

Mr. Edwardes, *rebus sic stantibus,* states various reasons why he should be allowed to re-open the question as to the settlement of these claims, and exercise his discretion as to their re-arrangement with the present Venezuelan Government. These reasons appear to me deserving of grave consideration; they incline me to think that probably, if the question of the national character of the claimants had been prominently put forward in the first instance, Her Majesty's Government would not have pressed, strongly at least, several of them on the Venezuelan Government. There seems to be a *bonâ fide* penury of the Venezuelan Treasury; there is every reason, *a priori,* why Her Majesty's Minister on the spot, knowing all the circumstances, and the actual condition and capabilities of these perpetually fluctuating Governments, should be entrusted with a large discretion; there is also in this case that kind of double arrangement, above adverted to, which gives to the Venezuelan Government some excuse for their present course.

On the whole, therefore, unless Her Majesty's Government have guaranteed in some way to the individual claimants that the Mathison arrangement shall be executed, I think that it would be wise to give Mr. Edwardes the right, which he seeks, of exercising his discretion on this class of complicated and uncertain claims. Whatever may be the decision of Her Majesty's Government on this point and as affecting the present question, it would seem to me, as to Mr. Edwardes, most desirable that, for the future, the intervention of Her Majesty's Government on behalf of foreign subjects should be invoked much more rarely and cautiously than it appears to have been of late years at the Caracas by Her Majesty's Representative there.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 400.

The Law Officers of the Crown to Earl Russell.—(Received March 1.)

Lincoln's Inn, February 28, 1865.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 17th February instant, stating that, with reference to our Report of the 17th ultimo relative to the claims of the owners of the British steam-vessel "Albion" on the Government of Venezuela, he was directed by your Lordship to transmit to us therewith a further despatch upon the subject which has been received from Mr. Edwardes (No. 5); and to request that we would inform your Lordship whether we consider that it will be necessary to give any further instructions in this matter to Her Majesty's Chargé d'Affaires at Caracas.

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* Mr. Edwardes, Nos. 6 and 9, December 24, 1864.

Mr. Hammond was also pleased to state that the former papers were inclosed for our reference.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we are of opinion that it will not be necessary that your Lordship should give any further instructions in this matter to Her Majesty's Chargé d'Affaires at Caracas. The letter and inclosures from Captain Treviranus (who is described as an American citizen in the contract) thoroughly confirm our opinion that Her Majesty's Government ought not to interfere in this matter.

W have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 401.

The Queen's Advocate to Earl Russell.—(Received March 4.)

Doctors' Commons, March 3, 1865.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 1st instant, stating that he was directed by your Lordship to transmit to me therewith a letter, dated the 9th ultimo, from Her Majesty's Chargé d'Affaires at Caracas, in which he requests information as to the course he should pursue in regard to certain points which may be raised in investigating British claims on Venezuela; and to request that I would take this letter into consideration, and report to your Lordship my opinion as to the answer which should be given to Mr. Edwardes.

In obedience to your Lordship's commands I have taken this matter into consideration, and have the honour to report—

That with respect to the general question of all these claims, it is certainly competent to Mr. Edwardes to review all those as to which Her Majesty's Government has not given positive directions, although they may have been received at the Legation.

The claimants appear to fall practically under these categories:—

1. British-born.
2. Naturalized.
3. Recognized for a length of time as entitled to British protection.
4. Mercantile houses long established, and persons *bonâ fide* domiciled in British possessions.

With respect generally to the evidence which Mr. Edwardes should require as to the fact that the claimant is a British subject, negatively Mr. Edwardes is not bound to be satisfied with the certificate mentioned of the Petty Judge of the country; affirmatively, it would, perhaps, be unwise to lay down any fixed rule as to the evidence which he would invariably require upon this point, where the claimant professes to be British-born.

But Mr. Edwardes might, in all cases of reasonable doubt, require documentary proof from the parish register, and the affidavit of proper credible witnesses, to identify the claimant as being the persons mentioned in the register.

As to claimants on the footing of being entitled to British protection, Mr. Edwardes would probably distinguish between cases in which the claimant had been long in the enjoyment of British protection, and those in which the claimant had been recently admitted, perhaps without much inquiry, during the times of civil war.

As to claimants on the ground of naturalization, Mr. Edwardes might require the proper evidence from the Home Office, if the naturalization took place before the passing of 7 and 8 Vic., cap. 66; and if after that date, the proper certificate of enrolment in the Court of Chancery.

Mr. Edwardes is no doubt right in supposing that the opinion which, while in Spain, he obtained from the Law Officers of the Crown was correct. That opinion must have been that children born out of the Queen's legiance, whose fathers or grandfathers, by the father's side, were natural-born subjects, are to be considered in every respect as natural-born subjects, but no other children, with the exception of children born in the house of the Legation or on board one of Her Majesty's ships.

In the case of claimants from merchants' houses established at Trinidad, or persons *bonâ fide* domiciled there, Mr. Edwardes is entitled to require proper evidence from the Governor or authorities of the island as to the fact; but I think that if the evidence

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satisfies Mr. Edwardes that the claim be founded upon the existence of a long-established mercantile house, or a *bonâ fide* domicil in that island, that the claimant ought to be admitted to British intervention on his behalf.

With respect to the particular case of the Anderson family, and others of which this is a sample, I think Mr. Edwardes would be justified in refusing to interfere in any instance in which the claimant's loss was consequent upon his having taken a part in the political troubles of the State, or where a nominal claim was put forward on behalf of A who had not taken such a part, but really on behalf of B, who had so mixed himself up with the political revolutions of the country.

Mr. Hartman's case appears to be one in which Mr. Edwardes may exercise his discretion as to the amount of the claim which shall be preferred. And it may be well here to repeat the observations already made, and generally applicable to all these cases, that unless Her Majesty's Government have already closed the door to inquiry by positive orders as to the sum to be demanded, Mr. Edwardes would do well to cause all these claims to be subjected to a proper investigation, probably by selecting certain persons whom he can trust to examine them all, with or without the assistance of the Venezuelan authorities as Mr. Edwardes may think best.

As to the interest to be demanded on consolidated bonds and the like, setting aside exceptional causes, the general rule suggested by Mr. Edwardes is sound, namely, that the British claimant should be in the same position as the native subject who enters into the same speculations.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 402.

The Queen's Advocate to Earl Russell.—(Received March 21.)

Doctors' Commons, March 20, 1865.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 10th instant, stating that he was directed by your Lordship to transmit to me a despatch and its inclosures from Her Majesty's Chargé d'Affaires at Caracas (No. 6, February 9) respecting a claim of Messrs. Schloss and Co. and Mr. Michelsen, which Mr. Bingham had been instructed to urge on the Venezuelan Government; that the previous correspondence was therewith inclosed; and Mr. Hammond was to request that I would take the accompanying papers into consideration, and report to your Lordship my opinion as to the course which should now be pursued by Her Majesty's Government.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That the claims of Mr. Scholefield, on which the claims of Messrs. Schloss and Co. and Mr. Michelsen are founded, appear to have been carefully considered by Lord Aberdeen after taking the advice of the then Queen's Advocate, but whose opinion is not inclosed to me. His Lordship, as well as Lord Clarendon, must have been satisfied that the claims were well founded in principle; and the fact that the Granadian Government has paid its quota of the debt strongly confirms the justice of the conclusion at which their Lordships arrived.

No reply appears to have been made to the answer of the Venezuelan Government (July 18, 1861) to the letter of Mr. Orme (November 25, 1858), which placed before that Government the despatch of Lord Clarendon to Mr. Bingham. That answer does not, however, assign satisfactory reasons for refusing to discharge the national obligations. At least, I collect from the despatch of Mr. Stewart (No. 62, 31st December, 1842) that these bonds in the hands of many foreign creditors could not have been presented within the time prescribed by the Government; and certainly no Government has a right to get rid of its liabilities by superadding to the original contract, by virtue of which it obtained the money of foreigners, an impossible or an impracticable condition,—if, indeed, it be entitled to make the fulfilment of its contract depend upon any condition subsequent to the completion of the contract, which is onerous to the creditor.

Nor does it seem to me competent to a Government which has drawn a bill of exchange for "value received" to say that this language is a "mere formality," or to repudiate a direct acknowledgment of the validity of such a bill on the ground that "an intrusive Administration issued an order for the liquidation of it" (Inclosure 3 in Mr. Edwardes' despatch No. 6).

Certainly, the delay which has taken place in replying to this refusal of payment by the Venezuelan Government is to be regretted; but I see no sufficient reason why the ground taken up by Lord Clarendon on behalf of these bonds and bills of exchange should be abandoned, and I think Her Majesty's Chargé d'Affaires at Caracas should be instructed to urge, unless he have some good reason to assign for not doing so, these claims again upon the Venezuelan Government, and to express the dissatisfaction of Her Majesty's Government with the reasons assigned for the refusal to discharge them.

I do not find in these papers any statement as to whether Ecuador has paid her share of the debt, which I gather from the despatch of Lord Clarendon that she ought to have done.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 403.

The Law Officers of the Crown to Earl Russell.—(Received May 27.)

Lincoln's Inn, May 26, 1865.

My Lord,

WE are honoured with your Lordship's command signified in Mr. Hammond's letter of the 16th instant, stating that with reference to our Report of the 10th February last respecting Mr. Chitty's claim against the Venezuelan Government on account of the losses he sustained through the emancipation of slaves, he (Mr. Hammond) was directed by your Lordship to transmit to us a further letter from Mr. Chitty, dated the 25th ultimo, requesting a re-consideration of his case; that, for our convenience, the former papers connected with this case were submitted to us; and Mr. Hammond was to request that we would take these papers into consideration, and furnish your Lordship with our opinion as to the answer which should be returned to Mr. Chitty's application.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we are of opinion that an answer should be sent to Mr. Chitty to the effect that Her Majesty's Government adhere to their determination not to interfere in this matter. That so far as the question of slave property is concerned—which was one only of the grounds alleged in the former commuuication—it does not seem to Her Majesty's Government to affect the substance of the question, whether Mr. Chitty's interest in the continuance of slavery in Venezuela was in his own right or in a representative character, or whether he or the deceased whom he represented, was the proprietor of slaves, or was merely interested in the continuance of slave labour for the purposes of a particular Venezuelan contract. His claim for compensation is, in each case, equally founded upon a loss, said to have been occasioned by the abolition of slavery in Venezuela, and by no other cause. Against such a loss a British subject is not entitled to be protected by Her Majesty's Government.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 404.

The Queen's Advocate to Earl Russell.—(Received July 22.)

Doctors' Commons, July 22, 1865.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 15th instant, stating that he was directed by your Lordship to transmit to me the accompanying memorandum dated the 10th instant (together with the papers to which it refers), setting forth the circumstances under which your Lordship has been called upon to take steps to enforce the claims of British bondholders on the Venezuelan Government arising out of the conditions of the loan which was negotiated by Venezuela in this country in 1862.

That I should perceive that Her Majesty's Government have never made themselves responsible for this loan, and though the Venezuelan Government have committed a distinct breach of faith, your Lordship is disposed to restrict the interference of Her Majesty's Representative in Venezuela to peaceable remonstrance; but that your Lordship would be glad to receive my opinion whether Her Majesty's Government are bound in any way to interfere further than they have done in behalf of the bondholders.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I am of opinion that Her Majesty's Government are not bound to interfere further than they have done on behalf of the Venezuelan bondholders.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 405.

The Queen's Advocate to Earl Russell.—(*Received September* 13.)

My Lord, *Doctors' Commons, September* 12, 1865.

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 6th instant, stating that he was directed to transmit to me two despatches and their inclosures from Her Majesty's Chargé d'Affaires at Caracas* respecting the capture of a British schooner "Serafina" by the Venezuelan Government, and the subsequent proceedings which have been taken in the matter; and that in requesting me to take these papers into consideration and furnish your Lordship with my opinion thereupon, he was to state that as regards General Falcon's offer for a settlement of this case, your Lordship is of opinion that if no serious objection exists, it would be well to accept it.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I am clearly of opinion that General Falcon's offer for the settlement of this case should be accepted.

I am inclined to agree with the view of the conduct of the master and crew which is taken by Her Majesty's Chargé d'Affaires at Caracas. I doubt very much their innocence and the truth of the story which they tell; and certainly—*primâ facie* at least—the Venezuelan Government were fully justified in treating the vessel as belonging to the enemy.

I have, &c.
(Signed) ROBERT PHILLIMORE.

Ne. 406.

The Queen's Advocate to Earl Russell.—(*Received September* 21.)

My Lord, *Doctors' Commons, September* 20, 1865.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 18th instant, stating that he was directed by your Lordship to transmit to me a despatch from Her Majesty's Chargé d'Affaires at Caracas (No. 66), inclosing a copy and translation of a note which he has received from the Venezuelan Government respecting the nationality of all persons born in that Republic, and to request that I would take these papers into consideration, and furnish your Lordship with my opinion thereupon.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That it cannot be denied that the Venezuelan Minister applies to English subjects born in Venezuela, the law which England applies to Venezuelan subjects born in England.

I think too that the general principles upon which he founds his particular position are sound. It is to be observed, however, that by Treaty stipulations, and even by long usage, a State may concede to the subjects of another privileges which are not accorded to its own subjects. Many circumstances may make such a usage not impolitic or unreasonable. When such usage is abrogated by the municipal law ample time should certainly be given to the subjects of the State from whom the privilege is withdrawn to make up their minds whether they will remain in or leave the country in which this change, in their former relation to it, has been effected.

I have, &c.
(Signed) ROBERT PHILLIMORE.

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* Mr. Edwardes, No. 4, December 23, 1864; No. 59, August 8, 1865.

No. 407.

The Queen's Advocate to the Earl of Clarendon.—(*Received December* 23.)

My Lord, *Doctors' Commons, December* 23, 1865.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 11th instant, stating that he was directed by your Lordship to transmit to me therewith a despatch and its inclosures from Her Majesty's Chargé d'Affaires and Consul-General in Venezuela (No. 93), containing a Report on British claims, of which he also inclosed a list; and Mr. Hammond was pleased to request that I would take the same into cansideration, and report to your Lordship my opinion as to the degree of support which should be given to the claims in the list, or any of them. Mr. Hammond was also pleased to inclose some previous despatches from Mr. Edwardes* on the subject of certain British claims as bearing on his final Report.

I am also honoured with Mr. Hammond's letter of the 18th instant, transmitting for my information, in connection with the papers already before me on the subject, a further despatch from Her Majesty's Chargé d'Affaires at Caracas (No. 97) respecting British claims on Venezuela.

I am also honoured with Mr. Hammond's letter of the 20th instant, transmitting Mr. Edwardes' despatch No. 76 relative to the claim of Messrs. Schloss and Co. and Michelsen, and also a despatch No. 17 of the 24th of March to, and No. 99 of the 22nd ultimo from, Mr. Edwardes.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That after reading the very clear and able account which Mr. Edwardes gives of the disgraceful manner in which claims have been fabricated against the Venezuelan Government, and for which it appears that in too many instances the countenance and protection of this country has been fraudulently obtained, it is impossible to doubt the necessity of the searching investigation which, with so much industry and pains, Mr. Edwardes has instituted both into the character and the amount of the claims which, in their corrected shape, he now submits for your Lordship's approbation.

I have no hesitation in advising your Lordship to accept in every respect the Report which has been made by Mr. Edwardes, by which I mean that the claims which he admits should be sanctioned, with the reductions which he points out, and those which he rejects should be rejected. It seems to me that the ends of justice will be best obtained by placing implicit confidence in this arrangement. As it appears from his despatch of November 22, since these papers were first laid before me, that the Venezuelan Government have now recognized the necessity of discharging their obligations to the foreign creditor, it has become unnecessary that I should say more than that I agree with the opinion expressed by Mr. Edwardes that the payment of 6 per cent. upon the amounts fixed must be considered as an integral part of the arrangement which there is every reason now to hope will be finally completed.

I have, &c.
(Signed) ROBERT PHILLIMORE.

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* Nos. 5, 6, 8, 22, 26, 33, 45, 48, 50, 54, 55, 62, 76, 79, 82, 85, 86, and 88.

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REPORTS

FROM

THE LAW OFFICERS

OF

THE CROWN.

1866.

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ALFRED S. GREEN.

Foreign Office,
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Africa.

No. 1.

The Queen's Advocate to the Earl of Clarendon.—(Received April 25.)

Doctors' Commons, April 24, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 20th instant, stating that he was directed by your Lordship to transmit to me the inclosed letter from the Board of Admiralty, containing a copy of a despatch from Commodore Hornby, dated the 12th instant, reporting the capture of Manuel Vacca, a native Chief, and notorious pirate in the Congo River, by Her Majesty's ship "Jaseur," in the month of November last, and requesting to be allowed to detain him for the present at Ascension or Sierra Leone; and to request that I would take these papers into consideration, and furnish your Lordship with my opinion as to the legality of the course of proceeding recommended by Commodore Hornby.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That the capture and detention of Vacca may not unreasonably be regarded in one point of view as a measure of self-defence. But unless England is to be considered as at war with the tribe of which this man was Chief, or unless he be treated as a pirate, I am afraid that his detention cannot be justified upon strictly legal grounds. In the former case, which would be attended with by far the least practical difficulty, he may be treated as a prisoner of war; in the latter case he ought, strictly speaking, to be tried for piracy.

I have, &c.
(Signed) ROBERT PHILLIMORE.

Austria.

No. 2.

The Queen's Advocate to the Earl of Clarendon.—(Received May 24.)

Doctors' Commons, May 23, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 17th instant, stating that he was directed to transmit to me the accompanying despatch

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from Her Majesty's Consul-General at Venice (No. 7), and to request that I would furnish your Lordship at my earliest conveuience with my opinion on the point submitted in it, as to the state of international law with regard to the question of the sale to neutrals, previous to the breaking out of hostilities, of vessels belonging to belligerents.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That the general international law on this subject, as carefully expounded by the Judicial Committee of the Privy Council during the last (Russian) war, is to this effect; that a complete, absolute, *bonâ fide* sale of a ship, *imminente bello*, by an owner, the subject of a State which is about to become, and does become, a belligerent, to a purchaser, the subject of a State which is about to become, and does become, a neutral, is lawful and valid. The sale must not, however, be in any sense collusive or fraudulent; the transfer must not be conditional but entire; the former owner must be divested of the property, the interest in the management, the employment, the direction of the vessel. I am not aware of any Treaty upon this subject.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 3.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received May 24.*)

Lincoln's Inn, May 24, 1866.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 22nd instant, stating that he was directed by your Lordship to transmit to us therewith a despatch from Her Majesty's Ambassador at Vienna, and a letter from the Austrian Ambassador at this Court, severally inclosing a notice published by the Austrian Government, and purporting to be issued with reference to the Declaration of Paris, by which the Austrian Government declares its intention to renounce the capture of merchant-ships belonging to an enemy, provided that enemy reciprocally renounces the capture of Austrian merchant-ships.

Mr. Hammond was also pleased to state that, by a Memorandum which the Austrian Ambassador has placed in your Lordship's hands, and which was also inclosed, it is requested that the British Government will endeavour to obtain a reciprocal engagement from the Italian Government, and Mr. Hammond was therefore pleased to request that we would consider these papers at our earliest convenience, and report our opinion, 1st, as to the Austrian Declaration; 2ndly, as to the bearing on it of the Declaration of Paris; and, 3rdly, as to the expediency of Her Majesty's Government making any such communication to the Italian Government as is requested by the Austrian Ambassador.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

1. That with respect to the Declaration itself, we have only to observe that it is of course competent for any belligerent Power to renounce, for itself, upon such terms as it may think fit to declare, the exercise of any belligerent right competent to it by the law of nations in time of war. This Austrian Declaration proposes to renounce (provided the other Power or Powers with whom Austria may be at war will do the like) one of the most unquestionable belligerent rights of nations. It may be presumed that the motive for such renunciation may be that the exercise of this right would not be likely, in the particular circumstances of the Austrian Empire, to prove so useful to Austria as to her enemies, during the anticipated war. But in this question neutral nations have no interest, except so far as they may profit by the increased immunity of their commerce from the ordinary risks of war, if the other belligerents should follow, in this respect, the invitation and example of Austria.

2. The Declaration of Paris does not, directly or indirectly, involve the principle of this Austrian Declaration; nor has it (that we can see) any legitimate bearing thereon.

3. It will be for Her Majesty's Government to consider whether it is expedient for Great Britain now to hold out to other European States the expectation that in any future wars in which this country may be engaged, we should be disposed to renounce the right of capturing merchant-vessels, on terms of reciprocity such as those proposed by Austria. Unless Her Majesty's Government should think this course proper and expedient, we cannot advise them to interpose so far even as to use their good offices with the Italian Government for the purpose of inducing that Government to accept the Austrian proposal.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 4.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received June 30.*)

Lincoln's Inn, June 29, 1866.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 27th instant, stating that he was directed by your Lordship to transmit to us the accompanying note from the Austrian Ambassador at this Court, claiming the interference of Her Majesty's Government to prevent the exportation from North Shields, on board the steamer "Edith Owen," of a cargo of Armstrong guns and ammunition, said to have been shipped for an unknown destination, and to request that we would favour your Lordship, at our earliest convenience, with our opinion as to the course that should be taken with reference to this communication.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we are of opinion that no ground is shown for the interference of Her Majesty's Government in this matter. If these cannons are intended for the service of a belligerent, they will be liable to be seized as contraband on the high seas; but the proclamation of neutrality would not warrant Her Majesty's Government in preventing their exportation from this country, the "Edith Owen" being (as we assume) a merchant-vessel, and not a ship fitted out or designed for warlike purposes.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

P.S.—Since this Report was copied, we have received your Lordship's further letter of this day's date, inclosing another letter from the Austrian Ambassador, which, however, makes no change in our views, and does not call for any additional observations.

R. P.
R. P. C.
R. J. P.

No. 5.

The Law Officers of the Crown to Lord Stanley.—(*Received August 8.*)

Lincoln's Inn, August 7, 1866.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Egerton's letter of the 23rd day of July ultimo, stating that he had the honour to transmit to us therewith a despatch from Her Majesty's Ambassador at Vienna (No. 9), inclosing a Decree which has been issued by the Austrian Government respecting the treatment of hostile and suspended merchant-vessels during the continuance of hostilities at sea; and he had to request that we would be good enough to favour your Lordship with any observations which we might have to make on this document.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That the Decree in question does not appear to us to call for any particular observations. The regulations are generally very favourable to the neutral.

We assume, of course, that "the examination" spoken of, letter E, paragraph V, will be properly conducted before a regular Prize Court.

We have, &c.
(Signed) H. M. CAIRNS.
W. BOVILL.
ROBERT PHILLIMORE.

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Borneo.

No. 6.

The Queen's Advocate to the Earl of Clarendon.—(*Received April 7.*)

My Lord, *Doctors' Commons, April 7*, 1866.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 3rd instant, stating that he was directed to transmit to me therewith a correspondence which has passed between Her Majesty's Consul at Sarawak, Her Majesty's Consul-General at Hamburgh, and the Foreign Office, on the subject of the capture by pirates, and the rescue by a Hamburgh steamer, of the British ship "Ruby;" and Mr. Hammond was pleased to request that I would take these papers into consideration, and furnish your Lordship with my opinion thereupon.

In obedience to your Lordship's commands I have taken this matter into consideration, and have the honour to report—

That the Syndic of Hamburgh does not mention whether the "Ruby" appeared to have been pillaged or not; if the latter were the case, it would be rather difficult to give entire credence to the story of the captain and crew; but I presume that the vessel did bear evident marks of having been plundered. In this case the circumstances afford a strong ground, in addition to many it is to be feared already existing of the same character, why an application should be made to the Chinese Government to enter into some arrangements such as it appears have been procured by the Netherlands Government, by which greater security against the recurrence of these piratical acts can be obtained on behalf of British merchantmen. And, at all events, the necessity for more gun-boats in these seas appears to be demonstrated by the statement of Her Majesty's Consul-General at Sarawak.

I have, &c.
(Signed) ROBERT PHILLIMORE.

Brazil.

No. 7.

The Queen's Advocate to the Earl of Clarendon.—(*Received January 6.*)

My Lord, *Doctors' Commons, January 6*, 1866.

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 3rd instant, stating that he was directed by your Lordship to transmit to me a despatch and its inclosures from Her Majesty's Minister at Rio (No. 6) relative to a complaint made by certain British merchants against a recent alteration in the Brazilian Tariff with regard to printed cotton goods; and Mr. Layard was pleased to request that I would take these papers into consideration, and furnish your Lordship with my opinion as to the answer which should be returned to Her Majesty's Minister on this subject.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I agree in the view taken of this case by Her Majesty's Minister at Rio de Janeiro. I think the British merchants improperly evaded the law of the Brazilian Tariff passed in January 1861. I think the Order of October 1862, with respect to these remnants ("retalhos"), was the fair interpretation of the Tariff. And I am of opinion that these gentlemen are not entitled to the intervention of Her Majesty's Government or Representative at Rio on their behalf with the Brazilian Government in this matter.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 8.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received May 7.*)

My Lord, *Lincoln's Inn, May 7*, 1866.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 4th of May instant, stating that he was directed by your Lordship to transmit to us a despatch from Her Majesty's Minister at Rio de Janeiro (No. 39, April 5), inclosing a correspondence which had passed between the Spanish Minister in Brazil and himself relative to the application made to him by the former to take measures for the removal of British seamen from on board the Peruvian vessels of war "Independencia" and "Huascar;" and to request that we would take this matter into our consideration at our earliest convenience, and favour your Lordship with our opinion as to the instructions which should be addressed to Mr. Thornton thereon.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That Mr. Thornton has, in our opinion, taken a correct view of his duty; and that we think the answers returned by him to the requisitions of the Spanish Minister in Brazil were proper, and may be approved by your Lordship.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 9.

The Queen's Advocate to the Earl of Clarendon.—(*Received June 12.*)

My Lord, *Doctors' Commons, June 12*, 1866.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 2nd instant, stating that, with reference to my Report of the 24th of February last as to the steps which might be taken for removing from the Peruvian ships of war "Independencia" and "Huascar," in the event of their putting into an English port, any British seamen who might be serving on board those vessels, he was directed by your Lordship to transmit to me a letter from the Admiralty inclosing copies of a correspondence between Her Majesty's Consul and the Spanish Minister at Rio de Janeiro on the subject of the application made by the latter to Mr. Thornton for the removal of British seamen from on board those vessels, and requesting to be informed what instructions should be given to officers of Her Majesty's ships on foreign stations for their guidance in the event of their falling in with such ships having British subjects on board. That the correspondence between Mr. Thornton and Her Majesty's Ministers at Rio had already been submitted to me; and he (Mr. Hammond) was pleased to request that I would take the Admiralty letters into consideration, and inform your Lordship what reply should, in my opinion, be given to their inquiry relative to the instructions which should be issued in the matter to naval officers.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I am of opinion that Mr. Thornton has taken a correct view of his duty and authority in declining to comply with the Spanish Minister's request. That it appears to me that the only instructions which should be given to officers in command of Her Majesty's ships on foreign stations as to British subjects serving on board foreign ships contrary to the Proclamation, is, that it is not within the scope of their general duty to exercise any authority over such vessels or such persons.

I have, &c.
(Signed) ROBERT PHILLIMORE.

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Buenos Ayres.

No. 10.

The Queen's Advocate to the Earl of Clarendon.—(Received April 7.)

Doctors' Commons, April 7, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 6th instant, stating that he was directed to transmit to me the accompanying Memorandum from Mr. Robert Stewart, setting forth the circumstances under which his brother Mr. George D. Stewart was thrown into prison at Buenos Ayres; and Mr. Hammond was pleased to request that I would take this case into consideration and furnish your Lordship with my opinion, if possible, by this morning (as the mails are dispatched to the River Plate in the evening) as to the instructions which should be sent to Her Majesty's Chargé d'Affaires at Buenos Ayres in this matter.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That upon the present imperfect representation of facts it is impossible to do more than send instructions to Her Majesty's Chargé d'Affaires at Buenos Ayres to take such steps on behalf of Mr. Stewart as in the exercise of a sound discretion may appear to him necessary and proper for the due protection of this person, and to report to Her Majesty's Government without delay upon the true state of facts and circumstances of the case.

It should be added that as far as Her Majesty's Government are able to form any opinion on this matter, it would appear that the Government of Buenos Ayres have indirectly procured the imprisonment of Mr. Stewart for debt, at the same time that by laying an embargo upon his property they have deprived him of the means of discharging the debt. But that this opinion is founded upon a statement, as yet uncorroborated, of Mr. Stewart's letter.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 11.

The Queen's Advocate to the Earl of Clarendon.—(Received April 9.)

Doctors' Commons, April 9, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 6th instant, stating that, with reference to his letter of the same date respecting the imprisonment of Mr. G. D. Stewart at Buenos Ayres, he was directed by your Lordship to inclose for my consideration a further paper relating to this case.

In obedience to your Lordship's commands I have the honour to report—

That my Report upon Mr. Stewart's case had gone into the Foreign Office before the letter from Mr. Younger reached me; but that a perusal of that letter confirms me in the opinion which I have had the honour to offer to your Lordship in this matter.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 12.

The Queen's Advocate to the Earl of Clarendon.—(Received April 12.)

Doctors' Commons, April 12, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 5th instant, stating that with reference to my Report of the 2nd December last, he was directed to transmit to me a despatch from Her Majesty's Chargé d'Affaires at Buenos Ayres (No. 12, February 22), reporting a conversation which he had had with the Argentine Minister for Foreign Affairs, in regard to the Law recently passed for the administration of intestate estates in that Republic; and Mr. Hammond was pleased to request that I would take this despatch into consideration, and furnish your Lordship with any observations I may have to offer thereupon.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I am of opinion, having regard to the circumstances stated by Mr. Ford, that the best course to adopt would be that which Mr. Ford refers to as having been suggested by Earl Russell in his despatch of the 2nd April, 1863, namely, "to avoid as far as possible raising questions on a subject on which the wording of the Treaty of 1825 may be variously interpreted; and to act as may be thought necessary in each case which may arise." It is impossible to gainsay the abstract right of the Argentine Republic to pass the law in question.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 13.

The Queen's Advocate to the Earl of Clarendon.—(Received April 25.)

Doctors' Commons, April 24, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 21st instant, stating that with reference to my Report of the 9th instant in regard to the circumstances under which Mr. George D. Stewart was thrown into prison at Buenos Ayres, he was directed by your Lordship to transmit to me a further letter dated the 19th instant, with its inclosures, from that gentleman's brother upon this subject, in which he requests that Her Majesty's Representative at Buenos Ayres may be instructed to obtain pecuniary compensation from the Argentine Government for the losses sustained by his brother; and Mr. Hammond was pleased to request that I would take these papers into consideration and furnish your Lordship with my opinion as to the nature of the instructions which should be sent to Her Majesty's Chargé d'Affaires in the matter. The previous papers were also inclosed for convenience of reference.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That, in this letter of Mr. Stewart to his brother, I do not find any positive evidence of the complicity of the Government of Buenos Ayres in the imprisonment of Mr. Stewart—an offence of which it was suggested, in the last communication to the Foreign Office, that this Government was guilty. The imprisonment appears to have been caused by the agents of the captains of the vessel demanding freight for the "Yerba;" it may be that they were instigated by the Government, but there is, at present, no adequate proof of it. It appears that this Government were willing to yield possession of the "Yerba" to Mr. Stewart on his giving security that it did not belong to the Government of their eneny, from whose country it had been exported. This security Mr. Stewart could or would not furnish, and the "Yerba" remains embargoed. If the proof offered by Mr. Stewart of his ownership of the "Yerba" be, as he alleges, sufficient according to the law of Buenos Ayres, then the continued embargo is certainly an injury inflicted upon Mr. Stewart, and in any event there ought to be a reasonable period within which a decision upon the subject should be made. With respect to the imprisonment of Mr. Stewart at all (much more, of course, in a criminal jail, though only for a short time), it appears to have been unwarrantable, and, if the decision of the Judge at Buenos Ayres be correctly stated, to give Mr. Stewart a title to damages against those, whoever they were, who caused that imprisonment.

Mr. Stewart now seeks for compensation from the Government of Buenos Ayres on account both of the personal and pecuniary injury done to him. I am clearly of opinion that your Lordship should not make this demand on behalf of Mr. Stewart without a further communication upon the matter from Her Majesty's Chargé d'Affaires, to whom the letter of Mr. Stewart, the claimant, should be sent. But, at the same time, Her Majesty's Chargé d'Affaires might be instructed that, in the event of his agreeing with the view taken by Mr. Stewart, he should press for the immediate release of the "Yerba" from embargo; if this cannot be obtained, that a reasonable period should be fixed within which the question of ownership should be decided: and further, if he be satisfied that there is adequate ground for charging this Government with having caused the imprisonment of Mr. Stewart for not paying the freight which by their embargo they practically prevented him from paying, and which they would not pay themselves, then to intimate to the Government that he shall refer the question to Her Majesty's Govern-

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ment as to whether a reasonable compensation ought not to be demanded from them on behalf of Mr. Stewart.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 14.

The Queen's Advocate to the Earl of Clarendon.—(Received July 11.)

Doctors' Commons, July 11, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 3rd instant, stating that with reference to my Report of the 6th of November last, he was directed by your Lordship to transmit to me therewith a despatch from Her Majesty's Minister at Rio de Janeiro (No. 57), inclosing an extract from the general statement of the Brazilian Minister for Foreign Affairs, relative to the proceedings of Her Majesty's ship "Dotterel," with regard to the blockade of the River Parana.

And Mr. Hammond was to request that I would inform your Lordship whether I have any further observations to make on the subject.

The previous papers upon this subject were inclosed for reference if necessary.

In obedience to your Lordship's commands I have considered this case, and have the honour to report—

That I have no observations to make on this subject additional to those which I have had the honour to make in my former Report.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 15.

The Queen's Advocate to Lord Stanley.—(Received August 25.)

Doctors' Commons, August 24, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Murray's letter of the 21st instant, stating that he was directed by your Lordship to transmit to me two despatches from Her Majesty's Chargé d'Affaires at Buenos Ayres (Nos. 59 and 60), relating to the liability of British subjects established in or trading at that place, to obey the Decree of the Argentine Government, by which horses, mules, and ships are compulsorily required for military service.

And Mr. Murray was pleased to request that I would furnish your Lordship with my opinion whether exemption from the operation of such Decrees can be claimed in favour of British subjects under the Treaty of February 2, 1825, or on any other ground.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I am of opinion that exemption from the operation of these Decrees in favour of British subjects can be claimed under the 9th section of the Treaty of Buenos Ayres of February 2, 1825, by the terms of which it is provided that British subjects "shall be exempted from all compulsory military service whatsoever, whether by sea or by land, and from all forced loans or military exactions or requisitions."

I have, &c.
(Signed) ROBERT PHILLIMORE.

Central America.

No. 16.

The Queen's Advocate to the Earl of Clarendon.—(Received February 6.)

Doctors' Commons, February 5, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 31st ultimo, stating that with reference to my Report of the 29th March, 1865, on the subject of the grant made to Messrs. Vaughan and Co. by the Nicaraguan Government to cut and export mahogany from a district within the territory reserved to the Mosquito Indians by the Treaty of Managua of January 28, 1860, he was directed to transmit to me a despatch from the Acting British Consul at Greytown (No. 13, November 20, 1865), inclosing a copy of a letter from the Government of the Mosquito Indians to Messrs. Vaughan and Co., in which they claim the sole right of making such grants; and to request that I would take these papers into consideration, together with the previous correspondence, and furnish your Lordship with my opinion on the question as it now stands.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That having regard to the evidence now before me, to the claim of the Mosquito Indian Government, and more especially to the information given to Mr. Green by Her Majesty's Government, March 12, 1862, founded, it appears, upon the opinion of my predecessor in office, that the absolute ownership of this territory was in the Mosquito Indians, carrying with it the right to cut timber and the like, I am of opinion that Messrs. Vaughan should be apprised by your Lordship that the grant of the Nicaraguan Government to them must be considered as invalid, unless they can obtain the sanction of the Government of the Mosquito Indians, confirming the said grant.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 17.

The Queen's Advocate to the Earl of Clarendon.—(Received April 18.)

Doctors' Commons, April 18, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 14th instant, stating that he was directed by your Lordship to transmit to me the accompanying despatches as marked in the margin,* relative to a claim for compensation which has been made upon the Nicaraguan Government by Her Majesty's Consul at Greytown, in behalf of Thomas Williams, a British subject, in consequence of the ill-treatment he received at the hands of an officer in the Nicaraguan Service, while serving as cook on board an American steamer; and Mr. Hammond was to request that I would take these papers into my consideration, and furnish your Lordship with my opinion as to the instructions which should be addressed to Her Majesty's Minister in Central America upon the subject.

In obedience to your Lordship's commands I have considered these papers, and have the honour to report—

That it appears from the despatch from the Foreign Office, dated January 28, 1865, that Her Majesty's Government have approved of the demand for redress made by Mr. Fraser to the Nicaraguan Government on behalf of Thomas Williams.

The outrage, if correctly stated in these papers, was a very gross one. A British subject, without trial or inquiry, was subjected to violent corporal punishment by the order of the Nicaraguan Commander of Fort St. Carlos on the San Juan River at the request of the captain of an American merchant-steamer

The answer of the Nicaraguan Government, through Don Pedro Zeledon, is not a denial of the outrage, but an averment that the officer who inflicted it has ceased to be

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* Mr. Fraser, No. 25, 1864; to Mr. Fraser, No. 2; Mr. Fraser, No. 16, 1865; Mr. Wallis, No. 54; Mr. Mathew, No. 4, 1866.

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in command of Fort St. Carlos, and that the Courts of Law are open to Williams for redress.

This answer has been twice made, once to Mr. Consul Green, August 9, 1864; a second time to Mr. Consul Paton, June 14, 1865.

The above-mentioned despatch approving the demand for redress was written after the answer to Mr. Green had been received at the Foreign Office.

It does not appear to me now, as it did not appear before to Her Majesty's Government, to be satisfactory; the outrage was committed by the officer of a fort of the Venezuelan Government, and by him acting in this capacity. For his acts, so far as they affect foreign subjects, they are responsible to foreign States; they do not escape from the responsibility by saying that he is not now an officer of this fort.

It seems to me that the instructions to be addressed to Her Majesty's Minister in Central America should be, that Her Majesty's Government cannot accept, for the reason which I have stated, the answer of the Nicaraguan Government, and that they must require a proper indemnity to be paid to the British subject who has been the sufferer of this apparently undefended and indefensible outrage.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 18.

The Queen's Advocate to Earl Russell.—(*Received April* 21.)

Doctors' Commons, April 21, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 18th instant, stating that he was directed to transmit to me a letter dated the 31st ultimo, with its inclosures, from Mr. Hope, requesting that a declaration may be obtained from the present Chief or King, or Government of Mosquito as to the validity of a grant of land made in the year 1838 by King Robert to Mr. George Rice Brown, and which grant was revoked in 1846, by King Robert's successor.

A Memorandum which has been prepared in the Foreign Office in regard to the claims arising out of the Mosquito land grants, together with a draft of a letter which your Lordship proposes to send to Mr. Hope in answer to his letter, was also inclosed; and Mr. Hammond was pleased to request that I would take these papers into consideration, and furnish your Lordship with my opinion whether this proposed answer is right and proper.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I am of opinion that the proposed letter is right and proper to be sent.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 19.

The Queen's Advocate to the Earl of Clarendon.—(*Received May* 28.)

Doctors' Commons, May 26, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 19th instant, stating that he was directed by your Lordship to transmit to me the accompanying letter, dated the 10th instant, from the official assignee to the estate of Mr. Carmichael, relative to certain claims of that gentleman on the Government of Honduras, which the creditors are anxious to have realized.

That this case was referred to the Law Advisers of the Crown in 1856 and 1858: that I should see by the previous correspondence, also inclosed, that in 1859 Her Majesty's Government threatened to employ coercive measures to obtain a settlement of the matter in question; and Mr. Hammond was pleased to request that I would take these papers into consideration with reference to the present state of the case, and report to your Lordship my opinion as to how far the steps already taken by Her Majesty's Government would necessitate or justify coercive measures against the Government of Honduras.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That as this claim has been formally pronounced to be valid by Commissioners

appointed under Treaty by both Governments, who bound themselves to recognize the validity of the award of the Commissioners, there can be no doubt as to its validity, or as to the liability of the Honduras Government to satisfy it.

The claimant has, however, accepted to take payment in timber, to be delivered on the sea-coast of the Atlantic or elsewhere; but it is now said, on apparently good authority, that this arrangement is, as I understand the case, owing to the circumstances utterly incapable of being executed.

In these circumstances, though I think it would be a severe and inexpedient course to order coercive measures to be taken against this Government, which professes to be, and probably is, insolvent; nevertheless I am of opinion that the Honduras Government should be distinctly apprised that either the agreement with respect to the delivery of the timber must be carried into immediate effect, or that arrangements must be made for paying the debt in money by regular instalments, one of which should be forthwith paid down. This latter course would seem to me most expedient.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 20.

The Queen's Advocate to the Earl of Clarendon.—(*Received July* 11.)

Doctors' Commons, July 10, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 3rd instant, stating that he was directed by your Lordship to transmit to me a despatch from Mr. Mathew, late Her Majesty's Minister in Central America (No. 18, May 10, 1866), inclosing the reply of the Nicaraguan Government to the representation which, in conformity with my Report of the 23rd December last, he was instructed to address to them respecting the pretension raised by the authorities at Grey Town to levy duties on goods destined to be imported into the Mosquito Reserve, and brought in transit to that port, and also on goods imported directly into the Mosquito Reserve, without passing through Grey Town; and Mr. Hammond was to request that I would take the reply of the Nicaraguan Government into consideration, and furnish your Lordship with my opinion as to the further steps which should be taken in the matter.

The previous papers on this subject were also inclosed for reference, if necessary.*

In obedience to your Lordship's commands, I have taken this case into consideration, and have the honour to report—

That with respect to the contention of the Government of Nicaragua that Her Majesty's Government has no right to interfere on behalf of the Mosquito Indians, because by the Convention of 1860, the British Protectorate of Mosquito territory was finally abandoned, it is to be observed that Her Majesty's Government have hitherto conceived, and, as it appears to me, with justice, that they have a right to secure the execution of the conditions of the Convention, to which Her Majesty was one of the Contracting Parties.

With respect to the construction of that Treaty as to the particular point in question,—the reasoning of Don A. Silva, in his despatch of April 17, 1866, does not satisfy me that the Mosquito Indians are not entitled to impose duties upon merchandize imported into their territory, or that the exercise of this right is inconsistent with the sovereign rights of the Republic of Nicaragua; and if this right exists, the Nicaraguan Government cannot be entitled to require payment for a second time of such duties at Grey Town, or upon goods not imported into that port, but merely transhipped thence for the Mosquito territory.

Don Silva defends the act of his Government by referring to the latter part of the VIIth Article of the Treaty; but that relates to "goods destined" (which the goods in question are not) "for consumption within the territory of the Republic of Nicaragua."

I have, &c.
(Signed) ROBERT PHILLIMORE.

P.S.—I perceive that I am desired to advise as to "the further steps which should be taken in this matter." I think Mr. Mathew should be directed to apprise the Nicaraguan Government that Her Majesty's Government hold that they are entitled to insist upon

* Treaty of Managua; Mr. Green, No. 10, October 28; Mr. Fraser, No. 24, 1864; to Mr. Fraser, No. 1, January 26; Admiralty, February 28; to Admiralty, March 6; Mr. Fraser, November 6; Mr. Paton, No. 12, 1865; to Mr. Mathew, No. 1, 1866.

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the due execution of the Convention to which Her Majesty was a party; and that he is instructed to adhere to the remonstrance on this subject, which he has already addressed to the Nicaraguan Government.

No. 21.

The Queen's Advocate to Lord Stanley.—(Received November 13.)

My Lord, *Doctors' Commons, November* 13, 1866.

I AM honoured with your Lordship's commands, signified in Mr. Hammond's letter of the 9th instant, stating that he was directed to transmit to me a despatch from Her Majesty's Acting Chargé d'Affaires in Central America (No. 18), inclosing a Decree which has been recently published by the Government of Honduras in regard to the interior government of the Bay Islands and the Mosquito Indians and the Mosquito coast; and Mr. Hammond was pleased to request that I would take these papers into consideration and furnish your Lordship with my opinion thereupon.

In obedience to your Lordship's commands I have the honour to report—

That I have considered the two Treaties between Great Britain and Honduras and Nicaragua (28th November, 1859, 28th January, 1860), and I agree with the opinion expressed by Mr. Wallis that it was not the intention of Her Majesty's Government that the Mosquito Indians should be placed absolutely under the Government of Honduras.

The status of the Mosquito Indians is very peculiar, and I think it would be expedient that Mr. Wallis should be instructed to apprise the Government of Honduras that the Government of Her Majesty consider that, under the Treaties which have been made with the Republics which border on the Mosquito territory, the right of free government, with certain specified restrictions, is secured to the Mosquito Indians, and they therefore hope that no attempt will be made by the Honduras Government to infringe that right.

I have, &c.
(Signed) ROBERT PHILLIMORE.

Chile.

No. 22.

The Queen's Advocate to the Earl of Clarendon.—(Received January 6.)

My Lord, *Doctors' Commons, January* 6, 1866.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 1st instant, stating that with reference to my Report of the 16th ultimo he was directed by your Lordship to transmit to me a further despatch from Her Majesty's Chargé d'Affaires in Chile (No. 64), on the subject of the capture of the "Mattias Cousino" by the Spanish squadron, together with a letter, dated the 16th November, from Mr. Long, claiming to be owner of the vessel; and Mr. Hammond was pleased to request that I would take this despatch into consideration, and furnish your Lordship with my opinion as to whether any further instructions should be sent to Mr. Thomson on this subject.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I think it is not necessary to send further instructions on this matter to Mr. Thomson. But I may observe that the provisional certificate of registry does not necessarily prove the nationality of the vessel. It only proves that certain statements were made to the Consul, on the faith of which he granted, as he was bound to do, the certificate. The Consul acts ministerially and not judicially in this matter.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 23.

The Queen's Advocate to the Earl of Clarendon.—(Received June 6.)

My Lord, *Doctors' Commons, January* 6, 1866.

I AM honoured with your Lordship's commands, signified in Mr. Hammond's letter of the 1st instant, stating that he was directed by your Lordship to transmit to me a despatch from Her Majesty's Chargé d'Affaires in Chile (No. 69), reporting the circumstances of the seizure, by the Spanish blockading squadron, of the ship "Tongoy" sailing under the Chilean flag, but stated to belong to a British subject; and to request that I would take this despatch into consideration, and furnish your Lordship, at my earliest convenience, with my opinion as to the instruction which should be sent to Mr. Thomson in this case.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I am of opinion Her Majesty's Government ought not to interfere, officially, on behalf of the owner of the "Tongoy." The grounds stated by Mr. Thomson why, although sailing under a belligerent flag, she should not be condemned as lawful prize, are, though by no means incontrovertible, proper to be stated in the Prize Court. But they cannot be urged upon Admiral Pareja as reasons why the question of her capture should not be submitted to proper judicial examination.

This opinion is of course not to be understood as preventing Mr. Thomson from using any good offices in his power to obtain the release of the vessel.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 24.

The Queen's Advocate to the Earl of Clarendon.—(Received January 9.)

My Lord, *Doctors' Commons, January* 9, 1866.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 1st instant, stating that he was directed by your Lordship to transmit to me a despatch from Her Majesty's Chargé d'Affaires in Chile (No. 63), together with its inclosures, reporting the circumstances under which application had been made to the Chilean Government by British merchants at Valparaiso, supported by him, for permission to remove their goods from the bonded warehouses in that port, and stating the conditions on which that permission had been granted.

And Mr. Hammond was pleased to request that I would take these papers into consideration, and furnish your Lordship at my earliest convenience with my opinion thereupon.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That having regard to the circumstances, I do not think the conditions upon which the Chilean Government offered to allow the removal of these goods, which have not paid Custom duties, are such as to found any just complaint on the part of the British merchants.

And I think that Her Majesty's Minister at Santiago should be instructed to apprize these persons that, after the refusal to remove the merchandize under these conditions, they are not to expect that, in the event of any injury accruing to it from the operations of the Spanish belligerent, Her Majesty's Government will be prepared to hold the Chilean Government responsible for that injury.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 25.

The Queen's Advocate to the Earl of Clarendon—(Received January 24.)

My Lord, *Doctors' Commons, January* 23, 1866.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 17th instant, stating that he was directed by your Lordship to transmit to me a despatch from Her Majesty's Minister at Madrid, together with the previous correspondence on the same subject,* in regard to the conduct of the Commander of the Spanish ship of war "Berenguela," in threatening to bombard Coquimbo.

And Mr. Hammond was pleased to request that I would take these papers into consideration, and furnish your Lordship with my opinion thereupon.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That at present there is not sufficient evidence of what the Captain of the "Berenguela" really did threaten, or as to the circumstances in which the threat was made, to enable me to form a decided opinion upon this subject.

But if the captain of a belligerent ship blockading a port announced that if his ship or her boat was fired at from the shore, he would bombard, in an hour's time, the place from whence the shots were fired, I do not think, as at present advised, that he was guilty of any breach of international law or usage.

The presence of neutrals in a blockaded port or a besieged town cannot avail, and never, I think, has been allowed by British military or naval force to prevent a necessary operation of military force.

It is to be observed also, that the notice is practically more than an hour's notice to the neutral, because the notice is given before the act has taken place, after which the hour's interval is to elapse; and it would then rather seem to become a question between the neutral and the authorities of the blockaded port.

It is for the neutral, by application to these authorities, to prevent, if possible, the act which is to cause the bombardment of the town, and if this should be impracticable, to obtain a promise from them that the act shall not take place till the neutral has withdrawn from the port.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 26.

The Queen's Advocate to the Earl of Clarendon.—(*Received February* 14.)

My Lord, *Doctors' Commons, February* 14, 1866.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 13th instant, stating that he was directed to transmit to me a despatch from Her Majesty's Chargé d'Affaires at Santiago (No. 85, December 22, 1865), together with its inclosure, announcing that the blockade of Chilean ports is limited for the present to those of Valparaiso and Caldera, and also a letter from Admiral Harvey, received from the Admiralty on the same subject.

And Mr. Hammond was pleased to request that I would furnish your Lordship with my opinion whether a notice to that effect should be inserted in the "Gazette," and if so that I would prepare it accordingly.

In obedience to your Lordship's commands I have taken the case into consideration, and have the honour to report—

That I think it proper that a notice should be inserted in the "Gazette," a form of which notice I have prepared, and herewith transmit to your Lordship.

I have, &c.
(Signed) ROBERT PHILLIMORE.

Inclosure in No. 26.

Notification for the "London Gazette."

Foreign Office, February , 1866.

IT is hereby notified that the Earl of Clarendon, K.G., Her Majesty's Principal Secretary of State for Foreign Affairs, has received from Her Majesty's Chargé d'Affaires at Santiago a despatch which incloses a letter from the Commander-in-chief of the Spanish naval forces in the Pacific to the Consular Body at Valparaiso, announcing "that the blockade maintained by the forces under his command is, for the present, limited to the ports of Valparaiso and Caldera."

(Here insert letter of the Spanish Admiral, and translation of the same.)

R. P.

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* Sir J. Crampton. No. 23; Acting Consul Tait, No. 18; to Sir J. Crampton, Nos. 35, 38, and 52; Sir J. Crampton No. 3; Mr. Thomson, No. 33.

No. 27.

The Queen's Advocate to the Earl of Clarendon.—(*Received February* 23.)

My Lord, *Doctors' Commons, February* 22, 1866.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 13th instant, stating that he was directed by your Lordship to transmit to me a despatch from Her Majesty's Chargé d'Affaires at Santiago (No. 87, December 24, 1865), together with its inclosures, relative to the seizure, by the captain of the Spanish ship "Blanca," of a quantity of blasting powder belonging to Messrs. Rose, Innes and Co., a British firm at Valparaiso; and Mr. Hammond was to request that I would take these papers into consideration, and furnish your Lordship with my opinion as to the steps which should be taken by Her Majesty's Government in this matter.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That in any case Messrs. Rose and Co. are entitled to the adjudication of a Prize Court on their claim; but I doubt very much whether they would derive any benefit from it.

Gunpowder is certainly, *primâ facie*, contraband, and its seizure might be justified, although the blockade of the port to which it was destined was not known at the time of its shipment. It would be a different question if, at this time, the breaking out of the war had not been known; for then, as the question of contraband depends partly upon the destination of the article, the Prize Court might listen to the argument that the gunpowder was *bonâ fide* destined for blasting, that is, for civil, not military purposes.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 28.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received February* 24.)

My Lord, *Lincoln's Inn, February* 24, 1866.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 23rd instant, stating that he was directed to transmit to us therewith, for our immediate opinion as to the course which should be pursued, a letter from the Home Office respecting a vessel fitting out in the river, supposed to be for the service of the Chilean Government.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That it is embarrassing to have to advise Her Majesty's Government in a case of this kind without evidence in the form of depositions, showing an illegal destination. But if the Commissioners of Customs believe, from the information which has reached them, that this vessel is in fact intended for the service of the Chilean Government, we think that her armament and equipment in a manner contrary to the provisions of the Foreign Enlistment Act (assuming such to have been her destination) is so patent as to make it the duty of Her Majesty's Government to prevent her from going to sea.

Notice, therefore, should, in our opinion, be given to the person in whose possession she now is, that she will be seized if she attempts to leave the docks; and at the same time every effort should be made, without delay, to obtain depositions on which an actual seizure may safely be founded.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 29.

The Queen's Advocate to the Earl of Clarendon.—(*Received March* 1.)

My Lord, *Doctors' Commons, February* 28, 1866.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 26th instant, stating that he was directed by your Lordship to transmit to me a

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letter from Messrs. Uhthoff and Co., requesting to be informed whether lead is liable to seizure as contraband of war, being neutral property, and shipped under neutral flag; and Mr. Hammond was pleased to request that I would furnish your Lordship with my opinion as to the answer which should be returned to Messrs. Uhthoff.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That Messrs. Uhthoff and Co. say, that they address your Lordship because "we wish to have the highest authority for guiding us in our business transactions." I think that an answer to the following effect should be sent to these gentlemen; that they would act wisely in being guided by the opinion of their proper professional adviser in this matter, with respect to which Her Majesty's Government must wholly decline taking any responsibility upon themselves.

That lead is an article of an ambiguous character and doubtful use; and the question whether a cargo of it would, or would not, be deemed contraband, would depend mainly upon all the circumstances of the case, showing a *bonâ fide* destination of the cargo to a neutral or a belligerent port.

That with respect to the other question in the letter, Her Majesty's Government "have not received any communication from the Chilean Government bearing upon this subject."

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 30.

The Queen's Advocate to the Earl of Clarendon.—(*Received March* 3.)

Doctors' Commons, March 3, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Murray's letter of the 1st instant, stating that he was directed by your Lordship to transmit to me a letter from Messrs. York and Co., inclosing certain documents relative to the seizure by the Spanish ship "Blanca," of a quantity of blasting powder consigned to Messrs. Rose, Innes and Co., of Valparaiso, and requesting to be furnished with a hint as to the course they should pursue in the matter; and Mr. Murray was pleased to request that I would take these papers into consideration, and furnish your Lordship with my opinion as to the reply which should be returned to those gentlemen, and with any further observations I might have to make relative to this case. Mr. Murray was also pleased to add, that the substance of my Report of the 22nd ultimo has already been communicated to Messrs. York and Co.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I am of opinion that a reply should be sent to Messrs. York and Co to the following effect:—That these gentlemen must rely upon their own exertions to establish their claim upon the Spanish Government for the restitution of this gunpowder, which they have been already apprised is *primâ facie* contraband, liable to seizure. That the documents are returned, which should be in the hands of their agent in Chile.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 31.

The Queen's Advocate to the Earl of Clarendon.—(*Received March* 20.)

Doctors' Commons, March 20, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 19th instant, stating that he was directed by your Lordship to transmit to me a despatch, dated January 19th, from Her Majesty's Chargé d'Affaires in Chile, reporting that the blockade of the port of Caldera had been raised, and that Valparaiso was the only port, at that date, which was blockaded by the Spanish naval forces; and Mr. Hammond was to request that I would take this despatch into consideration, and furnish your Lordship with my opinion as to whether any notification upon the subject should be issued by Her Majesty's Government.

In obedience to your Lordship's commands I have taken these papers into consideration and have the honour to report—

That I think it right that a notification of the raising of the blockade of this port should be inserted in the Gazette.

I have accordingly prepared a draft form of notice, which I herewith transmit, proper for insertion.

I have, &c.
(Signed) ROBERT PHILLIMORE.

Inclosure in No. 31.

SPAIN AND CHILE.—RAISING OF THE BLOCKADE OF THE PORT OF CALDERA BY SPANISH NAVAL FORCES.

Notification.

Foreign Office, March 23, 1866.

IT is hereby notified that the Earl of Clarendon, Her Majesty's Principal Secretary of State for Foreign Affairs, has received, through Her Majesty's Chargé d'Affaires at in Chile, a notification (dated 16th January, 1866, and addressed by the Acting Commander-in-Chief of the Spanish naval forces in the Pacific to the Portuguese Consul-General, as "Doyen" of the Consular body at Valparaiso), that the blockade of the port of Caldera, by Spanish naval forces, had been raised.

The following is a copy and translation of the notification referred to:—

(Here insert a copy of the original notice from Spanish Commander-in-Chief, and also of translation.)

R. P.

No. 32.

The Queen's Advocate to the Earl of Clarendon.—(*Received March* 27.)

Doctors' Commons, March 27, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 19th instant, stating that he was directed by your Lordship to transmit to me two despatches from Her Majesty's Chargé d'Affaires in Chile (Nos. 4 and 16) relative to the seizure of a British vessel, "Marshal Pelissier," by the local authorities at Coquimbo; and to request that I would take these papers into consideration, and furnish your Lordship with my opinion thereupon.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That it is true that Lord Stowell was inclined to hold that in cases of contraband, an entirely past transaction wholly unconnected with the voyage on which the vessel was seized, would not enure to the condemnation of the vessel; and to that doctrine I suppose Her Majesty's Chargé d'Affaires at Chile refers.

It does not, however, appear to me to be applicable to the circumstances of this case, so far as I can collect them from the papers before me. The ship has been set free, and I do not think that any further interference in this matter, on the part of Her Majesty's Representative at Chile, is necessary.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 33.

The Queen's Advocate to the Earl of Clarendon.—(*Received March* 27.)

Doctors' Commons, March 27, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 19th instant, stating that with reference to previous correspondence in regard to the seizure of the "Mattias Cousino" by the Spanish naval forces in Chile, he was directed by your Lordship to transmit to me a further despatch from Her Majesty's

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Chargé d'Affaires on this subject (No. 10); and Mr. Hammond was pleased to request that I would take this despatch into consideration, and furnish your Lordship with any observations I may have to offer thereupon.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That with respect to the case of this vessel, I beg leave to refer to my former Reports of the 16th December, and 30th November, 1865, and 6th January, 1866. That it appears to me the present offer of the Spanish Admiral to place the "Mattias Cousino" under the custody of Commodore Harvey until the lawfulness of her seizure has been properly adjudicated upon, is a very fair offer, and one which ought to be accepted by the owner of the vessel.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 34.

The Queen's Advocate to the Earl of Clarendon.—(Received April 5.)

Doctors' Commons, April 5, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 2nd instant, stating that he was directed by your Lordship to transmit to me a despatch from Her Majesty's Chargé d'Affaires in Chile (No. 24), reporting that on raising the blockade of the port of Caldera, the Spanish Commander-in-Chief had set-fire to certain prizes in his possession; and Mr. Hammond was pleased to request that I would take this despatch into consideration, and furnish your Lordship with my opinion as to the legality of this transaction.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That according to the principles and rules of international law, it is competent to a belligerent captor to destroy prizes if the necessity of the case really compels him to do so. But the Government of the captor cannot, by this act of their officer, escape from their obligations to the neutral owner. He is entitled either to obtain immediate compensation for his loss, or to every facility for establishing his claim to compensation before a proper Prize Court: and it must be conceded to him that every defect of evidence which may ensue from the act of the captor must enure to his, and not to the owner's detriment.

It is a matter, of course, for the discretion of the owner whether, if he have reason to know that his vessel was on any account liable to be condemned as prize, he will undertake this trouble and expense, necessarily incident to a trial, even if the captor should be condemned in costs and damages; which condemnation, moreover, would not be part of the sentence unless it were proved that there was no probable ground of seizure.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 35.

The Queen's Advocate to the Earl of Clarendon.—(Received April 10.)

Doctors' Commons, April 9, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 2nd instant, stating that he was directed by your Lordship to transmit to me two despatches from Her Majesty's Chargé d'Affaires in Chile (Nos. 21 and 25), relative to a declaration which had been issued by the Commander-in-chief of the Spanish naval forces off the coast of Chile, that Chilean coal would be considered as contraband of war. A despatch with its inclosures which has been received from Her Majesty's Consul at Valparaiso upon the same subject, was also inclosed; and Mr. Hammond was pleased to request that I would take these despatches into consideration, and that, with reference to the course pursued by England during the war with Russia, I would report to your Lordship my opinion on the facts stated in the inclosed despatches, and on the course which should be pursued by Her Majesty's Government.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That the answer of Commander Mendez Nunez to the protest from the Consul of the United States of North America (Inclosure 6 in Consul Rouse's despatch No. 3 of February 16, 1866), contains a fair exposition of the principles of international law applicable to this question.

1. His first position is correct, namely, that neutral merchants resident in a belligerent kingdom after war has been declared and carried on, are liable to be treated, so far as their property at sea is concerned, as enemies.

2. His second position is also correct,—that it is competent to him to declare coal, from the present circumstances of the war, to be contraband. Coal is as necessary as gunpowder to privateer steamers, and, according to all reason and authority, the question whether a particular article be or be not contraband, must be materially affected by the consideration of its subservience to military uses at the place and in the circumstances in which it is captured. It is true that coal put on board neutral vessels sailing for an innocent destination, previously to the issue of this order of the Spanish Admiral, would not be liable to condemnation. It may also be contended that coal on board neutral vessels, that is, vessels not connected with any mercantile house in the belligerent country, with an unquestionable neutral destination, would be entitled to favourable consideration at the hands of the captor; but if the vessel were seized in a place convenient for the adverse belligerent, it would be extremely difficult to prove any such destination, whatever paper might be on board.

I find no Order in Council declaring coals to be contraband, but I do find that during the French and Austrian war in 1859, coals were forbidden to be exported from this country, which was then neutral; and I think that on this account, as well as for the reasons which I have already alleged, Her Majesty's Government ought not to complain of this declaration made by the Spanish Admiral.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 36.

The Queen's Advocate to the Earl of Clarendon.—(Received April 14.)

Doctors' Commons, April 14, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 12th instant, stating that he was directed by your Lordship to transmit to me a despatch and its inclosures from Her Majesty's Chargé d'Affaires in Chile, relative to the detention of the British brig "Dolphin" by the Spanish Commander-in-chief at Valparaiso. A despatch from Her Majesty's Consul at Valparaiso upon the same subject was also inclosed, and Mr. Hammond was pleased to request that I would take these papers into consideration, and furnish your Lordship with any observations I may have to offer thereupon.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I am of opinion that the Spanish Commander-in-chief has not exceeded his belligerent rights in detaining, as the facts are stated, this vessel. The suspicions of her being destined to supply the enemy with coal, expressed in the letter of Commodore Nunez to Commodore Harvey, may, or may not, be well founded, but certainly they are not altogether unreasonable; and the conduct of the gentleman acting as attorney for the owner of the brig in refusing to furnish the evidence of her innocence suggested to him by Mr. Consul Rouse, appears to proceed either from very bad judgment, or from a knowledge that the suspicions of the Spanish Admiral are well founded. The owner of the "Dolphin," of course, has a right to the sentence of a proper Prize Court upon his claim, but I do not think that the case is one which at present requires the intervention of Her Majesty's Govdrnment.

I have, &c.
(Signed) ROBERT PHILLIMORE.

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No. 37.

The Queen's Advocate to the Earl of Clarendon.—(*Received April* 14.)

My Lord, *Doctors' Commons, April* 14, 1866.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 12th instant, stating that he was directed by your Lordship to transmit to me the accompanying despatches from Her Majesty's Chargé d'Affaires in Chile, together with one which your Lordship addressed to Mr. Thomson, respecting the torpedoes which it was reported were to be employed by the Chilean Government against the Spanish vessels blockading the city of Valparaiso. That I should perceive that in his despatch No. 26, Mr. Thomson reports that the Spanish Commander-in-chief had declared that in the event of any torpedo being used against his squadron he would at once bombard that place; and to request that I would take these papers into consideration, and furnish your Lordship with my opinion as to whether the course which the Spanish Commander-in-chief declared he would pursue, would be justifiable if resorted to.

Mr. Hammond was also pleased to add that the next West India mail will be despatched on the evening of the 16th instant, and that your Lordship would be glad to receive my report in time to enable your Lordship to reply to Mr. Thomson by that mail.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I am of opinion that the course which the Spanish Commander-in-chief has declared he will pursue, would, in the circumstances stated, be justified by international law. I think it impossible to deny the belligerent right of Chile to employ torpedoes against the Spanish squadron, and equally impossible to deny the belligerent right of Spain to bombard the town which those instruments are employed to protect. It is of course not within my province to express any opinion upon the policy of such a proceeding upon the part of either of the belligerents.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 38.

The Queen's Advocate to the Earl of Clarendon.—(*Reeeived May* 3.)

My Lord, *Doctors' Commons, May* 2, 1866.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 30th ultimo, stating that with reference to my Report of the 14th ultimo, in regard to the detention of the British brig "Dolphin," by the Spanish squadron off Valparaiso, he was directed by your Lordship to transmit to me a further despatch upon this subject which has been received from Her Majesty's Chargé d'Affaires at Santiago (No. 42); and Mr. Hammond was to request that I would take this despatch, together with the former papers in the case therewith annexed,* into my consideration, and furnish your Lordship with my opinion thereupon.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That the papers now laid before me confirm the opinion which I had the honour to express in my former Report, namely, that inasmuch as the agent for the owner of this vessel declines to produce the proof of her innocent destination, which, if she be innocent, it must be in his power to produce, in order to remove the suspicion not unreasonably entertained by the Spanish Admiral, he has no right to call for the intervention, on his behalf, of Her Majesty's Government.

It appears that Mr. Consul Rouse has frequently given to this agent the best advice upon this subject. He has suggested to him either to produce to him (the Consul) the owner's instructions to the master, his correspondence with the master, and with his agent at Lota and Coronel, who were concerned in hiring and loading the vessel, or to obtain a surety for the actual importation of the coals into Monte Video.

The agent (Señor Lopez) declines to take either of these courses: for not taking the latter he alleges as one reason, the difficulty of finding a surety; but I can find no reason whatever why he refuses to take the former course.

* Mr. Thomson, No. 30; Mr. Rouse, No. 5; to Mr. Thomson, No. 36.

I think that Mr. Lopez should be distinctly apprized that Her Majesty's Representative cannot in these circumstances further interfere on his behalf.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 39.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received May* 19.)

My Lord, *Lincoln's Inn, May* , 1866.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 17th instant, stating that he was directed by your Lordship to transmit to us a letter dated the 15th instant, which had been received from Messrs. Aitken and Bodger and Company, of Glasgow, relative to the losses incurred by them in consequence of the bombardment of the city of Valparaiso by the Spanish naval forces.

Mr. Hammond was also pleased to inclose a draft of the reply which it is intended to return to Messrs. Aitken; and to request that we would take these papers into our consideration, and favour your Lordship with our opinion as to whether this proposed answer is right and proper.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we think the proposed answer is proper to be sent; but it occurs to us to suggest to your Lordship, whether it may not be expedient also to take notice of the allegation of Messrs. Aitken and Co., that "this destruction has taken place with the concurrence of the British Admiral and Government Representative at Valparaiso;" and to observe that if by that statement it is meant to assert or imply that the British Admiral, or Her Majesty's Representative at Valparaiso, either approved or encouraged the bombardment of the city by the Spanish fleet, Her Majesty's Government believe such a representation to be the very contrary of the truth, while if the statement means only that the British Admiral and Her Majesty's Representative did not actively prevent or interfere with the operations of the Spanish fleet, it is wholly irrelevant; inasmuch as any such prevention or interference would have been entirely inconsistent with Her Majesty's declared neutrality in the war between Spain and Chile.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 40.

The Queen's Advocate to the Earl of Clarendon.—(*Received May* 31.)

My Lord, *Doctors' Commons, May* 31, 1865.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 30th instant, stating that he was directed by your Lordship to transmit to me a despatch from Her Majesty's Chargé d'Affaires in Chile (No. 61), inclosing a copy and translation of a Decree which has been issued by the President of that Republic, dated March 16, prohibiting neutral vessels from communicating with the Spanish ships of war, under the penalty of not being allowed to touch at or load in any ports of the Republic; and to request that I would take this despatch into consideration, and furnish your Lordship with any observations I may have to offer thereupon.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That the observations which I had the honour to make in my Report of the 19th of May appear to me to be applicable to the present question. I think that it is competent to the Government of Chile in time of war to make a Decree which forbids the admission of all neutral vessels, except under certain specified conditions, equally applicable to all, into Chilean ports. The conditions in this case have for their object to prevent the belligerent blockading force from obtaining supplies whereby they are enabled or materially assisted in maintaining the blockade. These supplies, it is alleged, are furnished by neutral vessels on their way to Chilean ports. To refuse, therefore, to allow

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the entrance of these vessels into these ports is, or may be, a means of preventing the enemy receiving the supplies necessary for the continuance of his blockade.

I think it is a measure of self-defence which the Government of Chile has a right in its dominions to put in force.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 41.

The Queen's Advocate to the Earl of Clarendon.—(Received May 31.)

Doctors' Commons, May 31, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of to-day's date, stating that he was directed by your Lordship to transmit to me therewith a despatch and its inclosures from Her Majesty's Chargé d'Affaires and Consul-General in Chile, reporting that the blockade by the Spanish naval forces of the port of Valparaiso has been raised; and Mr. Hammond was to request that I would take the same into consideration, and, if the notice be sufficient, prepare the draft of a notification to be inserted in the "Gazette" of to-morrow.

In obedience to your Lordship's commands I have considered these papers, and have the honour to report—

That I think the notice sufficient, and have prepared, and herewith transmit, a draft notification thereof for insertion in the "London Gazette."

I have, &c.
(Signed) ROBERT PHILLIMORE.

Inclosure 1 in No. 41.

SPAIN AND PERU.—BLOCKADE OF THE PORT OF CALLAO.

Notification.

Foreign Office, June 1, 1866.

IT is hereby notified that the Earl of Clarendon, Her Majesty's Principal Secretary of State for Foreign Affairs, has received from Her Majesty's Acting Chargé d'Affaires in Peru a despatch inclosing a notice published by the Spanish Admiral, of the blockade by the forces under his command, of the port of Callao, on and from the 27th day of April, 1866.

The following is a copy and translation of the notice of the Spanish Admiral referred to.

(Here add a copy of the notice and of the translation.)

R. P.

Inclosure 2 in No. 41.

SPAIN AND CHILE.—RAISING OF THE BLOCKADE OF THE PORT OF VALPARAISO.

Notification.

Foreign Office, June 1, 1866.

IT is hereby notified that the Earl of Clarendon, K.G., Her Majesty's Principal Secretary of State for Foreign Affairs, has received a despatch (dated April 16, 1866) from Her Majesty's Chargé d'Affaires and Consul-General in Chile, inclosing a copy of a notification received from the Commander-in-chief of the Spanish naval forces in the Pacific, that the blockade of the port of Valparaiso was from the 14th day of April last, and is for the present, raised.

The following is a copy and translation of the notification of the Spanish Commander-in-chief above referred to.

(Here add a copy of the notice and of the translation.)

R. P.

No. 42.

The Queen's Advocate to Lord Stanley.—(Received November 10.)

Doctors' Commons, November 9, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 7th instant, stating that he was directed by your Lordship to transmit to me two despatches from Her Majesty's Chargé d'Affaires in Chile, relative to the capture of the "Thalaba," a British vessel, by the Chilean gun-boat "Covadonga," and the decision which has been come to by the Prize Court on the subject; and to request that I would take these papers into consideration, and furnish your Lordship with my opinion thereupon.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That it does not appear from the papers before me that the "Thalaba" has been actually condemned by the Prize Court, but that a demand for her condemnation has been made to that Court by the Attorney-General—a demand which he supports by a very able argument.

Assuming—which there seems no reason whatever to doubt—the facts to be as he states them, I am clearly of opinion that, by the law applicable to these facts, this vessel and her cargo would be properly condemned by the Prize Court.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 43.

The Queen's Advocate to Lord Stanley.—(Received December 24.)

Doctors' Commons, December 24, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 19th instant, stating that he was directed to transmit to me despatches from Her Majesty's Chargé d'Affaires in Chile relative to a war tax of 5 per cent., which was authorized by the Chilean Legislature on the declaration of war with Spain, and made law by an edict of the President in Council, dated September 24, 1865.

That Mr. Thomson calls the attention of Her Majesty's Government to the position of British subjects with regard to such contributions under the terms of the Commercial Treaty between Great Britain and Chile, and also to the terms of the Treaty on this point between France and Chile; and Mr. Hammond was pleased to request that I would take this matter into consideration, and report to your Lordship my opinion as to the nature of any instructions which should be sent thereon to Mr. Thomson.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I think Mr. Thomson should be instructed to the effect that he has correctly interpreted the terms of the Commercial Treaty between Great Britain and Chile, namely, that these terms do not exempt the subjects of Great Britain from the payment of war tax, and that these subjects have no right to be heard upon the question whether the tax be or be not illegal upon constitutional grounds. That it would, however, certainly be matter of just remonstrance on the part of Great Britain if her subjects were made liable to a tax from which the subjects of other friendly Powers were exempted. At the same time, apart from this consideration, and on general principles, it appears to be just and fair that foreign subjects domiciled and resident in a State, which they do not choose to leave in time of war, should bear their share in the expense of defending the country in which they reside from the attack of an enemy.

I have, &c.
(Signed) ROBERT PHILLIMORE.

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China.

No. 44.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received January* 9.)

My Lord, *Lincoln's Inn, January* 8, 1866.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 28th of December, 1865, stating that, with reference to his letter of the 8th of that month, he was directed by your Lordship to transmit to us a despatch from Her Majesty's Chargé d'Affaires at Peking (No. 232, October 13, 1865), relative to the execution of the Chinese subject who was delivered up by the British authorities at Hong Kong; and to request that we would take this despatch into our consideration, and favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That it does not appear to us that the letter of Mr. Wade calls for any observations in addition to those which we have previously had the honour to address to your Lordship upon the subject to which it relates.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 45.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received February* 16.)

My Lord, *Lincoln's Inn, February* 16, 1866.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 17th of January ultimo, stating that he was directed by your Lordship to transmit to us the accompanying despatch from Mr. Wade (No. 233, October 18, 1865), inclosing drafts of Regulations proposed by Sir Edmund Hornby to be issued for the registration of mortgages, bills of sale, and companies in China and Japan; and to request that we would take the same into consideration, and favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands, we have taken this matter into consideration, and have the honour to report—

That the proposed Regulations as to the registration of mortgages, and as to bills of sale, seem to us to be unobjectionable, and proper to be confirmed, so far as they go. We are not sure that the addition suggested by Mr. Wade, of words expressly limiting them to mortgages and sales by British subjects is (in strictness) necessary: for we think that such a limitation, even if not expressed, ought to be implied. Considering, however, that there might be mixed transactions of mortgage and sale between British subjects and foreigners, we incline to think that the addition of such words of limitation might be expedient, for the purpose of showing that the regulation was meant to apply to all mortgages and sales *by* British subjects, whoever might be the mortgagee or vendee, but not to any mortgages or sales *to* British subjects by foreigners.

We have further to point out that both these Regulations seem to us defective, and insufficient for their intended purposes: the former, because, while it expressly gives to "judgment and simple contract debts contracted *before* the execution of the deed," precedence over an unregistered mortgage, it does not give the like precedence to subsequent mortgages or conveyances for valuable consideration without notice, even though the subsequent deed (if registrable) may be duly registered; and the latter, because, while ordering the registration of all bills of sale, it omits altogether to declare or define what shall be the consequence, or the legal effect, of non-registration. In these respects both these regulations seem to us to require material amendment: but, in the meantime, we think no harm can be done by leaving them to their operation.

The third Regulation, as to joint stock companies (which, in the judgment of Mr. Wade, is of much more doubtful necessity, not to say policy), appears to us to be open to a fatal objection, viz., that it says these companies must be registered in Her Majesty's Supreme Court for China and Japan, "in the same way *and subject to the same provisions as if formed in England, they would have had to comply with.*" Not to criticize the mere phraseology (which is certainly faulty), we find it difficult to understand what the precise effect of this general reference to the English law, as to the registration of similar companies, is intended or might be judicially determined to be. Is it meant to apply to companies in China, *all* the provisions contained in Sections 4 and 6 to 20, inclusive, of the English Companies Act, 1862 (25 and 26 Vict., cap. 89)? If not all, what part of these provisions is, and what part is not, to be so applied? Would it be competent, in this or any other way, to make the whole applicable? These and other questions unavoidably suggest themselves. We think that a regulation of this kind ought, upon the face of it, clearly to prescribe the conditions of registration, and ought not to attempt to do so by any such general reference to the law of England. And, upon this ground, we feel compelled to advise that this Regulation should be disallowed by Her Majesty.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 46.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received February* 28.)

My Lord, *Lincoln's Inn, February* 27, 1866.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 29th ultimo, stating that with reference to our Report of the 11th of July last, he was directed by your Lordship to transmit to us, with the previous papers,[*] a despatch from Sir Edmund Hornby,[†] respecting the tenure of land in British Settlements at Chinese ports; and Mr. Hammond was to request that we would take the same into our consideration, and furnish your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we find it very difficult to form a satisfactory opinion upon the points as to which Mr. Wade and Sir Edmund Hornby disagree. In our former Report, in which we expressed our concurrence (generally) with the views of Mr. Wade, we were necessarily much influenced by the weight which we felt to be justly due to the practical judgment of a public servant of great ability and knowledge, and experience of China and of the foreign communities in China. Sir Edmund Hornby has not had the same local experience; but we think it would be advisable for Her Majesty's Government to suspend, at all events, any decided action upon these points in a direction contrary to Sir Edmund Hornby's opinion until it is known how far Mr. Wade may still be disposed to urge the necessity for such action.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 47.

The Queen's Advocate to the Earl of Clarendon.—(*Received February* 28.)

My Lord, *Doctors' Commons, February* 28, 1866.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 22nd instant, stating that he was directed by your Lordship to transmit to me a letter from Messrs. Menzies and Coventry[‡] respecting the case of Mr. W. H. Baldwin,

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[*] Mr. Wade, No. 35, No. 50, and No. 52; to Mr. Wade, No. 147, 1865.

[†] Sir E. Hornby, No. 14.

[‡] Mr. Cowen, February 9; Messrs. Menzie and Co., February 7; Mr. Adkins, February 19, 1866.

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who claims compensation from the Chinese Government on account of injuries received in an attack made upon him by Chinese soldiers near Ching-kiang on the evening of the 19th of November, 1864. A Report upon this case by Mr. Adkins, late Acting Consul at Ching-kiang, who is in this country on leave of absence, was also inclosed; and Mr. Hammond was pleased to request that I would take the case into consideration, and furnish your Lordship with my opinion thereupon.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I am of opinion that the facts stated in this case, as explained by the letter of Mr. Consul Adkins, would not warrant Her Majesty's Government in demanding compensation from the Chinese Government for the injuries received by Mr. Baldwin.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 48.

The Law Officers of the Crown to the Earl of Clarendon.—(Received March 9.)

My Lord, *Lincoln's Inn, March* 8, 1866.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 9th February ultimo, stating that he was directed by your Lordship to transmit to us a despatch from Her Majesty's Chargé d'Affaires at Peking (No. 269, November 20, 1865), inclosing a copy of a note to Prince Kung, in which, with reference to the case of Mansfield, a British subject who had lately been surrendered by the Chinese authorities to the British Consul at Kiu-kiang, charged with the commission of certain offences in China, Her Majesty's Chargé d'Affaires takes occasion to point out to the Chinese Government that the XVIth Article of the Treaty of Tien-tsin does not, as that Government would seem to imagine, authorize the trial by a Mixed Court of British subjects accused of crimes in China, and that the words in the Chinese version of that Article signifying acting "in concert," merely mean such a concert as is implied by a Chinese authority being invited to be present in such cases while the trial is going on; and to request that we would take these papers into our consideration and report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That the words "acting in concert" do not appear in the 16th section of the English version of the Treaty.

If the Chinese be rightly rendered into English by these words, they would appear to us materially to affect the operation of the Treaty, and it would be desirable that a more correct translation should be given, to enable us to judge of their exact effect.

I have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 49.

The Law Officers of the Crown to the Earl of Clarendon.—(Received March 10.)

My Lord, *Lincoln's Inn, March* 10, 1866.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 19th January last, stating that he was directed by your Lordship to transmit to us the accompanying despatch from Mr. Wade (No. 234, October 18, 1865), and its inclosures, respecting the claim to British protection in China of Chinese who have been born in the Straits Settlements; and to request that we would take the same into our consideration, and favour your Lordship with our opinion thereupon.

Mr. Hammond was also pleased to state that the previous correspondence upon this subject with Sir J. Bonham was also inclosed.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That while, on the one hand, it is not difficult to believe that great practical inconvenience must often arise from the claims of these persons to the protection and privileges of British subjects, on the other hand we think that such claims ought not to be refused solely on the ground of the claimants wearing the same dress as Chinese; and therefore (although it is both right and necessary to be satisfied of the identity of any person producing a certificate, before interfering on his behalf) we think that Mr. Consul Robertson has, at present at least, no right to make his recognition of these claims dependent on the circumstance of dress.

Nevertheless, it would, in our judgment, be expedient that the Chinese of the British Settlements should be induced, if not required, to adopt some distinguishing badge or article of apparel, though the adoption of the European dress ought not to be insisted upon.

Certainly, the letting the hair grow, and not shaving the crown, would be by far the safest and best criterion, if these persons could be induced to adopt this fashion. The fate of Chin Ring Ching would, apparently, then be avoided: at all events, the Chinese authorities would be thereby deprived, by their own showing, of the right of treating such persons as Chinese subjects.

We are, of course, aware of the obstacles which, probably, local feelings and prejudices may oppose to this scheme; but it seems to us that an endeavour should be made to procure its adoption.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 50.

The Law Officers of the Crown to the Earl of Clarendon.—(Received March 22.)

My Lord, *Lincoln's Inn, March* 20, 1866.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 12th March instant, stating that he was directed by your Lordship to acknowledge the receipt of our Report of the 8th instant, in which we observed that the words "acting in concert" do not appear in the 16th section of the English version of the Treaty between this country and China, and added that if the Chinese be rightly rendered into English by those words, they would appear materially to affect the operation of the Treaty; and that it would be desirable that a more correct translation should be given, to enable us to judge of their exact effect.

Mr. Layard was also pleased to state that your Lordship will instruct Her Majesty's Minister at Peking to furnish an exact translation of the Chinese version of that Article, and that, in the meantime, he was to draw our attention to Article L of the Treaty of Tien-tsin, in which it is stipulated that, in the event of there being any difference of meaning between the English and Chinese texts of the Treaty, the English Government will hold the sense, as expressed in the English text, to be the correct sense; and to request that we would take this matter again into our consideration, and favour your Lordship with our opinion as to the bearing of that stipulation on the question raised by Mr. Wade.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That Article L of the Treaty, to which our attention is now drawn, certainly appears to justify the opinion of Her Majesty's Minister at Peking; but the omission, in the English version, of such important words as "acting in concert" seems to us still to call for some explanation.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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No. 51.

The Law Officers of the Crown to the Earl of Clarendon.—(Received May 15.)

Lincoln's Inn, May 14, 1866.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 2nd ultimo, stating that he was directed by your Lordship to transmit to us a despatch from Her Majesty's Consul at Shanghae (No. 8, February 7), inclosing copies of despatches he had addressed to Sir R. Alcock, covering copies of a correspondence which Her Majesty's Consul has had with the French Consul-General, with Sir E. Hornby, and with Mr. Edouard Schmidt, on matters connected with the nationality of the latter gentleman: and to request that we would take these papers into our consideration, and favour your Lordship with any observations we might have to offer thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we are of opinion that, in the peculiar circumstances of this case, the decision of Mr. Consul Winchester and Sir E. Hornby was right, namely, that Mr. Schmidt should, under the Order in Council referred to, be treated as amenable to the French authorities, with respect to all transactions which happened between the 18th of March, 1863, when he procured himself to be matriculated as a Frenchman, and the 30th October, 1865, when he obtained, by virtue of his British birth and allegiance, British registration.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 52.

The Queen's Advocate to the Earl of Clarendon.—(Received May 29.)

Doctors' Commons, May 28, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 24th instant, stating that he was directed by your Lordship to transmit to me a despatch, and its inclosures, from Sir Rutherford Alcock (No. 44, March 12, 1866), respecting the right of trade at Kiung-chow, in Hainan, one of the ports named in the Treaty of Tien-tsin,* but to which Her Majesty's Government have not yet thought it necessary to appoint a Consul.

That I should perceive that certain British subjects have embarked in this trade, and that the Chinese authorities have made representations to Her Majesty's Consul at Canton, with a view to its being put a stop to, and that although the Acting Governor of Hong Kong has authorized vessels to be cleared from that port for Kiung-chow on the ground of the right conferred by the Treaty, Sir Rutherford Alcock, on the other hand, considers that the Chinese Government may justly refuse trade until a Consul is appointed, and that the right conferred by the Treaty does not exist until a public notification from the Chief Superintendent of British trade declares the port to be opened; and Mr. Hammond was to request that I would take these points into consideration, and report to your Lordship my opinion thereupon.

In obedience to your Lordship's commands I have considered this matter, and have the honour to report—

That it does not seem to me necessary to express a positive opinion that it is not, in theory, competent to the proper British authority to authorize trading from Hong Kong to one of the ports mentioned in section XI of the Treaty of Tien-tsin, the opening of which has not been formally declared and to which no Consul has been appointed, because I am clearly of opinion that, practically, such a course ought not to be taken, as it would be at variance with the spirit and true meaning, if not with the letter, of the Treaty of Tien-tsin.

I agree with Sir Rutherford Alcock that the exterritorial privilege of jurisdiction accorded by Article XVI (not XV) is granted on the faith that there will be a Consul "or other public functionary" in the place to exercise the jurisdiction of which the Chinese Government has deprived itself.

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* Treaty of Tien-tsin; Treaty of Pekin. See Hertslet, vol. xi, pages 86 and 112.

I think, too, that there should be a formal notification that a port not hitherto opened is, henceforth, to be considered as open.

It is, of course, for Her Majesty's Government to consider whether the trade at Hainan be likely to warrant the establishment of a Consul at that port, but until this has taken place I think clearances from the Harbour-master at Hong Kong, from that place to Hainan, should not be issued.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 53.

The Law Officers of the Crown to the Earl of Clarendon.—(Received June 23.)

Lincoln's Inn, June 22, 1866.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 13th instant, stating that he was directed by your Lordship to transmit to us the accompanying despatches from Sir Edmund Hornby (No. 7) and Mr. Consul Winchester (No. 568) with regard to the appointment of a public prosecutor to conduct cases, when required, in Her Majesty's Supreme Court for China and Japan; and to request that we would take the same into our consideration, and favour your Lordship with our opinion thereupon.

Mr. Hammond was also pleased to state that he had inclosed a draft of a despatch upon that subject which your Lordship proposes to address to Sir Rutherford Alcock by the mail of the 26th instant (No. 167).

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we think the draft despatch to Sir Rutherford Alcock is proper to be sent. With respect to the prosecution of cases against British subjects in which the interests of public order in China are concerned, we are of opinion that the most proper and advisable course will be, not to appoint a public prosecutor with a salary, but to give a general retainer to Mr. Myburgh (or to whoever else may be the best Counsel practising in the Consular Courts where such prosecutions may take place), on behalf of Her Majesty's Government, and to deliver briefs to the Counsel so retained in the usual manner, and upon the ordinary terms of professional remuneration, at the cost of Her Majesty's Government, in each separate case, as it arises.

At all events we think this will be the best expedient for the present until more experience has been gained of the working of the whole system and of the probable frequency and importance of cases requiring public prosecutions.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 54.

The Queen's Advocate to Lord Stanley.—(Received August 2.)

Doctors' Commons, August 1, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 25th ultimo, stating that he was directed by your Lordship to transmit to me a despatch from Sir Rutherford Alcock (No. 79, May 9, 1866), inclosing copies of his correspondence with Mr. Consul Winchester, and of certain Memorials from Shanghae, on the question of the right of small steamers under foreign flags to navigate the inland waters of China; and Mr. Hammond was to request that I would take this matter into consideration, and report to your Lordship my opinion whether the view taken of it by Sir Rutherford Alcock is the correct one.

In obedience to your Lordship's commands I have taken this matter into consideration, and have the honour to report—

That I am clearly of opinion that Sir R. Alcock has correctly interpreted the Articles in the Treaty of Tien-tsin which relate to this question, and that it is perfectly competent

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to the Government of China to prohibit the navigation of the inland waters of that country by these small steamers, which belong to the foreign firms at Shanghae.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 55.

The Law Officers of the Crown to Lord Stanley.—(Received August 30.)

Lincoln's Inn, August 29, 1866.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 3rd of August instant, stating that he was directed by your Lordship to transmit to us a despatch and its inclosures from Her Majesty's Minister at Peking (No. 80, May 10), and also a private letter and its inclosures from Her Majesty's Consul at Shanghae on a question raised by the so-called Municipal Council at Shanghae as to the right of the Chinese authorities to levy taxes on the Chinese established within the foreign settlement; and to request that we would take this matter into our consideration, and report to your Lordship our opinion thereupon.

Mr. Hammond was also pleased to inclose a copy of a Blue Book laid before Parliament in 1863, which contains, at page 87, a copy of an instruction from Sir F. Bruce to Her Majesty's then Consul at Shanghae bearing upon this question.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we agree with the opinion expressed by Sir F. Bruce, Sir R. Alcock, Sir E. Hornby, and Mr. Consul Winchester, and the Consul for the United States of North America.

That we are clearly of opinion that the Chinese subjects resident in Shanghae are amenable to the jurisdiction and authority of the Chinese Government.

We have, &c.
(Signed) H. M. CAIRNS.
W. BOVILL.
ROBERT PHILLIMORE.

No. 56.

The Law Officers of the Crown to Lord Stanley.—(Received September 27.)

Lincoln's Inn, September 26, 1866.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Egerton's letter of the 5th instant, stating that with reference to our Reports of the 8th and 21st March last, he was directed by your Lordship to transmit to us a despatch from Her Majesty's Minister at Peking (No. 110), forwarding a translation of the XVIth Article of the Treaty of Tien-tsin, together with a letter from Mr. Wade, explaining the apparent divergence between the Chinese and English texts of the Treaty; and Mr. Egerton was to request that we would take this paper into our consideration, together with Mr. Wade's former despatch (No. 269), on which our opinion was asked in Mr. Hammond's letter of the 9th of February, and which was also inclosed, and that we would furnish your Lordship with our opinion thereupon at our earliest convenience. A copy of the Treaty was inclosed for our information.

In obedience to the commands of your Lordship we have considered this question, and have the honour to report—

That the difference in the language of the English and Chinese version of Article XVI of the Treaty is much to be regretted, and does not appear to us to be very satisfactorily accounted for; and it would, in our opinion, be desirable that, as far as possible, any direct issue with the Chinese authorities, as to the effect of this divergence in the two versions, should be avoided by that species of courtesy and friendly consent which, as we understand, has hitherto prevailed in cases where subjects of both nations were concerned. But we are of opinion, looking to Article L of the Treaty, that if it should on any occasion be necessary to determine which text is to govern the action of the English authorities, the English version must be adhered to, and that Mr. Wade is justified in the explanation by which he endeavours to make the Chinese version consistent with the English. We think the XVIth Article in either version cannot be so interpreted as to interfere with the right of each Government to exercise independent jurisdiction over its own subjects.

We have, &c.
(Signed) H. M. CAIRNS.
W. BOVILL.
ROBERT PHILLIMORE.

No. 57.

The Law Officers of the Crown to Lord Stanley.—(Received November 2.)

Lincoln's Inn, October 30, 1866.

My Lord,

WE are honoured with Mr. Egerton's letter of the 3rd instant, stating that he was directed by your Lordship to transmit to us a despatch from Her Majesty's Minister at Peking (No. 120), forwarding a regulation respecting the registration of Companies, which, on the recommendation of Sir Edmund Hornby, has been published in China by Sir Rutherford Alcock; and he was to request that we would take this paper into our consideration, and furnish your Lordship with our opinion thereupon.

The former papers referred to by Sir Rutherford Alcock were inclosed for our information.*

In obedience to your Lordship's commands we have considered this matter, and have the honour to report—

That we think the proposed regulations as to the mode in which partnerships may be sued, avoid the objections made by the late Law Officers to the regulations formerly proposed for the registration of Companies, and that the regulations now proposed are proper to be confirmed.

We observe that the defects in the regulation for the registration of mortgages and bills of sale, which were pointed out by the late Law Officers, and to which attention was called by the despatch of Earl Russell of the 21st of February, do not appear to have been remedied, or in any way noticed.

We have, &c.
(Signed) H. M. CAIRNS.
W. BOVILL.
ROBERT PHILLIMORE.

Colombia.

No. 58.

The Queen's Advocate to Lord Stanley.—(Received September 13.)

Doctors' Commons, September 12, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Egerton's letter of the 6th instant, stating that he was directed by your Lordship to transmit to me a despatch, together with its inclosures, from Her Majesty's Acting Chargé d'Affaires in the United States of Colombia, relative to the application made to him by Mr. Carlos J. Irwin for a certificate of British nationality; and Mr. Egerton was to request that I would take these papers into consideration, and furnish your Lordship with my opinion as to the instructions which should be given to Mr. O. Leary on the subject.

In obedience to the commands of your Lordship I have considered these papers, and have the honour to report—

That assuming the accuracy of the statement of Mr. Carlos J. Irwin that he is the son of a British-born parent, there is no doubt that, according to the English law, he lies under the obligation of an indelible allegiance to Her Majesty. He ought, therefore,

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* Mr. Wade, No. 233; to Sir R. Alcock, No. 65.

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upon general principles, to be entitled (unless by some act of his own he has forfeited it) to British protection. I do not find in the papers before me that he has done any such act.

I would, therefore, humbly advise that an answer should be sent to Her Majesty's Acting Chargé d'Affaires to the following effect: that Mr. Irwin must be considered as entitled generally to British protection, except in Venezuela, the country of his birth, in the event of the Government of that country, while he is resident in it, putting forth a claim to his allegiance by reason of his being born in that State, in which case Mr. Irwin must be apprised that he must not rely upon the protection arising out of the British origin of his father being extended to him.

I have, &c.
(Signed) ROBERT PHILLIMORE.

Ecuador.

No. 59.

The Queen's Advocate to the Earl of Clarendon.—(*Received June* 23.)

Doctors' Commons, June 23, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 19th instant, stating that he was directed by your Lordship to transmit to me a despatch, together with its inclosures, from Her Majesty's Chargé d'Affaires at Quito, reporting the circumstances under which some Spanish subjects residing at Guayaquil had embarked on board the Pacific Steam Navigation Company's ship "Favorita," and the proceedings of the authorities to obtain their removal from on board her; and to request that I would take this despatch into consideration, and furnish your Lordship with my opinion thereon, and also as to the instructions which should be sent to Colonel Neale in the event of a repetition of similar proceedings on the part of the authorities.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That the English merchant-vessels and steamers not carrying Her Majesty's Commission are subject to the jurisdiction of the State in whose ports they happen to be.

The masters of such vessels are not bound to use force to put any passengers who have duly taken their passage on board the vessel on shore; but they cannot lawfully refuse to allow the proper authorities of the place to exercise jurisdiction over their own subjects who are on board the vessel in port; and I think that, strictly speaking, in this class must, for this purpose, be included all foreigners domiciled in the State, who have gone on board contrary to the law of the State.

It is, of course, most expedient to avoid all chances of collision with the local authorities on questions of this kind.

I have, &c.
(Signed) ROBERT PHILLIMORE.

France.

No. 60.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received January* 9.)

Lincoln's Inn, January 9, 1866.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 4th instant, stating that he was directed by your Lordship to transmit to us therewith a letter from the French Ambassador at this Court,[*] denouncing the Extradition Treaty between this country and France, together with the previous correspondence[†] to which it refers.

Mr. Hammond was also pleased to state that he inclosed the draft of a despatch which your Lordship proposes to address to Lord Cowley on the subject; and that this draft, as first drawn, was referred to the Home Office for Sir George Grey's concurrence; and in consequence of a letter dated the 3rd instant, received from the Home Office (sent therewith), the original draft had been modified and brought into its present shape.

Mr. Hammond was also pleased to state that he inclosed the Treaties and legislative enactments bearing on this subject.[‡]

And that he was directed by your Lordship to request that we would take the draft to Lord Cowley into our immediate consideration, and report to your Lordship, at our earliest convenience, our opinion upon the propriety of its being sent, and also any observations which it might occur to us to offer in the present stage of the business.

We are also honoured with your Lordship's commands signified in Mr. Hammond's letter of the 5th instant, stating that he was directed by your Lordship to transmit to us therewith a further draft of a despatch to Her Majesty's Ambassador at Paris with reference to the question of the Extradition Treaty between this country and France, and to request that we would take this draft into our consideration, together with that inclosed in his letter of the previous day, and report to your Lordship our opinion thereupon at our earliest convenience.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we think both these despatches may properly be sent, subject to the observation (with respect to the latter of them) that there does not appear to us to be any insuperable objection, in principle, to a Treaty for the extradition of escaped criminals, who have been convicted, after a regular trial at which they have been present, with full opportunities of self-defence, of any offences which would have been a sufficient cause for their extradition before trial.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 61.

The Queen's Advocate to the Earl of Clarendon.—(*Received January* 27.)

Doctors' Commons, January 27, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 23rd instant, stating that he was directed by your Lordship to transmit to me a despatch from Her Majesty's late Chargé d'Affaires at Paris (No. 7, Commercial, 1865), inclosing copy of a "Convention relative à l'Union Douanière, et aux Rapports de Voisinage," concluded between France and Monaco, in November 1865, the IVth Article

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[*] Prince de la Tour d'Auvergne, December 4, 1865.

[†] Prince de la Tour d'Auvergne, November 14, 1864; to Prince de la Tour d'Auvergne, February 2; Prince de la Tour d'Auvergne, March 13; to Prince de la Tour d'Auvergne, March 25, 1865.

[‡] Convention, Great Britain and France, February 13, 1843; Act of Parliament, August 22, 1843; Treaty, Great Britain and the United States, August 9, 1842; Act of Parliament, August 22, 1843; Treaty, France and the United States, November 9, 1843; Act of Congress, August 12, 1848.

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of which Treaty provides that the ships of Monaco shall enjoy in French ports the same treatment as French ships; that on receiving this Convention, your Lordship consulted the Lords of Trade as to the expediency of addressing to Lord Cowley the instruction of which draft was inclosed, together with a letter from the Board of Trade, conveying their views in this matter; and Mr. Hammond was also pleased to inclose a further despatch from Lord Cowley, calling attention to an article in the "Moniteur," containing certain explanations as to the nature of the Convention, and Mr. Hammond was to request that I would take these papers into consideration, and report to your Lordship my opinion whether the facts of the case are such as to call for any or what representation on the part of Her Majesty's Government to the Government of France.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That the article in the "Moniteur" does not deny that if by this Treaty of France with Monaco, a mutual reduction of duty in the Tariffs of France and Monaco was stipulated for, other States having Treaties with France containing a "most favoured nation" clause would be entitled to claim to be placed upon the same footing; but it argues that the Treaty with Monaco is of a different character, having simply for its object to effect, as the Ist Article shows, a mere Customs Union ("Union Douanière"), and to extend the line of French Custom-houses to the limits of the Principality of Monaco.

The consequences of this argument are alarming, beecause it might be easily extended so as to include the Kingdom of Belgium in the line of French Custom-houses; but apart from this consideration, the argument does not seem to me, having regard to the facts of the case, satisfactory.

The true question is, has France by this Treaty conceded to a foreign State certain advantages not enjoyed by other States with respect to Customs duties? Now, the Treaty recognizes the Principality of Monaco, as in every respect an independent State, and by the Ist Article, the Prince of Monaco reserves to himself the right of concluding Treaties, not contradictory of this Convention, with foreign States. The Prince, by Article II, is to appoint a "Capitaine de Port," who is to receive the duties payable by all foreign States, except France.

Under the name of Customs Union, therefore, a foreign State is practically admitted to the enjoyment of certain privileges with respect to the French Tariff in French ports, from which other foreign States are excluded.

It is quite obvious that the change of *name* on which the "Moniteur" so much relies, is of no importance if the *thing* be the same.

If, indeed, the Principality of Monaco had become part of the realm of France, as Scotland became part of the realm of England, or by any lawful process of incorporation, whereby its identity as a State was lost, and there was a French law that the same system of Custom-houses and duties should prevail throughout the French Empire, it might, perhaps, be plausibly contended that no *casus fœderis,* with respect to States possessing a Treaty with a "most favoured nation" clause, had arisen. But this is not the case, and it is difficult to escape from the conclusion that, in fact and reality, the little State of Monaco has obtained, upon whatever grounds and under whatever phraseology, the reduction or suppression of a duty in the French Tariff, to which third States with "a most favoured nation" clause ought, as a matter of strict right, to be admitted to share.

The question is, however, practically of such very little importance that I would humbly suggest that while it might perhaps be expedient that the view which Her Majesty's Government take of this matter should be intimated to the Government of France, no formal representation need be made on the subject, unless, indeed, other States, putting a like construction upon the Treaty, should claim and obtain a recognition of their right to a reduction of the French Tariff.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 62.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received February* 22.)

My Lord, *Lincoln's Inn, February* 22, 1866.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 30th ultimo, stating that he was directed by your Lordship to transmit to us printed copies of drafts of Treaties of Extradition which have been proposed to your Lordship by the Prussian Ambassador and the Hanse Towns Minister at this Court; that in the margin of the latter some amendments in red ink were suggested; and Mr. Layard was to request that we would take both drafts into our consideration, and report to your Lordship our opinion as to their respective stipulations.

Your Lordship further directed Mr. Layard to request, that as it is probable that demands on the part of other countries may be made for Treaties of Extradition with Great Britain, we would consider and report our opinion with reference to the two drafts now submitted to us, as to what form of Articles it would be desirable to adopt for such Treaties generally.*

Mr. Layard was also pleased to inclose notes from the Hanse Town Minister (dated the 8th and 10th ultimo), containing copies of convictions, according to the laws of the three Hanseatic Republics.

In obedience to your Lordship's commands we have taken these drafts into consideration, and have the honour to report—

That with respect to the draft Treaty with Prussia, we think it proper to be executed.

With respect to the Treaty with the Hanse Towns, we think that in Articles I and II the alterations in red ink (already made) should be adopted, and that they should also be adopted in sections 1 to 8 of Article III; but that the word "burglary" should be omitted at the end of section 7; sections 9 and 10 should not be omitted. We think that, as to Article IV, the red ink substituted Article should be adopted; the red ink alterations should be adopted also for Article V, and also for Articles VI, VII, VIII, IX, X. Article XI should be omitted. As to Article XII, six months does not appear too long a time.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 63.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received February* 22.)

My Lord, *Lincoln's Inn, February* 22, 1866.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 1st instant, stating, that with reference to the question now pending between Her Majesty's Government and that of France, respecting the denunciation by the latter of the Extradition Treaty of the 13th February, 1843, he was directed by your Lordship to call our attention to that Treaty, which, together with the Act of the 6 & 7 Vict., cap. 75, we should find in the 6th volume of Hertslet's Treaties, pages 344 and 448, and also to the further Act of the 8 & 9 Vict., cap. 130, sent to us in Mr. Hammond's letter; and he was to request that we would report to your Lordship our opinion, at our early convenience, whether, under the Treaty and Acts, as they now stand, there could be accepted by the police magistrates in this country, in support of a demand of extradition, and held to be sufficient for the purpose of extradition, in lieu of a "mandat d'arrêt," a regular "acte d'accusation," giving a recital of the whole crime, and examined, before it was passed, by competent French judges, and, if required, containing the names of the witnesses and the depositions made by them; and if such an "acte d'accusation" could be accepted as sufficient under the existing Treaty, whether there would be any objection to a person charged under the Extradition Treaty, being at once arrested and held in custody until the "acte" could be drawn up, and produced before the magistrate; and that, if we should be of opinion that such an "acte d'accusation" could not be accepted under the Acts of Parliament as they now stand, your Lordship would be glad further to receive our opinion whether there would be any objection to submitting to Parliament a Bill enabling it to be accepted, and whether such a Bill would be likely to be objected to.

Mr. Hammond further stated, that in the printed papers which he transmitted to us on the 29th ultimo, we should find full particulars respecting the purport of an "acte d'accusation."

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

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* See, as to this point, our Report, in answer to Mr. Hammond's letter of the 1st February, as to the French Treaty.

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That we are of opinion that an "acte d'accusation" could not, under the present law, be accepted as sufficient to warrant the extradition of an accused person. But we see no valid objection to submitting to Parliament a Bill enabling magistrates to commit accused persons, with a view to extradition, upon an "acte d'accusation," of a description to be defined in the Bill.

The principal requisites to be insisted on in such an "acte d'accusation" appear to us to be, that it should clearly describe the offence, so as to bring it within the terms of the Treaty, and purport to be drawn up upon a judicial investigation of evidence sufficient to establish a *primâ facie* case of guilt.

We cannot help thinking that such a Bill, if properly explained, would be likely to pass without much opposition.

We may add, that it appears to us feasible to prepare a general measure giving Her Majesty power to conclude Conventions with foreign Powers on certain terms: first, on the terms of the existing Convention with French or America; secondly, on the terms of accepting the "acte d'accusation" (to be defined as we have before described), in lieu of the evidence now required; thirdly, on the terms of delivering up convicted criminals, upon their conviction being duly certified, after a public trial, at which the accused was present.

Counter stipulations may be properly insisted upon, that the criminal surrendered shall be tried only upon the charge on which he was surrendered; or, at all events, on no other charge than such as are within the Treaty.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 64.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received February* 23.)

Lincoln's Inn, February 23, 1866.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 14th instant, stating that with reference to his letter of the 1st instant, requesting our opinion on two points bearing on the question of extradition between this country and France, he was directed by your Lordship to transmit to us an extract of a despatch from Lord Cowley reporting two questions put to him on the subject by M. Drouyn de Lhuys, and Mr. Hammond was to request that we would take the same into consideration and acquaint your Lordship, at our early convenience, with our opinion as to the answer which should be returned to Lord Cowley; and that, as bearing on this matter, Mr. Hammond was pleased to inclose, for our perusal, a Memorandum of what passed at a meeting held at the Foreign Office on the 8th instant to consider the question of extradition between this country and France.

In obedience to your Lordship's commands we have considered this case, and have the honour to report—

That we think a simple French warrant, without evidence, would not be sufficient, as the law now stands, to enable a person whose extradition was demanded to be detained; but if Parliament were asked to sanction the substitution of an "acte d'accusation," founded upon and stating the effect of evidence for the evidence now required by law, it would not (in our opinion) be unreasonable or improper also to provide that the person demanded might be detained in custody upon a simple "mandat d'arrêt," for a short time, to be limited, in order to enable the necessary "acte d'accusation" to be drawn up and produced against him.

For this purpose, however, some evidence of identity would still be indispensable.

As to the second question of M. Drouyn de Lhuys, we think that Parliament might not unwisely or improperly be asked to sanction the extradition of an escaped convict convicted, at a public trial at which he was present, of any of the crimes mentioned in the Treaty.

We think it necessary to observe that we have never understood it to be now the law (as seems to have been assumed in the recent Conference at the Foreign Office) that a person whose extradition was demanded could not controvert before the magistrate the truth of the depositions produced against him, or produce before the magistrate exculpatory evidence. The contrary view has been invariably acted upon in all the recent cases under the Treaty with the United States, which arose during the late war in

America, whether in this country or in the Colonies; and we think it might be very dangerous to deprive persons accused of the power of producing evidence in such cases.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 65.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received March* 10.)

Lincoln's Inn, March 10, 1866.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 12th January last, stating that with reference to our Report of the 29th of December, respecting an application made by an English solicitor in Paris for permission to inspect certain documents in the French Foreign Office, bearing upon a suit pending at Calcutta, and in which we advert to the practice observed in France in regard to "Commissions Rogatoires," he was directed by your Lordship to transmit to us a despatch from Earl Cowley (No. 37) in reply to one addressed to his Excellency, of which the draft was therewith annexed (No. 16), embodying our observations on this subject: and Mr. Hammond stated that we should perceive that Her Majesty's Ambassador points out that the facts do not bear out our observations in regard to the practice and feeling in France with reference to such "Commissions Rogatoires;" and he was, therefore, again to submit to us the papers in this case,* to afford us the opportunity of making any alteration in our Report that we may desire to do, and he was, at the same time, to say that your Lordship would be glad to be furnished with our opinion whether any, and if so what, steps should be taken with regard to the question raised by Lord Cowley whether some means should not be found of making it obligatory on Tribunals in this country to have recourse to the intervention of the Foreign Office whenever it may be found necessary to issue a "Commission Rogatoire" to take any evidence in France.

The papers referred to in the inclosure of Lord Cowley's despatch were forwarded to us therewith for our further information.

In obedience to your Lordship's commands we have further considered this case, and have the honour to report—

That we were not aware that any formal objection had ever been taken to the execution of voluntary Commissions in France, while, as a matter of fact, it is certain that a great number of such Commissions have been so executed; but after reading the letter of Lord Cowley of 9th January, 1866, we should wish to withdraw these words, "it is to be observed that no exception has hitherto been taken in France to this practice," from our former Report, and we think they should be omitted in the instructions to be given to Earl Cowley.

With respect to the further question submitted to us, namely, whether the Tribunals in this country should not be obliged to execute Commissions in France solely by application to the French authorities in the manner pointed out by M. Drouyn de Lhuys, we think that an Act of Parliament would be necessary to render such a mode of procedure legally binding upon the Tribunals of this country; but we see no reason why an Act of Parliament might not be framed having for its object to regulate the manner of issuing and executing Commissions from the Courts of this country, for the examination of witnesses abroad, so that in France or in another foreign country to which, by Order in Council, the Act might be made applicable, such Commissions should be transmitted and certified to the proper political or judicial authorities of such country in such form and manner as Her Majesty by Order in Council may direct, and not otherwise, and may be made conformable, both as to the forms of the Commissions themselves and as to the mode of their execution, to the laws and usages of such foreign country. Should this course be adopted we think that the power to be so given to Her Majesty in Council had better be general, and that its application to France, or to any other particular country, should be the subject either of formal Convention or of some other mode of diplomatic agreement which would prescribe the detail of the practice to be followed in each case, so that such detail might be embodied in the Order in Council to be made thereon.

It is to be observed that by our own statute 19 and 20 Vict., cap. 113, "An Act to provide for taking evidence in Her Majesty's dominions in relation to civil and commercial matters pending before foreign tribunals," it is provided that the Superior Courts in Her Majesty's dominions shall have power, at the request of a competent foreign Court, to enforce the examination of witnesses in this country in aid of the jurisdiction of such foreign Court.

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* Mr. Grey, No. 133; Law Officers, December 29.

In this statute a provision is made for the personal protection of the witness from being compelled to criminate himself, and any similar conditions might, of course, properly be insisted upon by any foreign country in which witnesses might be held bound to submit themselves to examination in aid of civil proceedings in any British Courts.

Arrangements of this nature would facilitate the administration of justice in this country, while they would obviate the objection stated by Lord Cowley to be felt in France to the execution of voluntary Commissions as involving the exercise of some kind of jurisdiction in the foreign State. We do not indeed think that this objection is generally well-founded, inasmuch as no claim is made to exercise any compulsory authority as to obtaining evidence, or to make use of the evidence obtained within the territorial limits of the foreign State. Some weight, however, ought to be ascribed to the objection, in any particular instance, in which a foreign State may have prohibited, by its municipal law, the administering of oaths except by some defined public authority, and (whether such a law exists in France or not, as to which we have no information) we think it is clearly desirable to avoid all difficult international questions of this kind.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 66.

The Law Officers of the Crown to the Earl of Clarendon.—*(Received March* 13.)

Lincoln's Inn, March 12, 1866.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 28th ultimo, stating that he was directed by your Lordship to inform us that, upon the receipt of our Report of the 23rd ultimo, referring to certain questions put by the French Minister for Foreign Affairs to Earl Cowley on the question of the Extradition Treaty, your Lordship thought it desirable to transmit an extract of the concluding portion to Sir Thomas Henry, for his observations as to the practice observed in regard to allowing persons whose extradition is demanded to controvert before the magistrate the truth of the depositions produced against them, or to produce before the magistrate exculpatory evidence; and Mr. Layard was pleased to transmit to us two letters in reply from Sir Thomas Henry, dated the 26th and 27th ultimo, and to state that your Lordship would be glad to be favoured with any further remarks, if we had any to offer upon the subject. Our former Report was also inclosed for convenience of reference.

In obedience to your Lordship's commands we have taken this case into our further consideration, and have the honour to report—

That we adhere to the observations which we had the honour to make on this subject in our former Report. By those observations we did not mean to imply that the magistrate ought "to try the case;" that is to say, to determine whether the prisoner was innocent or guilty; but that, before committing him to gaol, with a view to extradition, the magistrate ought to be satisfied upon the whole of the evidence, including that of the prisoner (if he produces any), that a case sufficiently strong is established to justify the committal of the prisoner for trial, if the offence charged had been committed in this country.

We agree with Sir Thomas Henry to this extent, that where the evidence is conflicting in material particulars, it will generally be the duty of the magistrate to send the case to be investigated by another Tribunal; but we cannot subscribe to his opinion (as we understand it) that the magistrate is in all cases bound to give absolute credence to the whole of the evidence for the prosecution, and to disbelieve any evidence for the defence which may in any degree conflict with it. If this were so, the right which Sir Thomas Henry in his letter of the 27th of February admits the prisoner to possess, of calling witnesses to *controvert* the evidence for the prosecution, would be wholly nugatory.

It is possible to conceive cases in which *primâ facie* evidence for the prosecution might be contradicted by evidence for the prisoner so conclusive that it would be manifestly unjust to surrender him; and we apprehend that, under similar circumstances, the magistrate would not think it his duty to commit for trial a person charged before him with an offence against the laws of this country.

The provision that, in extradition cases, depositions may be substituted for *vivâ voce* evidence appears to us to have no bearing on the admissibility of evidence for the defence; if it had, we should conceive it to bear in favour of the admissibility of such evidence, inasmuch as written depositions are (as a rule) less reliable, and more open to be controverted than *vivâ voce* testimony.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 67.

The Law Officers of the Crown to the Earl of Clarendon.—*(Received March* 23.)

Lincoln's Inn, March 23, 1866.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 13th of March instant, stating that he was directed by your Lordship to transmit to us a copy of a note from the French Minister for Foreign Affairs to the French Ambassador at this Court, and which had been communicated to him by the latter, in which the question is raised as to the treatment of neutral property under the flags of Spain, Chile, and Peru, during the continuance of hostilities between the former Power and those two Republics, regard being had to the fact that Chile and Peru have given their adhesion, which Spain has not done, to the Declaration of the Congress of Paris of the 16th of April, 1856, that "neutral goods, with the exception of contraband of war, are not liable to capture under enemy's flag."

Mr. Layard was also pleased to request that we would take M. Drouyn de Lhuys' note into our consideration, and favour your Lordship with our opioion, at our early convenience, upon the points raised in it.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That the French Minister for Foreign Affairs refers in his letter to that Article only of the Declaration of Paris which, relinquishing the peculiar pretensions formerly advanced in the French Ordinances, recognized and established the ancient general rule of maritime international law, that neutral goods in enemy's ships are not liable to capture. Great Britain and most other European nations have always recognized and acted upon this rule, except when its application may have been displaced by particular international Conventions. It is a rule established in the interest of neutrals, and not of belligerents; and we think that all the Powers, parties to the Declaration of Paris, are bound to respect and act upon it, in favour of the subjects of neutral States who are parties or who have acceded to the Declaration, even when they may be engaged in war with any Power which has not acceded thereto. We think, therefore, that Chile and Peru are now bound, as between themselves and all such other States, as, having acceded to the Declaration of Paris, are neutrals in the present war, to hold the goods of subjects of such neutral States, if found on board Spanish vessels free from capture, notwithstanding the fact that Spain has never acceded to that Declaration.

We are further of opinion that, by the ancient general rule of maritime international law, Spain is also bound to respect goods proved to be neutral, on board Chilean or Peruvian vessels, except in cases in which she may be entitled, under any particular Treaty or Convention with the neutral Power to whose subjects they may belong, to treat them as enemy's goods.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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No. 68.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received April* 6.)

Lincoln's Inn, April 4, 1866.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 20th March ultimo, stating that he was directed by your Lordship to transmit to us for our perusal, in case we should have any observations to offer upon it, a letter dated the 17th ultimo which has been received at the Foreign Office, inclosing copy of an instruction addressed by Mr. Secretary Cardwell to the Governor of British Guiana, relative to the measures to be taken to prevent the immigration of escaped foreign convicts into that Colony, a subject discussed in our Report of the 18th of December last.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That the instructions given by the letter of Mr. Secretary Cardwell to the Governor of British Guiana appear to us to have been in all respects proper.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 69.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received April* 11.)

Lincoln's Inn, April 11, 1866.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 4th instant, stating that with reference to our letter of the 28th of February last, expressing our concurrence in the Draft Order in Council for carrying out the provisions of the Act lately passed relative to the navigation of the mouths of the Danube, he was directed by your Lordship to transmit to us the accompanying copy of a Protocol, signed at a meeting of the Conference at Paris on the 28th ultimo, sanctioning the provisions of the Act in question; and to request that we would favour your Lordship with our opinion whether any reference should be made to this Protocol in the proposed Order in Council above referred to, a fair draft of which was inclosed.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That we think it is necessary to refer to the Protocol, and to the amendments thereby made in the Public Act; and we have altered the draft Order in Council accordingly.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 70.

The Queen's Advocate to the Earl of Clarendon.—(*Received April* 14.)

Doctors' Commons, April 14, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 7th instant, stating that he was directed by your Lordship to transmit to me a correspondence, as marked in the margin, with reference to the circumstances under which a convoy of merchandize belonging in great part to British merchants, and which appears to have been despatched from Tampico to the interior on the faith of assurances of protection given by the French Commandant of a "contra guerilla," had fallen into the hands of the guerillas.

That I should perceive that the question has arisen as to what course, if any, the British and French Governments should pursue, in regard to this affair, in the interests of British and French merchants who have suffered by this occurrence, and that the French Government are of opinion that under the circumstances it would not be equitable to fix upon the Mexican Government the responsibility of what has taken place; and Mr. Hammond was pleased to request that I would take these papers into consideration, and furnish your Lordship with my opinion upon this subject.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That in order to render the Mexican Government responsible for the loss of this merchandize, it would, having regard to the particular circumstances, be necessary to prove that the Capitaine Jaquin, acting under their express authority, guaranteed the safe convoy of these goods. It does not appear to me that this proposition can be established, and I am inclined to agree with the French Government that it would be inequitable to hold the Mexican Government responsible for a calamity incident to the disturbed state of the country, of which the foreign merchants were fully cognizant.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 71.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received May* 8.)

Lincoln's Inn, May 8, 1866.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 26th of April ultimo, stating that, with reference to our Reports, dated as in the margin,* on questions arising out of the denunciation by the French Government of the Extradition Treaty between the two countries, he was directed by your Lordship to transmit to us therewith a despatch from Her Majesty's Ambassador at Paris, giving an account of an interview which, in company with Sir Thomas Henry, who was visiting Paris, he had with M. Drouyn de Lhuys, the French Minister of Justice, and one of the Secretaries of the Department of Justice, with the object of ascertaining whether some means might not be devised for making the existing Treaty and Act of Parliament operative for the purpose for which they were designed.

Mr. Hammond was also pleased to state, that Sir Thomas Henry, since his return to England, has addressed to your Lordship the letter which was inclosed; that we should perceive that he is of opinion that by a slight alteration in the second section of the Act of the 6 and 7 Vict., cap. 75, the difficulty which now prevents the French Government from supporting their demands for extradition by sufficient evidence might be got over.

Mr. Hammond was further pleased to state that Sir Thomas Henry, as we should see, has framed the draft of an Act which he considers would be sufficient for the purpose, and he was to request that we would take the matter into our early consideration, and report our opinion whether the proposed Act would be sufficient; and, if so, whether it might be submitted to Parliament with a reasonable expectation of its passing through both Houses; and Mr. Hammond further stated that we should observe that the Act, as drawn by Sir Thomas Henry, applies only to the French Treaty; but as the Act of the 6 and 7 Vict., cap. 76, for giving effect to the Extradition Treaty with the United States, and the Act of the 25 and 26 Vict., cap. 70, for giving effect to the Treaty with Denmark, severally contain a provision for the admission of depositions in lieu of oral testimony, it will be for our consideration whether a new Act amending the provision on that point as regards the Act giving effect to the Treaty with France, should not be so worded as to be applicable to the same provision in the Acts for giving effect to the Treaties with the United States and with Denmark.

Mr. Hammond was further to suggest that we might request Sir Thomas Henry to communicate personally with us on the subject.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That we think the best course which Her Majesty's Government could pursue would be to introduce into Parliament a short Bill, applicable to all cases of extradition under Treaties between this Government and foreign States, which might enable Her Majesty's Government to introduce into all such Treaties the amendment which Sir T. Henry has sketched out with regard to the admission in evidence of certified copies of official

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* January 9, February 1, February 22, February 22, February 23, and March 12: see Nos. 60, 62, 63, 64, and 66.

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or judicial documents; and in that case the draft suggested by Sir T. Henry might, with a very slight alteration, be put into the form of a Bill for this purpose.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 72.

The Queen's Advocate to the Earl of Clarendon.—(Received May 28.)

My Lord, *Doctors' Commons, May* 26, 1866.

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 15th instant, stating that he was directed by your Lordship to transmit to me a correspondence which has passed between Her Majesty's Government and the Government of the Emperor of the French, and between the Foreign Office and the Admiralty, relating to certain amendments proposed to be made in the identical instructions issued by the British and French Governments in 1859, for the guidance of their naval officers engaged in the suppression of the Slave Trade on the African coast; and to request that I would take these papers into consideration, and report to your Lordship whether I see any objections to the amendments proposed.

In obedience to your Lordship's commands I have the honour to report—

That after a careful consideration of all the correspondence that has passed between the Governments of Great Britain and France on this important subject, I have the honour to state my opinion that I do not see any objection to the amendments which it is proposed to make in the instructions issued to the naval officers of both countries.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 73.

The Law Officers of the Crown to the Earl of Clarendon.—(Received June 7.)

My Lord, *Lincoln's Inn, June* 7, 1866.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 21st May last, stating that he was directed by your Lordship to transmit to us a despatch from Her Majesty's Ambassador at Paris (No. 660), in reply to a despatch also inclosed (No. 681), reporting a conversation with M. Drouyn de Lhuys on the subject of the late bombardment of Valparaiso by the Spanish naval forces; and stating that he was to request that we would consider and report to your Lordship our opinion on the point stated by the French Minister as to the liability of the Spanish Government for damage done to neutral property; and further stating, that the printed correspondence inclosed in the said letter would show under what circumstances the bombardment took place.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That the bombardment of Valparaiso was an act of war, legitimate in this sense, that it was permitted to the belligerent Power by the law of nations, however much at variance it might be with the public opinion of the present day.

The belligerent was not bound, in exercising the right of bombardment, to distinguish between hostile and neutral property in the same place (that place being a port or town of the enemy), and exposed to the same danger.

We have reported to this effect in the cases of British property destroyed by the United States' army, in the sacking and destruction of towns under the control of the Southern Confederacy.

Moreover, it appears, that on the 27th March, warning was given by the Spanish Admiral to the foreign Consuls of his intention to resort to this measure of hostility on the 31st; so that, for four days, an opportunity was afforded for the withdrawal of neutral property from the danger which threatened the city. Moreover, Admiral Denman writes, (paragraph 3, April 2, 1866), "I do not believe a single shot was fired on the part of the town where most of the English merchants reside; and their losses consist of the goods burnt in the Custom-house, where there was a large amount of British property."

Under these circumstances we are of opinion that compensation cannot properly be demanded from the Spanish Government for the injury inflicted on neutral property by the bombardment of Valparaiso.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 74.

The Law Officers of the Crown to the Earl of Clarendon.—(Received June 25.)

My Lord, *Lincoln's Inn, June* 25, 1866.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 12th instant, stating that your Lordship had received from Secretary Sir George Grey the draft of a Bill respecting Extradition Treaties which we had been requested to prepare.

Mr. Hammond was also pleased to state that as Sir Thomas Henry has had personal communication with the French Government on the subject, your Lordship thought it desirable, before consulting the Lord Chancellor, as suggested by Sir George Grey, to let Sir Thomas Henry see the Bill, and that gentleman, as we should perceive from his letter therewith inclosed, has suggested certain alterations in it.

Mr. Hammond was therefore pleased to request that we would, at our earliest convenience, consider Sir Thomas Henry's suggestions, and favour your Lordship with our opinion as to the expediency of adopting them.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we are of opinion that it is expedient to adopt the alterations suggested by Sir Thomas Henry, and embodied in his draft of the Bill inclosed to Mr. Hammond, and submitted to us with these papers.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 75.

The Law Officers of the Crown to Lord Stanley.—(Received September 6.)

My Lord, *Lincoln's Inn, September* 3, 1866.

WE were honoured with your Lordship's commands signified in Mr. Hammond's letter of the 3rd August ultimo, in which he stated that he was directed by you to transmit to us the accompanying letter from the Colonial Office, dated the 28th July ultimo, inclosing copies of correspondence on the subject of the right claimed by the French Consul at Galle, Ceylon, to the assistance of the Government of that Colony, to enable him to detain in the local jails French subjects who have been convicted by him of offences committed on board ship; and to request that we would take these papers into our consideration and favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken the papers into our consideration, and have the honour to report—

That we are of opinion that the Queen's Advocate of Ceylon is erroneous. We think that a steamer of the Messageries Impériales is not a commissioned vessel in the sense that a ship of war is, for purposes of international law. But be this as it may, we think that the Fiscal has no legal authority to execute the sentence of the French Consul at Galle by causing to be imprisoned a French subject convicted by a French Consul of an offence on board of or connected with a French ship, whether of a public or private character.

The Statute 15 Vict., cap. 26, enables British authorities in certain circumstances to "aid in apprehending," and "order to be conveyed," foreign seamen to the foreign ship from which they had deserted; but even for this very limited purpose a Statute was required, as the act would otherwise have been illegal by the common law of England.

It may be questioned whether it would or would not be expedient as a matter of comity to confer power upon the Fiscal at Galle, or on the proper authority in any

British port, to execute the sentence of a foreign Consul; but we are of opinion that such power could not be conferred without the authority of the Legislature.

We have, &c.
(Signed) H. M. CAIRNS.
W. BOVILL.
ROBERT PHILLIMORE.

No. 76.

The Law Officers of the Crown to Lord Stanley.—(*Received November* 1.)

My Lord, *Lincoln's Inn, October* 30, 1866.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 17th instant, stating that he was directed to transmit to us the accompanying correspondence with the Colonial Office and with Her Majesty's Ambassador at Paris, relative to the transfer from Canada to France, nominally under the Extradition Treaty between the latter country and Great Britain, of M. Lamirande, who is accused of having committed forgery at Poictiers; and to request that we would take the case into consideration, and furnish your Lordship with our opinion whether the facts stated in the depositions contained in the Colonial Office letters of the 29th ultimo and 17th instant, assuming them to be true and incapable of any explanation, would warrant Her Majesty's Government in making any further communication to the Government of France with a view to the re-delivery of M. Lamirande to British authorities.

We are also honoured with Mr. Hammond's letter of the 26th instant, stating that with reference to his letter of the 17th instant, on the subject of the transfer of Lamirande from Canada to France, he was directed to inclose a further letter from the Colonial Office inclosing copies of the explanations which have been received from Lord Monck with regard to this matter; and to request that we would take these papers into consideration, and in reporting on the point already specifically referred to us in Mr. Hammond's previous letter, we would at the same time furnish your Lordship with our opinion on the separate points adverted to in the letter from the Colonial Office, namely, how far the facts of Lamirande's case, and the documents on which his surrender was demanded, would, under the Extradition Treaty, have warranted that surrender, assuming the proper procedure had been adopted? Secondly, whether, and in what respect, if any, the course adopted by the Canadian authorities, and the persons employed by them, in taking Lamirande out of the Montreal jail, and sending him through Great Britain to France, is blameable, and on whom the blame would appear to rest? And, thirdly, what course should be adopted by the Secretary of State for the Colonies in respect to the Canadian Government?

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

1. In answer to your Lordship's *first* question, we have to observe that we have not before us the materials upon which the warrant of commitment was founded, nor have we the laws of Canada. We cannot, therefore, definitely say whether they were sufficient to justify the extradition. It appears by the warrant of commitment that Lamirande was charged "with the crime of forgery by having, in his capacity of cashier of the branch of the Bank of Franch at Poictiers, on the 12th day of March, 1866, made false entries in the book of the said Bank, and thereby defrauded the said Bank of the sum of 700,000 francs." And we must observe that the facts here stated do not constitute the crime of forgery according to the English Criminal Law, with which we presume the Canadian Law is in harmony.

2. In answer to your Lordship's *second* question, we have observe that it appears to us to affect three classes of persons:—(1.) Those who obeyed the warrant of the Governor General. (2.) Those who made application for it. (3.) The Governor-General who issued it, and the legal officers who advised him to do so.

(1.) With respect to the first class, the warrant of the Governor-General was, it must be assumed, regular and formal, and the officers to whom it was addressed were therefore bound to obey it.

(2.) With respect to the second class, by which we mean the legal agents of the prosecution, whatever may be thought of their conduct in a moral point of view, we cannot say that there was anything technically speaking irregular in the extreme haste with which they conducted their proceedings, or that they have on this score rendered themselves amenable to penal consequences.

3. In the third class we include (*a*) the Governor-General, and (*b*) the Attorney-and Solicitor-General.

We understand that the Bank of France was represented by the two partners of the Attorney-General, and the Crown by Mr. Ramsay and the Deputy Clerk, Mr. Schiller. Further, that the person who advised the issuing of the warrant by the Governor-General was the Solicitor-General.

With respect to the Governor-General we are restrained, after a perusal of his despatch to Lord Carnarvon, and of the extract of his letter, dated the 12th of October, to say, that he appears to us to have acted with undue precipitation in issuing the warrant of extradition.

His Excellency had been apprised on the 16th or 17th of August that the advisers of Lamirande were prepared to insist that the case was not a proper one for extradition, and to apply for a writ of *habeas corpus;* and his Excellency had undertaken that full time should be allowed for these proceedings to be taken.

The prisoner was committed late (half-past 7) on the evening of the 22nd. Notice of application for the writ of *habeas corpus* was given on the morning of the 23rd. The petition for the writ was presented and argued on the 24th. The case was adjourned till the morning of the 25th. And we observe that a suggestion having been made in Court that the extradition might be proceeded with if the writ of *habeas corpus* did not issue on that day, the suggestion was promptly and indignantly repudiated "as a calumny" by the Crown prosecutor.

In this state of things, on the evening of the 24th, a warrant of extradition was signed by the Governor-General, and on the same night the prisoner was given up under that warrant to the Agents of the French Government.

The Governor-General states that he believes that "abundant time was allowed the prisoner to obtain the writ of *habeas corpus* if his Counsel had used ordinary diligence." We are quite unable to concur in this view.

With respect to the other official persons who wc think must have been cognizant of the proceedings in Court relative to the *habeas corpus,* we have not evidence before us that would warrant us in distributing among them the amount of blame which arises from the transaction.

We think upon the present statement that their conduct is open to grave censure, and requires further investigation.

With respect to any application being made to the French Government, we think it would be proper that a friendly representation should be made to them that Her Majesty's Government are of opinion that the warrant of extradition in this case was improperly granted during the pendency of legal proceedings on the part of the prisoner, which had for their object to show that the Governor-General had no jurisdiction under the Treaty, and the statute by which the Treaty was put into legal execution. And that Her Majesty's Government, therefore, hope that the French Government will consent to the prisoner being replaced in that position from which he was improperly removed. At the same time we are clearly of opinion that no demand or claim as of right can be made upon the French Government, to whom their own subject, accused of a grave crime, committed in their own territory, has been voluntarily delivered up by the English Government under the provisions of the Treaty subsisting between the two States.

We have, &c.
(Signed) H. M. CAIRNS.
W. BOVILL.
ROBERT PHILLIMORE.

No. 77.

The Law Officers of the Crown to Lord Stanley.—(*Received November* 10.)

My Lord, *Lincoln's Inn, November* 9, 1866.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 2nd instant, stating that your Lordship had before you our Report of the 30th ultimo, respecting the case of Lamirande, when your Lordship received from the Earl of Carnarvon the further papers respecting it which were inclosed, together with the previous papers.

And Mr. Hammond was pleased to request that we would take these further papers into consideration, and report to your Lordship any additional observations which they may induce us to make.

We are also honoured with Mr. Hammond's letter of the 6th instant, transmitting the accompanying letter which has been received from the Colonial Office, inclosing further correspondence from Lord Monck respecting the case of Lamirande.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That with reference to the course to be pursued by Her Majesty's Government in communicating with the French Government as to Lamirande and his trial in France, we are of opinion that a communication should be made to the following effect:—That Her Majesty's Government have ascertained that the warrant of extradition was issued in ignorance that the prisoner had applied to the proper tribunal to order his discharge on the ground that his case was not within the provisions of the Treaty. It appears that while this point was actually under discussion before the Judges, who had adjourned the case to the following morning, the warrant was obtained from the Governor, wholly uninformed of these facts, and who would not have issued it had he been aware of them.

It should also be stated that in the opinion of the Judge before whom the matter was depending, the case of Lamirande did not come within the provisions of the Treaty, and that the prisoner ought not to have been delivered up; and, moreover, that he was carried away under the warrant notwithstanding the personal protest of the Judge.

It should also be stated that Her Majesty's Government were advised that there is good reason to believe that the opinion of the Judge was well founded in law, and that the prisoner ought not to have been delivered up.

We refer to the Report of the Law Officers (October 30) as to the nature of the communication which should be made to the French Government, and beg to repeat our opinion that care should be taken to place the application on the ground of a friendly request, and not on the footing of a claim of right.

We have not yet had sufficient time to report on the conduct of the Canadian officials, as explained in the voluminous papers laid before us since the last Report of the Law Officers.

We have, &c.
(Signed) JOHN ROLT.
W. BOVILL.
ROBERT PHILLIMORE.

No. 78.

The Solicitor-General and Queen's Advocate to Lord Stanley.—(Received November 14.)

My Lord,
Doctors' Commons, November 14, 1866.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 13th instant, stating that he was directed to acquaint us that your Lordship has instructed Her Majesty's Ambassador at Paris to apply to the French Government as suggested in our Report of the 30th October and 9th instant on the case of Lamirande: that a question, however, arises to which your Lordship directed him to request our attention. In the event of the French Government consenting to remit Lamirande to Canada, there to be dealt with according to the decision of the Court on his application for release under the writ of *habeas corpus*, and sending him to this country on his way to Canada in charge of a French police officer, may it not happen that a writ of *habeas corpus*, issued by one of the Judges in this country, on application made on behalf of the prisoner, may be served on the person in whose custody he is, and on the prisoner being brought before the Judge, and the case argued, his discharge ordered by the Judge? How is such a contingency to be met? The French Government would send the prisoner to this country on the faith of no impediment being offered to his being conveyed to Canada, and yet he might be interrupted on the road, and set free by process issuing from one of the Courts of this country:—and that your Lordship would be glad if we would report to your Lordship on this subject at our earliest convenience.

In obedience to your Lordship's commands we have the honour to report—

That we are of opinion that in the event of Lamirande being brought to this country a writ of *habeas corpus* might be obtained from the Courts or a Judge here, with a view to his discharge from custody, and that he might in that way obtain his release before reaching Canada. Indeed, after his arrival in Canada, the writ might equally be applied for to the Court of Queen's Bench in England, although it is probable that the prisoner would prefer applying to Judge Drummond, who has already decided in his favour, and would no doubt at once discharge him.

We think the French Government should be fully apprised that the effect of the prisoner being remitted to Canada would almost inevitably be that he would obtain his release, and that the same result would probably attend an application to the Courts in England in the event of his being brought into this country.

We have, &c.
(Signed) W. BOVILL.
ROBERT PHILLIMORE.

NOTE.—We have sent this Report—in consequence of the absence of the Attorney-General at his re-election—without the signature of the Attorney-General.

W. B.
R. P.

No. 79.

The Solicitor-General and Queen's Advocate to Lord Stanley.—(Received November 14.)

My Lord,
Lincoln's Inn, November 14, 1866.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letters of the 1st, 2nd, 6th, and 7th instant, transmitting various papers and correspondence respecting the case of Lamirande, and requesting that we would take the same into consideration, and report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands we have the honour to report—

That the additional papers submitted to us in this case furnish some information of importance which was not before the Law Officers when they made their first Report. The three most material points which present themselves for consideration appear to be: 1st. Whether Lamirande could properly be delivered up under the Treaty? 2nd. Whether the Governor-General was blameable for issuing the warrant? 3rd. Whether his legal advisers or any of the authorities were to blame?

1st. We are of opinion that the case of Lamirande was not brought within the provisions of the Extradition Treaty, and that he ought not to have been delivered up, although Lord Monck was advised that the case did come within the Extradition Statute.

2nd. With respect to the Governor-General, we think that his present explanation places beyond all doubt the fact of his ignorance that at the time he signed the writ, proceedings for obtaining the *habeas corpus* had been taken. We give him credit for having acted in the most perfect good faith. At the same time we continue to think that it is much to be regretted that after the intimation which he received on the 17th of August of the intention of the prisoner to dispute the legality of the proceeding, and the assurance which he then gave that time should be allowed for this purpose, that a little longer time should not have been allowed, or at least that some inquiry was not made by his Lordship as to what was taking place at Montreal. It is a very grave matter that a prisoner, though a foreigner, should have been deprived of the constitutional mode of obtaining a judicial decision on the legality of his imprisonment.

3rd. We find no evidence upon which any blame can fairly be imputed to the Canadian Attorney-General, though the fact that his partner was acting for the French Government in the case has not unnaturally given rise to suspicion and observations. With respect to Mr. Ramsay, who acted for the Attorney-General, having regard to the statement which Mr. Ramsay has made, and the explanation which he has now offered, we think that he is not liable to the charge of improper conduct. But if it should hereafter appear that either on the 23rd or the 24th of August he was in communication with the Solicitor-General upon the subject, or took any part in directing the issuing or in the execution of the warrant, we should entertain a different opinion. We think also that further explanation is required as to the officer having parted with the warrant whilst the case was still under investigation before the Judge.

With respect to the Solicitor-General we do not find sufficient explanation of his conduct in taking the warrant to the Governor-General and inducing him to sign it. We must observe also that the explanation as to the fact of the warrant having been sealed at Ottawa on the 23rd, and taken by the Solicitor-General to the Governor-General, and signed by him at Quebec on the forenoon of the 24th, is not satisfactory, more especially when it is remembered that it was, or ought to have been known, that

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twenty-four hours' notice was required for the application for a writ of *habeas corpus*, and that the Judge, by the Canadian law, is, we believe, allowed forty-eight hours to give his decision. In other respects we desire to adhere to the views expressed in the first Report of the Law Officers to your Lordship. There seems to have been throughout an undue zeal on the part of some of the authorities to deliver up the prisoner to the French Government, though we have no doubt that they were actuated by the desire that a great criminal should not be allowed to escape from Canada as he had already done from France and the United States, and that the Treaty engagements of Great Britain with France should be satisfactorily fulfilled.

We have, &c.
(Signed) W. BOVILL.
ROBERT PHILLIMORE.

NOTE.—In consequence of the absence of the Attorney-General, on account of his re-election, he has had no opportunity of reading this Report, but we have reason to believe that he would concur in it; and as the case is very pressing, we have thought it better to forward it without waiting for the signature of the Attorney-General.

W. B.
R. P.

No. 80.

The Solicitor-General and Queen's Advocate to Lord Stanley.—(Received November 15.)

My Lord, *Lincoln's Inn, November* 15, 1866.

WE are honoured with your Lordship's commands signified in Mr. Hammond's two letters of yesterday's date, the one stating that he was directed by your Lordship to transmit to us the accompanying copy of a letter from Lord Monck, which had been received that day from the Colonial Office, inclosing the copy of an affidavit in Lamirande's case referred to in a previous despatch from the Governor-General, and the other transmitting, for our consideration, a copy of a despatch received that morning from Earl Cowley, respecting a conversation with the French Minister for Foreign Affairs on the same subject.

In obedience to your Lordship's commands we have considered these further papers, and have the honour to report—

That we have perused the affidavit made by the French Inspector-Principal of Police, and that it does not affect the Reports which we have had the honour to make on this subject.

That with respect to the conversation between Earl Cowley and M. de Moustier, we have to observe that it appears to us impossible to deny the force of the reasoning of the French Minister for Foreign Affairs.

It must be admitted that if the situations were reversed, and the restoration of a French subject given up under the Treaty of Extradition, and about to undergo trial before an English tribunal, were demanded or requested by the French of the English Government, that the latter would be constrained to reply that the Executive Government had no power to remove a prisoner from the judicial authority to which he had been submitted, or in any way to stop the course of justice with respect to him, by whatever error on the part of the French authority he might originally have been placed within the jurisdiction of the Court.

We think, therefore, that the refusal of the French Government to deliver up Lamirande ought not to be considered as affording any ground of offence whatever to the Government of Her Majesty.

We have, &c.
(Signed) WILLIAM BOVILL.
ROBERT PHILLIMORE.

P.S.—We have thought it better not to delay this Report for the return of the Attorney-General, who is engaged in his re-election.

W. B.
R. P.

No. 81.

The Attorney- and Solicitor-General to Lord Stanley.—(Received November 16.)

My Lord, *Temple, November* 16, 1866.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 15th instant, stating, that it being apparently essential, with reference to the case of M. Lamirande, that Lord Cowley should have immediately before him a distinct legal definition of the crime of forgery, he was directed by your Lordship to request that we would inform you, at our earliest convenience, in what manner that crime may be defined, and the bearing of that definition on the use of the word in the Extradition Treaty with France, of which he inclosed a copy, and also upon the statement made by the French Consul-General in his letter and in the deposition of the French police officer Mélin, setting forth the crime of which Lamirande was accused.

Mr. Hammond was also pleased to state that the original "mandat d'arrêt" does not appear among the papers, having probably been returned to the Consul-General according to his request.

In obedience to the commands contained in Mr. Hammond's letter, we have taken this matter into consideration, and have the honour to report—

That forgery, by the common law of England, may be defined to be the fraudulently counterfeiting any written document, in whole or in part, or altering or adding to it and making it falsely appear to be the genuine writing or instrument of some other person with intent to defraud or prejudice another.

That by one of the statutes for consolidating the criminal law, viz., "The 24th and 25th Vict., c. 98," a variety of cognate acts are defined and classed under the general head of forgery, and by various special statutes the counterfeiting or falsification of various public and other documents is also declared to be forgery.

That we think the term forgery in the Extradition Statute would include all these cases.

That a mere false statement in writing which does not purport to be the writing of another person, is not forgery: for instance, if a man fraudulently signs the name of A.B., without authority, to a bill of exchange, it is a forgery; but if he fraudulently signs it in his own name "per procuration of A.B.," having no authority, it is only a false statement and a fraud, but not forgery; so if he makes a false entry in a banker's pass-book as if it were and purporting to be the banker's entry, with a view to defraud, it is forgery; but if he makes a false entry in his own book, and purporting to be his own entry, with the like intent, it is a fraud but is not forgery.

That, according to the opinion of the Court of Queen's Bench, a forgery, to come within the French Extradition Treaty and Statute, must be what would be considered forgery according to the Law of England as well as of France, though this opinion seems to be rather questionable.

That upon the statements made in the letter of the French Consul-General and in the depositions of the French police officer Mélin, it would appear that Lamirande was not charged with or guilty of forgery, or counterfeiting the entry of any other person, but that he was charged with embezzlement and with making fraudulent and false entries in his own books and which would not, in our opinion, be forgery according to the Law of England, within the meaning of the Extradition Statute.

That the original "mandat d'arrêt" was, in the papers formerly submitted to us, alleged to have been stolen by the person who represented Lamirande at the inquiry at New York.

We have, &c.
(Signed) JOHN ROLT.
W. BOVILL.

No. 82.

The Attorney- and Solicitor-General to Lord Stanley.—(Received November 19.)

My Lord, *Lincoln's Inn, November* 19, 1866.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 19th November instant, stating that he was directed by your Lordship to request our opinion on the following point, viz.:—The charge made against M. Lamirande by the French Consul-General in Canada was that of "falsifying his books and bordereau;" but if these books are the ledgers of the Bank of France entrusted to his keeping, and not M. Lamirande's private accounts, would that bring him within the accusation of forgery?

In obedience to your Lordship's commands we have the honour to report—

That we are of opinion that the falsifying by Lamirande of the books and bordereau or ledgers of the Bank of France, entrusted to and kept by him, would not be forgery according to the laws of England.

We have, &c.
(Signed) JOHN ROLT.
W. BOVILL.

No. 83.

The Law Officers of the Crown to Lord Stanley.—(Received December 19.)

Lincoln's Inn, December 18, 1866.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 14th December instant, stating that with reference to the letter of the Law Officers of the 19th ultimo, and to previous correspondence respecting the case of M. Lamirande, he was directed by your Lordship to transmit to us the accompanying despatch from Her Majesty's Ambassador at Paris inclosing a copy of a letter from M. Treite forwarding the "compte-rendu" of the trial and containing observations upon this case; and to request that we would take these papers into our consideration, and that we would favour your Lordship, at our earliest convenience, with our opinion thereupon.

In obedience to your Lordship's commands we have taken the papers submitted to us into our consideration, and have the honour to report—

That we are of opinion that the "arrêt" or decree of the Cour d'Assises, so far as it holds or proceeds upon the assumption that the question of the legality of the extradition of Lamirande could not be discussed before that Court, as stated by M. Treite in his letter to Lord Cowley, was right, and in harmony with the principle that would prevail in the Courts of this country if a person delivered to our authorities by a foreign State were being tried here. And we beg leave further to report that neither the trial nor the sentence upon Lamirande by the French Tribunals appear to us to call for any representation from Her Majesty's Government to the French Government.

We have, &c.
(Signed) JOHN ROLT.
JOHN B. KARSLAKE.
ROBERT PHILLIMORE.

No. 84.

The Solicitor-General to Mr. Hammond.—(Received December 29.)

The Solicitor-General's Chambers, 2, Essex Court,
Temple, December 28, 1866.

Sir,

M. TREITE, in his letter to Lord Cowley of the 11th December, with reference to the case of Dermenon's extradition proceedings, refers to "la fameuse circulaire de la Chancellerie du 5 Avril, 1841, laquelle met en relief tous les points de la pratique de l'extradition en France."

The Law Officers would be glad if they could be furnished with a copy of this document with a view to advising further on Lamirande's case.

I should be also glad if you would do me the favour of sending me a former report of M. Treite, in which he states (according to my recollection) that Lamirande was not tried for the crime of "faux," but for larceny or robbery.

I have, &c.
(Signed) JOHN B. KARSLAKE.

General.

No. 85.

The Law Officers of the Crown to the Earl of Clarendon.—(Received February 10.)

Lincoln's Inn, February 8, 1866.

My Lord,

WE were honoured with Earl Russell's commands signified in Mr. Layard's letter of the 2nd June, 1865, stating that he was directed by his Lordship to transmit to us, for any observations which we might have to offer thereupon, the accompanying Bill, which it was the intention of Her Majesty's Government to introduce into Parliament, for the better suppression of the Slave Trade, when carried on in vessels not entitled to the protection of any State or nation.

Mr. Layard was also pleased to add that Earl Russell would be glad to be favoured with our opinion upon this Bill at our earliest convenience.

We are also honoured with your Lordship's commands signified in Mr. Layard's letter of the 25th January ultimo, stating that he was directed by your Lordship to refer us to that letter, and to state that your Lordship would be glad to be favoured with our opinion upon the Bill in question.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That when this Bill was referred to us by Earl Russell in June last, we felt it necessary to make it the subject of much more deliberate consideration than was possible at so advanced a stage of the then session of Parliament.

Having now had time for such consideration, we desire to state that there appear to us to be very grave objections to the principle of this Bill. If slave-trading, in a vessel not justly entitled to claim the protection of the flag of any State or nation, ought to be deemed piracy by the general law of nations, such a Bill as this is needless; for piracy, by whomsoever committed, is already punishable by our laws. But if (which has hitherto been the doctrine generally maintained by jurists), slave-trading is not piracy by international law, we see no principle on which acts done beyond British jurisdiction, by persons who are not British subjects, in ships which are not British ships, can be made felonies or misdemeanours cognizable by British law. In the nature of things, and upon fundamental views of international jurisprudence, such persons cannot be made subject, in respect of such acts, to the criminal legislation of Great Britain; and a statute declaring that their acts, although done beyond the limits of our authority, shall be "deemed" felonies or misdemeanours, would be a mere legal fiction; however unavoidable it might be for our Judges and Courts to act upon it.

Your Lordship is aware of the doubts which have so often been expressed, and by persons of high authority, as to the principle of the statute commonly called the "Aberdeen Act." The justification offered for that statute was, that Brazil had, by a perpetual Article of a Treaty (in other respects temporary) given this country a right to deal with her subjects engaged in the Slave Trade as pirates. This justification, however, could not be offered for the present Bill, which does not proceed upon the ground that the foreigners against whom it proposes to legislate are pirates, either *jure gentium*, or by virtue of any Treaty by which they are bound; on the contrary, it proposes to deal with them as guilty of a "felony," or "misdemeanour," *i.e.*, of offences to be created and defined by a municipal law of Great Britain.

For these reasons we feel obliged to express an opinion unfavourable to the introduction of this measure into Parliament, which renders it unnecessary for us to advert particularly to any matters of detail; though the clauses of the Bill might, in some respects, be improved by modification, if it were introduced.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 86.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received March* 20.)

My Lord, *Lincoln's Inn, March* 20, 1866.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 14th instant, stating that he was directed by your Lordship to transmit to us a letter, dated the 9th instant, with its inclosures, from the Lords Commissioners of Her Majesty's Treasury, requesting to be favoured with his Lordship's opinion in regard to the question raised by the Board of Customs as to whether that Department should, in times when war is being carried on between foreign countries in amity with Her Majesty, watch and report on the construction of vessels in this country, which are likely to be employed in contravention of the Foreign Enlistment Act.

Mr. Layard was to request that we would take these papers into consideration, and furnish your Lordship with our opinion as to the course which it would be fit and proper for Her Majesty's Government to adopt in regard to this matter.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we think the burden of procuring procuring such *primâ facie* evidence as would warrant my Lords in ordering the seizure of a vessel lies generally upon the agent of the foreign State giving information against such vessel. But this position is quite consistent with requiring the Custom-house officers, during the time of war between foreign States, one or all of whom are in amity with Her Majesty, to watch and report on the construction of vessels likely to be employed in contravention of the Foreign Enlistment Act.

It will be a matter for the discretion of Her Majesty's Government, in each case, whether the further duty of collecting evidence and depositions shall or shall not be cast upon the officers of the Custom-house.

But it is to be recollected that in all such cases the vindication of our own laws is the matter in question; and that the offence is one against the State, which it becomes Her Majesty's Government to endeavour to prevent, and to discover and bring to justice (when not prevented) by the same means which would be resorted to for the repression and detection of any other offences against the laws of Customs and navigation which might concern the domestic interests of this country alone.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 87.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received June* 21.)

My Lord, *Lincoln's Inn, June* 21, 1866.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 19th instant, stating, that he was directed by your Lordship to transmit to us the draft of a letter which your Lordship proposed to address to the Lords Commissioners of the Admiralty, the Lords Commissioners of the Treasury, and the Secretaries of State for Home, Colonial, War and Indian Affairs, on the subject of the neutrality of Her Majesty in the war which has broken out in Europe; and that he was to request that we would take the same into consideration, and report to your Lordship our opinion whether the same might properly be sent; and that he was also to request that we would prepare the draft of a Proclamation to be issued by Her Majesty to the same effect; and that to facilitate our doing so, he inclosed the Proclamation issued in 1859, altered so as to be adapted to the present case.

In obedience to your Lordship's commands we have taken the inclosed draft letter into our consideration, and have the honour to report—

That we think the inclosed draft letter is proper to be sent; and that the draft Proclamation, which we have prepared as desired, is proper to be published in the "London Gazette."

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

Germany.

No. 88.

The Queen's Advocate to the Earl of Clarendon.—(*Received January* 22.)

Doctors' Commons, January 19, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Murray's letter of the 17th instant, stating that he was directed to transmit to me a letter dated the 15th instant, from Mr. S. Williams, respecting the proceedings of the Hamburgh authorities as regards Mr. C. Dodgshun, a person born at Hamburgh, but who, by descent, claims to be a British subject, and is resident in England; and who is now called upon to serve as a soldier in Hamburgh; and he was to request that I would furnish your Lordship with my opinion whether this is a case in which Her Majesty's Government should interfere, and if so, on what ground.

In obedience to your Lordship's commands I have the honour to report—

That I beg leave to refer to my Report in the similar case of Bosdet, on the 22nd of September, 1863.

Charles Dodgshun was born in Hamburgh, of a British father, who had become a burgher of Hamburgh.

I am afraid that Her Majesty's Government cannot gainsay the right of the Hamburgh authorities to treat him, so far as their jurisdiction is concerned, as a citizen, or to sequestrate his property in Hamburgh, though they can have no right to touch the property of his brother and sister.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 89.

The Queen's Advocate to the Earl of Clarendon.—(*Received June* 9.)

Doctors' Commons, June 9, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Murray's letter of the 8th instant, stating that he was directed to transmit to me a despatch and its inclosure, from Her Majesty's Ambassador at Vienna (No. 39, Commercial), respecting applications that have been made by Austrian merchants to be furnished with British Consular certificates for the protection of goods ordered by British subjects, and forwarded to England by the German railways; and Mr. Murray was pleased to request that I would take these papers into consideration, and furnish your Lordship with my opinion as to the instructions which should be sent to Lord Bloomfield on the subject.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I think Lord Bloomfield may be instructed to the effect that Her Majesty's Consul at Vienna may grant certificates that goods are the property of British subjects when he is satisfied that they are really and *bonâ fide* such, but that in each case he should most clearly and distinctly apprise the applicant for the certificate that the granting of it does not in any manner bind Her Majesty's Government to interfere hereafter on behalf of the owner of such goods with any foreign Government.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 90.

The Law Officers of the Crown to Lord Stanley.—(*Received July* 28.)

Lincoln's Inn, July 28, 1866.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Egerton's letter of the 27th instant, stating that he was directed by your Lordship to state to us that the

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Secretaries of the different foreign Legations accredited to the Diet of Frankfort who remained in that city after the departure of their Ministers with the Diet on the approach of the Prussian army having represented to the Prussian Commandant in an official note the apprehension felt by their countrymen lest they should suffer from the measures of bombardment and pillage with which the city was threatened, were informed in writing by the Prussian Commandant General Roeder that their respective countrymen had nothing to fear from the measures he might have to take towards the city of Frankfort. Various telegrams relating to those measures were also inclosed. That last night, however, a telegram was received from Her Majesty's Secretary of Legation at Frankfort, from which we should see that if the contributions to be levied on Frankfort are not at once paid, it is intended by the Prussians to isolate the town, and not to allow either persons, merchandize, letters or telegrams to enter or leave it. That Her Majesty's Secretary of Legation says that those measures will cause British merchants to suffer, and asks for instructions. And Mr. Egerton was pleased to request that I would take this matter into consideration, and report to your Lordship whether, under the circumstances, Her Majesty's Government can take any, and if so what, measures for the protection of British interests at Frankfort.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That the general principle applicable to cases of this kind is, that the foreign subject of a neutral Government who, during a time of war, continues his residence in the country of a belligerent must submit to the inconveniences incident to any operation which the belligerent thinks necessary for the prosecution of the war; that he is, however, entitled, generally speaking, to the option of leaving the place which is about to become the scene of warlike operations; and if this option be refused by the belligerent, it is at the risk of his being holden liable by the Government of the foreigner to any compensation which subsequent losses inflicted upon the foreigner by the belligerent troops may render it just to demand.

In the present case it would seem that the neutral received the assurance of the belligerent that "he had nothing to fear from the measures which he (the belligerent) might have to take towards the city" in which the neutral was resident. These words are clear as a promise of actual safety for person and property; but whether they have any further operation would depend somewhat on the precise communication to which they were an answer, which communication we have not before us.

We think, however, that a foundation is laid for a remonstrance by the Representatives of the neutral Governments against the effect of such a measure of hostility as is now threatened upon their subjects, whereby they may be exposed to an amount of inconvenience and loss against which, under the previous declaration of the belligerent they may have reasonably expected to be secured, and from the operation of which, therefore, they had taken no steps to withdraw themselves. Much must of course depend upon the actual circumstances; but although we recommend that such a remonstrance as we have suggested be made, nevertheless if it should turn out that the persons and property of neutral subjects are secured from actual injury, and the measure of "isolation" be of short duration, we do not, as at present advised, think that the neutral can treat this operation of the belligerent as an unlawful exercise of his rights.

We have, &c.
(Signed) H. M. CAIRNS.
W. BOVILL.
ROBERT PHILLIMORE.

Greece.

No. 91.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received January* 6.)

Lincoln's Inn, January 6, 1866.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 1st instant, stating that he was directed by your Lordship to transmit to us the accompanying correspondence as noted in the margin,* respecting the seizure of Mr. Coore and his party, and the plunder of their yacht by brigands near Dragomestre.

The draft of an instruction which your Lordship proposes to address to Her Majesty's Minister at Athens on that subject was inclosed; and Mr. Hammond was pleased to request that we would take this draft into consideration, together with the other papers, and report to your Lordship our opinion whether the same is right and proper, more particularly with reference to the question raised in regard to the plunder of the yacht.

Mr. Hammond was also pleased to add that your Lordship would be glad to receive a report upon this case in the course of Wednesday then next, as a messenger would be dispatched from the Foreign Office to Athens on the following day.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That Mr. Hammond's letter having been delivered in the afternoon of Tuesday last, it was not possible for us to report on this case as soon as your Lordship desired.

With respect to the question raised as to the plunder of the yacht, we think the view taken by your Lordship is correct, and the proposed despatch is, in our opinion, right and proper to be sent.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 92.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received January* 8.)

Lincoln's Inn, January 8, 1866.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 6th instant, stating that he was directed by your Lordship to transmit to us the accompanying draft of an instruction which, founded on our Report of the 26th ultimo, has been addressed to Her Majesty's Minister at Athens (No. 2, January 5), on the question of the Convention respecting British Judgments in Ionian suits.

Mr. Hammond was also pleased to state that this instruction had not yet been forwarded to Mr. Erskine, but was intended for the messenger which leaves the Foreign Office on Thursday next.

Mr. Hammond was further pleased to inclose the accompanying telegram dated January 5, which had just been received from Mr. Erskine, from which we would perceive that the Greek Government decline to adopt the first clause of the declaration inclosed in the accompanying draft which was addressed to him on the 17th of October last (No. 114), founded upon our Report of the 29th of September; and Mr. Hammond was to request that we would take these papers again into our consideration, and report to your Lordship at our earliest convenience our opinion as to the answer that should be returned to Mr. Erskine's telegram.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we think it will be proper to send the proposed instruction to Mr. Erskine, and in answer to his telegram to state that, in the absence of such a Convention as that proposed, Her Majesty's Government cannot recognize the competency of any Hellenic

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* Mr. Erskine, Nos. 21 and 25; to Mr. Erskine, No. 12; Consul Ongley, Nos. 39 and 40; Mr. Saunders, (Telegraphic), December 20, 1865.

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Court, by any form of proceeding in which both the parties concerned have not appeared and been heard before such Court, to assume any appellate or other jurisdiction over a sentence pronounced by Her Majesty's Consular Court at Constantinople, before the annexation of the Ionian Islands to Greece, in favour of any non-Hellenic plaintiff or plaintiffs against an Ionian defendant; and that Her Majesty's Government would regard any such attempt, or any subsequent refusal of the benefit of the British Consular Judgment by the Courts of Greece, on the ground of such proceedings, to the party who obtained it in the British Court as a violation of the principles of international comity. That Her Majesty's Government would, therefore, regard an acceptance by the Hellenic Government of the principle of the first Supplementary Article proposed by Her Majesty's Government as indispensable, not only to any Convention which is to be of practical value or use (as it is understood that some *ex parte* proceedings contrary to that principle have actually been taken at Athens), but to a good understanding between the two countries on this subject. That Her Majesty's Government, however, do not object to limit the Article to those cases in which the successful party before the British Consular Court had not himself, after the cession of the Ionian Islands to Greece, become a Greek subject, and to those in which (whether a Greek subject or not) he had not by appearing and defending himself before an Hellenic tribunal waived the objection, and submitted himself to the jurisdiction of that tribunal.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 93.

The Law Officers of the Crown to the Earl of Clarendon.—(Received February 6.)

My Lord,

Lincoln's Inn, February 6, 1866.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 25th January ultimo, stating that he was directed by your Lordship to transmit to us the accompanying correspondence,* together with a copy of the Treaty between this country and Greece therein referred to, respecting a question asked by Sir H. D. Wolff, whether the acceptance of office under the British Crown will entail the absolute forfeiture of a pension obtained under that Treaty from the Greek Government, on account of services performed by such pensioner in the Ionian Islands, while those islands were under the Protectorate of Her Majesty; and to request that we would take this matter into our consideration, and favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That, looking to all the circumstances which attended the making of the Treaty, and the equitable construction of it, we think that the IInd Article cannot have been intended to deprive persons accepting office under Her Majesty of the Ionian pension, except during the time when such office was retained. But it would be impossible to contend that this construction of the Article is so clear as to enable Her Majesty's Government to enforce it, as such, upon Greece, the other party to this international contract.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 94.

The Law Officers of the Crown to the Earl of Clarendon.—(Received February 7.)

My Lord,

Lincoln's Inn, February 6, 1866.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 19th ultimo, stating that, with reference to our Report of the 8th ultimo, he was directed by your Lordship to transmit to us the accompanying despatch from Mr. Erskine (No. 7, January 6), inclosing a copy of the note addressed to him by the Greek Minister for Foreign Affairs, stating that the Greek Government would accept the second, but not the first clause of the Declaration proposed to be attached to the Convention respecting British judgments in Ionian suits; that the instruction to Mr. Erskine, founded on our above-mentioned Report (No. 6, January 9), and such of the previous papers as bear particularly on this point, were likewise inclosed.

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* Sir H. Wolff, November 17; to Sir H. Wolff, November 21; to Mr. Erskine, No. 3, November 21; Sir H. Wolff, November 23; to Sir H. Wolff, November 25, 1865; Mr. Erskine, No. 1, January 1, 1866; Treaty.

And Mr. Hammond was to request that we would again take this matter into consideration, and furnish your Lordship, at our early convenience, with such observations as we may have to offer on Mr. Erskine's further despatch now transmitted to us.

In obedience to your Lordship's commands we have taken this matter again into consideration, and have the honour to report—

That we have so often had occasion to report to your Lordship on this subject, that we do not think it necessary to repeat the reasons which led us to a different conclusion from that at which the Greek authorities have arrived.

It is sufficient to refer to our Report of the 8th of January last, and to say, that we can hardly suppose the authorities at Athens can gravely mean to claim, independently of any Convention and legislation following thereon, a jurisdiction for their Courts to review, upon appeal, the judgments of the British Consular Court at Constantinople, except in cases in which *both the parties* to such judgments (*i.e.*, the *Plaintiff* as well as the Defendant), have become subject, by reason of the cession of the Ionian Islands to Greece, to Hellenic jurisdiction. If the claim is so limited, we have already advised that the Ist Article of the proposed Supplementary Convention may be so modified as to leave undisturbed any anterior proceedings of Greek tribunals in cases in which *both* parties were subject, or submitted, to Hellenic jurisdiction.

In all other cases, we think it must be distinctly understood that any claim of Hellenic jurisdiction over British sentences, by way of appeal, will be regarded by Her Majesty as inadmissible, upon general principles of international law. We should trust, however, that, with the explanations and qualifications suggested in our former Report, the Greek Government will no longer object to the propositions of Her Majesty's Government.

If the negotiations should fail, we think it might be well to inform the Plaintiff in the suit of "Rodocanachi *v.* Verissi," of the resource which is supposed to be open to him by the Hellenic law; and it will be for him to exercise his discretion as to whether or not he will avail himself of it.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 95.

The Law Officers of the Crown to the Earl of Clarendon.—(Received May 26.)

My Lord,

Lincoln's Inn, May 15, 1866.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 27th ultimo, stating that with reference to our Report of the 6th of February, he was directed by your Lordship to transmit to us, for such observations as we may have to offer thereupon, the accompanying further despatch from Mr. Erskine (No. 74, April 17), relative to the continued refusal of the Greek Government to accept the first clause of the Declaration proposed to be attached to the Convention respecting British judgments in Ionian suits. The more recent correspondence was also inclosed.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we have already stated in our former Reports all the reasons why this claim of the Greek authorities appears to us to be at variance with sound principles of international law and justice. We can only express our regret that they persist in maintaining what seems to us an indefensible position. We think it will be of no advantage to conclude any Convention as long as this position is maintained; and we think it will only be proper to make it distinctly understood by the Greek Government that Her Majesty's Government absolutely decline to recognize the competency of any Hellenic Court to assume jurisdiction over MM. Rodocanachi and Kipula, or to entertain appeals against the judgments of a British Court in favour of these parties, on the ground of the cession of the Ionian Islands to Greece after the dates of those judgments.

It will be desirable at the same time to make the communications suggested in our former Report to these parties.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 96.

The Law Officers of the Crown to the Earl of Clarendon.—(Received July 7.)

My Lord, *Lincoln's Inn, July 6, 1866.*

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 29th ultimo, stating that with reference to that part of our Reports of the 6th of February and 15th of May, respecting the proposed Ionian Judgments Convention with Greece, which relates to the cases of Messrs. Copello and Rodocanachi, he was directed by your Lordship to transmit to us the accompanying letters from those gentlemen, and from Mr. Routh, preferring a claim upon Her Majesty's Government in consequence of the non-execution of the sentence pronounced in Her Majesty's Supreme Consular Court at Constantinople on the 30th of May, 1864, in the case of Copello and Rodocanachi *v.* Verissi.

Mr. Hammond likewise transmitted to us a memorandum on this matter, together with the draft of the letter, founded on our above-mentioned Reports, which was addressed to Mr. Routh on the 19th ultimo (May), informing him of the intention of Her Majesty's Government not to proceed further in the negotiations with the Greek Government on the subject of the proposed Convention, and pointing out the course which it was now open to Messrs. Copello and Rodocanachi to pursue; and Mr. Hammond was to request that we would take the inclosed papers into consideration, and furnish your Lordship with our opinion as to the answer which should be returned to the letters now referred to us.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we think Her Majesty's Government ought, in reply to Mr. Routh, to decline all responsibility whatever for the claims to which his letter refers. He may be informed that although Her Majesty's Government would very gladly have come to such a definite arrangement with the Greek Government as might have insured a proper and just treatment of these cases, they cannot for a moment admit that any suitors in the British Consular Court at Constantinople, who had obtained judgments therein against Ionian defendants, have any right to complain of the cession of the Ionian Islands to Greece, without special provision concerning such claims in the Act of Cession. The effect of that transfer (according to sound principles of international law) was only that the successful plaintiffs, if they desired afterwards to obtain the benefit of those judgments before the new tribunals to which the defendants had now become amenable, might be obliged to do so upon the same terms, and with the same advantages or disadvantages, as in other cases, in which the benefit of foreign judgments may have to be sought before the Courts of a country different from that in which they have been pronounced.

If in the result the Greek tribunals should refuse to do justice to these parties in the ordinary course of the administration of Greek law, there may possibly be ground for seeking redress against the Hellenic Government; and Her Majesty's Government are aware that, in our opinion, the Greek tribunals ought not to be recognized as entitled to assume any proper appellate jurisdiction in these cases at the instance of Ionian defendants in the British Consular Courts, against plaintiffs not themselves subject (and who have not voluntarily submitted) to Greek jurisdiction. But the possibility of injustice being done by the Greek Courts in particular cases could not make it the duty of Her Majesty's Government to abstain from concluding a territorial arrangement, recommended by general reasons of European policy, until all judgments obtained in the British Consular Courts against Ionians had been either executed or specially provided for, much less to insist upon treating as still amenable to the compulsory process of our extra-territorial Courts in Turkey, persons who, by reason of the cession of the Ionian Islands to Greece, had ceased to be subject to British authority.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 97.

The Law Officers of the Crown to Lord Stanley.—(Received November 13.)

My Lord, *Lincoln's Inn, November 12, 1866.*

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 17th of October last, stating that he was directed by your Lordship to transmit to us a despatch and its inclosures from Her Majesty's Consul-General at Corfu (No. 46) relative to the liability of British subjects domiciled as Ionian citizens in that island to be drawn for the conscription, and to the question of whether they can evade it by renouncing the Ionian naturalization acquired by themselves or their fathers during the British protectorate of the island; and Mr. Hammond was to request that we would favour your Lordship with our opinion upon these points.

We are also favoured with your Lordship's commands signified in Mr. Murray's letter of the 24th ultimo, stating that with reference to his letter of the 17th of that month he was directed by your Lordship to transmit to us a further despatch from Her Majesty's Consul-General at Corfu (No. 50), together with a copy of the Treaty referred to therein, upon the subject of the liability of British subjects domiciled in the Ionian Islands to be drawn for the conscription; and to request that we would take this despatch into our consideration, together with the papers already before us.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That we think it would be a reasonable and just concession on the part of the Greek Government to allow British subjects, naturalized during the Protectorate of Great Britain, to have the option now of renouncing their Ionian and resuming their British nationality, provided this option be exercised without delay, and put on formal record as soon as possible.

But inasmuch as no stipulation to this effect was made in the Treaty by which Great Britain renounced the Protectorate, we do not think that Her Majesty's Government can properly demand, as a matter of right, that such an option should be conceded to them by the Government of Greece.

We have, &c.
(Signed) JOHN ROLT.
W. BOVILL.
ROBERT PHILLIMORE.

No. 98.

The Queen's Advocate to Lord Stanley.—(Received December 12.)

My Lord, *Doctors' Commons, December 12, 1866*

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 6th instant, stating that he was directed to transmit to me the accompanying despatch and its inclosures from Her Majesty's Minister at Athens, setting forth the proceedings of the Greek Government in regard to certain pensioners who were in the service of the Ionian Government at the time of the cession of the Ionian Islands to Greece, and also in reference to certain other persons. A copy of the Convention of March 1864 was also inclosed, and Mr. Hammond was pleased to request that I would take these papers into consideration, and report to your Lordship as to how far Her Majesty's Government would, in my opinion, be justified in instructing Mr. Erskine to interfere in the several cases referred to in his despatch.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That for the due solution of all these questions it is necessary to bear in mind the general principle contained in Article VII of the Treaty of the 29th March, 1864, namely, "That the King of the Hellenes engages to take upon himself all the engagements and contracts lawfully concluded by the Government of the United States of the Ionian Islands, or in their name by the Protecting Power of those islands, conformably to the Constitution of the Ionian Islands, whether with foreign Governments, with companies and associations, or with private individuals; and promises to fulfil the said engagements and contracts fully and completely as if they had been concluded by His Majesty or by the Hellenic Government."

With respect to the first case, I agree with Mr. Consul Saunders that this Article is

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applicable to the case of the discharged policemen. Under the IVth Article of the Act regulating the pensions of the constabulary force in the Ionian Islands, they would be entitled to the pensions which they now claim, as they would also have been if their services had not been continued for the good of the State at the time of the cession; and I think that Her Majesty's Government ought, in the circumstances stated, to assist them in obtaining what is justly their due.

With respect to the second case, namely, that which is described as tithe commutation, in which Count Gerasimo Dalladecima is interested, I think that Mr. Erskine should be instructed to insist upon the immediate payment of the annuity.

With respect to the third case, namely, that of the Prior of the Convent of Catharas, in the Island of Ithaca, it appears to me clear that the former Government of the Ionian Islands had by a most formal contract conceded to him the enjoyment of all the rights and privileges incident to the office of Prior of this Convent during the term of his natural life. That this contract belongs to the category of those engagements which Greece is bound by the Treaty to fulfil, and against the breach of which the Prior is certainly, in the last resort, entitled to invoke the protection of Great Britain as the principal guardian of the Treaty by which his rights were secured.

I have, &c.
(Signed) ROBERT PHILLIMORE.

Hanse Towns.

[For Report on Extradition Treaty with Hanse Towns, see France, No. 62, page 34.]

No. 99.

The Queen's Advocate to the Earl of Clarendon.—*(Received June* 12.)

Doctors' Commons, June 12, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 11th instant, stating that he was directed by your Lordship to transmit to me a despatch from Her Majesty's Minister at Hamburgh (No. 36), relative to the presence of Prussian gun-boats in the Elbe; and Mr. Hammond was pleased to request that I would furnish your Lordship at my earliest convenience with my opinion as to the question of the neutrality of that river in the event of hostilities between Prussia and Austria, which is touched upon in the latter part of Mr. Ward's despatch.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That it may be necessary to observe a distinction between different kinds of warlike operations in the Elbe; for instance, as to the capture of or combat with ships and the institution of a blockade. As to the latter operation, I must observe that our Prize Courts, during the continental war, held that the *blockade* of the Elbe and the Weser necessarily affected the *neutral* cities connected with these rivers.

"I have had," Lord Stowell says, "frequent occasion to observe how severely the neutral cities connected with the Weser and the Elbe are pressed upon by the blockade of those rivers. At the same time, it is my duty to apply to those operations of blockade the principles that belong to that branch of the law of nations generally, and by which only such measures can be maintained. The principles themselves cannot differ, although it will undoubtedly be the disposition of the Court to alleviate the situation of those towns as much as possible by attending to any distinctions that can be advanced in their favour not inconsistent with the sound construction of the general principles of law. A blockade imposed on the Weser must in its nature be held to affect the commerce of Bremen; because if the commerce of all the towns situated on that river is allowed, it would only be to say in more indirect language that the blockade itself did not exist." (The "Maria," 6 Robinson, 203; the "Spes" and the "Irene," 5 Robinson, 81.)

It might be difficult to avoid the application of these principles to a blockade by Prussia of Holstein in possession of Austria. It does not, however, follow from these decisions, which certainly carried the belligerent's right to a great length, and to which I have thought it right to draw your Lordship's attention, that the capture or combat

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No. 98*.

The Law Officers of the Crown to the Earl of Clarendon.—*(Received April* 20.)

Lincoln's Inn, April 19, 1866.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 9th instant, stating that he was directed by your Lordship to transmit to us a despatch from Her Majesty's Ambassador at Berlin relative to the claim for compensation which has been put forward by a Mecklenburg subject, named Weckmann, residing at Cape Haitien, in consequence of the losses he sustained during the bombardment by Her Majesty's ship "Bulldog" in October last, and also a letter, with its inclosure, which have been received from the Lords Commissioners of the Admiralty, to whom the matter was referred; and to request that we would take these papers into our consideration, together with the former papers upon this subject, therewith transmitted to us, and favour your Lordship with our opinion as to the merits of M. Weckmann's claim.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to

Report—

That we agree with the opinion which the Admiralty Advocate has expressed in this case.*

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

Annex.

Opinion of Dr. Twiss.

THE proceedings of the Commander of Her Majesty's ship "Bulldog" against the vessels of the Insurrectionary Government in the harbour of Cape Haitien must be taken to have been in the nature of reprisals, not of war, and accordingly those proceedings did not constitute a state of war, under which the property of foreigners residing for purposes of trade within the town which was in possession of the Insurrectionary Government might have become the property subject to the exercise of belligerent right on the part of the British Commander, and to be treated as enemy's property.

Under this view of the case, as reprisals ought to be strictly confined to the property of such persons as during a state of peace would have the status of subjects of the Government from which satisfaction is required, and for the purpose of this case it is immaterial by what right the Insurrectionary Government held actual possession of Cape Haitien, it was the duty of the officer of the Power exacting satisfaction from that Government to take care that the property of the subjects of any foreign Power who might be engaged in lawful trade within the town should not suffer by its acts of reprisal.

Such being the principles of public law applicable to this case, it would appear from the papers submitted for my perusal that it had been the original intention of the Commander of Her Majesty's ship to confine his acts of reprisal to measures which were calculated to cause no damage to the

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* See Admiralty, April 4, 1866.

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property of merchants within the town of Cape Haitien, but that owing to the circumstance of Her Majesty's ship having unexpectedly taken the ground on a shoal within the harbour he found himself obliged in self-defence to fire in the direction of the town, and so unintentionally brought about the destruction of the property of M. Weckmann, a Mecklenburg subject. Under these circumstances, although the suffering inflicted upon M. Weckmann may have been unavoidable on the part of the Commander of Her Majesty's ship, and there may have been no intentional violation of public law on his part, the Grand Ducal Government has just grounds, in my opinion, for seeking at the hands of the British Government compensation for the damage caused to M. Weckmann's property by the fire of Her Majesty's ship.

(Signed) TRAVERS TWISS.

Doctor's Commons, March 31, 1866.

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with vessels in the waters of Hamburgh or Hanover would not be a violation of neutral rights. I am of opinion that Hanover and Hamburgh, being neutral, would be justified in maintaining that no belligerent operation should take place in the waters which are within their respective jurisdictions, that is to say, within those limits to which in time of peace their civil jurisdiction has been admitted to extend.

We have, &c.

(Signed) ROBERT PHILLIMORE.

No. 100.

The Queen's Advocate to Lord Stanley.—(Received August 4.)

Doctors' Commons, August 4, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Egerton's letter of the 1st instant, stating that he was directed by your Lordship to transmit to me the accompanying despatch from Her Majesty's Minister at Hamburgh, on the subject of the claim to exemption from military service in the forces belonging to that city, of Alfred Bosdet, who is stated to be the son of a Hamburgh citizen, but to have been born in Jersey, and to be now permanently resident in Scotland; and to request that I would furnish your Lordship with my opinion as to whether the claim of this individual to exemption is well founded.

In obedience to your Lordship's commands I have the honour to report—

That Alfred Bosdet appears to be the son of a native citizen of Hamburgh, now a domiciled merchant in that town. The municipal law of Hamburgh treats the son of such a citizen as a subject, and places him, so far as its jurisdiction extends, under the obligations of a citizen, one of which is to serve in the Hamburgh military force. The fact that Alfred Bosdet was born in England confers on him, according to the law of this country, the character of an English subject; and there arises, or may arise, in these cases a conflict of jurisdiction: but as the law of England also considers the son of a native subject, wherever he is born, as an English citizen, the English Government cannot fairly complain of the law of Hamburgh, which is in this respect the same; nor can it interfere with the execution of that law within the town of Hamburgh. I must express my opinion that while Mr. Ward may be instructed to represent to the Hamburgh authorities that Alfred Bosdet has become an English subject, and to ask *as a matter of comity* that his name may therefore be taken off the military list, Mr. Ward cannot be properly instructed to insist *as a matter of right* upon this being done.

I have, &c.

(Signed) ROBERT PHILLIMORE.

Italy.

No. 101.

The Queen's Advocate to the Earl of Clarendon.—(Received January 13.)

Doctors' Commons, January 13, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 8th instant, stating that he was directed by your Lordship to transmit to me a correspondence as marked in the margin,* respecting the seizure by an Argentine vessel of war of three vessels bearing the Italian flag, and freighted with railway iron, the property of the Paraguayan Government, which the Argentine Government had detained as being enemy's goods; and that although this matter appears to have been amicably settled on the spot, Mr. Hammond was directed by your Lordship to state to me that

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* Mr. Thornton, No. 61, June 25; Private, November 1; to Mr. Elliot, Private, December 4; No. 233, December 14, 1865.

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your Lordship would be glad to be furnished with my opinion upon the merits of the case, as it involves a general principle in which all maritime States are interested.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That it is a cardinal maxim of international jurisprudence that all public acts having the force of covenants between States should, in case of reasonable doubt, receive a liberal and equitable construction founded on a consideration of all the circumstances which can fairly illustrate the intention of the parties to them.

The Declaration of Paris, so far as it has the force of a covenant, must be taken to mean that each subscriber parted with a belligerent right which he possessed, on the faith that in any future war he would still be, so far as this concession was concerned, upon equal terms with his antagonist. But this would not be the case if, when a subscriber was at war with a non-subscriber, the latter exercised a power of capturing enemies' goods in neutral bottoms, from which the former Power was restrained; for it is provided by the Declaration that the belligerent *status* of a non-subscriber remains unaffected by the Declaration. In this case, therefore, the Declaration, so far as it was a covenant, does not apply. This construction, in itself plainly equitable, derives also force from the discussion which accompanied the preparation, and preceded the signing of the Declaration.

It appeared, I think, in the papers recently submitted to me from the Foreign Office, that your Lordship expressed yourself at the Conference to this effect, and that the opposite opinion was not maintained.

I am, &c.
(Signed) ROBERT PHILLIMORE.

No. 102.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received February* 5.)

My Lord,
Lincoln's Inn, February 3, 1866.

WE are honoured with your Lordship's commands signified in Mr. Murray's letter of the 29th ultimo, stating that he was directed by your Lordship to transmit to us a despatch from Her Majesty's Consul at Turin (No. 1, January 7, 1866), requesting instructions in regard to the question whether he would be competent to grant a certificate required by the provisions of the 103rd Article of the New Italian Civil Code, referring to the marriage of a foreigner within the Italian dominions, and, if so, what formalities should be gone through before issuing such a document; and to request that we would take this paper into our consideration, and favour your Lordship with our opinion as to the nature of the instructions which should be addressed to Mr. Colnaghi on the subject.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That if the proper Italian authorities would be satisfied with the certificate of Her Majesty's Consul (upon whom the Legislature has devolved a certain authority with respect to marriages of British subjects abroad), we see no reason why he should not, on proper application being made to him, grant it. The form of such a certificate might properly, we think, be as follows:—

"I, , Her Majesty's Consul at , in the Kingdom of Italy, do hereby certify, that, according to the best of my knowledge and belief, there is no impediment by the law of Great Britain, to the marriage of A. B. with C. D., resident in ".

(Date, seal, and signature.)[*]

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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[*] There need be no other formalities.—R. P., R. P. C., R. J. P.

No. 103.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received February* 28.)

My Lord,
Lincoln's Inn, February 28, 1866.

WE are honoured with your Lordship's commands signified in Mr. Murray's letter of the 15th instant, stating that with reference to our Report of the 3rd instant, expressing our opinion that Her Majesty's Consul at Turin might properly issue certificates in order to meet the requirements of the Italian Civil Code as regards marriages of foreigners in Italy, he was directed by your Lordship to state to us that your Lordship is of opinion that Her Majesty's Consuls would not be warranted in issuing such certificates unless upon reasonable proof that there is no ground why they should not give them, and that your Lordship accordingly proposes to instruct Mr. Consul Colnaghi to require parties applying to him for such certificates to go through the form required by the 6th section of the "Marriages in foreign countries facilitating Act." A Draft instruction, in this sense, was also inclosed.

Mr. Murray was also pleased to transmit a despatch upon the same subject from Her Majesty's Minister at Florence (No. 39), to whom your Lordship proposes to send analogous instructions, and was pleased to request that we would furnish your Lordship with our opinion whether the accompanying drafts to Mr. Elliot and to Mr. Colnaghi are right and proper. Mr. Colnaghi's No. 1 was also annexed for convenience of reference.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we think the accompanying drafts are right and proper.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 104.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received March* 10.)

My Lord,
Lincoln's Inn, March 8, 1866.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 30th January last, stating that he was directed by your Lordship to transmit to us the accompanying despatch, and its inclosures, received from Her Majesty's Minister at Florence (No. 24), respecting the case of a young man named Philip Smith, who is the son of an Englishman domiciled at Bologna, and whom the Italian Government hold liable to the military conscription and for whose exemption Mr. Elliot has made an unsuccessful application to the Italian Government, founded upon the view taken by Her Majesty's Government in previous cases, the correspondence respecting which was annexed for our information,[*] and has already formed the subject of reference to Her Majesty's Advocate-General; and Mr. Hammond was to request that we would take this case into consideration, and furnish your Lordship with our opinion as to the instructions which should be addressed thereupon to Her Majesty's Minister at Florence.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That we are of opinion that the case of Philip Smith is rightly distinguished by the Italian Government from the former cases of Hammet and Stuart.

There is no doubt that it was competent to the Italian Government to make the regulation respecting foreigners which is contained in the new code, and under which the case of Philip Smith falls.

The opinion of Signor Corsi may safely guide Mr. Elliot for the future in cases of this description.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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[*] M. d'Azeglio, November 28; to M. d'Azeglio, December 1, 1864; to M. d'Azeglio, February 6; M. d'Azeglio, February 16; Queen's Advocate, March 11; to M. d'Azeglio, March 25; M. d'Azeglio, March 25 and April 4; to Queen's Advocate, May 17; Queen's Advocate, May 20; to Count Maffei, May 26; Queen's Advocate, May 22, 1865.

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No. 105.

The Queen's Advocate to the Earl of Clarendon.—(Received April 25.)

My Lord,

Doctors' Commons, April 24, 1866.

I AM honoured with your Lordship's commands signified in Mr. Hammonds's letter of the 23rd instant, stating that he was directed by your Lordship to transmit to me therewith the accompanying letter from Messrs. Walton and Bubb, bringing to your Lordship's notice the case of M. Rosario Messina who, in the year 1851, appears to have become, by virtue of an Ordinance of the Government of Malta, a naturalized subject of Her Majesty, but who, while proceeding on a journey from thence to Rome, has been arrested at Catania, and his claim to the privileges and protection of a British subject ignored by the Italian authorities on the ground that his naturalization applied only so long as he was resident in the Island of Malta: and Mr. Hammond was to request that I would take this case into consideration, and furnish your Lordship with my opinion as to the answer which should be returned to Messrs. Walton's and Bubb's representation.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That the representation of Messrs. Walton and Bubb should be answered to the following effect:—That the rule of international and public law applicable to cases of this description is, that a person who, owing a natural allegiance to the country of his birth, is naturalized in another country, is under the protection of the Government of the latter country in all places which are not within the jurisdiction of the country of his original allegiance. That the exception to this rule is to be found in cases in which the country of the original allegiance allows her subjects to put off their allegiance and become the subjects of another country; this is not alleged to be the law of the Kingdom of Italy.

Her Majesty's Government are, therefore, of opinion that the Italian authorities have acted as English authorities would have acted in the like circumstance.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 106.

The Law Officers of the Crown to the Earl of Clarendon.—(Received May 15.)

My Lord,

Lincoln's Inn, May 12, 1866.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 24th April ultimo, stating that with reference to our Reports of the 3rd and 28th of February last, on the subject of certificates to be given by Her Majesty's Diplomatic and Consular authorities for British subjects desirous of contracting marriages within the Italian dominions according to the new Civil Code, he was directed by your Lordship to transmit to us therewith a despatch from Her Majesty's Minister at Florence (No. 126), inclosing a copy of a note from General La Marmora, submitting a draft form of declaration which the Italian Government wish to be substituted for that proposed by Her Majesty's Government; and to request that we would take the same into consideration, and favour your Lordship with our opinion thereupon.*

Mr. Hammond was also pleased to state that the previous papers on this subject were sent therewith for reference if required.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we see no objection to the adoption of either of the forms, No. 4 or No. 5, suggested by Mr. Elliot,

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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* Consul Colnaghi, No. 1; Law Officers, February 3; Mr. Elliot, No. 39; Law Officers, February 28; to Mr. Elliot, No. 43; to Consul Colnaghi, No. 2, 1866.

No. 107.

The Law Officers of the Crown to the Earl of Clarendon.—(Received June 12.)

My Lord,

Lincoln's Inn, Jnne 12, 1866.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 5th June instant, stating that he was directed by your Lordship to transmit to us two letters dated the 5th instant, from the Marquis d'Azeglio, inquiring as to the position in which ships belonging to the Italian Government, of the two classes mentioned, would be in British ports in the event of war breaking out in which Italy should be a belligerent; and to request that we would take these papers into our consideration, and favour your Lordship with our opinion as to the answer which should be returned to the Marquis d'Azeglio.

Mr. Hammond was also pleased to state that, as bearing upon this question, he was directed by your Lordship to refer us to our Report of the 30th January last, therewith inclosed, in connection with the hostilities between Spain and Peru; and, further, to transmit to us the accompanying letter, and its inclosures, received from the Admiralty, dated the 5th instant, together with the letter from the Foreign Office of the 26th of February last therein referred to; and to request that we would further inform your Lordship what answer should, in our opinion, be returned to the Admiralty on the question of docking belligerent vessels at Malta.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That, assuming war to have broken out, then,—

1st. With respect to ships already built in this country which have left this country and been commissioned by a foreign Government abroad, they must be treated, when they return to any British port, as ships of war belonging to a belligerent.

2ndly. With respect to ships already built and paid for by a foreign Government, but which have not yet left the ports of this country, we think that if there should be evidence to satisfy Her Majesty's Government that any such vessel was *bonâ fide* built, not for the purpose of carrying on warlike operations against a particular Power, but generally for the purpose of augmenting the force of the fleet of a foreign State, she might be allowed to depart in the state in which she is, without any additional armament, to the ports of the foreign State which has purchased her.

3rdly. With respect to cases in which the vessels are in course of construction, we are clearly of opinion that their fitting out and equipment should not be permitted to be continued; and that if it should be continued, they ought not to be allowed to leave this country.

That we think my Lords of the Admiralty may properly approve of the instructions given by Lord Clarence Paget to Rear-Admiral Kellet, and that it is not necessary that any further orders should be given to him with reference to docking Italian or Austrian ships.

We must observe, however, that the instructions contained in your Lordship's letter to the Lords Commissioners of the Admiralty (25th February, 1866), which Lord Clarence Paget seems to consider it incumbent on him to follow with respect to the ports and harbours under his command, are applicable only to the hostilities now existing between Spain and Chile and Peru; and that if (as we presume) the same rules are intended to be applied to the hostilities now imminent between Austria and Prussia and Italy, it will be necessary for the Board of Admiralty to issue new and substantive instructions for that purpose,

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 108.

The Law Officers of the Crown to the Earl of Clarendon.—(Received June 14.)

My Lord,

Lincoln's Inn, June 14, 1866.

WE are honoured with your Lordship's commands signified to us in Mr. Hammond's letter of the 13th instant, stating that he was directed by your Lordship to request that we would favour your Lordship at our earliest convenience with our opinion whether,

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under the XVth Article of the Treaty of Commerce and Navigation of the 6th August, 1863, between this country and Italy, British subjects in Italy are entitled to claim exemption from being called upon to billet or lodge soldiers, and annexing to the said letter a copy of the Treaty in question.

In obedience to your Lordship's commands we have taken the question submitted to us into our consideration, and have the honour to report—

That this question is not entirely free from doubt; but we think that, according to the liberal construction which good faith requires should be put upon the language of an international contract, British subjects ought to be considered as exempt, under the terms of this Article, from the obligation to billet and lodge soldiers. The billeting of soldiers appears to us to fall within the category of a military exaction or requisition ("prestazione o requisizione militare").

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 109.

The Law Officers of the Crown to the Earl of Clarendon.—(Received June 28.)

My Lord, *Lincoln's Inn, June* 28, 1866.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 18th instant, stating that he was directed by your Lordship to transmit to us the papers, as marked in the margin,* with reference to an application from the Italian Minister at this Court, on behalf of his Government, to obtain the formal depositions of Mr. Moens, in regard to his capture by the brigand Manzo, and of the other British subjects who were concerned in this affair; and Mr. Hammond was to request that we would take these papers into consideration, and that we would furnish your Lordship with our opinion as to the course which can be taken in this case.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That, in our opinion, the Italian Minister should be informed that the law of England does not permit or enable any depositions to be taken in this country from Mr. Moens with the object for which it is required by the Italian Minister.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 110.

The Law Officers of the Crown to Lord Stanley.—(Received July 31.)

My Lord, *Lincoln's Inn, July* 31, 1866.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 17th instant, stating that he was directed by your Lordship to transmit to us a correspondence which has passed between the Foreign Office and Her Majesty's Minister at Florence,† subsequent to our Report of the 12th May last, in regard to the form of declaration to be made by Her Majesty's Diplomatic and Consular authorities in the case of British subjects desirous of contracting marriages within the Italian dominions according to the new Civil Code; and Mr. Hammond was to request that we would furnish your Lordship with our opinion whether the form of declaration now proposed by the Italian Government may be adopted.

The former papers were also annexed for convenience of reference.‡

In obedience to your Lordship's commands we have the honour to report—

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* M. d'Azeglio, June 1; to Home Office, June 6; Home Office, June 8; to Home Office, June 12; Home Office, June 15, 1866.

† To Mr. Elliot, No. 113, May 22; Mr. Elliot, No. 297, June 30, 1866.

‡ Consul Colnaghi, No. 1, January 21; Law Officers, February 3; Mr. Elliot, No. 39, February 7; to Mr. Elliot, No. 43, February 28; Law Officers, February 28; to Consul Colnaghi, No. 2, March 1; Mr. Elliot, No. 126, April 18; Law Officers, May 12, 1866.

That the difference between the form recommended by Her Majesty's Government and that recommended by the Italian Government consists in the omission by the latter of the words "that I know of," thereby making the Consul declare absolutely that there is no obstacle to the celebration of the marriage.

We do not think that the Consul can be required to do more than certify that, upon the evidence submitted to him, there is, by the law of Great Britain, no obstacle; and that a certificate in the following form might be agreed to, and would probably answer the object of the Italian Government, namely:—

"A. B. and C. D. having gone through the formalities required by the law of Great Britain for enabling them to be married at Her Majesty's Legation or Consulate, I , Her Britannic Majesty's upon the evidence laid before me, hereby certify that, according to the laws of Great Britain, there is no obstacle to the celebration of their marriage."

We have, &c.
(Signed) H. M. CAIRNS.
W. BOVILL.
ROBERT PHILLIMORE.

No. 111.

The Law Officers of the Crown to Lord Stanley.—(Received August 8.)

My Lord, *Lincoln's Inn, August* 7, 1866.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 20th of July ultimo, stating that he was directed by your Lordship to transmit to us the accompanying copy of a letter, dated the 18th ultimo, and its inclosure, from Lieutenant-General Peel, requesting to be informed whether there is any objection to Captain Palliser communicating certain details connected with the manufacture of his chilled shot to the Italian Government; and to request that we would be good enough to favour your Lordship with our opinion as to what answer should be returned to the Secretary of State for War, having reference to Her Majesty's Proclamation of Neutrality.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That Major Palliser having applied to Her Majesty's Government to give its formal sanction to his communicating to a belligerent in a war in which Her Majesty is neutral, an invention relative to the manufacture of instruments of war, we do not think it would be expedient that Her Majesty's Government should give its sanction to Major Palliser making this communication.

We have, &c.
(Signed) H. M. CAIRNS.
W. BOVILL.
ROBERT PHILLIMORE.

No. 112.

The Law Officers of the Crown to Lord Stanley.—(Received August 9.)

My Lord, *Lincoln's Inn, August* 8, 1866.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 21st ultimo, stating that, with reference to his letter of the 29th of June, he was directed by your Lordship to transmit to us therewith the accompanying letter from the Admiralty and Board of Trade, containing the views of the Admiralty Advocate, and the observations of that Board with regard to the instructions issued to Italian naval officers respecting the exercise of belligerent rights at sea during the present war; and Mr. Hammond was to request that we would take the same into consideration, and furnish your Lordship with any observations we may have to make thereupon, and as to the expediency of making any communication to the Italian Government on the subject. A copy of the Italian circular and of the instructions were likewise inclosed for reference, if required.

In obedience to your Lordship's commands we have considered this matter, and have the honour to report—

That we are clearly of opinion that it is not desirable that Her Majesty's Government should open any communication whatever with the Italian Government on the subject of these instructions to their naval officers.

During the course of this war, as during the course of the war in South America, instructions have been issued to the belligerents far more favourable, generally speaking, to the neutral than those which the Government of this country, when belligerent, has been in the habit of issuing.

It is, of course, quite competent to the Government of a belligerent to issue Proclamations or Ordinances whereby they restrict themselves in the exercise of the rights accorded by international law to the status of a belligerent. Such an act, on their part, binds themselves only; and it may well happen that the right in the exercise of which they restrict themselves is one which considerations of a particular nature belonging to the particular occasion would render it inexpedient, or perhaps impossible, that they should exercise.

The neutral Government has no reason for interference because they receive a treatment more favourable than that which they are strictly entitled to demand; but if they do any act wherefrom their approbation of this departure from the usual rights of the belligerent, as a maxim of international law, is to be inferred, they may most seriously embarrass their future action when their country happens to be belligerent, and when perhaps it may be of vital importance to the State to exercise the very right of which it is now by implication recognizing the abolition.

In any case, such a step upon the part of this country, whose chief arm in war is her navy, and whose principal means of aggression or self-defence is the exercise of maritime belligerent rights, should not be taken, we humbly think, without the gravest deliberation, and the most ample consideration of all the consequences.

With respect to the two points noticed by the Admiralty Advocate, namely, those which refer to contraband and blockade, we have to observe that on the question of contraband, though the principles of international law relating to it have been generally adopted by States without much difference of opinion, the question as to the particular ingredients of contraband has always been, to some extent, matter of controversy.

It is certainly true that if the meaning of the Italian Government be that goods unquestionably contraband, when sent on neutral account for sale to an enemy's country, are to be exempt from capture, that they are, so far as they are concerned, abandoning a clear right of the belligerent captor. And so with regard to blockade: if they adopt the rule (which the French have, however, always maintained) that a neutral vessel is entitled to warning on the spot before it can be seized for a breach of blockade, they are enunciating a rule greatly in favour of the neutral.

Upon both these points the Government of the United States maintained and enforced during the late war a totally opposite practice. The Government of this country has always pursued a similar course.

But the course of action which the Italian Government thus prescribes to itself cannot be considered as affecting the existing rights of other States now neutral, but which may hereafter be belligerent.

Upon the whole, we see no reason why Her Majesty's Government should make any communication or express any opinion upon these instructions; and we see much and grave inconvenience which might flow from such a proceeding.

We have, &c.
(Signed) H. M. CAIRNS.
W. BOVILL.
ROBERT PHILLIMORE.

Japan.

No. 113.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received May* 15.)

Lincoln's Inn, May 14, 1866.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 18th ultimo, in which he stated that he was directed by your Lordship to transmit to us the accompanying despatch from Sir Harry Parkes (No. 21, February 13), inclosing copies of correspondence respecting the prison of Her Majesty's Consulate at Kanagawa being used as a municipal lock-up; and to request that we would take this matter into our consideration, and favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That with the restrictions mentioned, and with the expressed consent of all the foreign Consuls, we see no objection to this use being made of the prison of Her Majesty's Consulate.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 114.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received May* 15.)

Lincoln's Inn, May 15, 1866.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 21st ultimo, stating that he was directed by your Lordship to transmit to us a despatch from Her Majesty's Minister in Japan (No. 20, February 13), forwarding a correspondence between Mr. Flowers, the Acting British Consul at Yokohama, and Mr. Fisher, the Consul for the United States, arising out of a charge of larceny brought by Mr. Alexander McKechnie, a British subject, against Gustave Glackmeyer, a young American in his employ; and Mr. Hammond was to request that we would take these papers into our consideration, and report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands, we have the honour to report—

That we have perused the volume containing the fifty-two inclosures which accompanies Mr. Hammond's letter, but it does not appear necessary to us to state in detail the reasons which have led us to the conclusion which we have now the honour to express.

First, with respect to the arrest of Glackmeyer by McKechnie, and the subsequent action brought by the former against the latter in the British Consular Court, and the judgment of Her Majesty's Consul, Mr. Flowers, thereupon, we are of opinion that a justification not having been specially pleaded, Mr. Flowers was technically wrong in not finding the issue on the plea of "Not guilty" (which only operates in law as a denial of the trespass charged) in favour of the plaintiff; and that the decision of Sir E. Hornby so far modifying the Judgment of Mr. Flowers in this respect, and inflicting a fine of 40*s*. on McKechnie, was correct.

It is clear to us that the place in which Glackmeyer was confined, though part of the British prison, had been used as a lock-up by all the foreign Consuls, including the American, and that the attempt of Mr. Fisher to make a grievance out of the place of the confinement was extremely disingenuous.

2ndly. With respect to the charge of assault preferred by Rickerby against Glackmeyer in the American Consular Court, we are of opinion that the latter had been guilty of a gross outrage upon the former, and that the trivial punishment inflicted upon him by the American Consul was a plain failure of justice. Nor do we understand how it happens that the charge of larceny, regularly preferred by Mr. McKechnie against Glackmeyer before Mr. Fisher (and which Mr. Fisher refused to try until the action of Glackmeyer against McKechnie for false imprisonment should have been disposed of),

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has never been proceeded with by Mr. Fisher, who seems to have throughout spoken and acted as the patron, rather than the Judge, of the person so accused.

3rdly. With respect to the case of Mr. Seare, we agree in the opinion expressed by Sir E. Hornby, by Her Majesty's Chargé d'Affaires, and, we are happy to add, by the American Chargé d'Affaires: (1.) That the American Consul had no power, in the circumstances, to compel Seare to give evidence at all; (2.) That, at the most, his power was limited to causing his expulsion from the Court, and that the ordering and causing him to be sent in custody through the street to the British Consulate was clearly illegal.

We must observe, however, that the conduct of Seare in attending the American Court upon the following day was injudicious and reprehensible.

It is hardly necessary to express our opinion that the conduct of the American Consul, Mr. Fisher, has been from first to last most discreditable; while the conduct of Her Majesty's Consul, Mr. Flowers, notwithstanding the one error in judgment to which we have adverted, is in every respect most favourably contrasted with that of his foreign colleague.

The course pursued by Sir Harry Parkes, Her Majesty's Chargé d'Affaires, appears to us to have been extremely proper and judicious, and the frank and honourable manner in which the United States' Chargé d'Affaires, Mr. Portman, has received and replied to the communication of Sir H. Parkes, leads us to join in the expectation expressed by Sir H. Parkes in his last letter to Mr. Portman (which closes the correspondence before us), that satisfactory assurances will yet be given by that gentleman upon those points upon which they were felt (and we think justly) by Sir H. Parkes to be still required.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 115.

The Law Officers of the Crown to Lord Stanley.—(*Received August* 30.)

My Lord, *Lincoln's Inn, August* 27, 1865.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 6th instant, stating that with reference to the Report of the Law Officers of the 15th May, he was directed to transmit to us, together with the previous papers, a despatch from Sir Harry Parkes, inclosing copies of his further correspondence with the United States' Chargé d'Affaires in Japan, relative to the case of Mr. Seare, a British subject, arrested by the United States' Consul at Yokohama; and to request that we would take these papers into consideration, and furnish your Lordship with our opinion whether it is necessary to pursue the question further. Mr. Hammond was also pleased to add that a despatch in the sense of the Law Officers' Report of the 15th May has already been addressed to Sir Harry Parkes.

In obedience to your Lordship's commands we have the honour to report—

That we are of opinion that it is not necessary to pursue this question further; and we may venture to add that we entirely approve of the course adopted by Sir Harry Parkes.

We have, &c.
(Signed) H. M. CAIRNS.
W. BOVILL.
ROBERT PHILLIMORE.

No. 116.

The Law Officers of the Crown to Lord Stanley.—(*Received November* 13.)

My Lord, *Lincoln's Inn, November* 12, 1866.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 6th instant, stating that he was directed by your Lordship to transmit to us a despatch from Her Majesty's Minister in Japan (No. 135, September 1), inclosing, with other papers, a Regulation which he has issned under the Order in Council of the 9th March, 1865, relative to the navigation of the Straits of Shimonosaki of British vessels

during the hostilities between the Tycoon and the Daimio Choshiu; and Mr. Hammond was to request that we would take the Regulation into our consideration, and report whether we think it right and proper to be confirmed.

In obedience to your Lordship's commands we have the honour to report—

That we are of opinion that the Regulation is right and proper to be confirmed.

We have, &c.
(Signed) JOHN ROLT.
W. BOVILL.
ROBERT PHILLIMORE.

No. 117.

The Law Officers of the Crown to Lord Stanley.—(*Received November* 30.)

My Lord, *Lincoln's Inn, November* 29, 1866.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 13th November instant, stating that with reference to his letter of the 6th instant he was directed by your Lordship to transmit to us the accompanying despatches from Sir H. Parkes (Nos. 147, 149, 150, and 151), respecting a further regulation issued by him debarring British ships from conveying into or through the Strait of Shimonosaki Japanese troops or munitions of war, or Japanese passengers in excess of the numbers authorized by Her Majesty's Consuls; and to request that we would take this further regulation into our consideration, and report to your Lordship our opinion whether it is right and proper to be approved.

In obedience to your Lordship's commands we have the honour to report—

That we are of opinion that the Regulation of the 5th of September (copies of which have been forwarded to us with Mr. Hammond's letter of the 13th instant) has been properly made under the 95th section of the Order of Her Majesty in Council, dated the 9th day of March, 1865; and that the Regulation is right and proper to be approved.

We have, &c
(Signed) JOHN ROLT.
W. BOVILL.
ROBERT PHILLIMORE.

No. 118.

The Law Officers of the Crown to Lord Stanley.—(*Received December* 27.)

My Lord, *Lincoln's Inn, December* 27, 1866.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 26th ultimo, stating that he was directed by your Lordship to transmit to us therewith a collection of papers divided by a mark into two series: the one relating to certain proceedings in the Consular Court at Hakodate in Japan, arising out of the complaint made by the Japanese authorities of the desecration by certain British subjects of the graves of a Japanese race of people known by the name of Ainos; the other relating to the conduct of the Consul, Captain Vyse, in connection with the transmission of a portion of the proceeds of the robbery to England, and the explanations that he has given on the subject.

That with regard to the second portion of the correspondence, Mr. Hammond inclosed two memoranda containing, at least the one bearing date the 18th instant, a full abstract of it; and stated that your Lordship would be much obliged if we would consider the statements laid before us in these papers, and report to your Lordship our opinion whether, on the evidence contained in them, there is sufficient proof to establish the complicity of Captain Vyse in the improper transactions disclosed in these papers, especially as regards the disposal of the bones sent to England. That we should observe in looking through the correspondence, reference made to the conduct of Mr. Enslie, the interpreter in the Consulate at Hakodate, in regard to these matters; an abstract of the papers relating to this point being also sent to us: and that your Lordship would be glad also on this point to be furnished with our opinion.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That the Report which the Queen's Advocate had prepared with respect to the conduct of Consul Vyse is not sent in, on account of the subsequent letter from Mr. Hammand rendering any report thereon unnecessary.

That with respect to the conduct of Mr. Enslie, we have to state our entire concurrence in the opinion expressed by Sir Harry Parkes in his despatch to Lord Clarendon (April 15, 1866, Yokohama).

We have, &c.
(Signed) JOHN ROLT.
JOHN B. KARSLAKE.
ROBERT PHILLIMORE.

No. 119.

The Law Officers of the Crown to Lord Stanley.—(*Received December* 31.)

Lincoln's Inn, December 28, 1866.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 30th November ultimo, stating that with reference to his letter of the 13th of that month, he was directed by your Lordship to transmit to us a despatch, and its inclosures, from Her Majesty's Minister in Japan (No. 161, September 29, 1866), relative to a notification issued by the Dutch Political Agent in that country, respecting the navigation of the Straits of Shimonosaki by Netherland ships during the war between the Tycoon and Choshiu; and to request that we would take these further papers into our consideration, and favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken the papers into our consideration, and have the honour to report—

That we are of opinion that Sir Harry Parkes has taken a correct view of his duty with respect to British ships at this particular juncture, and that he ought not to follow or be influenced by the course which the Dutch Political Agent has thought proper to adopt.

We do not understand that Sir Harry Parkes doubts his authority to give permission to British merchant-vessels to convey troops or munitions of war for the Tycoon Government on the terms of their doing so at their own risk, and without laying Her Majesty's Government under any obligation to protect them. We think that Sir H. Parkes has such authority if he were to deem it prudent to exercise it.

We have, &c.
(Signed) JOHN ROLT.
JOHN B. KARSLAKE.
ROBERT PHILLIMORE.

Mexico.

No. 120.

The Queen's Advocate to the Earl of Clarendon.—(*Received July* 11.)

Doctors' Commons, July 11, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 6th instant, stating that he was directed by your Lordship to transmit to me a despatch and its inclosure, from Her Majesty's Minister in Mexico (No. 71), relative to a negotiation which is reported to have been entered into by a person styling himself an Agent of the Mexican Republic in the United States, for the sale to an American Company of a portion of Lower California.

And Mr. Hammond was pleased to request that I would take this matter into consideration, and furnish your Lordship with any observations I may have to make thereon, and especially respecting the bearing which such a sale may have in regard to the interests of the London bondholders.

A correspondence which took place respecting the question of a sale of a portion of of Mexico to the United States, which was at the time referred to Her Majesty's Advocate-General, was also inclosed.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That if part of the Mexican territory, the revenues of which are already pledged or hypothecated to the British bondholders, be sold without their consent, it will still be liable to discharge its due share of the interest or principal of the debt to the bondholders. Care should be taken that the purchaser be duly affected, previously to the purchase, with the knowledge of the lien which the foreign creditor has upon the territory in question.

I agree substantially with the Report of my predecessor in office, to which my attention is called, upon this question, and which does not materially differ from the private opinion given by me to which reference is partially made by Mr. Scarlett, and which is given at length in the paper submitted to the former Queen's Advocate.

I have, &c.
(Signed) ROBERT PHILLIMORE.

Muscat.

No. 121.

The Queen's Advocate to Lord Stanley.—(*Received December* 16.)

Doctors' Commons, December 14, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Egerton's letter of the 12th instant, stating that he was directed by your Lordship to transmit to me the accompanying despatches from Mr. Seward, the Acting British Consul and Political Agent at Zanzibar, together with a Memorandum drawn up in the Foreign Office upon questions connected with the suppression of the Slave Trade on the East Coast of Africa, and more particularly in regard to the engagements of the Sultan of Zanzibar in this matter towards this country:

That by the terms of an agreement signed at Zanzibar in 1845, which came in force on the 1st of January, 1847, the Imaum of Muscat engaged by Article I to prohibit under the several penalties the exportation of slaves from his African dominions, and by Article III to grant to the ships of Her Majesty's navy, as well as to those of the East India Company, permission to seize and confiscate any vessels the property of His Highness, or of his subjects, carrying on Slave Trade, excepting only such as were engaged in the transport of slaves from one part to another of his own dominions in Africa, between the port of Lamoo to the north and his dependencies, the northern limit of which is the north point of Kuyloo Island, in 1° 57′ south latitude, and the port of Keelwa to the south, and its dependencies, the southern limit of which is Souga Manara, or Pagoda Point, in 9° 2′ south latitude, including the Islands of Zanzibar, Pemba, and Mongia:

That by the terms of a further Agreement, concluded in May 1850, the Imaum also consented that the ships of Her Majesty the Queen of England should be allowed to enter the creeks, rivers, and harbours in his territories, in which slaves were shipped contrary to his orders, and that the vessels found engaged in the Slave Trade might be seized, and the barracoons destroyed:

That in 1863 the Sultan also further consented to prohibit entirely the transport of slaves from port to port in his dominions, during the months of January, February, March, and April, these being the months that the Northern Arabs from the Persian Gulf and Red Sea frequented the coast of the Sultan's territories for the purpose of procuring slaves:

That it will be seen, however, from Mr. Seward's despatch of the 10th of September last, that in consequence of the recent destruction by a British cruizer of a native vessel

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in or about Zanzibar waters proper, and the asserted spoliation of another in the neighbourhood of Pemba Island by Her Majesty's ship "Pantaloon," the Sultan of Zanzibar now protests against any interference, in any way, of British cruizers with Zanzibar vessels in Zanzibar waters; and His Highness claims as Zanzibar waters the whole area of waters included within lines drawn parallel to the African coast, north and south, from the outside or eastern shores of Zanzibar and Pemba Islands to Cape Delgado and Lamoo:

That this practically amounts to a claim of jurisdiction over the waters to a distance of ten miles from the coast; and Mr. Seward asks, therefore, for information upon the following points, namely:—

1. As to the extent of Zanzibar territorial waters proper, over which a claim to jurisdiction can be recognized by Her Majesty's Government.

2. Whether the practice of search and detention in the waters acknowledged to be territorial is to be discontinued; and

3. Whether exemption from search and detention within the wide limits set forth by the Sultan of Zanzibar can be conceded.

Mr. Egerton was pleased to request that I would take these papers into consideration, and furnish your Lordship with my opinion as to the instructions which should be given to Mr. Seward on the points on which he requests information; and also whether Her Majesty's Government would be justified in taking any, and if any what, steps to compel the Sultan to carry out his engagements for the suppression of the Slave Trade.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That the three engagements specified, namely, the Treaty of 1845, the formal concession of 1856, the Engagement of 1863, taken together, contain the positive international obligations of the Ruler of Zanzibar to Her Majesty; that by these instruments Her Majesty's ships may seize and confiscate Zanzibar slavers generally on the high seas, and also vessels transporting slaves from port to port in the Zanzibar dominions, during January, February, March, and April; and Her Majesty's ships may enter creeks, rivers, and harbours in Zanzibar territories, "from Songa Manara to Tonghe," for the purpose of destroying slavers.

If this last engagement be, as it appears to me to be, binding, the question of the inviolability of the territorial waters within these limits does not arise.

With respect to other territorial waters, upon general principles of international law, the Sultan is not entitled to claim jurisdiction beyond the distance of cannon-shot, at present still estimated at three miles, from the shore.

It does not appear to me that his claim to the larger area of waters mentioned can be supported, either by usage (for it appears that "down to 1850 there had been no mention of territorial rights or waters:" despatch of Mr. Seward, No. 132 of 1866), or by reasons arising from the natural configuration of the coast—circumstances which have sometimes been considered as sufficient to sustain such a claim.

I think that the limitation of the right of search, &c., in territorial waters from Songa Manara to Tonghe, did, if considered *per se*, virtually imply that no *general* right of search, &c., in territorial waters had been conceded by the Sultan; but as, on the other hand, this general right has up to the present time, been exercised generally in all the territorial waters, without objection or remonstrance, and as it is almost indispensable for the due execution of the original Treaty, and as the Sultan does not, from whatever cause, fulfil his part of the engagements with Her Majesty as to the suppression of the Slave Trade, I think that Mr. Seward should be instructed to this effect:—

1. That in no event can Her Majesty recognize the Sultan's claim to a wider claim over territorial waters than the usual limit of three miles from the shore.

2. That when the Sultan fulfils that part of his engagement which binds him to suppress, in every way, the Slave Trade, Her Majesty's Government will consider whether, consistently with their sole object, the suppression of the Slave Trade, they can abandon the practice sanctioned by such long usage, and never before complained of, of capturing slavers in the waters of Zanzibar.

I have, &c.
(Signed) ROBERT PHILLIMORE.

Netherlands.

No. 122.

The Queen's Advocate to the Earl of Clarendon.—(*Received February* 26.)

Doctors' Commons, February 23, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Murray's letter of the 19th instant, stating that with reference to my predecessor's Report of the 20th of May, 1861, relative to the claim of Mr. Dreland, of the barque "Handy," against the Netherlands Government, on account of the seizure of part of the cargo of that vessel by an officer of the Netherlands Board of Shorage, he was directed to transmit to me two further representations which have been received from Mr. Dreland on this subject, dated the 24th October, 1865, and the 10th February, 1866.

The former papers relating to the case were also inclosed, and Mr. Murray was pleased to request that I would furnish your Lordship with my opinion as to whether there is anything in Mr. Dreland's last communication to alter the decision which Her Majesty's Government have come to with regard to this claim.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That Mr. Dreland is under an error in supposing that Her Majesty's Government ever undertook to intervene on his behalf with the Government of the Netherlands in the event of Mr. Dreland not succeeding in his suit before the Courts of that State. Her Majesty's Government would only be justified in addressing any remonstrance to the Government of the Netherlands in the case of a plain and palpable miscarriage of justice, *in re minime dubiâ*, by the tribunals of that State.

I am clearly of opinion that the case of Mr. Dreland is not of this kind. I see no reason whatever for imputing any misconduct to the Netherlands tribunals. These tribunals differed in opinion and decision, but this is a circumstance of continual occurrence in England, and Her Majesty's Government would certainly not entertain any application from the Netherlands Government in similar circumstances.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 123.

The Queen's Advocate to the Earl of Clarendon.—(*Received March* 5.)

Doctors' Commons, March 5, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Murray's letter of the 3rd instant, stating that he was directed to transmit to me the accompanying correspondence, as marked in the margin,[*] which has passed between the Rev. John McKraith, the Foreign Office, and Her Majesty's Consul at Amsterdam, relative to the case of William Martin, a British subject imprisoned in that town upon a charge of theft; and Mr. Murray was pleased to request that I would take these papers into consideration, and furnish your Lordship with my opinion as to whether any, and if so what, steps should be taken by Her Majesty's Government in this matter.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That as it appears doubtful whether any intended theft was committed by this man, I think the Consul should be instructed to provide him with counsel at the coming trial, who might explain that the act was not done by the Englishman *animo furandi*, and that according to the law of England the finder of property without an owner may keep it against everybody but the real owner; but if he has reasonable means of discovering the owner, and refrains from doing so, he is guilty of theft—not otherwise. During the present year it has been decided at Guildhall that a man who found property in a railway carriage was not bound to give it up to the officers of the railway company.

I have, &c.
(Signed) ROBERT PHILLIMORE.

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[*] The Rev. J. McKraith, February 10; to Consul Newnham, No. 3; Consul Newnham, No. 15, 1866.

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No. 124.

The Queen's Advocate to the Earl of Clarendon.—(*Received March* 27.)

Doctors' Commons, March 27, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Murray's letter of the 21st instant, stating that he was directed by your Lordship to inform me that on receipt of my Report of the 5th instant, an instruction was addressed to Her Majesty's Consul at Amsterdam, instructing him to provide William Martin with counsel at the trial to which he was about to be subjected on a charge of theft. The reply which has been received from Mr. Consul Newnham reporting his proceedings in this respect was also inclosed (No. 16); and Mr. Murray was pleased to request that I would furnish your Lordship with my opinion as to the further steps, if any, which Mr. Consul Newnham should take in the matter. The previous papers were inclosed for convenience of reference.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I agree with Mr. Consul Newnham that the sending this person to prison after his acquittal by the Superior Court is a proceeding which it would be proper that the Procureur-Général should be requested to explain.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 125.

The Law Officers of the Crown to Lord Stanley.—(*Received October* 3.)

Lincoln's Inn, October 2, 1866.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Egerton's letter of the 20th September ultimo, stating that he was directed by your Lordship to transmit to us the accompanying notes from the Netherlands Minister at this Court, dated the 30th July and 6th August ultimo, complaining of outrages committed by British fishermen upon Dutch subjects in the North Sea.

Mr. Egerton was also pleased to inclose a letter dated September 18 from the Board of Trade, to whom these complaints were referred by your Lordship, and to state that in compliance with the suggestion contained in the letter from that Department he was directed by your Lordship to request that we would take the matter into our earliest consideration, and report to your Lordship what answer should be returned to Baron Bentinck's communications.

In obedience to your Lordship's commands we have taken the papers submitted to us into our consideration, and have the honour to report—

That we recommend further inquiry to be made of the captains and crews of the three Yarmouth vessels ("Echo," "Faith," and "Inspector") mentioned in the depositions, and also amongst the crews of the three vessels implicated in the charges, viz., "The Good Intent," the "Frank," and the "Fred."

We further recommend that proceedings be instituted against such of the parties as can be proved to have taken part in the acts complained of upon the high seas and beyond the jurisdiction of the Dutch authorities.

That we think an answer should be returned to the communications of Baron Bentinck to the effect that inquiries have been directed into the matters of complaint which his Excellency has brought to the attention of Her Majesty's Government; that in consequence of the absence of the crews of the vessels there has been great difficulty in obtaining the necessary information, but that the result of the inquiries, up to the present time, Her Majesty's Government regret to say leads to the conclusion that the complaints are but too well founded.

That the captains of two of the vessels implicated have been discharged by the owners, and are not now to be found.

That Her Majesty's Government will be most anxious to take measures, in concert with the Government of the King of the Netherlands, to repress and prevent the recurrence of such conduct for the future, and will be happy to consider any suggestions with which they may be favoured by the King's Government with that view.

That as regards the case of the "Eensgezindheid," in which the offence appears to have been committed in Dutch waters, the punishment of the offenders would rest with the Dutch authorities, and that it is to be regretted that the parties were not immediately prosecuted, the more so inasmuch as even if they could now be found, in the absence of any Extradition Treaty, they could not be remitted to Holland for trial there upon the charges in question.

That the case of the "Jonge Cornelis Koeman," and any other case where the acts were committed upon the high seas and beyond the limits of Dutch waters, the English Courts would have jurisdiction; and that as soon as the parties can be found and identified, and sufficient evidence can be obtained against them, they shall be prosecuted and an endeavour made to obtain their conviction.

We think from the unwillingness of the crews of the vessels to give evidence against their comrades, it may be difficult to obtain convictions without the Dutch fishermen and sailors coming over to this country to give evidence and to identify the offenders, and a request should, we think, be made to know whether they would be willing to come over for the purpose when required.

The occurrence of the three cases now complained of within a very short period, and the statement of Mr. William Morgan that he believes that similar acts of robbery by British fishermen have not been uncommon during the present year, appears to us to show that this matter requires serious and immediate attention, and we recommend that every endeavour be made to prosecute the present offenders and to convict them.

We have, &c.
(Signed) H. M. CAIRNS.
W. BOVILL.
ROBERT PHILLIMORE.

No. 126.

The Queen's Advocate to Lord Stanley.—(*Received November* 19.)

Doctors' Commons, November 19, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Murray's letter of the 15th instant, stating that he was directed to transmit to me a despatch from Her Majesty's Consul at Surinam (No. 20), stating the circumstances under which the cargo of the British ship "Artemisia" had been forcibly unloaded contrary to the will of the master, but under an order from the local authority; and to request that I would furnish your Lordship with my opinion whether Her Majesty's Government are called upon to take any, and what, notice of the proceedings of the Surinam authorities in this matter.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That this is a case of what is technically called the right of "stoppage *in transitu*," according to which the vendor is entitled to stop goods while still in an intermediate agent's hands, and undelivered to the purchaser. It is a right very generally recognised in all systems of jurisprudence, and especially in those founded, as the Dutch system is, upon the Roman law, according to which "qui rem nondum emptori tradidit adhuc ipse dommus est." This right appears to have been unjustifiably interfered with in the present instance; but it is impossible to form a correct opinion upon the subject without reading all the papers, and being apprised what the Dutch law is upon the point. These papers (and this information also, I presume) are, Mr. Munroe says, to be sent by the following mail.

In the meantime it might be proper that your Lordship should apprise Mr. Munroe that as at present advised it appears to your Lordship that the forcible taking of these goods out of a British ship requires explanation, which it will be his duty to obtain from the authorities at Surinam.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 127.

The Queen's Advocate to Lord Stanley.—(*Received December* 20.)

Doctors' Commons, December 20, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Egerton's letter of the 17th instant, stating that he was directed by your Lordship to transmit to me a despatch from Her Majesty's Chargé d'Affaires at the Hague (No. 9), inclosing copies

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of a correspondence with Her Majesty's Consul at Rotterdam on the subject of the refusal of the Netherlands police authorities to assist in the arrest of Dutch seamen who have deserted from British vessels; and Mr. Egerton was to request that I would take these papers into consideration, and furnish your Lordship with such observations as I may have to offer thereupon.

For my further information Mr. Egerton was pleased to inclose a copy of the Article referred to by Mr. Ward, in the draft of a Commercial Treaty which it was proposed to negotiate with the Netherlands Government, but which has not as yet been concluded.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I understand that the refusal of the Dutch water bailiff to arrest the Dutch seamen who had deserted from the English ship was upon the ground that by the Dutch law he had no power to do so. I do not find that this position is contradicted, and, *à priori*, it would seem to me very probably to be correct; this point should be ascertained.

If this be so, I am of opinion that the Treaty was not violated by this refusal, as it is expressly provided by the Xth Article that the assistance of the local authorities should be such as they "may be enabled by law to give."

It is not necessary at present to consider the further question whether the Treaty could be construed to extend to the necessity of arresting native subjects who have deserted from a foreign ship.

I have, &c.
(Signed) ROBERT PHILLIMORE.

New Granada.

No. 128.

The Queen's Advocate to the Earl of Clarendon.—(Received May 9.)

Doctors' Commons, May 9, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 7th instant, stating that he was directed by your Lordship to transmit to me a letter, with its inclosures, which has been received from Mr. Percy Brandon, complaining of a decision of the Columbian Law Courts in regard to a debt due to him, and requesting the interference of Her Majesty's Government in his behalf; and to request that I would take these papers into consideration, and furnish your Lordship with any observations I may have to offer thereupon.

In obedience to your Lordship's commands I have the honour to report—

That for the consideration of this claim it must be assumed that the Government which made this Decree as to the paper money of the State being legal tender, and which gave a retroactive effect to its Decree, was the *de facto* Government of the country, howsoever it became so. The law, however unjust and vicious in its principle, did not inflict a special injury upon the foreigner; it affected equally all inhabitants of the State. It is clear that the Judges were obliged to obey the law, they not having, as the Judges in the United States of North America have, a power by the constitution of the country to declare the law to have been *ultra vires* of the Legislative Power. These premises lead to the conclusion that unless there be some Treaty obligation which confers a special privilege on the foreigner in this matter, his civil contracts, like those of the native subject, must be subject to the law of the territory—however bad that may be—in which they are made. The Treaty (3 Hertslet, p. 57) provides that merchants "shall enjoy the most complete protection and security for their commerce;" but it also contains the further provision, not cited by Mr. Brandon, "subject always to the laws and statutes of the two countries respectively." Such a provision does not prevent the State from passing a law as to paper money being legal tender within its territory. Upon the whole I must express my opinion that there is no ground for the special interference of Her Majesty's Government on behalf of Mr. Brandon.

I have, &c.
(Signed) ROBERT PHILLIMORE.

Persia.

No. 129.

The Queen's Advocate to the Earl of Clarendon.—(Received April 5.)

Doctors' Commons, April 5, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 29th ultimo, stating that he was directed to transmit to me the accompanying despatches from Mr. Alison,* inclosing copies of a correspondence which has taken place respecting the right of Colonel Dolmage to carry on trade as a British subject in Persia while in the service of that Government; and Mr. Hammond was pleased to request that I would take these papers into consideration and report to your Lordship my opinion thereupon.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I am of opinion that while Colonel Dolmage continues to be a salaried Persian officer, he cannot claim to be put upon any other footing, as to trade, than that of a Persian subject.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 130.

The Queen's Advocate to the Earl of Clarendon.—(Received April 7.)

Doctors' Commons, April 7, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 4th instant, stating that he was directed by your Lordship to transmit to me a despatch from Her Majesty's Consul-General at Tabreez, requesting instructions with reference to an application made to him by the commercial house of Pierre P. Ralli, established at Tabreez under British protection, in regard to certain bills of exchange drawn on Persian merchants at Tabreez, and remitted by their agents at Constantinople, who reside there under French protection; and Mr. Hammond was pleased to request that I would take this paper into consideration, and inform your Lordship what reply should be returned to Mr. Abbott on this subject.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I think Mr. Abbott should be instructed that he may properly continue to lend official assistance in these cases, exercising of course his own discretion as to any one of a particular or exceptional nature.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 131.

The Queen's Advocate to the Earl of Clarendon.—(Received May 29.)

Doctors' Commons, May 28, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Murray's letter of the 24th instant, stating that he was directed by your Lordship to transmit to me therewith a despatch from Her Majesty's Consul-General at Tabreez (No. 9, April 16, 1866), requesting instructions as to the course he should pursue with reference to an application made to him by a person named Antoine Korsak, claiming certain moneys left in the hands of the Consul-General in 1843, by a Pole, calling himself Alexander Cortzak de Colbeau, but supposed to have borne another name, who left an unsigned and

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* Mr. Alison, No. 139, December 27, 1865; No. 1, Commercial, February 7, 1866.

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unfinished will at the Consulate; and Mr. Murray was to request that I would take this paper into consideration, and furnish your Lordship with a report thereon.

The former papers on this subject were annexed for reference.*

In obedience to your Lordship's commands I have considered this matter, and have the honour to report—

That I am of opinion that Mr. Abbott ought not to deliver up the deposit of money to the present claimant without far better evidence than he at present possesses, of his being entitled to it.

Louisa Rudincka, the sister of the deceased, appears to be the person to whom the money should be paid over.

Perhaps some tidings may be obtained of this lady or of her representative.

I have, &c.
(Signed) ROBERT PHILLIMORE.

Peru.

No. 132.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received January* 30.)

Lincoln's Inn, January 30, 1866.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 29th instant, stating that, with reference to our Report of the 24th instant, respecting the Peruvian steamer-of-war "Huascar" he was directed by your Lordship to transmit to us a despatch from Her Majesty's Consul at Brest (No. 6), reporting the arrival of that vessel, and the dissatisfaction of the British portion of her crew. That Sir Anthony Perrier has been instructed by telegraph to facilitate by all means legally within his power the discharge of any British seamen from the ship; but that your Lordship would be glad to know whether any further instructions could in our opinion be given to him on the subject, and also whether it would be advisable to send similar instructions to Her Majesty's Consul at Havre with reference to the Peruvian frigate "Independencia," which was understood to be destined for that port.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That we think the instructions already sent by your Lordship as to the seamen on board the "Huascar" are proper, and that it will be advisable to send similar instructions with respect to the "Independencia." We do not perceive that anything further at present can be done.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 133.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received February* 24.)

Lincoln's Inn, February 24, 1866.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of this day's date, stating that, with reference to our previous Reports respecting the case of the Peruvian ship "Independencia," he was directed by your Lordship to state to us that there is reason to anticipate that that vessel, which since her departure from this country has been in the Scheldt, together with her consort, the "Huascar," which since her departure from this country has been at Brest, may shortly put into a British port. That Her Majesty's Government have no official information of war having been declared by Peru against Spain, but that a declaration to that effect appeared in the newspapers of yesterday. But be that as it may, as there is reason to suppose that a part of the crew of one or both these vessels is composed of British subjects, Mr. Hammond was pleased to request that we would furnish your Lordship with our opinion whether, supposing these vessels put into an English port, Her Majesty's Government [would be justified ?] in requiring their commanders to land any British seamen who may be on board, and if the commanders should refuse to do so, then in requiring them forthwith to depart from the British port, and to prohibit them from obtaining any supplies whatever during their stay in such port.

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* Acting Consul-General Abbott, No. 24, March 31, 1843; Consul-General Abbott, No. 33, November 6, 1862; to Treasury, January 15; Treasury, January 24, 1863.

In obedience to your Lordship's commands we have the honour to report—

That we think your Lordship's questions should be answered in the affirmative.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 134.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received February* 28.)

Lincoln's Inn, February 28, 1866.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 26th instant, stating that he was directed by your Lordship to acquaint us that Her Majesty's Government, having received from the Spanish Minister at this Court official notice that war has been declared between Spain and Peru, the time has arrived for issuing a Proclamation by Her Majesty declaring her neutrality in that war; and Mr. Hammond was accordingly to request that we would prepare the draft of such a Proclamation to be submitted for Her Majesty's sanction at the next Council; and Mr. Hammond was pleased to inclose a copy of the Proclamation respecting the war between Spain and Chile issued on the 3rd instant.

In obedience to your Lordship's commands we have the honour to report—

That we have considered and settled the accompanying draft Proclamation of of neutrality, and submit the same to your Lordship as proper to be issued on the present occasion.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 135.

The Queen's Advocate to the Earl of Clarendon.—(*Received April* 5.)

Doctors' Commons, April 5, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 2nd instant, stating that he was directed to transmit to me a copy and translation of the instructions issued by the Peruvian Government for the guidance of the Commanders of Peruvian men-of-war and privateers during the war with Spain; and Mr. Hammond was pleased to request that I would take these documents into consideration, and furnish your Lordship with any observations I may have to offer thereupon.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That, generally speaking, I see nothing to object to in these instructions. They are, in most particulars, more favourable to the neutral than those which England was in the habit of issuing to her privateers. But with respect to the Article which constitutes what is termed an *ad referendum* Prize Tribunal of naval officers, I am of opinion that the Peruvian Government should be apprised, as the Spanish Government has been, by Her Majesty's Government, that they will expect that no British vessel or cargo be condemned as prize without a proper trial in a proper Prize Court, before which the owners of the captured vessel or cargo may have ample opportunity of conducting their defence by professional advice. That Her Majesty's Government presume, therefore, the *ad*

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referendum trial has for its sole object to determine whether the prize shall be immediately released or sent in for trial before a proper Judge in a proper Court.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 136.

The Queen's Advocate to the Earl of Clarendon.—(Received April 18.)

Doctors' Commons, April 18, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 13th instant, stating that he was directed by your Lordship to transmit to me a despatch and its inclosure from Her Majesty's Acting Consul-General at Lima (No. 11), relative to a representation addressed to him by the British merchants in that city, on the subject of a Decree recently issued by the Peruvian Government, imposing an export duty of 3 per cent. *ad valorem* on various articles forming the principal objects of commerce between this country and Peru; and Mr. Layard was to request that I would take these papers into consideration, and furnish your Lordship with my opinion thereupon, with reference to the bearing on the question of the VIIIth Article of the Treaty between Peru and the United States, and to the privileges claimed under the IIIrd Article of the Treaty of Commerce between this country and Peru of the 10th of April, 1850.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I am of opinion that, in this instance, the argument from the favoured-nation clause fails, inasmuch as the Treaty which contained the privilege granted by Peru to the subjects of the American United States has been abrogated, and is no longer in existence.

I think, however, that the objection of the Consul to the retroactive effect of the Decree should be again pressed upon the Peruvian Government, on the ground of its inflicting unforeseen hardship upon the British subject. The objection, however strongly urged, should be put upon this ground.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 137.

The Queen's Advocate to the Earl of Clarendon.—(Received May 21.)

Doctors' Commons, May 19, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Murray's letter of the 17th instant, stating that he was directed to transmit to me a despatch from the Acting British Consul-General at Lima, inclosing copy of a Decree issued by the Peruvian Government prohibiting the entry into the ports of Peru of neutral vessels which have furnished the Spanish squadron with fuel, provisions, articles of war, or of any other kind, or which have been in communication with that squadron; and Mr. Murray was pleased to request that I would take these papers into consideration, and furnish your Lordship with my opinion on the subject.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That it is competent to the Peruvian Government, in time of war, to make such a Decree, with respect to the reception in their ports of neutral vessels, as may have the effect of defending or relieving their country from the pressure of a belligerent and blockading force. It is for that Government to judge whether the Decree in question is or is not calculated to produce this effect. It must be treated at present as a measure of self-defence, and the neutral State cannot demand, as a matter of right, the revocation of such a Decree, though, of course, the neutral State may amicably remonstrate against it, and endeavour to show that while the Decree will not produce the effect intended it will injuriously affect neutral commerce. It seems to be worthy of consideration whether the Decree should or should not be noticed in the "Gazette."

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 138.

The Queen's Advocate to the Earl of Clarendon.—(Received May 23.)

Doctors' Commons, May 23, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 18th instant, stating that he was directed by your Lordship to transmit to me a despatch from Her Majesty's Acting Chargé d'Affaires at Lima (No. 22), inclosing copies of a correspondence with Rear-Admiral Denman in regard to the arrangements made between the Commander of the Spanish naval forces in Chilean waters and the Pacific Steam Navigation Company for the conveyance of mails and passengers to and from Chilean and other ports; and was to request that I would take these papers into consideration, and furnish your Lordship with any observations I might have to offer thereupon.

The former papers connected with the arrangement were likewise transmitted to me.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I am of opinion that Her Majesty's Chargé d'Affaires at Lima has taken, in his letter to Admiral Denman (April 3, 1866), a correct view of his duty in this matter. The engagement of Chile made with the British Admiral cannot be considered as absolutely binding on Peru, on the sole ground of her subsequent alliance with Chile in this war, though it is a reasonable expectation that Peru will adopt the same course as Chile with respect to the conveyance of mails by the Pacific Steam Navigation Company. The suggestion made by Her Majesty's Chargé d'Affaires, that Spanish officers should be placed on board one of Her Majesty's ships of war, and not allowed to remain on board the vessels of this Company while in the port of Callao, appears, in the circumstances, to be reasonable and prudent.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 139.

The Queen's Advocate to the Earl of Clarendon.—(Received May 31.)

Doctors' Commons, May 31, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of this day's date, stating that he was directed by your Lordship to transmit to me therewith a despatch from Her Majesty's Chargé d'Affaires in Peru inclosing a notice published by the Spanish Admiral, of the blockade of the port of Callao; and Mr. Hammond was to request that I would take this notice into consideration and, if sufficient, prepare for publication, in the "Gazette" of to-morrow, the draft of notification of such blockade.

In obedience to your Lordship's commands I have considered this matter, and have the honour to report—

That I think the notice received of the blockade of this port sufficient. I have accordingly prepared, and herewith transmit, a draft of notification for insertion in the "London Gazette."

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 140.

The Queen's Advocate to the Earl of Clarendon.—(Received June 15.)

Doctors' Commons, June 14, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of this day's date, stating that he was directed by your Lordship to transmit to me the accompanying despatch, and its inclosures, from Her Majesty's Chargé d'Affaires in Peru reporting that the blockade of the Spanish naval forces in the port of Callao had been raised; and was to request that I would take the same into my immediate consideration, and, if the notice were sufficient, prepare the draft of a notification to be inserted in the "Gazette" of to-morrow.

In obedience to your Lordship's commands I have considered this case, and have the honour to report—

That I am of opinion the notice of the raising of this blockade is sufficient: I have therefore prepared, and herewith transmit, a draft notification thereof for insertion in the "London Gazette."

I have, &c.
(Signed) ROBERT PHILLIMORE.

Inclosure in No. 140.

SPAIN AND PERU.—RAISING OF THE BLOCKADE OF THE PORT OF CALLAO BY THE SPANISH NAVAL FORCES.

Draft Notification.

Foreign Office, June 15, 1866.

IT is hereby notified that the Earl of Clarendon, K.G., Her Majesty's Principal Secretary of State for Foreign Affairs, has received from Her Majesty's Chargé d'Affaires in Peru a despatch stating that he (the said Chargé d'Affaires) had received from the Commander-in-Chief of the Spanish naval forces in the Pacific a despatch (dated the 9th May, 1866) announcing the raising of the blockade of the port of Callao from that date, and of the departure of the Spanish squadron from Peruvian waters.

The following is an extract from the said despatch of the Commander-in-Chief of the Spanish naval forces above referred to:—

[Here print the following extract from said notice (in Spanish), namely, the words under-marked with red ink, and add]

(Signed) CASTO MENDEZ NUNEZ.)

(Translation.)

[Here print so much of the translation as is under-lined with red ink, and add]

(Signed) CASTO MENDEZ NUNEZ.)

R. P.

No. 141.

The Queen's Advocate to the Earl of Clarendon.—(Received July 26.)

My Lord,

Doctors' Commons, July 24, 1866.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 18th instant, stating that, with reference to my Report of the 5th April last on the subject of the institution by the Peruvian Government of what was termed an *ad referendum* Prize Court of Naval Officers during the late hostilities with Spain, he was directed by your Lordship to transmit to me a further despatch on the subject from Her Majesty's Chargé d'Affaires at Lima (No. 37, June 11), and to request that I would furnish your Lordship with any observations which I may have to offer thereon. The former papers were inclosed for reference.

In obedience to your Lordship's commands I have the honour to submit to your Lordship the following observations upon the reply of the Peruvian Secretary of State for Foreign Affairs:—

That I beg leave to draw the attention of your Lordship to my Reports upon this subject of the 30th November, 16th and 18th of December, 1865, and 19th of January and 14th of March, 1866.

That the Peruvian Government is misinformed if it supposes that Her Majesty's Government has ever assented to the constitution of a Prize Court, properly so called, on board a Spanish man-of-war. On the contrary, Her Majesty's Government have from the first maintained the proposition that no neutral vessel can be properly tried, much less condemned, before any tribunal, but one duly constituted according to the law, practice, and usage of nations, which a tribunal on board a belligerent man-of-war certainly is not; inasmuch as (as Her Majesty's Government observed to the Government of Spain) it is wanting in the essential requisites of such a tribunal.

The Spanish Government replied that they had no intention of ascribing to the inquiry on board the belligerent man-of-war the character of a prize decision, and that they did not deny the right of the neutral to be adjudicated upon before a properly constituted Prize Tribunal in the territorial dominions of Spain, but they said that the inquiry had for its object simply to ascertain whether there was such a *primâ facie* case of suspicion as would warrant the captor in sending the prize to be adjudicated upon in the territorial dominions of Spain, or whether the vessel should not be immediately released.

Now, as it was the undoubted right of the belligerent (subject, indeed, to a responsibility as to costs and damages) to send the vessel in for such adjudication, the neutral owner, while he could not deny the abstract right of the belligerent to send his vessel for trial to a Prize Court in the Spanish dominions, might be advantaged by the immediate release of her. It was therefore upon the distinct understanding that the neutral could in no way be damnified, but would probably be benefited by this preliminary inquiry, that Her Majesty's Government ceased to remonstrate against it.

If it be the intention of the Peruvian Government to adopt a strictly similar course, it will probably not be the disposition of Her Majesty's Government to object to it; but the Peruvian Government should be distinctly apprised that Her Majesty's Government do not surrender, in any way or in any degree, the full right of the neutral to be tried before a proper tribunal, constituted and sitting in the territorial dominions of the belligerent, and that while Her Majesty's Government will not recognize the validity of a sentence of condemnation passed upon any vessel belonging to Her Majesty's subjects by any other Tribunal, Her Majesty's Government will also reserve to itself the right of demanding, according to the circumstances of the case, compensation on behalf of British vessels unjustifiably detained, though eventually released, in consequence of the inquiry on board the Peruvian man-of-war.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 142.

The Queen's Advocate to Lord Stanley.—(Received November 7.)

My Lord,

Doctors' Commons, November 7, 1866.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 2nd instant, stating that he was directed to transmit to me a despatch which has been received from Her Majesty's Chargé d'Affaires in Peru (No. 59), inclosing two Decrees recently published by the Government of that Republic, by which it is proposed to impose an annual contribution on all Peruvian subjects as well as foreigners resident in Peru.

The answer which your Lordship has addressed to Mr. Barton on the subject was also inclosed (No. 12), and Mr. Hammond was pleased to request that I would take this despatch into consideration, and furnish your Lordship with my opinion as to the right of the Peruvian Government to levy the contribution in question on foreigners.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That by the IXth Article of the Treaty between Great Britain and Peru, April 10, 1850, it is provided that all Her Majesty's subjects in Peru shall be exempted from all compulsory military service whatsoever, whether by sea or land, and from all forced loans or "military exactions or requisitions; and they shall not be compelled, under any pretext whatsoever, to pay any ordinary charges, requisitions, or taxes, other or higher than those that are or may be paid by native subjects or citizens."

If, therefore, the first Decree, which is not before me *in extenso*, partook of the character of a military exaction or requisition, it was not competent to the Government of Peru to put it in force against Her Majesty's subjects. In any event it was not competent to that Government to enforce against Her Majesty's subjects the XVIth Article (a copy of which is before me), ordering persons who had not paid the contribution to be treated as conscripts of the National Military Force.

But it is competent to the Government of Peru, having increased the ordinary taxes upon its own subjects, to compel Her Majesty's subjects resident in Peru to bear the like charge.

Much, therefore, depends upon the character of the "personal contribution."

I presume from the letters of Mr. Barton that it was of a character to trench upon the privilege of exemption accorded by the Treaty to Her Majesty's subjects, and it

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therefore appears to me that the letter which your Lordship proposes to send to Mr. Barton is right and proper to be sent.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 143.

The Queen's Advocate to Lord Stanley.—(Received November 23.)

Doctors' Commons, November 21, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 15th instant, stating that, with reference to my Report of the 24th July last, he was directed by your Lordship to transmit to me a despatch from Her Majesty's Acting Chargé d'Affaires in Peru (No. 61, October 12), inclosing a correspondence which he had had with the Peruvian Government in regard to Prize Courts held on board belligerent vessels of war; and Mr. Hammond was to request that I would take these papers into consideration, and furnish your Lordship with my opinion thereupon.

Mr. Hammond was also pleased to inclose, for convenience of reference, the former papers on the subject.*

In obedience to your Lordship's commands I have considered these papers, and have the honour to report—

That if Mr. Barton's inference be correct, namely, that the Peruvian Government accepts the proposition of the Spanish to the British Government in the sense put upon that proposition by Her Majesty's Government, the object of the remonstrance to the Peruvian Government has been practically obtained. But the despatch of the Peruvian Government is very diffuse, and not very clear, and is chiefly occupied with maintaining that the *Spanish* Government have not done what they promised to do.

I think, therefore, that Mr. Barton should be instructed to apprise the Peruvian Government that Her Majesty's Government have no desire to prolong this discussion, but that they accept the Peruvian answer as admitting the justice of the demand of Her Majesty's Government that no vessel belonging to Her Majesty's subjects be captured or tried otherwise than according to the strict rules of international law, and that no tribunal on board a belligerent ship can be recognized by Her Majesty's Government as a proper Prize Tribunal; though Her Majesty's Government do not desire to interfere with any regulation which the Peruvian Government may make, having for its object to provide that no neutral vessel shall be *sent in to be tried* before a proper Prize Court duly constituted, and sitting in the belligerent territory, without a preliminary decision by a council on board a Peruvian ship that the neutral vessel ought to be subjected to this inconvenience.

I have, &c.
(Signed) ROBERT PHILLIMORE.

Portugal.

No. 144.

The Queen's Advocate to the Earl of Clarendon.—(Received February 10.)

Doctors' Commons, January 9, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 7th instant, stating that he was directed by your Lordship to transmit to me a letter received in January 1865, from Messrs. Miller and Horsman, together with its inclosures, requesting the assistance of Her Majesty's Government to obtain from the Government of Portugal a settlement of the claim put forward by the owners and underwriters of the British vessel "Riverdale," to a balance said to be due to them on the salvage of the cargo.

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* Mr. Barton, No. 10, February 27; No. 37, June 11, 1866.

Mr. Hammond was also to inclose the instructions which were addressed to Her Majesty's Minister at Lisbon, and the correspondence which has taken place between him and the Portuguese Government on the subject; and was to request that I would take these papers into consideration, and furnish your Lordship with my opinion as to the instructions which should be sent to Sir A. Magenis in the matter, and whether he can properly be authorized to make the declaration required by the Portuguese Government.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That, strictly speaking, Messrs. Miller and Horsman should be required to state to your Lordship precisely what the proof was which the Portuguese Courts required, and which they say the alleged owners and underwriters have not furnished; but looking to all the circumstances, among others to the facts that the proceeds of this vessel have been in the Portuguese Treasury since 1861, and that no other claimants, as I understand the case, have appeared, and that proper bonds of security are to be given by the claimants, I think Sir A. Magenis may be instructed to make the declaration required by the Portuguese Government.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 145.

The Queen's Advocate to the Earl of Clarendon.—(Received March 22.)

Doctors' Commons, March 21, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Murray's letter of the 14th instant, stating that he was directed by your Lordship to transmit to me the accompanying correspondence, as marked in the margin,* relative to the proceedings of the Portuguese authorities at Loanda in interfering with the proper duty of Her Majesty's Consul in regard to the clearance of British ships; and Mr. Murray was pleased to request that I would furnish your Lordship with my opinion whether any and what representation should be made to the Portuguese Government on this subject, and whether that representation may include a statement that the rules and port regulatious alluded to in the above-mentioned papers are at variance with the Commercial Treaty between Great Britain and Portugal of 1842, a copy of which will be found in vol. vi of Hertslet's Treaties, page 598.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I agree with the Report of the Board of Trade in this matter, and am of opinion that a remonstrance should be addressed to the Portuguese Government on the conduct of the civil authorities with respect to the endorsement in a foreign language on the ship's articles; the requiring the delivery up of the ship's agreement from the Consul at the time when he requires their use for purposes connected with the discharge of his duties; and with respect to taking out of the ship, when about to sail, distressed British seamen; and the general conduct of the police in preventing the shipment of seamen by the Consul without their consent.

There may be special circumstances justifying the intervention of the police in this matter, but unless they exist, the shipment of British seamen by the Consul should not be interfered with.

Lastly, with reference to the Port Regulations contained in Rules 8, 23, and 36, and their alleged conflict with the provisions of the Treaty of July 3, 1842:—

Rule 8, requiring a consignee to be appointed before a foreign vessel can enter or discharge, is not perhaps directly at variance with Article III of the Treaty, which refers in terms to resident persons, and not to captains of merchant ships; but I think it is contrary to the spirit and object of the Treaty, which is to place British and Portuguese traders upon the same footing.

Rule 23 appears to me to conflict with the two last clauses of Article XIV of the Treaty, and especially the passage recited in the letter of the Consul, with whose opinion upon this point I agree.

Rule 36 cannot, I think, be said to be directly at variance with the provisions of the Treaty, and it may be defended on the ground that the peace of the town required the enforcement of such a rule. It furnishes, however, ground for remonstrance on general

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* Consul Vredenburg, No. 12, November 22, 1865; to Board of Trade, February 9; Board of Trade, March 8, 1866.

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grounds, and may be fairly complained of as harsh, arbitrary, and inhospitable. An obvious improvement upon it would be, that no seaman, without the express permission of his captain, should be allowed in the town after tattoo without liability to be fined. But I think that an endeavour should be made to remove the restriction altogether; it would always be competent to the authorities at Loanda to punish any seaman misconducting himself on shore.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 146.

The Queen's Advocate to the Earl of Clarendon.—(*Received May* 25.)

My Lord, *Doctors' Commons, May* 24, 1866.

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 19th instant, stating that he was directed by your Lordship to transmit to me a correspondence which has passed between Her Majesty's Government and the Government of Portugal, and also between the Foreign Office and Her Majesty's Commissioner at Loanda, arising out of the proceedings of the Portuguese authorities in Angola in permitting the exportation of negroes from that province, under the plea of their being libertos or freedmen, to the neighbouring Islands of Principe and San Thomé, contrary, as Her Majesty's Government believe and maintain, to the spirit and letter of the Treaty of 1842 between this country and Portugal for the suppression of the Slave Trade. A Memorandum, drawn up in the Foreign Office, showing the views taken by Her Majesty's Government and the Government of Portugal upon this matter, was also transmitted; and Mr. Layard was pleased to request that I would take this matter into consideration, and furnish your Lordship with my opinion whether Her Majesty's Government are borne out in their views of the case, and, if so, what steps it would be proper to take in order to put a stop to the continued exportation of negroes from Angola to the adjacent Portuguese islands.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I am of opinion that the view which Her Majesty's Government have taken in this matter is correct. The true question is, whether this practice of exporting natives, called "libertos," from the Portuguese possessions on the mainland of the coast of Africa to the adjacent Portuguese islands be or be not a violation of the Treaty of 1842; and I have the honour to agree with the opinion of Her Majesty's Government that this practice is, in substance, a violation of the Treaty.

The Treaty carefully specifies the number and character of slaves who may accompany a Portuguese subject "in voyages to and from the Portuguese possessions off the coast of Africa." It is plain that if these persons, called libertos, are really slaves, they are not the class of slaves which by the Treaty Portuguese subjects are allowed to take with them.

It is further clear to me that these so-called libertos are, in fact and truth, slaves; and, indeed, so much is substantially admitted by the Decree of 1854, upon which the Portuguese authorities rely. By that Decree they are slaves to all intents and purposes for ten years, and their services, *as slaves*, may be sold for a whole or a portion of that time. The fact that a period of ten years is fixed as the limit of their time of slavery does not prevent their being slaves during that period, and before it expires. It was the thing, and not the name, it was which the object of the Treaty to prevent, and which it is the duty of the Parties to the Treaty to take care to prevent.

If it is competent to the Portuguese authorities to take slaves out of the operation of the Treaty by limiting the period of slavery to ten years, it is, as observed in the Foreign Office Memorandum, equally competent to them to produce the same effect by passing another Decree, and fixing a period of twenty, thirty, forty, or fifty years, and by this means the very object and end of the Treaty would be practically defeated; and that is the answer to the request of Count de Castro (Inclosure 2 in Sir A. Magenis' No. 6 of the 22nd March, 1866) as to "what international provision" is violated by the transportation of these so-called libertos from one Portuguese possession to another, namely, the answer that these libertos are, in fact, slaves, and that they do not fall within the category of those slaves who are permitted, under the provisions of the Treaty, to accompany their masters.

The objection raised by Count Castro to bringing these so-called libertos before the

Mixed Commission Court in order to ascertain whether they are going of their own free will, or not, to these islands, does not seem to be sound. The Count says that the possibility of taking the declarations of libertos before a Mixed Commission is not inserted among the provisions in the Annex C to the Treaty, and this is true; but the contention of Her Majesty's Government is, that whatever name the Portuguese authorities may impose upon these persons, they are, in fact, slaves, liable to be treated and to be sold as such during a particular and unexpired period; and it is on this ground that the bringing them before a Mixed Commission is to be justified.

The other argument of Count Castro, that the Portuguese Government must have labourers to develope the resources of the islands, is irrelevant; the answer clearly is, that no one disputes their right to do so, but that they must not export slaves under the name of labourers.

It is, I see also, a contention of the Portuguese authorities that if the passport describes these libertos "as *bonâ fide* household servants," it is not competent to the cruizer to look behind or beyond the passport; but I do not so read the Treaty, which has the expressions "slaves who *are bonâ fide* household servants, and who may be duly named *and* described as such in passports, &c.;" and these expressions, "being" and "who shall be *bonâ fide* household servants," are repeated more than once in the Articles of the Treaty. The existence of both conditions, therefore, (1) that they shall be *bonâ fide household* slaves, and (2) that they shall be so described in the passport, seems necessary to avoid the application of the Treaty to these persons; and I think it would be competent to the seizing officer to show that these slave-owners were not entitled to a passport, and that they had obtained it either through the agency of fraud or by the improvidence of the grantor.

Nevertheless, it is desirable for many reasons to avoid, if possible, having recourse to this expedient of bringing the libertos before the Mixed Commission Court, and I think the Portuguese Government should be apprised that it would be with very sincere regret that Her Majesty's Government would be driven to take this course; but that so notorious and flagrant has the present system become of carrying on a Slave Trade under the mask and pretext of transporting free men (against their will) from the main shore to the islands, that really no option will be left to Her Majesty's Government, unless the Portuguese Government do, out of regard to their own honour and duty, at once and effectually interfere, as it is to be yet hoped they will, to prevent and put down a system which practically renders the Treaty of no avail.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 147.

The Queen's Advocate to Lord Stanley.—(*Received September* 24.)

Doctors' Commons, September 23, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Egerton's letter of the 13th instant, stating that he was directed by your Lordship to transmit the despatches and letters, as marked in the margin,* which have been received from Mr. Vredenburg, Her Majesty's Commissioner at Loanda, and from the Admiralty, reporting the circumstances under which the Portuguese brig "Dahomey" has been detained by the Commander of Her Majesty's ship "Espoir," and brought for adjudication before the Mixed Commission Court established at that place, for having on board three slaves, and on suspicion that she was destined to be employed in Slave Traffic; and Mr. Egerton was to request that I would take these papers into consideration, and report to your Lordship my opinion upon the merits of this case, and more particularly as to whether, under the circumstances, Her Majesty's Commissioner acted rightly in declining to refer to arbitration the question whether or not the owners of the "Dahomey" were entitled to compensation on account of the detention of their vessel.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That with respect to the merits of this case, I am clearly of opinion that this vessel could not have been lawfully condemned upon the evidence (with which alone, of course, I am concerned) produced before the Commissioners. It is not necessary that I should enter into the question as to whether or no the captor was deceived by the statement of

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* Admiralty, April 10 and 12; Consul Vredenburg, Nos. 13, 16, and 20; Consul Vredenburg, Private, July 8 and August 2, 1866.

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the interpreter, or whether the three men alleged to be slaves gave two different accounts at the time of capture and at the time of their examination before the Commissioners.

With respect to the question whether the owners of the "Dahomey" were entitled to compensation, and the construction of the IXth and Xth Articles of the Treaty, and the VIIth Article of Annex B (3rd July, 1842, Hertslet, vol. vi, page 625, &c.), I am of opinion that, in the first place, if the captain's statement was admitted as credible evidence, as I understand it to have been, the replies of the master of the "Dahomey" to the questions put by the captain with respect to these men were such as to show, in the language of the VIIth Article of the Annex B, "that the captain had been led into error by the fault of the master or commander of the detained vessel," and that therefore the detained vessel was not, according to the provision of the same Article, entitled to receive compensation for seizure; and, in the second place, I think that the "extraordinary number of water-casks or of other vessels for holding liquid" (Article IX), for which the master did not produce a proper specific certificate, did bring the case, as the British Commissioner thought, under the provisions of the Xth Article of the Treaty, and therefore disentitled the owners of the prize to compensation.

With respect to the question whether Her Majesty's Commissioner acted rightly in declining to refer to arbitration the consideration whether the owners of the "Dahomey" were entitled to compensation—having regard to the IVth and VIIth Articles of the above-mentioned Annex—I am of opinion that he acted wrongly, and that he was not authorized, either by the Treaty or by the special circumstances of the case, to take that course.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 148.

The Queen's Advocate to Lord Stanley.—(Received October 23.)

My Lord,
Doctors' Commons, October 23, 1866.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 15th instant, stating that, with reference to my Report of the 23rd ultimo, respecting the case of the Portuguese barque "Dahomey," which was brought for adjudication before the Mixed Commission Court at Loanda, on a charge of being engaged in the Slave Trade, he was directed by your Lordship to transmit to me two further despatches from Mr. Vredenburg (Nos. 21 and 22), inclosing a list of articles found on board the "Dahomey," and a translation of an award made in favour of the owners of that vessel by the Portuguese Commissioner and Arbitrator in Mr. Vredenburg's absence; and Mr. Hammond was pleased to request that I would take these papers into consideration, and furnish your Lordship with my opinion thereupon.*

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That it is provided by the Treaty (Lisbon, July 3, 1842, Annex B, 3), "that the Mixed Commissions are to decide upon the legality of the detention of such vessels as the cruizers of either nation shall, in pursuance of the same Treaty, detain." And, moreover, that "these Commissions shall judge definitively, without appeal, all questions which shall arise out of the capture and detention of such vessels."

If Her Majesty's Government were to adopt and act upon Mr. Vredenburg's opinion with respect to the alleged unreasonableness of the amount awarded in this case, it would practically be acting as a Court of Appeal from the sentence of the Commissioners. I do not think that Her Majesty's Government ought to take this course. I retain the opinion expressed in my former Report, that Mr. Vredenburg erred in refusing to refer to arbitration the question as to the construction of the Articles of the Treaty, and in withdrawing from the Commission; but I continue to think that he is right in saying that, according to the construction of Article X of the principal Treaty, and Article VII of the Annex B, the owners of the detained vessel were not entitled to compensation for her seizure.

Upon the whole, I venture to think that the best course which your Lordship could pursue would be to submit to the Portuguese Government that though Her Majesty's Government fully recognize their obligation to be bound by the sentence of the Commissioners, both generally and especially as to all questions of contested fact, they think it

their duty to represent that in this case there appears to have been a misconstruction of the provisions of the Articles of the Treaty above mentioned, and that upon this misconstruction the decree for compensation in this case has been entirely founded. That Her Majesty's Government therefore desire to lay this question of principle before the Portuguese Government, hoping and believing that they will take the same view of it as that which has been taken by Her Majesty's Government, but nevertheless professing, should this unhappily not be the case, their readiness to be bound by the decision, however unjust they may think it, of the Arbiter who is called in under the provisions of the Treaty.

It would of course be proper to embody the statements of Mr. Vredenburg in a Memorial, though probably it would be thought inexpedient to annex the letters themselves.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 149.

The Law Officers of the Crown to Lord Stanley.—(Received November 24.)

My Lord,
Lincoln's Inn, November 22, 1866.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 27th of October, stating that he was directed by your Lordship to transmit to us the accompanying despatches from Her Majesty's Chargé d'Affaires at Lisbon (Nos. 4, 8, 9, 12), calling attention to the habitual shipment and transport of slaves under the name of libertos on board the vessels of Messrs. Leatham and Bailey, of Hull, the owners of the steamers plying under contract with the Portuguese Government.

Mr. Hammond was also pleased to state that we should perceive that Messrs. Leatham and Bailey stated, in reply to Mr. Lytton's warning of the risk they ran in continuing to carry slaves on board their vessels, that they considered that the Portuguese authorities, and not the owners of the steamers, should be held responsible by Her Majesty's Government for the passengers conveyed on board their vessels; and Mr. Hammond was to request that we would take the inclosed papers into our consideration, and report to your Lordship our opinion whether these British contractors, notwithstanding their vessels being in the employ of the Portuguese Government, do not render themselves amenable to British laws for carrying these so-called libertos on board their ships.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we are not able satisfactorily to answer the questions put to us without being furnished with a copy of the contract that now exists between Messrs. Leatham and Bailey and the Portuguese Government. If, by the contract, Messrs. Leatham and Bailey are to navigate the ships, employing and paying the captains and crews, and merely carrying such persons and things as they are required to carry by the Portuguese Government under the contract, and assuming, as we do, from the statements submitted to us, that the libertos are really slaves, we are of opinion that Messrs. Leatham and Bailey do render themselves amenable to the provisions of the British laws by carrying the libertos on board their ships. If, however, by the contract, Messrs. Leatham and Bailey charter their ships absolutely to a Portuguese Company, and that Company, under contract with the Portuguese Government employ the ships to carry the libertos, although the vessels might be forfeited and liable to be seized and brought for trial before a Mixed Commission Court, yet Messrs. Leatham and Bailey would probably not be personally amenable to the provisions of the British laws.

We think the best course will be to request that a copy of the contract shall be sent, so that the matter may be further considered and a satisfactory judgment framed upon the question.

The precise connection of Messrs. Leatham and Bailey with the Portuguese Company should also be ascertained.

We have, &c.
(Signed) JOHN ROLT.
W. BOVILL.
ROBERT PHILLIMORE.

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* Also further Papers in Mr. Hammond's letter of October 17, 1866.

No. 150.

The Law Officers of the Crown to Lord Stanley.—(Received November 23.)

My Lord, *Lincoln's Inn, November 22, 1866.*

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 7th instant, stating that he was directed by your Lordship to transmit to us a letter dated the 18th ultimo, which your Lordship had received from Mr. Stearns, connected with the case of the "Agnes," which was seized in Delagoa Bay, in 1862, by the Portuguese authorities.

Mr. Hammond was also to transmit to us a despatch from Her Majesty's Chargé d'Affaires at Lisbon (No. 15), and a letter, dated the 10th ultimo, which was recently addressed to Mr. Stearns, together with a Memorandum which has been drawn up at the Foreign Office upon this subject; and he was to request that we would take these papers into our consideration, and furnish your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have considered these papers, and have the honour to report—

That it must be taken to be established upon the papers before us that the "Agnes" continued her voyage up the King George River against the remonstrances of the Portuguese authorities. Mr. Stearns, though he endeavours to explain the transaction, admits that he refused to go to the Portuguese Governor when sent for, and seeks inferentially to justify it by denying the right of the Portuguese to the territory and jurisdiction at the mouth of the river. But it is clear the English Government have recognized and admitted the right and jurisdiction of the Portuguese to this extent, though to what extent inland this right and jurisdiction extends is not clear.

On the whole, therefore, we think the "Agnes" was in the wrong in the outset of the dispute.

The seizure of the vessel and the ill-treatment of the crew appear originally to have been the acts of Kaffirs, at a distance up the river beyond the Portuguese jurisdiction; but it is not made out that this was done by the Portuguese authorities.

On the whole, we cannot see sufficient justification, upon the evidence before us, for a demand for reparation by the British Government upon the Government of Portugal on behalf of Mr. Stearns.

We have, &c.
(Signed) JOHN ROLT.
W. BOVILL.
ROBERT PHILLIMORE.

No. 151.

The Law Officers of the Crown to Lord Stanley.—(Received December 7.)

My Lord, *Lincoln's Inn, December 7, 1866.*

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 8th ultimo, stating that Mr. Lindsay, formerly Member for Sunderland, had requested your Lordship again to submit to the Law Officers of the Crown his request for the official support of Her Majesty's Government, which has hitherto, under the opinion of our predecessors, been withheld from him, in respect of his claim, and those of other British subjects, arising out of their connection with the Royal Union Mercantile Company of Portugal.

That your Lordship having acceded to this request, he (Mr. Hammond) was directed to transmit to us the accompanying printed papers on the subject, and to refer us at the same time to the Reports of the Law Officers of the dates mentioned in the margin;* and Mr. Hammond was pleased to request that we would report to your Lordship our opinion as to the propriety of Her Majesty's Minister at Lisbon being instructed to afford his unofficial support to the claimants.

Some further correspondence which has passed with Her Majesty's Mission at Lisbon since the date of the printed papers was also inclosed.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we entirely agree with the late Law Officers in the opinions expressed by them in their Reports of the 28th and 29th July, 1864, and in the reasons on which those opinions are founded.

It appears that subsequent to those Reports Mr. Lindsay, on the 3rd June, 1865, in a letter addressed to Her Majesty's Government, stated that the Courts of Portugal had at last decided that the debentures issued in his favour by the Royal Union Company of Lisbon must be paid with interest, and that they had a preference claim upon all the assets of the Company; and urging the Government to instruct Her Majesty's Minister at Lisbon to ask the Portuguese Government that means might be placed at the disposal of the holders of those debentures to carry into effect the decision of the Court.

Her Majesty's Minister at Lisbon was thereupon instructed by Her Majesty's Government to communicate with the Portuguese Government with the view of obtaining for Mr. Lindsay the full benefit conferred upon him by the Decree in question, and generally to do, unofficially, what he properly could to promote an early settlement of his claims in regard to these debentures.

Mr. Lytton, in a long and detailed despatch of the 24th June, 1865, written in reply to those instructions, explained that Mr. Lindsay's letter of the 3rd June was not quite accurate, and that the verdict of the Portuguese Court, referred to by Mr. Lindsay, had not been obtained by that gentleman and was not in his favour, but that he had recently made over to the London and Brazilian Bank, established at Lisbon, the whole of those papers, and that the Bank, and not Mr. Lindsay, was then the creditor of the Company and, as holders of such debentures, had, in that capacity, sued the liquidating Committee of the Company for payment, and had obtained in their favour, and not in Mr. Lindsay's, the verdict of which a copy had been transmitted by Mr. Lindsay to Her Majesty's Government. Mr. Lytton, in the same despatch, also explained the steps that were being taken for realizing, by sale, the three steamers belonging to the Company, and stated, in substance, that there was reason to believe that the Company or the Liquidating Committee were purposely delaying the sale and so preventing the realization of funds out of which the debentures might be satisfied; and that he (Mr. Lytton), assuming and believing that the Portuguese Government had authority to insist on the affairs of the Company being wound up within a period of time, had spoken privately and unofficially to Count d'Avila in furtherance of what appeared to him the very reasonable wishes expressed by the Representative in Lisbon of Mr. Lindsay and by the then holders of the debentures.

Subsequent despatches from that date down to the 26th February last from Her Majesty's Minister at the Court of Lisbon show that to that date nothing of importance had been done and that the ships were still unsold, notwithstanding the urgent private and unofficial appeals and remonstrances made by the Minister to the Portuguese Government. This delay in effecting the sale of the vessels is wholly unexplained in the papers before us, and the consequent loss from the deterioration of the vessels is obviously great and will probably fall on the debenture holders. But we are of opinion that these facts do not afford any ground for Her Majesty's Government to interfere officially on behalf of Mr. Lindsay or any other debenture holders.

The present holders have established in the Portuguese Courts the validity of the debentures in their hands against the Company, and they can only, as it appears to us, resort to the laws of that country for the purpose of enforcing payment of the amount of them against the assets of the Company. Neither Mr. Lindsay nor any other person is, as we think, entitled to claim that Her Majesty's Government shall interfere officially on the subject and insist on payment or on any particular course of action being adopted by the Portuguese Government.

We think, therefore, that it will be proper that instructions should be sent to Her Majesty's Representative at Lisbon to continue to give any assistance in his power, by friendly offices, to Mr. Lindsay or to the present debenture holders, but not *officially* to interfere in this matter with the Portuguese Government.

We have, &c.
(Signed) JOHN ROLT.
JOHN B. KARSLAKE.
ROBERT PHILLIMORE.

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* Queen's Advocate, October 24, 1862; January 17, May 5, May 12, and May 23, 1863; Law Officers, July 28 and July 29; Attorney and Solicitor-General, December 6, 1864.

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Prussia.

No. 152.

The Queen's Advocate to the Earl of Clarendon.—(*Received January* 13.)

My Lord, *Doctors' Commons, January* 12, 1866.

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 10th instant, stating that with reference to my Report of the 3rd of November last, reporting my opinion upon certain questions which had arisen out of the contemplated marriage at the British Consulate at Königsberg, of an Englishman with a Jewess, a Prussian subject, he was directed by your Lordship to transmit to me further correspondence which has passed on the subject, from which I should see that the marriage has been celebrated at the Consulate; and Mr. Layard was pleased to request that I would furnish your Lordship with any observations I may have to make on the matter. My previous Report, and the correspondence on which it was founded, was also inclosed for convenience of reference.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That upon the general question of the duty of the Consul with respect to these marriages, I adhere to the opinion expressed in my former Report, to which I crave leave to refer.

With regard to this particular case, I do not advise your Lordship that any further instructions should be sent to Lord Napier; but it would be, perhaps, expedient that the parties to this marriage should be apprized by the Consul that after reading the letter of M. de Bismarck, I am of opinion that they would act wisely in even now going through the forms prescribed by the law of Prussia for a marriage between a Christian and a Jewess.

I have, &c.
(Signed) ROBERT PHILLIMORE.

[For Report upon Extradition Treaty with Prussia, see France, No. 62, page 34.]

No. 153.

The Queen's Advocate to the Earl of Clarendon.—(*Received April* 16.)

My Lord, *Doctors' Commons, April* 14, 1866.

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 6th instant, stating that he was directed by your Lordship to transmit to me a correspondence which has been forwarded to the Foreign Office by Her Majesty's Ambassador at Berlin, on the subject of a complaint made by the British residents at Memel against the enaction by the Prussian clergy of baptismal fees for the infants of British subjects. That in consequence of this complaint Lord Napier addressed an inquiry to the Prussian Government with regard to the position of the Anglican Church in Prussia, and the validity of registration by its ministers. That Lord Napier has now received a reply on the subject; and Mr. Layard was pleased to request that I would take this matter into consideration, and furnish your Lordship with any observations which may suggest themselves to me on the subject.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That if the complaint of the British subjects was, that they were compelled to have their children baptized by Prussian clergymen, that is, by ministers who do not belong to their church, and to pay fees for the same, there would be ground for a strong remonstrance by Her Majesty's Government against such a breach of comity as would be inflicted by a law or custom of such extreme intolerance and illiberality; but if I am to take—as I think I am bound to do at present—the letter of M. Thile to Lord Augustus Loftus, as the true exposition of the Prussian law upon this subject, the complaint does not seem to be well-founded.

It appears that the English Church is not so recognized by the Prussian law as to permit the registries of the English clergymen to be received as evidence in the Civil Courts of Justice, of the facts recorded in them, and that therefore, for the purposes of such evidence, the registration must be made according to the Prussian law, which law requires that all entries respecting births, baptisms, and the like, shall be made by Prussian clergymen.

Moreover, it appears from the letter of M. Thile that it is competent to British subjects who are *naturalized* in Prussia, by obtaining a certificate from the English Ambassador or Consul, to produce the evidence necessary for civil purposes, relative to their birth or baptism in Prussian Courts, without having recourse to baptism by Prussian clergymen.

It may be a subject worthy of your Lordship's consideration whether an endeavour should not be made to induce the Prussian Government to include the English Church among those religious communities whose corporate character is recognized by the State; but, apart from this general consideration, I do not think that the complaint of these particular persons calls for any intervention on the part of Her Majesty's Government.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 154.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received June* 2.)

My Lord, *Lincoln's Inn, May* 31, 1866.

WE are honoured with your Lordship's commands signified to us in Mr. Hammond's letter of the 25th of May instant, stating that with reference to our letter of the 24th of May instant, reporting our opinion upon the order issued by the Austrian Government respecting the exemption from capture of merchant-ships belonging to belligerents granting reciprocal exemption to Austrian vessels, he was directed by your Lordship to transmit to us an accompanying note from the Prussian Ambassador at this Court, inclosing a similar order which had been issued by the Prussian Government; and that he was to request that we would favour your Lordship with any observations which we might have to make upon the Prussian Order.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That the observations which we had the honour to make in our former Report with respect to the proposal of the Austrian Government, appear to us in great measure applicable to the course which Her Majesty's Government should pursue with respect to this communication from the Prussian Government.

It would seem to us imprudent to do more than formally acknowledge the receipt of this communication; and we must observe that the Decree is couched in language by no means free from ambiguity, with respect to the proposed treatment of neutral vessels in time of war.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 155.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received June* 30.)

My Lord, *Lincoln's Inn, June* 29, 1866.

WE are honoured with your Lordship's commands signified in Mr. Layard's letter of the 27th instant, stating that he was directed by your Lordship to transmit to us the accompanying despatch from Her Majesty's Ambassador at Berlin, inclosing an Order published in Prussia respecting the treatment of Austrian merchant-vessels during the present war; and Mr. Layard was to inclose also a despatch referred to by the Ambassador, and to request that we would favour your Lordship with any observations which we might have to make upon the order in question.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That it does not appear to us that the Prussian Order calls for any observations on the part of Her Majesty's Government. It correctly recapitulates the provisions of the

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Declaration of Paris, and makes an addition to them for the purpose of the present war, which concerns the present belligerents only, and does not affect the commerce of neutral States.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 156.

The Law Officers of the Crown to Lord Stanley.—(*Received July* 25.)

Lincoln's Inn, July 21, 1866.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Egerton's letter of the 13th instant, stating that he was directed by your Lordship to transmit to us the accompanying translation of a note dated the 4th instant from the Prussian Ambassador at this Court, forwarding a Prussian Official Order directing that crews (?) of Austrian merchant ships should be humanely treated; and Mr. Egerton was to request that we would furnish your Lordship with any observations which we may have to make upon this document.

In obedience to your Lordship's commands we have the honour to report—

That we beg leave to refer to the Reports of the Law Officers of the 24th and 31st of May, with respect to the official declarations of the belligerents in this war on the subject of the exemption of merchant-ships from the effects of belligerent operations.

That we are of opinion that the receipt of the present communication should be formally acknowledged without any comment on the part of Her Majesty's Government.

We have, &c.
(Signed) H. M. CAIRNS.
W. BOVILL.
ROBERT PHILLIMORE.

No. 157.

The Queen's Advocate to Lord Stanley.—(*Received October* 6.)

Doctors' Commons, October 6, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Egerton's letter of the 3rd instant, stating that he was directed by your Lordship to inclose the accompanying despatches and papers which have been received from Her Majesty's Ambassador at Berlin (Nos. 234, 248), on the subject of a claim for compensation made by Mr. John Cliff, a British subject acting as manager to a Mining Company in Moravia for losses which he has sustained at the hands of the Prussian forces invading that country; and to request that I would take these papers into consideration, and report to your Lordship my opinion as to what steps, if any, should be taken by Her Majesty's Government in the matter.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That the principle of international law which Her Majesty's Government have been advised to apply to cases of this kind which occurred during the American civil war was the following; namely, that when a neutral subject has been domiciled in the country of a belligerent, and carrying on commercial business therein, he must be treated, with respect to injuries done by the armies of either belligerent to his property, as being in the same category as a native subject of the State in which he was domiciled, and that the official interference of Her Majesty's Government ought only to be exerted when the redress to which a native subject was entitled had been denied to him. In the present case I think the most expedient course would be to apprise Mr. Cliff that he must make his own application for redress to the Prussian Government, and use the same means as he may be legally advised it would be proper for an Austrian subject to use whose property had been injured in the same circumstances. That the fact of his being domiciled and carrying on a commercial establishment in the country places him, so far as this particular question is concerned, on the same footing as a native subject of Bohemia; at the same time Her Majesty's Government will instruct Her Majesty's Representative at Berlin to assist, according to his discretion, and without making a demand as of right, the application of Mr. Cliff.

Mr. Cliff, however, must distinctly understand that if the Prussian Government should contend that he must be treated, so far as this claim is concerned, as an Austrian subject, Her Majesty's Government would be unable to deny the right of the Prussian Government to maintain this position.

I have, &c.
(Signed) ROBERT PHILLIMORE.

Russia.

No. 158.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received June* 21.)

Lincoln's Inn, June 20, 1866.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 21st of May ultimo, stating that he was directed by your Lordship to transmit to us the accompanying correspondence which has passed between the Foreign Office and Messrs. Nell and Co.,* respecting the seizure by the Russian authorities at Odessa of certain bonds of the Crédit Foncier of Poland belonging to their firm; and to request that we would take this matter into consideration, and favour your Lordship with our opinion thereupon.

We are also honoured with your Lordship's commands signified in Mr. Hammond's letter of the 6th instant, stating that with reference to his note of the 4th instant he was directed by your Lordship to transmit therewith a note which had been received from Messrs. Nell and Co., inclosing a copy of the evidence given by the Polish Advocate in their case, together with a copy of the "Times" of the 22nd of February, referred to in Messrs. Nell and Co.'s letter of the 28th ultimo.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That it appears to us that Messrs. Nell and Co. have made out a strong *primâ facie* case for the interference of Her Majesty's Government on their behalf with the Government of Russia. We are at present wholly at a loss to understand upon what ground the Russian authorities can justify the arbitrary seizure of these bonds in the hands of a *bonâ fide* foreign possessor of them for valuable consideration; more especially after the decision of the English Court of Chancery, in which they appear to have acquiesced. In any case, the offer of the British holder, "that the question between him and them (the Russian Government) should be decided according to Polish law established by the Russian Government," is one the fairness of which it seems difficult to gainsay or impugn.

We are of opinion that a representation on the subject, setting forth the principal facts of the case, and requesting proper redress, should be addressed by your Lordship to the Russian Government.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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* Messrs Nell and Co., May 14; to Messrs. Nell and Co., May 18; Messrs. Nell and Co., May 28. 1866.

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No. 159.

The Queen's Advocate to Lord Stanley.—(Received October 6.)

Doctors' Commons, October 6, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Egerton's letter of the 5th instant, stating that he was directed to transmit to me a letter from Mr. Charles Collins, applying for his Lordship's mediation in regard to certain bonds of the Crédit Foncier of Poland, which he is apprehensive that the Russian Government will refuse to recognize; and to request that I would furnish your Lordship with my opinion as to the course which should be pursued with respect to this application.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I am of opinion that Mr. Charles Collins should be informed that Her Majesty's Government see no ground at present for their official intervention on his behalf with the Russian Government. That Government has not as yet refused the payment of these bonds; should they do so, Her Majesty's Government will consider whether there is any adequate ground laid for lending official assistance to Mr. Charles Collins.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 160.

The Law Officers of the Crown to Lord Stanley.—(Received December 27.)

Lincoln's Inn, December 27, 1866.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 12th of November last, stating that with reference to the Report of the Law Officers of the 20th of June last he was directed by your Lordship to transmit to us, together with the previous papers, the accompanying despatch from Sir A. Buchanan (No. 407, November 7), inclosing a copy of a note from Prince Gortchakoff explaining the course pursued by the Russian Government in regard to the seizure at Odessa of certain bonds of the Crédit Foncier of Poland, the property of Messrs. Nell and Co.

Mr. Hammond was also pleased to transmit to us the accompanying correspondence respecting a somewhat similar case of a destruction of a bond of the Crédit Foncier of Poland, the property of Mr. H. Nicolls; and to request that we would take the inclosed papers into consideration, and report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That having carefully considered the papers relating to the complaints of Messrs. Nell and Co., and Mr. H. Nicolls, of the seizure and destruction of certain bonds of the Crédit Foncier of Poland by the Russian Government, we think that notwithstanding disputes as to certain facts connected with these cases, the claimants' proposal "that the questions between the claimants and the Russian Government should be decided according to Polish law established by the Russian Government" is so reasonable and fair that the Russian Government should be again urged to accede to it.

It seems to us that there can be but little question that the bonds which became the property of Messrs. Nell and Nicolls were stolen and brought to this country for the purpose of being disposed of. It may be assumed also that *certain* notices were issued and published in different journals and otherwise in Russia, and in England, and other countries, that such bonds had been stolen; but the claimants contend that they purchased their bonds (which are payable to bearer and transferable by delivery) *bonâ fide* for value; and after, as they believed, all questions as to the validity of the bonds had been settled by the judgment of the Court of Chancery, and by the delivery up of the bonds (for the detention of which actions had been brought in a Court of Law) by the Russian Consul-General, and others who had acted by his direction and authority in detaining them.

It is obviously impossible for us to determine whether many assertions contained in the letter of Messrs. Nell, and especially that of the 28th of May, 1866, explained, qualified, or denied, in the despatch of Prince Gortchakoff of the $\frac{\text{21st October}}{\text{2nd November}}$, 1866, are or are not correct; but we are of opinion that it is an act of injustice on the part of the Russian Government, while material facts are in dispute, and while the claimants contend that they are ready to prove that they are *bonâ fide* holders for value of their bonds, and entitled, according to the law (as expounded by a skilled witness in the course of the Chancery proceedings, and not then controverted), to recover the amount of such bonds from the Crédit Foncier of Poland,—to seize the instruments evidencing the title of the claimants, and prevent their having the opportunity of establishing their legal right to the amounts secured by such instruments. We do not understand why the proposal of the claimants (Messrs. Nell) already made, is characterized by Prince Gortchakoff as "parfaitement illusoire."

We think that in justice the claims should be determined at once by some Tribunal competent to try the question whether by the law of Poland, as established by the Russian Government, the claimants are entitled to be paid the amounts secured by the bonds.

I have, &c.
(Signed) JOHN ROLT.
JOHN B. KARSLAKE.
ROBERT PHILLIMORE.

Siam.

No. 161.

The Law Officers of the Crown to the Earl of Clarendon.—(Received May 24.)

Lincoln's Inn, May 22, 1866.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 30th ultimo, stating that he was directed by your Lordship to transmit to us the papers as marked in the margin,* relative to disputes which have arisen as to the respective rights of certain parties to cut timber in the Mhine-loughee forests, a tract of land ruled over by the Chief of Chiengmai, who is himself a tributary of the King of Siam.

That the interference exercised by Her Majesty's Consulate at Bangkok in these disputes, so far as relates to the case of Mong Shuez Gan *v.* the Chief of Chiengmai, has already formed the subject of Reports by Her Majesty's Advocate-General, dated the 2nd December, 1864, and 25th August, 1865, to which Mr. Hammond was pleased to refer us. That those Reports were embodied in instructions to Her Majesty's Consul, who was informed in the despatch addressed to him on the 18th of September last (No. 45), that, as a compromise had been effected, Her Majesty's Government would abstain from offering any further observations upon the case. That further disputes had, however, now arisen, of which the particulars may be gathered from the complaints made by Messrs. Todd, Findlay, and others, to Her Majesty's Government, and the answers thereto of Mr. Consul Knox and Colonel Fytche, the Commissioner in the Tenasserim Provinces, now at home on leave.

That as it would be necessary to return an answer to Messrs. Todd, Findlay, and Co., Mr. Hammond was to request that we would take their memorial into consideration, and advise your Lordship as to what the nature of that answer should be; but that your Lordship would also wish to be furnished with our opinion as to the course from first to last pursued by Her Majesty's Consulate at Bangkok in those disputes, and as to any instructions which should be addressed to Consul Knox for his future guidance.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That with respect to the questions now raised by the Memorial of Messrs. Findlay and others, we think it sufficient to observe that no interference of Her Majesty's Consul at Bangkok appears to have taken place subsequently to the settlement, by a compromise for pecuniary consideration, of the dispute between Mr. Johnstone and Captain Burn and his Burmese partner: and as the questions which have since arisen between the latter parties and other British subjects claiming rights to cut wood in the disputed districts appear to be cognizable by the British Consular Courts under the Siamese Order in Council, we think those questions may be properly left to be so determined.

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* Sir R. Schomburgk. No. 19, May 29; to India Office, July 16; India Office, August 2; to Mr. Knox, No. 40, August 9; India Office, November 23, 1864; India Office, January 13; to Sir R. Schomburgk, January 13; to Mr. Knox, No. 13, March 24; Mr. Knox, No. 30, June 27; to Mr. Knox, No. 45, September 18, 1865; India Office. January 5; Memorandum, January 5; to Mr. Knox, No. 4, January 16; Colonel Fytche to the Governor-General of India, March 6; India Office, April 12; Memorandum, April 17, 1866; Mr. Knox, No. 46, November 14, 1865; Mr. Knox, No. 7, February 1; No. 10, February 19, 1866.

It does not seem to us that the conduct of Mr. Commissioner Fytche has been in any respect deserving of censure.

Upon the proceedings connected with the disputes between Mr. Johnstone and the persons under whom he claimed, and Captain Burn, and Mong Shuez Gan, it is more difficult to form a satisfactory judgment. It is not shown that any person filling any official position in connexion with the British Consulate at Bangkok, or otherwise connected with the British Government, was directly or indirectly cognizant of the bribe which seems to have been offered by Captain Burn and his partner to the Siamese Prince, by whom the inquiry into these disputes was conducted. Were it otherwise, such conduct would have merited the severest reprehension and the most condign punishment. But as this is not alleged to have been the case, the sole question is whether Sir R. Schomburgk was justified in interfering, not (indeed) to obtain a reversal of any judicial or quasi-judicial decision (for this, speaking with strict accuracy, he did not do), but to obtain a re-grant to Captain Burn and his partner of the privileges of which he considered them to have been arbitrarily deprived by a proceeding not entitled, in his judgment, to the respect due to a *bonâ fide* legal decision.

It is extremely difficult for us to form any opinion either as to the validity of the original title under which Captain Burn and his native partner claimed, or as to the existence or non-existence of adequate grounds for holding that title forfeited or lost, if originally valid, or as to the true character of the proceedings before the Siamese Prince and his assessors, and of the decision said to have been pronounced by them. It is sufficient to say that, on all these points, we are quite disposed to accept and rely upon the statements and explanations contained in Mr. Knox's Report (Inclosure No. 1 in his letter to Earl Russell, June 27, 1865, No. 30); and we are satisfied that the true motive for Sir R. Schomburgk's interference was his desire to prevent what he honestly considered to be an arbitrary confiscation of valuable rights granted to a British subject, especially in a case in which the substantial parties to the controversy were British subjects on both sides, who (if they had been openly and directly litigating against each other) would have been subject to British and not to Siamese jurisdiction. Nor do we perceive that the new grant which was actually made, by means of Sir R. Schomburgk's influence, to Captain Burn and his partner, could practically have had the effect of defeating, in a British Court, any prior valid title which might have been obtained from the same quarter by Mr. Johnstone, or by those under whom Mr. Johnstone claimed.

Upon the whole it does not appear to us that Sir R. Schomburgk's conduct was deserving of censure.

We are of opinion, nevertheless, that, as a general rule, it would be better if the British Consul, who fills a judicial office and character, did not interpose his influence with the native authority, either to induce grants of land, or of privileges connected with land, to be made to one person rather than another, or to control the course of any legal or quasi-legal proceedings, in the result of which the interests of British subjects may be directly or indirectly concerned.

The local law, whether well or ill-administered, and whether the titles depending on it are thereby rendered more or less precarious, must prevail in all questions relating to land in Siam; and British subjects acquiring, or seeking to acquire, interests in such land, must submit to all the local conditions and infirmities of tenure.

If the parties to any such litigation, or if the questions involved in it, are (as in the present case) such that the Consul may himself be liable to be called upon to discharge judicial duties concerning the same matters, the inconvenience (not to say the impropriety) of any previous extra-judicial interference by him in favour of either party, becomes very apparent. But this general must be subject to exceptions where cases arise of plain oppression, or grave miscarriage of justice, which, upon public and international grounds may properly be made matters of remonstrance and complaint as between Government and Government; and in a country such as Siam, such exceptional cases may possibly be more liable to occur than in more civilized countries.

The views thus expressed by us agree in substance with those of the Queen's Advocate in his two former Reports upon this subject.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

Spain.

No. 162.

The Queen's Advocate to the Earl of Clarendon.—(*Received January* 1.)

My Lord, *Doctors' Commons, January* , 1866.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 30th ultimo, stating that, with reference to my Report of the 23rd instant, on the subject of the announcement made by the Spanish Government that they would treat as pirates the crews of privateers cruizing under certain specified conditions with Chilean letters of marque, he was directed by your Lordship to transmit to me the draft of a despatch which your Lordship proposes to address to Sir J. Crampton upon that subject; and Mr. Hammond was to request that I would take these instructions into consideration, together with the previous papers, and furnish your Lordship with my opinion as to whether the proposed draft is proper to be sent.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That the draft letter of your Lordship to Sir J. Crampton appears to me right and proper to be sent. I have, however, ventured to suggest certain additions to it.

The conduct of the United States in their war with Mexico, in 1846, with respect to privateers) which forms the principal addition), was not present to my mind when I reported upon this subject; but I am happy to find that this precedent, when closely examined, as well as the one supplied by your Lordship in 1839, strongly confirms the opinion which I had the honour to express upon the general subject.

I have added the name of the Spanish writer Riquelme to the list of Spanish writers.

Your Lordship will find in Lawrence's Wheaton (edited 1865, page 255) that Riquelme expresses himself very strongly against this claim on the part of Spain.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 163.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received January* 17.)

Sir, *Foreign Office, January* 17, 1866.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 16th instant, stating that he was directed by your Lordship to state to us that, in the inquiries which have been made respecting vessels supposed to be destined to be employed as privateers in the war between Spain and Chile, it has been ascertained that various vessels are building and arming in this country ostensibly for the service of foreign Governments not at present engaged in hostilities, for the construction and military equipment of which vessels the permission of Her Majesty's Government has neither been applied for nor obtained; and Mr. Hammond was pleased to request that we would furnish your Lordship with our opinion whether Her Majesty's Government could or should detain such vessels from proceeding to sea, unless the previous consent of Her Majesty's Government shall have been sought and obtained for such equipment and armament.

A copy of a letter on this subject which, by your Lordship's direction, Mr. Hammond addressed some days to the Home Office,* but to which no answer had yet been received, was also inclosed.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That there is no law in this country by which the building or equipment of ships of war within British territory for the use of foreign non-belligerent Powers, without Her Majesty's consent, can be prevented; and if any practice has in past times prevailed on the part of any foreign Powers, of communicating to the Government of this country any

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* N.B.—The answer from the Home Office has since been received and laid before us.—R.P.

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steps which they may have taken to procure such building or equipment, it must have been founded only upon their own views (very just and reasonable, in our opinion) of international comity.

The question seems to have been more than once considered in the early part of last century. Lord Fortescue, in his Reports (page 388), gives the following account of what then passed:—

"In Michaelmas vacation, 1721, the Judges were ordered to attend the House of Lords, concerning the building of ships of force for foreigners; and the question the Lords asked the Judges was, whether, by law, His Majesty has a power to prohibit the building of ships of war or of great force for foreigners in any of His Majesty's dominions? And the Judges were all of opinion (except Baron Mountague), Chief Justice Pratt delivering the opinion, that the King had no power to prohibit the same; and declared that Mountague said he had formed no opinion therein. The question was asked, on occasion of ships built and sold to the Czar being complained of by the Minister of Sweden. Trevor and Parker gave the same opinion in 1713."

Reference was made to this subject during the argument of the "Alexandra" case, in November 1863; and it is not at all probable that, if there had been any authority to the contrary, it would then have escaped attention.

We are therefore of opinion that Her Majesty's Government cannot by law detain such vessels as those mentioned in Mr. Hammond's letter (being vessels the equipment of which is not prohibited by the Foreign Enlistment Act), so as to prevent them from proceeding to see, unless the previous consent of Her Majesty's Government to their equipment has been sought and obtained: and that no such detention ought to be attempted.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 164.

The Queen's Advocate to the Earl of Clarendon.—(*Received January* 18.)

Doctors' Commons, January 18, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 16th instant, stating that he was directed by your Lordship to transmit to me a despatch from Her Majesty's Chargé d'Affaires in Chile (No. 74, November 30, 1865), reporting the circumstances under which he had applied to Admiral Pareja for the restoration of the "Constancia," which was captured under the Chilean flag but said to belong to Mr. Alwyn, a British subject; and Mr. Hammond was pleased to request that I would take this despatch into consideration, and inform your Lordship of my opinion whether, under the circumstances, your Lordship would be warranted in instructing Her Majesty's Minister at Madrid to support the representation which Admiral Pareja had promised to make to the Spanish Government in this case.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That, having regard to the peculiar circumstances of this case, I humbly advise your Lordship to instruct Her Majesty's Minister at Madrid to support, in the manner which he may think most expedient, the representation which Admiral Pareja had promised to make on behalf of the "Constancia."

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 165.

The Queen's Advocate to the Earl of Clarendon.—(*Received January* 20.)

Doctors' Commons, January 19, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 17th instant, stating that he was directed by your Lordship to transmit to me a despatch from Her Majesty's Minister at Madrid (No. 21, January 11), inclosing a copy of the reply of the Spanish Minister for Foreign Affairs to the representation which,

on receipt of my Report of the 18th ultimo, Sir J. Crampton was instructed to make to him on the subject of the Prize Court established by Admiral Pareja on board his flagship for the trial of vessels captured by the Spanish blockading squadron off Chile; and Mr. Hammond was pleased to request that I would take these papers into consideration and furnish your Lordship with my opinion on Señor de Castro's reply.

In obedience to your Lordship's commands I have taken this matter into consideration, and have the honour to report—

That the only part of Señor de Castro's reply which raises any question of law has reference to the constitution of the Prize Court.

He complains that the Government of a neutral State should require that such a Court should be presided over by a Civil Judge of sufficient experience—and asserts that no neutral nation has anything to say as to the category or class to which such Judge should belong, and that, according to the Spanish Law, it is proper to appoint naval Commanders to decide questions of prize, subject to an appeal from their decision to the Council of State. With respect to this position it is to be observed that there is in principle a great difference between the Prize Court and the ordinary Municipal Tribunals of a State. To the latter the subject of a foreign State necessarily and naturally submits himself while he is within the territory. To the former the foreigner, being neutral, is not, on the high seas, naturally subject. His vessel is permitted by his natural protector, his Sovereign, to be seized and brought by force within the territory of the foreign State upon the condition that the question of the lawfulness of the seizure be tried by the principles of International Law applied by a competent Court to his case. It is manifest that, in the competency of this Court, the neutral has a deep and peculiar interest, an interest recognized by the reason of the thing, by many Treaties, and by universal practice.

It is true that the Judge of this Court is appointed by the State of the captor, and that it is within the abstract competence of that State—however inconvenient and contrary to modern usage the course may be—to appoint a military or naval officer a Judge of a Prize Court, provided that he possesses the adequate knowledge of international jurisprudence which the neutral is entitled to expect and the application of which he has a right to demand, not only in the Court of Appeal but in the Court of the first instance.

But it is certainly not competent to the State of the captor to appoint one of the officers of the naval squadron, by a ship of which the neutral is captured, to be the Judge of the lawfulness of that capture. All reason, as well as authority, is opposed to such a practice. The Spanish jurist Bello puts the objection clearly: "Para que la presa maritima dé un titulo auténtico de propiédad, trasferible á los neutrales ó al represador, es necesaria, segun la práctica mas general de las naciones modernas, la adjudicacion de un *tribunal*, que debe pertenecer al Soberano del captor, *y residir en el territorio de este Soberano*, ó de sus aliados.

"La necesidad de los juzgamientos de presas nace principalmente del peligro de que en el ejercicio del derecho de captura se confundan las propiedades neutrales con las enemigas por error ó malicia de los captores. *Es evidente que si el juicio de la legitimidad de las presas se dejase á estos, la guerra se convertiria en un sistema de pillaje*, y la propiedad de aquellos que nada tienen que ver con la guerra, correria no menor peligro que la propiedad de los beligerantes."*

To the same effect is the celebrated answer made by Her Majesty's Government to the demands of Prussia in 1753 (called by Montesquieu "réponse sans réplique"), which has since been universally acknowledged as a most correct exposition of international law:—"By the Maritime Law of nations, universally and immemorially received, there is an established method of determination, whether the capture be or be not lawful prize. Before the ship or goods can be disposed of by the captors there must be a regular judicial proceeding, wherein both parties may be heard, and condemnation thereupon as prize, in a Court of Admiralty, judging by the law of nations and Treaties. The proper and regular Court for these condemnations is the Court of that State to whom the captor belongs."†

We have, &c.
(Signed) ROBERT PHILLIMORE.

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* Bello: "Principios de Derecho Internacional," pp. 182, 183.

† Phillimore's "International Law," vol. iii, p. 552.

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No. 166.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received January* 26.)

My Lord, *Lincoln's Inn, January* 26, 1866.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 25th instant, stating that he was directed by your Lordship to transmit to us the accompanying letters from the Spanish Minister at this Court, respecting certain vessels which are fitting out in this country, and supposed to be intended for use as privateers against Spain, and respecting which inquiries are being made through the Home Office and Treasury.

Two letters from the Admiralty relative to one of the vessels, the "Independencia," and two from the Home Office, relating to other vessels which were supposed to be fitting out as Chilean privateers, were also inclosed.

And Mr. Hammond was pleased to request that we would take these papers into consideration, and furnish your Lordship with our opinion as to whether any steps can be taken in the matter.

We also honoured with Mr. Hammond's further letter of yesterday's date, forwarding the statutory declaration inclosed in M. de Molin's letter of the 25th instant, which was accidentally omitted in Mr. Hammond's letter.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That the declaration of Juan Gavaron, which is the only evidence of any kind accompanying Mr. Hammond's letter, purports merely to state his belief, founded upon information received from persons not named, whom he "believes to be truthful." Even if the facts of which he proceeds to state his belief would amount to an offence against the Foreign Enlistment Act, it is clear that his belief alone is not even *primâ facie* evidence of the truth of these facts. Nor can credit be given to the information which he states himself to have received, unless it assumes the shape of definite statements by persons accepting the responsibility of what they allege, and showing what are their means of knowledge.

The substance, however, of the information to which Señor Gavaron deposes is that the "Independencia" is a ship of war lately purchased *by the Peruvian Government*, and now about to sail from this country with a crew many of whom are trained as soldiers.

It is added that she is believed to be intended "eventually" to "cruize against and prey upon Spanish commerce." If Spain were now at war with Peru this might be important. But if (as we suppose) Spain is not at war with Peru, we do not see how Her Majesty's Government could, even with better evidence, act upon the mere apprehension by the Spanish Government of "eventual" hostilities, as a reason for stopping a ship of war purchased and manned in this country by the Peruvian Government while still at peace.

Upon the whole, we cannot advise Her Majesty's Government to detain any of these vessels upon the materials now before us.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 167.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received January* 27.)

My Lord, *Lincoln's Inn, January* 27, 1866.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 19th instant, stating that he was directed by your Lordship to transmit to us a letter from the Home Office,* together with previous correspondence,† on the subject of the vessel "Pampero" or "Tornado," which was supposed to be fitting out to be used as a privateer in the Chilean service; and to request that we would take these

papers into our consideration, in conjunction with those inclosed in his letter of the 17th instant.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we see no ground for any interference on the part of Her Majesty's Government with respect to that vessel.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 168.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received January* 27.)

My Lord, *Lincoln's Inn, January* 27, 1866.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 25th January instant, stating that he was directed by your Lordship to transmit to us a letter from Messrs. Thompson, Bonar, and Co., requesting that, in the event of hostilities taking place between Spain and Peru, Her Majesty's Government will take such steps as may be necessary to prevent any obstacle being offered to the shipment of guano by British subjects from the Chincha Islands; and to request that we would take this letter into our consideration, and favour your Lordship, at our earliest convenience, with our opinion on this subject, and more especially as to how far Her Majesty's Government would be justified in interfering, by force or otherwise, to protect the produce of the Chincha Islands, which is mortgaged to British subjects.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That in the assumed event of hostilities between Spain and Peru, Her Majesty's Government would not be justified in interfering by force to protect from the belligerent operations of Spain the produce of the Chincha Islands, which is mortgaged to British subjects.

But we think that the good offices of Her Majesty's Government might very properly be used with the Spanish Government (as requested by Messrs. Thompson, Bonar, and Co., in the concluding paragraph of their letter), for the protection of the interests of British subjects in this property, so far as may be consistent with the exigencies of those warlike operations which the Spanish Government may consider it necessary to undertake.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 169.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received January* 29.)

My Lord, *Lincoln's Inn, January* 29, 1866.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 27th January instant, stating that with reference to our Report of the 26th instant, he was directed by your Lordship to transmit to us a further letter from the Spanish Minister at this Court, inclosing two depositions, together with a letter from the Admiralty, relating to the Peruvian ship "Independencia;" and to request that we would take these papers into our immediate consideration, and favour your Lordship with our opinion whether any steps could properly be taken on the statements made by the deponents.

We are also honoured with Mr. Hammond's letter of yesterday's date, stating that with reference to his letter of the previous day, inclosing a letter from the Spanish Minister, with two depositions made by deserters from the Peruvian frigate "Independencia," he was directed by your Lordship to transmit to us therewith, to be considered with that letter, a letter from the Peruvian Chargé d'Affaires, acknowledging the "Independencia" as a Peruvian ship of war; a letter from the Admiralty, reporting that the "Independencia" left Greenhithe in the afternoon of the 26th instant; and a letter

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* Home Office, January 18, 1866.

† Mr. Edwardes, January 8; to Mr. Edwardes, January 10; to Treasury and Home Office, January 10; Treasury, January 12; Home Office, January 12; to Mr. Edwardes, January 15, 1866.

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to the Spanish Minister, dated the 27th instant, acknowledging his letter of the previous day, acquainting him that the Peruvian Chargé d'Affaires had acknowledged the "Independencia" as a Peruvian ship of war, and that she went to sea on the 26th, in the afternoon; and stating further that inquiry would be immediately made as to whether any steps could be taken on the depositions inclosed in his letter.

We are also honoured with your Lordship's commands signified in Mr. Hammond's letter of this day's date, stating that with reference to his letter of the 27th and 28th instant, he was directed by your Lordship to transmit to us a letter from the Home Office, containing particulars of certain vessels supposed to be acting in concert with the "Independencia;" and to request that we would take the same into our immediate consideration, and report to your Lordship whether any steps could be taken with reference to these vessels.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That as it now appears that the "Independencia" actually sailed from this country on the same day on which these depositions were received, we can only state our view of the course which it would have been proper for Her Majesty's Government to adopt had the ship been still within British jurisdiction. Upon the evidence now offered (supposing it to be true), we think it must be assumed that British subjects and others have in this country been "procured to enter, or engage, to enlist, or to serve, or to be employed," in the sea service of Peru, on board the "Independencia," with a view to warlike operations on the part of that ship against Spanish vessels, during the voyage on which she was then about to sail; and that arms and ammunition have been taken on board of her with the like purpose in this country.

In these circumstances, we no longer consider it important that Her Majesty's Government had not received official information of actual or contemplated hostilities between Spain and Peru except from the representations of the Spanish Minister. The evidence, if true, is, in our opinion, *primâ facie* sufficient to establish a violation of the 2nd and 7th sections of the Foreign Enlistment Act; the latter involving a forfeiture of the ship, &c., unless she was entitled to be recognized by Her Majesty as a Peruvian man-of-war; in which case the offence might come within the 8th section. We think the evidence would also have been sufficient to authorise Her Majesty's Government to detain the ship, under the 5th section of the Act, and to prevent her from proceeding to sea on her voyage, with any of the persons on board whose enlistment had been illegally procured; whether she may have been liable to forfeiture under the 7th section or not. If proceedings had been taken under the 5th section, information on oath must have been laid before the proper officers of Her Majesty's Customs; but we should not have hesitated to advise your Lordship (under whatever section it might ultimately have been determined to proceed) to give immediate orders for the detention of this ship, if she had not already left this country. As, however, she is now beyond British jurisdiction, we are not aware of any steps which can usefully be taken by Her Majesty's Government.

Since writing the above, we have read the information of Williamson and Evans; but we think that information scarcely sufficient to warrant action on the part of Her Majesty's Government. We suggest that an attempt should be made immediately to obtain some deposition from the "workmen and others" from whom the information was elicited, and that further inquiries should be prosecuted without a moment's delay.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 170.

The Law Officers of the Crown to the Earl of Clarendon.—(Received January 30.)

My Lord, *Lincoln's Inn, January* 30, 1866.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of this day's date, stating that with reference to our Report of the 29th instant he was directed by your Lordship to request that we would inform your Lordship whether orders may properly be sent to the authorities of the Customs at the outports of the United Kingdom to detain the "Independencia" if she should put into any of them, and to the Admiralty and Home Departments to assist by every means at their disposal, even by the employment of force, to support the Custom-house Officers in execution of these orders. That if this should be our opinion your Lordship would be glad to be informed of the exact terms in which the orders to the Custom-house should be framed.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we cannot advise Her Majesty's Government to use force for the detention of the "Independencia," if she should, after having once put to sea, and left Her Majesty's territory, again return within Her Majesty's jurisdiction.

Having been acknowledged by the Representative of Peru in this country as the property of his Government, and sailing (as we must assume she now does) not only under the Peruvian flag, but under a regular Commission from the Peruvian Government, we conceive that if she should now return within Her Majesty's jurisdiction it will be in the character of a public ship of war of an independent State. If so, she cannot (without previous notice, at all events, to the Peruvian Government) be treated as subject to the territorial jurisdiction of Her Majesty.

The 5th section of the Foreign Enlistment Act may, perhaps, be capable of being applied in such a case. But without at present entering into the questions of law which may exist on that subject, we do not advise Her Majesty's Government to raise those questions by initiating any proceedings under the circumstances supposed.

Any person who may be in possession of sufficient evidence and may wish to initiate such proceedings, may raise these questions under such circumstances by laying a sworn information before the principal officers of Her Majesty's Customs.

The 8th section of the Act does not authorize Her Majesty to detain a foreign ship of war, but only makes certain acts, if done within this kingdom, to increase the warlike power of any such vessel, punishable as a misdemeanour.

To prevent misunderstanding we desire to add, that it by no means follows, from the immunity from territorial jurisdiction conceded by international courtesy to ships which have once been duly commissioned as public ships of war by a foreign State, either within the foreign territory or on the high seas, that any like immunity would attach to ships built in this country for the war service of a foreign Government before they had once actually passed beyond the limits of British jurisdiction. It would be a very dangerous doctrine, and one unsupported (as far as we are aware) by authority, to hold that by the mere acquisition of property in a ship, locally situate in Great Britain, which had never left this country, and which before such acquisition was not exempted from our laws, and by granting to any officer a commission to take the command of such ship while still in British territory, with a view to her employment as a public ship of war, a foreign Government could deprive Her Majesty of the power to enforce her own laws against such a ship before it had ever sailed out of a British port. We do not, as at present advised, think that the character of a public ship of war, of a foreign Government, could attach for this purpose to such a ship (without the consent and recognition of Her Majesty) till it had once actually passed beyond British jurisdiction. But when it once had gone out of British jurisdiction its subjection to British law would have finally ceased; and the right of the foreign State to invest it with the character of a public ship of war, and with all the privileges belonging to that character, would then become perfect.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 171.

The Law Officers of the Crown to the Earl of Clarendon.—(Received January 31.)

My Lord, *Lincoln's Inn, January* 31, 1866.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of this day's date, stating that with reference to our previous Report on the subject of the ship "Pampero" which was supposed to be fitting as a Chilean privateer, he was directed by your Lordship to transmit to us a further letter, together with its inclosures, from the Home Office, reporting the intention of the owners to send her unarmed to a foreign market for sale; and to request that we would take these papers into consideration, and furnish your Lordship with our opinion as to whether Her Majesty's Government can properly take any steps in the matter.

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In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That we agree with the opinion which has been expressed by the Lord Advocate of Scotland on this case.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 172.

The Law Officers of the Crown to the Earl of Clarendon.—(Received February 1.)

Lincoln's Inn, January 31, 1866.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 30th instant, stating that he was directed by your Lordship to acquaint us that Her Majesty's Government consider that the time has arrived for issuing a Proclamation by Her Majesty declaring her neutrality in the war between Spain and the Republic of Chile; and Mr. Hammond was to request that we would prepare the draft of such a Proclamation to be submitted for her sanction at the Council to be held on Saturday, the 3rd of next month (February).

In obedience to your Lordship's commands we have the honour to report—

That we have prepared the Proclamation declaring the neutrality of Her Majesty in the war between Spain and Chile which accompanies this Report.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 173.

The Attorney- and Solicitor-General to the Earl of Clarendon.—(Received February 2.)

Lincoln's Inn, February 1, 1866.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 30th of January ultimo, stating that he was directed by your Lordship to transmit to us the draft of a letter which your Lordship proposes to address to the Lords Commissioners of the Admiralty and to Her Majesty's Principal Secretaries of State for the Home, India, War, and Colonial Departments, with the view of excluding from British ports prizes which may be made by Spanish or Chilean vessels of war or privateers in the war now pending between Spain and Chile; and to request that we would take the same into our immediate consideration, and report to your Lordship our opinion whether the letter is right and proper to be sent.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we are of opinion that the draft letter is right and proper to be sent.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.

No. 174.

The Law Officers of the Crown to the Earl of Clarendon.—(Received February 2.)

Lincoln's Inn, February 2, 1866.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of this day's date, stating that he was directed by your Lordship to transmit to us therewith, with reference to our Report of the 31st ultimo, a despatch from Her Majesty's Consul at Brest, respecting the British portion of the crew of the Peruvian man-of-war "Huascar," now lying in that port; and Mr. Hammond was to request that we would take the same into consideration, and report to your Lordship our opinion whether any, and if so what, steps should be taken by Her Majesty's Government in this matter.

In obedience to your Lordship's commands we have taken this despatch into our consideration, and have the honour to report—

That we do not see what steps can be taken in this case beyond those (if any) which it may be competent to Her Majesty's Consul at Brest to take under the French law, for the purpose of obtaining the release of these men, unless, indeed, it should appear to your Lordship to be proper for Her Majesty's Government to furnish the means of repaying the three months' pay said to have been advanced to them, in which case we understand the captain of the "Huascar" to be willing to discharge them.

Until the further information promised by the Consul has been received, it is impossible for us to judge whether these men, or any of them, have been misled into taking service on board the "Huascar" by false representations as to the nature of that service, or whether they, or the captain of the vessel, were or was guilty, when in this country, of any violation of the Foreign Enlistment Act.

It does not, at present, appear whether they were or were not enlisted for any war-service; if not, there cannot have been any violation of the Foreign Enlistment Act; and, even if that Act has been violated, no proceedings founded thereon can be taken against any of the persons while the ship is in French waters.

It is equally impossible for us to judge, upon the present materials, whether the men have or have not any right, in consequence of misrepresentation, ill treatment, or otherwise, to claim their discharge, either with or without repayment of the three months' pay which they are said to have received.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 175.

The Law Officers of the Crown to the Earl of Clarendon—(Received February 14.)

Lincoln's Inn, February 14, 1866.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 8th instant, stating that he was directed by your Lordship to transmit to us a letter from the Treasury, dated the 8th instant, together with its inclosures, relative to the vessel "General O'Higgins" and "Chucaboca," which are being built in the Thames by Messrs. Green and Co., and supposed to be intended for the Chilean Government; and Mr. Hammond was to request that we would take these papers into consideration, and furnish your Lordship with our opinion whether any steps can be taken by Her Majesty's Government with regard to these vessels.

In obedience to your Lordship's commands we have considered these papers, and have the honour to report—

That we think a careful watch should be kept over these vessels; and, in the event of their being got ready for sea by any process of equipment (as distinguished from mere building or construction), they should be stopped and seized, provided the information (as to their destination for the war service of the Chilean Government) which has been already obtained, and which appears to be credited by the Commissioners of Customs, can be verified by legal evidence.

The act of building alone, as distinguished from "equipping," "fitting-out," "furnishing," or "arming," is not prohibited by the Foreign Enlistment Act.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 176.

The Queen's Advocate to the Earl of Clarendon.—(Received February 15.)

Doctors' Commons, February 15, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 13th instant, stating that he was directed to transmit to me a despatch from Her

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Majesty's Minister at Madrid, inclosing a communication made to him by the Spanish Minister for Foreign Affairs, in which he announces the intention of his Government to maintain in certain cases the Prize Courts established by Admiral Pareja on board his flag-ship; and Mr. Hammond was pleased to request that I would take these papers into consideration, and furnish your Lordship with my opinion as to the course which should be pursued by Her Majesty's Government.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That it is not easy to understand what is the exact proposition with respect to prizes contained in the letter of the Spanish Minister. Assuming, however, that the proposition is this, that in certain cases of urgent necessity the Spanish Admiral is to determine whether a neutral ship is to be detained without submitting the question of the lawfulness of her capture to the immediate adjudication of a regular Prize Court, to which adjudication the ship is hereafter to be entitled, the proposition is one which may be considered in the circumstances not unreasonable.

Although the argument that the exigencies of the belligerent are such as to render it difficult for him to discharge his obligation towards the neutral is not to be generally admitted, the answer to that argument being, as I have before observed, that in such a case the belligerent must abstain from exercising a right which is dependent on the fulfilment of these obligations, and must refrain from interrupting the commerce of the neutral.

Your Lordship should, I humbly think, direct Her Majesty's Representative at Madrid to express to the Spanish Government the sense in which they understand this proposition as to prizes; and that in no case can Her Majesty permit that a vessel belonging to one of her subjects shall be condemned, and his property confiscated, without the due sentence of a regular Tribunal, and the opportunity of a proper appeal.

I venture to add that inasmuch as Spain has certainly shown in many respects during this war great tenderness towards neutral interests, the representation of Her Majesty's Minister at Madrid might, perhaps, convey the desire of Her Majesty's Government to avoid as much as possible putting undue pressure upon Spain in her present difficulties, and their acknowledgment that in many respects she has endeavoured to lighten the severity of belligerent operations to the neutral.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 177.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received February* 22.)

My Lord,
Lincoln's Inn, February 22, 1866.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 21st instant, stating that he was directed by your Lordship to transmit to us a letter dated the 21st instant, with its inclosures, from the Board of Treasury, relative to the vessels "Tornado" and "Cyclone," which are supposed to be fitting out as privateers for the Chilean service. A letter from the Home Office of the 20th instant, relative to two other vessels which are fitting out at Blackwall for the use of the Chilean Government, was also inclosed; and Mr. Hammond was pleased to request that we would take these papers into consideration, and furnish yonr Lordship with our opinion as to whether any steps can properly be taken by Her Majesty's Government in the matter.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we think the course taken with respect to the ships "Tornado" and "Cyclone" has been the proper one.

With respect to the two ships at Blackwall, we have no depositions before us; and although it appears to have been stated by some of the workmen employed by Mr. Green that these ships are for the Chilean Government, we have no means of judging how far the persons by whom this is "openly said," may be able and willing to substantiate that statement by legal evidence.

We think that the Solicitor for the Customs ought to be instructed to ascertain whether evidence of any equipment or fitting out of these vessels for the war service of the Chilean Government can be procured either from the persons of whom Mr. Savery (one of the examining officers of the Customs) made inquiries or otherwise.

So far as the law is concerned, we think that Her Majesty's Government and the Board of Customs should assume it to be in accordance with the argument for the Crown in the "Alexandra" case, and not as laid down by Chief Baron Pollock and Baron Bramwell.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 178.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received February* 24.)

My Lord,
Lincoln's Inn, February 24, 1866.

WE are honoured with your Lordship's commands signified to us in Mr. Hammond's letter of the 22nd instant, stating that he was directed by your Lordship to acquaint us that you had lost no time in making known to the Board of Treasury the observations contained in our Report of that day respecting certain vessels suspected of being designed for the Chilean service; and further stating that your Lordship had in the meanwhile received from the Board of Treasury the inclosed further letters respecting those vessels, and also respecting two other vessels under construction for the Spanish Government; and requesting that we would take those letters into our consideration, and report to your Lordship our opinion as to the course to be pursued on the facts disclosed.

In obedience to your Lordship's commands we have taken such letters into our consideration, and we have the honour to report—

That these papers still leave Her Majesty's Government without anything in the shape of depositions, tending to show that legal evidence of the alleged destination of the vessels in question for the war service (in one case) of the Chilean and (in the other case) of the Spanish Government can be obtained. We think it is extremely desirable that such evidence should be obtained; because, while a seizure without such evidence might entail failure in the legal proceedings by which it must be followed up, and consequent pecuniary liability, the information which the officers of the Custom-house have obtained seems (on the other hand) to be sufficient, to leave no doubt of the actual destination of the ships; and, under these circumstances, it is not easy to say that Her Majesty's Government would not be disregarding international obligations in allowing them to leave this country.

It occurs to us to suggest, for your Lordship's consideration, whether it might not be proper to address a direct communication to the Minister in this country of each of the belligerent nations, stating that Her Majesty's Government have received information leading them to believe that the ships said to be in course of preparation for the service of his Government are being fitted out for such service, and inquiring whether such information is correct. The steps to be afterwards taken might be considered, when the answers to these communications had been received.

We have, &c
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 179.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received February* 28.)

My Lord,
Lincoln's Inn, February 28, 1866.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 27th instant, stating that with reference to our Report of the 24th instant, he was directed by your Lordship to transmit to us a further letter, dated the 26th instant, from the Treasury, relative to the vessels "General O'Higgins," "Chucaboca," "Arapiles," and "Victoria," and reporting that orders had been issued for their detention.

A further letter from the Treasury, dated the 26th instant, relative to the vessel "Cyrus," which was suspected to be fitting out as a Chilean privateer, and which has been accordingly detained, but is now claimed by the Columbian Minister, and will be given up to him, was also inclosed.

Mr. Hammond was also pleased to inclose a report from the Treasury, dated the 26th instant, relative to another vessel, the "Ironsides," which has been built at Birken-

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head; and to request that we would take these these papers into consideration, and furnish your Lordship with our opinion as to the steps which may properly be taken in regard to these vessels.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That if the information given to the officers of the Customs at Liverpool, and mentioned in their letter of the 24th instant, can be substantiated by legal evidence, there may be probably good grounds for detaining the "Ironsides;" although it is to be observed that it would be desirable to have independent evidence of the nature of her build and equipment, and not to rely solely on statements said to have been made by the commander, or "some person belonging to the vessel," even if verified by legal evidence, showing the person who made those statements to have some control over the ship.

At present we think that the information is not sufficient for Her Majesty's Government to take any action in this case.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 180.

The Queen's Advocate to the Earl of Clarendon.—(Received March 14.)

My Lord, *Doctors' Commons, March* 14, 1866.

I AM honoured with your Lordship's commands signified in Mr. Murray's letter of the 12th instant, stating that he was directed by your Lordship to inform me that Her Majesty's Minister at Madrid was instructed, in conformity with my Report of the 15th ultimo, to acquaint the Spanish Government with the views of Her Majesty's Government relative to the intention expressed by the former to maintain, under certain circumstances, the Prize Courts established by Admiral Pareja on board his flag-ship.

Mr. Murray was pleased to transmit to me a despatch from Sir John Crampton, reporting a conversation which passed between Señor Bermudez de Castro and himself on this subject; and to request that I would take this despatch into consideration, and furnish your Lordship with my opinion as to whether any further instructions should be sent to Sir John Crampton on this subject.

In obedience to your Lordship's commands I have taken this despatch into consideration, and have the honour to report—

That I think the explanation of Señor Bermudez de Castro renders it probable that little or no practical difficulty will arise with respect to British vessels; but I do not think it necessary or expedient that any further instructions should be sent to Sir John Crampton on the subject.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 181.

The Law Officers of the Crown to the Earl of Clarendon.—(Received March 17.)

My Lord, *Lincoln's Inn, March* 17, 1866.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 16th of March instant, stating that he was directed by your Lordship to transmit to us a letter, with its inclosures, from the Board of Treasury, respecting an application which has been received by the Board of Customs from the Solicitors of the Spanish Minister at this Court, for permission to examine the Custom-house officers who were placed on board the "General O'Higgins" and "Chucaboca," with a view to proving that those vessels are intended for the use of the Chilean Government.

Mr. Hammond was also pleased to inclose to us a further letter from the Board of Treasury, dated the 13th instant, requesting to be informed what further steps should be taken by Her Majesty's Government in regard to the above-named vessels.

Mr. Hammond was further pleased to inclose to us a draft of the answer which your Lordship proposes to return to the Board of Treasury, and to request that we would take these papers into our consideration, and favour your Lordship with our opinion as whether the proposed answer is right and proper.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That the answer proposed to be given by your Lordship to the Board of Treasury is, in our opinion, right and proper. The Chilean Minister having avowed that these ships are intended for the service of his Government, this fact may, of course, be assumed, as between the Spanish Government and the Government of Her Majesty; and no evidence can now be necessary to be taken for the purpose of proving it.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 182.

The Law Officers of the Crown to the Earl of Clarendon.—(Received March 20.)

My Lord, *Lincoln's Inn, March* 20, 1866.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 17th instant, stating that simultaneously with our Report of the 17th instant, respecting the two Chilean vessels now under detention, the letter and inclosures on the same matter which he was directed by your Lordship to transmit to us were received at the Foreign Office from the Treasury, and that before acting on our Report he was to request that we would inform your Lordship of our opinion whether the statements in these papers are of a nature to induce us to alter the opinion contained in our Report, which for convenience of reference was returned, with the papers to which it applies.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That the statements contained in the additional papers now referred to do not lead us to alter the opinion expressed in our Report of the 17th instant. The depositions of Edward Nunn, Edward Clarke, and Edward Saville, would no doubt be sufficient *primâ facie* evidence that these vessels have been fitted out for the war service of the Chilean Government, if that were a matter still open to controversy. But the necessity of any such evidence appears to us to be superseded by the express admission of the Chilean Minister, whose undertaking that these ships shall not be allowed to leave the Thames without the permission of Her Majesty, renders a seizure under the Foreign Enlistment Act (even if sufficient legal ground were shown for such seizure) unnecessary for the protection of the Spanish Government, except in the very improbable event of the undertaking being itself broken. Strict watch must, of course, be kept over the vessels, and measures (if requisite) must be taken to prevent their leaving; but it does not seem to us either to be practically necessary in these circumstances to take proceedings against them under the Foreign Enlistment Act, or clear that such proceedings could be successfully taken.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 183.

The Law Officers of the Crown to the Earl of Clarendon.—(Received March 22.)

My Lord, *Lincoln's Inn, March* 21, 1866.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 1st of March instant, stating that he was directed by your Lordship to transmit to us the accompanying translation of a note addressed to the Spanish Minister at this Court, dated the 16th ultimo, and communicated to him by the latter, containing the views of the Spanish Government in regard to the conditions under which Chilean privateers would be treated as pirates.

Mr. Hammond was also pleased to state that, for our convenience, he was to inclose to us the paper referred to in the above note; and to request that we would take these

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papers into our consideration, and favour your Lordship with any observations we might have to offer thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That it is necessary to state clearly the difference of opinion between Her Majesty's Government and the Government of Spain upon this important subject.

The Spanish Government maintain that they have a right to treat as pirates all Chilean privateers duly commissioned by and carrying the flag of that State, unless the captain and the majority of the crew be composed of Chilean subjects.

Her Majesty's Government, on the other hand, maintain that the privateer derives her authority from the commission and flag, and that the condition required by the Spanish Government with respect to the composition of the crew is not warranted by international law; and that though it is competent to Spain or any other State to treat as pirates its own subjects serving on board a duly-commissioned foreign privateer, it is not competent to Spain, or any other State, so to treat the subjects of a foreign country; that, in fact, the regulation as to the number of the crew, who are to be the subjects of the State which commissions the privateer, is a regulation of municipal and not of international law.

These positions Her Majesty's Government have supported by arguments derived from principle, from practice, and from the authority of accredited writers upon international jurisprudence.

The Spanish Government, in this last despatch, allege that upon all these grounds Her Majesty's Government have failed to support their opinion.

It is proposed to examine the arguments upon which this assertion rests, in the order in which they are stated in the despatch.

1. The first argument is, that to deny to Spain the right of treating as pirates foreign subjects so serving on board privateers, is to deny to her the exercise of that jurisdiction which is the essential attribute of independent sovereignty.

It is very difficult to understand this argument. It is not contended by Her Majesty's Government that foreign subjects in the dominions or in the ships of Spain are not subject to the jurisdiction of that State. It is not contended that Her Majesty's subjects serving in the armies or fleets of the enemies of Spain are not subject, when captured by Spain, to be treated as prisoners of war. Either of these contentions would indeed be derogatory to the sovereignty of Spain; but it is contended that Spain cannot, by a private law of her own, whether that law be or be not identical with the private law of another State, change the character and alter the condition of a prisoner of war into the character and condition of a pirate.

It seems to be admitted by Spain that she is bound to treat foreign subjects taken in the army or navy of her enemy as what she calls "milites," as prisoners of war; but she contends that a different rule applies to foreign subjects serving in the privateers of the enemy. But upon what principle, when it is admitted that the privateer herself is entitled to be treated as a vessel of war? It is said that otherwise the foreign subject would be the subject of two Powers at once, namely, that of the State to which his original allegiance was due, and that of the State under whose commission he was fighting. But this is a transparent fallacy. So far as affects the belligerent, which is Spain in this instance, it has been already stated that he must be considered as a subject of the State of whom he is the military servant. And here must be noticed a confusion into which the writer of the despatch has fallen with respect to the bearing of the English Foreign Enlistment Act upon this question. It has never been argued by Her Majesty's Government that this municipal law in any way affected the rights of Spain in peace or in war; but it was argued that Spain could not insist upon the regulations of this municipal law as a reason for treating English subjects on board Chilean vessels as pirates.

While reasoning upon a mistaken view of this statute, and maintaining, justly, that no municipal law can affect international law, the writer of the Spanish despatch says: "Although England might declare those English subjects to be pirates who should form part of the crew of a foreign privateer, if such privateer were an enemy of Spain, and were captured, it is clear that Spain would not consider as pirates the English subjects she might find on board, if the captain and the majority of the crew were subjects of the Power which issued the commission.

To this proposition Her Majesty's Government entirely assent, but it is fatal to the whole argument of the writer upon the main subject of his despatch; for the position, that when a majority of foreigners form the crew of a privateer they are to be treated as pirates, is just as much the creature of municipal law as the position, that foreigners forming a minority of the crew may be treated as pirates by the State of which they are subjects. For, in fact, the former position is simply a provision contained in the Spanish and French Ordinances, the latter of which, it may be observed in passing, has varied from time to time as to the requisite number or proportion of the foreigners. Such provisions are not a portion of international law, and the legislation of a particular nation has no authority beyond its own territory. Then what are the other authorities? It will be found, when they are examined, that they rest upon the statement of Ortolan, a respectable modern writer, but not of the first class, nor a jurist by profession, and who founds his proposition upon the French Municipal Ordinance. It is true that De Pistoye and Duverdy express the same opinion; but, as has been already observed in a former Report, they cite, in support of it, no other authority than that of Ortolan.

It was stated, on the other hand, by Her Majesty's Government that no such position was to be found in the writings of any English or American jurists, or in the Orders issued by those Governments with respect to privateers, and this statement appears to be uncontradicted by the Spanish Minister.

It was further stated that the authority of many other writers,—among whom were enumerated the older jurists Bynkershoek and Abreu, and the modern Spanish jurists Pando and Riquelme,—was, directly or indirectly, opposed to this doctrine. It is replied that this is an error; and first, with regard to Bynkershoek, a passage is cited from one of his chapters (lib. i, chap. xvii) in his "Quæstiones Juris Publici," to the effect that the commander of a privateer sailing "sine codicillis sui Principis" is a pirate; and also another passage (though not expressly cited) is referred to, that one who sails under the orders "externi Principis" is in the same category.

It will be found, on examination of the chapters, and the context of the passages referred to, that Bynkershoek laid down no such doctrine as is contended for; but that his general reasoning, as well as his particular language, is most clearly adverse to it.

He has three chapters bearing on the subjec; one (chap. xvii) upon piracy—who are pirates? and three upon the subject of privateering. The passage, "sine codicillis," &c., is in the first of these chapters (page 127); and it is hardly too much to say, that if the whole chapter had been read, it never would have been cited.

The author begins by propounding the question, "Who are pirates?" and immediately answers by this definition: "Qui autem *nullius* Principis auctoritate, sive mari, sive terrâ, rapiunt, piratarum praedonumque vocabulo intelliguntur." This is the true international doctrine upon the subject. He proceeds to say that, according to the Dutch law, a Dutchman may not sail from a Dutch harbour or coast with the commission of a foreign Prince, "cum mandato externi Principis;" and continuing his argument, he adds that those who, under the authority of a foreign ("externi") Prince, "ad prædandum exeunt, piratarum nomine censendos esse; quia sic possent et non hostes deprædari, et alios Principes contra suum suscitare." He is here speaking of the case of a privateer belonging to a neutral subject (a thing not unknown in the times when he wrote), and not of a privateer belonging to the belligerent, and carrying the commission of the belligerent State.

In another part of the chapter (page 127) he deals with the question whether a foreign vessel, taken without a commission, while acting as a privateer, can be tried and punished by the country of the captor, and expresses his own opinion in the affirmative; and then he adds the passage cited by the Spanish Government, namely, "et nemo contradixerit, si sine codicillis Principis sui in nostros rapinam egerit; sed si ex mandato, cujus fines egressus dicitur, simile quid fecerit, magis dubitari posset."

He then refers to a dispute in 1667 between England and Holland, which had arisen in the case of vessels which, having letters of marque, continued, *after peace was proclaimed*, to act as belligerents. England contended that they should be tried by the State which gave the letters of marque; Holland contended that the State of the captor might deal with them; and he ends this discussion by the words, "Sed pirata quis sit, nec ne, inde pendet, an mandatum prædandi habuerit; si habuerit, et arguatur id excessisse, non continuo eum habuerim pro piratâ."

In his next chapter, "De Prædatoriâ privatâ" (chap. xviii), after describing the privateer as a vessel which individuals equip and arm, he says: "Quod autem *Albericus Gentilis* in libris 'De Advocatione Hispanicâ,' variis locis, etiam cum de jure, quod usu servatur ipsi sermo est, ejusmodi homines passim appellat piratas, nec alio, quam piratarum, loco habet, utique absurdius est, quam ut constitutâ disputatione refutari oporteat; quicquid enim illi agunt, agunt auctoritate publicâ, neque enavigant nisi ex mandato ordinum generalium," &c. The rest of the chapter is occupied with the law of prize as to the rights of privateers. The next chapter treats of the case of a ship without a commission, as privateer, making a prize, and considers to whom the prize shall belong. At the close of the chapter he again refers to the distinction between those "qui sine auctoritate publicâ" and "sine codicillis prædatum enavigant," and those who have a commission; upon the possession of which, duly granted, he throughout, from first to last, considers the lawful character of the privateer to depend.

The next authority impugned is that of Abreu.

The averment on the part of Her Majesty's Government was that in no part of the work of this Spanish writer was the position to be found, that a lawfully commissioned privateer could be treated as a pirate, because the captain and majority of the crew had been by birth subjects of a foreign State; and that the fact was remarkable because the question of a privateer, under a double Commission from two distinct States, was treated of (cap. 12, page 151), in which he speaks of the Commission as giving the authority to the privateer. No such position is now cited by the Spanish Minister. The passage referred to by him (cap. 1, N. 11, p. 9) asserts that it is not lawful for a subject, without a commission from his Prince, to make war, on account of the many inconveniences which would otherwise result, and that, according to the Spanish Ordinance, among the vessels which are lawful prize are those "which traverse the sea without the authority of *any* Prince or Sovereign State;" which is the "nullius Principis auctoritate" of Bynkershoek.

Next, with respect to Pando. It is said that he called the foreigners who commanded the South American privateers "filibusters," and said that no other name could be given to them. This is a strong instance of the evil of partial citation. What he really does say (page 427) is, that a privateer with two commissions was considered a pirate by the French Ordinances; and he adds that one of the abuses committed by the Republic of Buenos Ayres in her war with her ancient mother country, Spain, was entrusting the command of her privateers to foreigners, whose conduct, in the exercise of their authority, was such that they deserved no other character than that of filibusters. At page 429 this author says, "It is competent to each nation to give to its own privateers whatever rules it pleases. So far as these rules relate exclusively to subjects, no one can dispute the competency of the Sovereign to establish them; but this does not apply to foreigners: it has no authority to subject them to requisitions of any particular kind, except so far as the rules which it imposes are conformable to the universal law of nations, to general custom, or to Treaties."

Next, the authority of Riquelme (Wheaton, by Laurence, vol. i, p. 225). This author, Riquelme, refers to the Ordinances of Spain as being extremely severe upon the subjects of Spain; but, so far from recognizing the rule contended for as one of international law, he observes, "Besides, the taking of a commission for privateering from a foreign State, though its object be making prizes by incurring the risks of war, cannot be esteemed a proof of high morality, still it is very far removed from the crime of piracy."

Massé and even Hautefeuille are even of the same opinion. But there is another author (De Martens) of much continental celebrity (though adverse to many opinions of English jurists), who wrote, besides his great work upon international law, a special treatise upon privateering, "Essai concernant les Armateurs." He says, section xi, "At present all the Powers of Europe agree in these three points:—1. That whoever wishes to fit out a privateer must provide himself with letters of marque, or with a commission from one of the belligerent Powers, for want of which he may be treated and punished as a pirate, as well by those on whom he commits violence as also by his own Sovereign. 2. That a lawful privateer has, in strictness, a right to demand his prize to be adjudged to him, inasmuch as it is lawfully made; but also (3), That he can in no wise regard it as his property till it has been adjudged to him by a competent tribunal." And, at section xiii, "There is nothing that prevents the granting of letters of marque, even to the subjects of neutral or allied Powers who are able to solicit them; but, since it is contrary to neutrality to suffer neutral subjects to contribute by this means to the reinforcement of one of the belligerent Powers, and to the annoyance of the other, States generally prohibit their subjects from taking letters of marque from a foreign Power without the permission of their Sovereigns; and many Treaties oblige them also to prohibit their subjects from doing it, as well as to forbid every species of armaments on the enemy's account in their ports. However, the enemy is not justified in punishing them as pirates when they have letters patent (commissions) from one of the Powers with whom it is at war, although their ships may be confiscated" (pp. 43, 44).

To pass from the topic of authorities to that of Treaties.

The object for which the Treaty between England and the United States of America, and that of the United States of Mexico, was cited, seems to have been misunderstood by the Spanish Minister. The object was to prove that, when this particular composition of the privateer's crew was to be treated as imparting to the vessel the character of a pirate, it was necessary to make it the subject of this specific Convention between the nations by whom it was to be so considered, and that, accordingly, this was done in the Treaties referred to, which, if the doctrine had been universally recognized by international law, would have been unnecessary.

Then as to the practice.

It is no longer asserted that England assented, by tacit acquiescence, to this doctrine when propounded by the French Admiral in 1839, because the evidence that England then promptly and formally protested against the application of this doctrine to Her Majesty's subjects cannot be gainsayed.

The conclusion, therefore, to which these premises lead Her Majesty's Government is:—

1. That no infringement ("attentorio") of the sovereign rights of Spain is intended or attempted by Her Majesty's Government.

2. That the proposition for which the Spanish Government contend is opposed to the authority of jurists, considered *numero vel pondere*.

3. That it is a part of the municipal law of Spain applicable to the subjects of that kingdom only, by virtue of its own legislation.

4. That wherever it has been extended to the subjects of other States, it has been necessary to embody it in the specific provisions of Treaties, entered into for limited periods.

5. That it is not competent to Spain, in this war with Chile, to alter the law of nations and treat any duly commissioned privateers as pirates, to the injury of the subjects of neutral States who, if found on board commissioned ships of either belligerent, are liable to be treated as prisoners of war, as serving under the Government which issued the commission, but not as robbers upon the high seas.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 184.

The Law Officers of the Crown to the Earl of Clarendon.—(Received April 17.)

My Lord, *Lincoln's Inn, April* 16, 1866.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 12th April instant, stating that he was directed by your Lordship to transmit to us a translation of a note, dated the 9th instant, from the Spanish Minister at this Court, together with its inclosures, calling the attention of Her Majesty's Government to the course pursued by the captain of an English mail-packet, in warning M. Sanguirico, a Spanish Diplomatic Agent and bearer of despatches who had taken a passage on board that vessel, that he would deliver him over to the authorities at any Peruvian port where the vessel might touch, should he be required to do so; and also to transmit to us papers relative to two questions which arose at the port of Islay during last year, in regard to the giving up of persons who were passengers on board English mail-packets, together with the correspondence which took place with Her Majesty's Acting Chargé d'Affaires at Lima, in consequence of an application which he received from the Peruvian Government for the surrender of certain Peruvian subjects who had sought refuge on board Her Majesty's ship "Shearwater."

Mr. Hammond was also pleased to state that he was further directed by your Lordship to transmit to us a Memorandum which has been drawn up at the Foreign Office, in connection with these matters; and to request that we would take these papers into our consideration, and favour your Lordship with any observations which we might have to offer thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we understand the Spanish Minister to complain of a notice given by Captain Wolcott, of the steamer "Pacific," to a passenger on board that ship, who is in a high diplomatic employment under the Queen of Spain, and who is also the bearer of despatches (to whom those despatches are addressed, or for what purpose they are written, does not appear), that he will be delivered up, under certain contingencies, to the Peruvian authorities. The language used is not very precise; but we understand those contingencies to be: (1) the entrance of the steamer within the limits of the territorial jurisdiction of Peru; and (2) a demand made by the authorities of that country, while the steamer is actually within those limits.

If this be Captain Wolcott's meaning, it appears to us that there is nothing in it contrary either to international law generally, or (in particular) to the principles asserted by this country in the case of the "Trent." The "Pacific" is a merchant-vessel, not exempt, by international law or usage, from the territorial jurisdiction of Peru while within Peruvian waters. She cannot, therefore, confer, while within those waters, upon any enemy of the Peruvian Republic whom she may be carrying, as a passenger or otherwise, a privilege or exemption which she does not herself possess.

The case of the "Trent" was entirely different. That vessel was on the high seas, carrying to a neutral country persons understood to be sent there on some political errand by the authorities of the Confederate States. She was not, when those persons were forcibly taken out of her by Captain Wilkes, within the territorial jurisdiction of the United States; and Captain Wilkes' manner of proceeding was such as would not have been justified by the usages of international law, even if the Commissioners or any despatches which they might have been carrying had been contraband of war. Whenever any similar act is committed, under similar circumstances, by the Peruvian or any other belligerent Power against a British merchant-vessel on the high seas (a contingency which we think not very likely to happen), Her Majesty's Government will doubtless adhere to the principle upon which they acted in that case.

It does not occur to us to offer any other observations upon these papers except this: that even if the captain of the "Pacific" had proposed voluntarily to do some act contrary to his duty towards the passenger in question, when beyond British jurisdiction, Her Majesty's Government (who, we assume, have no power or control over that vessel or her commander) could not have prevented, and would not be responsible for, it. Any such passenger, whether in the political service of a foreign Government or not, when warned beforehand of any such intention on the part of the captain, must determine for himself what is the proper course to take with a view to his own safety; and certainly he is not entitled to rely upon the direct interference (in the first instance at all events) of Her Majesty's Government. If wronged, he may, of course, seek his proper legal remedies in any Court of any country to which the commander may be responsible.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 185.

The Queen's Advocate to the Earl of Clarendon.—(Received May 4.)

My Lord, *Doctors' Commons, May* 4, 1866.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 2nd instant, stating that he was directed by your Lordship to transmit to me a despatch, with its inclosure, from Her Majesty's Minister at Madrid (No. 91), relative to the circumstances under which the authorities at Bilbao objected to the the burial in the British cemetery at that place of the child of a British subject; and Mr. Hammond was to request that I would take these papers into consideration and furnish your Lordship with my opinion thereupon.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I find in the 35th section of the Treaty of Madrid (1667) the following provision: "That a decent and convenient burial-place shall be granted and appointed to bury the bodies of the subjects of the King of Great Britain who shall die within the dominions of the King of Spain" (Hertslet, 184). No distinction is here made as to the religion of the British subject who is to be buried. The right belongs to the country, not the religion of the buried.

I presume that this provision is considered to be still in force and binding between the two countries. This child was born of British parents, and "a subject of the King of Great Britain." To have prevented his burial in the British burying-ground would have been a breach of the Treaty obligation, as well as of international comity; to compel, against the wish of his parents, the body to be exhumed and buried elsewhere, was a still greater breach.

It appears to me enough to say this; but I would add, as a collateral observation, that the doctine that baptism by a Spanish priest would affect the right of the parents over the body of their child is on any ground untenable. It is the law of the Roman Catholic, as well as of the Catholic and of the Protestant Church, that baptism administered with water and the proper form of words is valid, by whomsoever administered. "De baptismo ab hœreticis ant infidelibus dato, magna olim disputatio fuit, num valeret: *sed eum valere certum est*, si tamen id efficere propositum eis fuerit, quod Catholica Ecclesia facit."—(Devoti Inst. Canon, t. 1, p. 395; an ultramontanist writer of high authority.)

The doctrine now contended for would deprive a father of the right to his child's body if it had been erroneously, or contrary to his wish, baptised by a Spanish priest, although the child had been previously *duly* baptised, and although he had been brought up, lived, and died, in the faith of the English Church.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 186.

The Queen's Advocate to the Earl of Clarendon.—(Received May 9.)

My Lord, *Doctors' Commons, May* 9, 1866.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 7th instant, stating that he was directed to transmit to me, by direction of your Lordship, a letter and its inclosures which have been received from the Board of Admiralty relative to the circumstances connected with the capture of the Chilean barque "Alice Ward" by a Spanish gun-boat near Gibraltar, and to request that I would take these papers into consideration, and furnish your Lordship with my opinion thereon.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I am of opinion that there is no ground for the interference of Her Majesty's Government in this matter. Spain exercised lawfully her belligerent right in seizing this vessel in her own territory.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 187.

The Queen's Advocate to the Earl of Clarendon.—(Received May 9.)

My Lord, *Doctors' Commons, May* 9, 1866.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 5th instant, stating that with reference to my Report of the 4th instant, in regard to the objections raised by the authorities at Bilbao to the burial in the British cemetery of the child of a British subject which had been baptised as a Roman Catholic, he was directed to request that I would inform your Lordship whether supposing that a child born of Protestant parents in England had been baptised by a Roman Catholic priest, its body could be claimed for burial by the Roman Catholic authorities of the parish in which it died, and its burial in a Protestant cemetery be forbidden, and whether such a claim would be allowed in a Court of Law in this country?

In obedience to your Lordship's commands I have taken this question into consideration, and have the honour to report—

That if a person who was a minor died, the father or the guardian (subject to the control of the Court of Chancery) would have the power to select the burial-ground in which the body should be interred. If a person who was a major died, his executor or administrator would have the power to direct the place of burial. In neither case would any Roman Catholic authority have any right or power to compel the burial to take place in a Roman Catholic burial-ground by reason that the deceased had been baptised by a Roman Catholic priest.

I have, &c.
(Signed) ROBERT PHILLIMORE.

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No. 188.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received May* 11.)

My Lord, *Lincoln's Inn, May* 11, 1866.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 8th instant, stating that he was directed by your Lordship to transmit to us a letter from the Treasury, with its inclosures, relative to two iron-clad vessels now being built in the Thames, and which are supposed to be intended for the Peruvian Government; and Mr. Hammond was pleased to request that we would take these papers into consideration, and inform your Lordship at our earliest convenience as to the mode of proceeding which we would recommend for adoption in regard to these vessels.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That there is no evidence before us at present which would justify the seizure of these vessels. If Mr. Youles' statement be true, one of the vessels, at least, is built on a speculation for sale, and is not ordered by any belligerent Government.

We venture to suggest that it would be well to inquire without delay whether the Spanish Minister is, as Mr. Youles asserts, satisfied as to the destination of the vessel.

With respect to the ship which is being built for Mr. Maylor, there can be no doubt that it is intended, like that being built for Mr. Youles for warlike purposes, and it would seem to be to some extent equipped and armed; and if there were evidence that it was being equipped for a State now at war, it would be seizable under the 7th section of the Foreign Enlistment Act, but there is no evidence at present to warrant her seizure. We advise that the men who assert that these vessels are intended for the Peruvian Government should be further questioned, and depositions obtained from them, if possible, and that the vessels should be watched, and any further evidence reported to Her Majesty's Government. We also recommend inquiries to be made on the subject (*i. e.*, as to both ships) of the Peruvian Minister, as was done with good effect in two former cases.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 189.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received May* 15.)

My Lord, *Lincoln's Inn, May* 14, 1866.

WE are honoured with your Lordship's commands signified to us in Mr. Hammond's letter of the 7th instant, stating that he was directed by your Lordship to transmit to us a despatch from Her Majesty's Minister at Madrid (No. 94), inclosing a copy of a note which he had received from the Spanish Government containing their views in regard to the question of the treatment of the property of neutrals on board enemy's ships, and inclosing to us a former despatch of Sir John Crampton's upon that subject (No. 87), as well as one addressed by Mr. Hammond to him (No. 55), together with a volume of diplomatic documents which were laid before the Spanish Cortes, to which Sir J. Crampton referred in his first-mentioned despatch, and further stating that he was to request that we would take these papers into our consideration, and favour your Lordship with any observations we might have to offer thereupon.

In obedience to your Lordship's commands we have taken the papers into our consideration, and have the honour to report—

That the correspondence between Her Majesty's Minister at Madrid and the Spanish Minister appears to us to call for no observations upon the international law, which is the subject of that correspondence, in addition to those which we have had the honour to submit to your Lordship in our former Report.

This question appears to us to be now placed upon a satisfactory footing, so far as the Government of Spain is concerned.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 190.

The Queen's Advocate to the Earl of Clarendon.—(*Received May* .)

My Lord, *Doctors' Commons, May* , 1866.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 191.

The Queen's Advocate to the Earl of Clarendon.—(*Received May* 23.)

My Lord, *Doctors' Commons, May* 23, 1866.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 21st instant, stating that he was directed by your Lordship to transmit to us therewith two despatches from Her Majesty's Minister at Madrid (Nos. 104 and 105), together with other correspondence relative to the seizure of a vessel belonging to Gibraltar by a Spanish cruizer; and to request that I would take these papers into consideration and report to your Lordship my opinion whether any, and if so what, further instructions should be sent to Sir J. Crampton with regard to this matter.

In obedience to your Lordship's commands I have considered these papers, and have the honour to report—

That Sir J. Crampton seems to have lost no time in urging the consideration of this important case upon the Spanish Government; but as the seizure of the vessel took place on the 15th January last, it would be proper, I think, that Sir J. Crampton should be again instructed to represent to the Spanish Government the anxiety with which Her Majesty's Government are waiting for a reply to their request that an immediate inquiry be made into what appears, upon the present evidence, to have been a very gross outrage committed by Spanish authorities upon the vessel of one of Her Majesty's subjects upon the high seas, and to remind the Spanish Government that the case has necessarily, from the circumstances, assumed a character of the gravest importance, affecting, as it does, both the national honour of the British flag as well as an injury to the property of a British citizen.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 192.

The Queen's Advocate to the Earl of Clarendon.—(*Received May* 31.)

My Lord, *Doctors' Commons, May* 31, 1866.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 28th instant, stating that, with reference to my Report of the 15th of March, on the claim made by the owners of the "William Anning" on the Spanish Government, he was directed by your Lordship to transmit to me therewith a further despatch on the subject from Sir J. Crampton (No. 103), inclosing a detailed account of the losses alleged to have been sustained by the detention of the "William Anning." ? When?

Mr. Hammond was also pleased to inclose the former papers, and to request that I would report to your Lordship my opinion as to the items of the claim thus presented to the Spanish Government.

In obedience to your Lordship's commands I have considered this matter, and have the honour to report—

That it is to be regretted that Her Majesty's Consul at Vigo did not accompany the transmission of the detailed statement preferred by Mr. Anning, with the expression of his own opinion as to the propriety of the particular items.

I am bound to say that I think the item for demurrage is the only one which can, in principle, be demanded from the Spanish Government. The loss of the anchors in the hurricane was an accident which might have happened to the vessel anywhere on her voyage, and possibly she was saved from greater danger by being detained in the harbour of the Island of Grand Canary.

With respect to the item founded on a calculation of the probable profit which she might have derived from her second St. Michael's voyage, I think it also too remote and uncertain to be the foundation of a claim of this peculiar kind against the Spanish Government: it is, moreover, to a certain extent, included in the claim for demurrage.

I believe that the usual referees in these cases, namely, two merchants, assisted by some legal person, always act upon the principles which have guided me in this opinion.

The most expedient course, perhaps, now to pursue would be to direct Sir J. Crampton, if the Spanish Government demur to the items, either to withdraw all but the one of demurrage, or to offer to submit these questions of detail to the decision of a Spanish merchant and the British Consul, with power to call in an umpire, if they differ, whose award shall be binding.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 193.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received June* 4.)

My Lord, *Lincoln's Inn, June* 4, 1866.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 2nd instant, stating that, with reference to our Report of the 11th ultimo, relative to two vessels which are being built in the Thames, and supposed to be intended for the service of Peru, he was directed by your Lordship to transmit to me a further Report from the Treasury, from which it appears that one of the vessels is about to be launched; and he was to request that we would take this letter into our consideration, and furnish your Lordship with our opinion as to the steps which should be taken in the matter. And Mr. Hammond was to add that the Peruvian Minister at this Court has assured your Lordship that neither of the vessels in question are intended for his Government.

The previous papers were also inclosed for reference, if necessary.

In obedience to your Lordship's commands we have considered the letter and papers submitted to us, and have the honour to report—

That the statement now made by Mr. Dudgeon that the ship about to be launched by him is not intended for Mr. Youle tends to throw suspicion upon the good faith of the statements previously made by Mr. Dudgeon and Mr. Youle upon the same subject. But there are no facts as yet appearing which could justify any interference by Her Majesty's Government with these vessels.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 194.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received June* 21.)

My Lord, *Lincoln's Inn, June* 20, 1866.

WE are honoured with your commands signified in Mr. Hammond's letter of the 2nd of June instant, stating that he was directed by your Lordship to transmit to us a copy and translation of a despatch from the Spanish Minister for Foreign Affairs to the Spanish Minister in London, in reply to the despatch which, in accordance with our Report of the 21st of March, your Lordship addressed to Her Majesty's Minister at Madrid, in regard to the intention of Spain to treat as pirates Chilean privateers under certain conditions; and Mr. Hammond was pleased to request that we would take this despatch into our consideration, and favour your Lordship at our earliest convenience with our opinion thereon.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That it is apparent that the Spanish Minister is determined to persist in ascribing to certain commentators on this branch of international law a meaning which we think we have conclusively shown to be at variance alike with the general reasoning which pervades their treatises, and with the particular passages, read with their legitimate context, which they contain. It would scarcely appear to us that any advantage can accrue from the continuance of this controversy; more especially as the Spanish Minister is obliged to admit that Martens, the most considerable of writers on this particular subject (and, it may be added, the least inclined to English expositions of international law) maintains, in the clearest terms, the opinion which Her Majesty's Government consider to be correct. But it may be as well to offer the following observations upon the general subject, in addition to those which we have already addressed to your Lordship.

There is a master fallacy which appears to us to pervade the whole contention of the Spanish Minister, namely: That because the Queen of England has, by proclamation, forbidden her subjects to take any part in the war which Spain is now waging against Peru and Chile, England is not entitled to interfere on behalf of any of her subjects if they, being found on board Peruvian or Chilean privateers, are treated as pirates by Spain. But the answer is obvious.

In the first place, the law of Great Britain, with respect to her subjects, is municipal only; and the vindication of that law belongs to Her Majesty and not to any foreign State. In the second place, it does not visit those who transgress it with the penalties of piracy. Thirdly, such persons do not cease to be Her Majesty's subjects, though engaged at a particular time in the service of either belligerent.

The law of Spain, with respect to the character and composition of the crews of privateers, is municipal, and applicable to her own subjects only; but the crime of piracy on the high seas is a matter of international law, the character of which it is not competent to any individual State to vary; and Her Majesty is certainly entitled to protect her subjects from any arbitrary oppression at variance with the principles of the law of nations, though they may have transgressed her command by taking part with either belligerent. She is, therefore, entitled to protect them from the treatment of pirates when they ought to be treated only as prisoners of war.

It is not contended that England or the United States of America have ever allowed this new doctrine, that, without reference to the specific terms of any particular treaty, it is competent to any one State to declare that the fact of a particular number of foreigners being on board a privateer, duly commissioned, shall convert that legitimate vessel of war into a pirate, whom it is the duty of every one if possible to capture and destroy.

It is obvious to observe, among other objections to this novel proposition of international law, that any State might from time to time vary the number, or alter the composition, of the crew, from which (and not from the flag and commission, as hitherto received according to the general maritime law) it is now contended that the character of a vessel on the high seas is to be determined. Such has been the case in former days with respect to France, as we mentioned in our former Reports; and, so far as the subjects of that State were concerned, the Ordinance may have been perfectly legitimate, but it could have no effect upon the subjects of States not owing allegiance to Spain or France in a place like the high seas, where no one State has exclusive jurisdiction.

Lastly, it is of no avail to attack the general character of privateers. It is competent to any State which has not formally renounced the use of privateers to carry on at sea, as in the case of volunteers by land, public war, offensive or defensive, in some degree by the aid and instrumentality of the exertions of its private subjects. No country has more fully recognized this right than Spain; and it might be, that otherwise a newly constituted State, like one of the South American Republics, might be absolutely defenceless against its enemy at sea. But be this as it may, it cannot be denied that the present belligerents are entitled to have recourse to this ancient and recognized means of warfare; and, that being the case, it is no more competent to Spain to declare a duly commissioned privateer to be a pirate, because foreigners constitute a certain portion of her crew, than it would be competent to her to ascribe the same character in the like circumstances to a regular ship of war.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 195.

The Law Officers of the Crown to the Earl of Clarendon.—(Received June 28.)

Lincoln's Inn, June 27, 1867.

My Lord,

WE are honoured with your Lordship's commands signified to us in Mr. Hammond's letter of the 16th instant, stating that he was directed by your Lordship to transmit to us a letter from the Colonial Office, inclosing a copy of a despatch from the Governor of Hong Kong, who forwarded two Proclamations issued by him with regard to Spanish and Chilean cruizers and their prizes calling at that port; and further stating that he was to request that we would take those papers into our consideration, and report to your Lordship whether we considered these Proclamations to be of too stringent a character; and also whether we did not consider that vessels carrying mails should be exempted from their operation.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we are of opinion that the Governor of Hong Kong is right in treating the Spanish vessel of war, though it also carries cargo, as a vessel of war; and, as his Excellency's Proclamations are merely in accordance with Her Majesty's orders issued in this country, to which all Her Majesty's Colonial Governors were bound to give effect (and which contain no exception as to vessels carrying mails), we do not think they can be regarded as of too stringent a character.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 196.

The Law Officers of the Crown to Lord Stanley.—(Received October 6.)

Lincoln's Inn, October 5, 1866.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Murray's letter of the 17th ultimo, stating that he was directed by your Lordship to transmit to us the accompanying papers relative to the seizure at Cadiz by a Spanish cruizer of the British vessel "Tornado," the property of Messrs. S. Isaac, Campbell, and Co., of London; and was to state that Mr. Campbell had had an interview with your Lordship on the subject, in which he had assured your Lordship that the vessel was totally unarmed, that no arms were sent with her, or were about to follow; that the vessel was, in the first instance, built for the Confederate Government of America, since which the firm of which he is a member bought her, and dispatched her on her present voyage for the purpose of sale, with the expectation that the Brazilian Government might probably be the purchasers; and Mr. Murray was to request that we would furnish your Lordship with our opinion whether, in the present stage of the matter, any steps should be taken by Her Majesty's Government beyond those of watching the case; and mentioned that the "Tornado" was the ship to which our Reports of the 6th and 8th of August relate.

In obedience to your Lordship's commands we have considered this case, and have the honour to report—

That we are of opinion that at present, and while a judicial investigation into the merits of this case is pending before the proper Spanish Tribunal, no further steps should be taken by Her Majesty's Government beyond those of causing the case to be watched.

We think, also, that a communication should be made to Messrs. Isaac, Campbell, and Co., informing them of the fact of the finding in the engine-room of an agreement with some engineers, &c., for the Chilean Government, and of a bundle of papers which concerned that Government; that John McPherson, the third mate, had denied all knowledge of them or of the Chilean Government, and that he had afterwards acknowledged that he was the chief engineer of that Government; and that these circumstances, as well as the allegation that the arms and stores had preceded the "Tornado," will require attention and explanation on their part in the judicial proceedings at Cadiz. It will be right, also, to send them copies of Captain Collier's letters of the 29th August and 1st September, in which these facts are mentioned.

We have, &c.
(Signed) H. M. CAIRNS.
W. BOVILL.
ROBERT PHILLIMORE.

No. 197.

The Law Officers of the Crown to the Earl of Clarendon.—(Received October 18.)

Lincoln's Inn, October 16, 1866.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Murray's letter of the 1st instant, stating that, with reference to his letter of the 17th ultimo, respecting the seizure of the "Tornado" by a Spanish cruizer, he was directed by your Lordship to transmit to us a further letter from Messrs. Isaac, Campbell, and Co., requesting that a formal claim for indemnification for loss may be made on their behalf by Her Majesty's Government. A despatch from Her Majesty's Minister at Madrid, reporting his conversation with the Spanish Minister for Foreign Affairs in regard to the course intended to be pursued by the Spanish Government in this matter, was also inclosed; and Mr. Murray was pleased to request that we would report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That, as far as we are able to judge from the papers submitted to us, we are of opinion that the course which the Spanish Government intends to pursue of submitting the question as to the lawfulness of the capture of this vessel for adjudication to the Admiralty Court, sitting as a Prize Court, is right and proper, and one against which Her Majesty's Government can offer no remonstrance.

If a Spanish vessel had been seized by an English cruizer under the same circumstances, Her Majesty's Government would have considered that they would have made a sufficient answer to any remonstrance from the Spanish Government by stating that the question in dispute was submitted to the judicial investigation of the proper Tribunal.

We think that an answer to this effect should be sent to the letter of Messrs. Campbell and Co, and that they should be apprised that, although Her Majesty's Government will be ready to lend such assistance as may be proper, that they must themselves take, like any other defendants, whatever legal steps are necessary for the protection of their interests in the Spanish Court of Justice, and that any claim for indemnification before the result of the proceedings in that Court is known would be premature.

We have, &c.
(Signed) H. M. CAIRNS.
W. BOVILL.
ROBERT PHILLIMORE.

No. 198.

The Law Officers of the Crown to Lord Stanley.—(Received November 1.)

My Lord,

Lincoln's Inn, October 30, 1866.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 24th instant, stating that with reference to our Report of the 16th instant respecting the detention of the "Tornado" he was directed by your Lordship to transmit to us a further letter from Messrs. Isaac, Campbell and Co., dated the 22nd instant, in answer to a letter, also inclosed, founded on our Report addressed to them on the 19th instant; and Mr. Hammond was pleased to request that we would state to your Lordship our opinion as to the answer which should be returned to this present letter.

At the same time Mr. Hammond was pleased to transmit, together with the papers which had already been before us, a despatch from Her Majesty's Consul at Cadiz, another from Her Majesty's Minister at Madrid, and an instruction sent to the latter; and further to request that we would consider these papers and report to your Lordship whether, in our opinion, Her Majesty's Government can, in the present state of the matter, make any further representations to the Spanish Government, or take any other steps on behalf of the vessel or prisoners, and to what extent Her Majesty's Government can properly interfere in support of the British parties previously to and during the trial. And that your Lordship would also be glad to know whether the proceedings of the Spanish Government, and the inquiry now going on preparatory to the trial of the vessel, and the delay in the commencement of the trial, are so far inconsistent with the practice of this country and of other nations when belligerent as to call for a special remonstrance on the part of Her Majesty's Government.

We are also honoured with Mr. Hammond's letter of the 26th October transmitting two further despatches from Her Majesty's Minister at Madrid respecting this case (Nos. 244 and 245).

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we think an answer should be sent to Messrs. Isaac, Campbell and Co. to the following purport and effect: That they appear to have misunderstood the tenor of the communications addressed to them from the Foreign Office upon the subject of the seizure and detention of this vessel.

The Spanish Government justify the seizure of this vessel on the high seas on the ground that she was not in reality the property of a neutral subject, but belonged to the

Chilean Government, with whom Spain is at war. The previous history of the vessel, as well as certain papers found on board, seem to furnish some colour for this statement; and here we may remark that Messrs. Isaac, Campbell and Co. are in error when they suppose that the fact of these papers not having been discovered on board at the time of the seizure detracts in any way from the weight of the evidence, whatever that may be, which they afford as to the true character of the vessel.

That the question whether the "Tornado" be a neutral or a belligerent vessel is, according to the principles of international law (always strenuously maintained by this country in former wars) properly cognizable by the Prize Court of the belligerent alone. And that Court is bound in the due exercise of its functions to award costs and damages to the innocent neutral owner, if it shall be proved at the trial that the vessel was really his property. The neutral State is bound to presume that justice will be done by the Prize Court until the contrary shall manifestly appear. The captor, moreover, in this case contends that the captured vessel was intended, with the crew on board of her, for the military service of the State with which he was and is at war. The Spanish Government is, however, certainly not justified in treating with harshness, much less with positive cruelty, the subjects of Her Majesty taken on board this vessel; or, until they have been clearly proved to have been acting as part of the military force of Chile, to consider and treat them as being in the category of prisoners of war. The Spanish Government is entitled to detain them for the purpose of obtaining their evidence, but is bound to keep them, during the time necessary for this purpose, with due attention to all the reasonable wants and requirements of persons in their condition of life.

That Her Majesty's Government has not failed to impress strongly these views upon the Government of Spain; but, as is not unusual in cases of this description, they have been met by contradictory statements as to the facts, and are now endeavouring to discover, through Her Majesty's Representative at Madrid, what is the truth respecting them. We think that such an answer as this should be sent to Messrs. Isaac, Campbell and Co.

With respect to the other questions put to us by your Lordship, we have to observe that it would seem to us to be expedient that the Government of Spain should be most distinctly apprised that Her Majesty's Government have conceded to the Spanish Government the right to capture, upon the high seas, a vessel, alleged to be a British vessel, and containing a crew composed in most part by Her Majesty's subjects, *solely* on the ground that it is the right of the belligerent to capture a neutral vessel when he undertakes either that the vessel, when judicially tried before the Prize Court, will be proved to be the vessel of his enemy; or that, in a contrary event, he will restore her with proper costs and damages to the innocent and neutral owner. This Prize Court, it is to be remembered, is an international tribunal, and bound to administer international and not municipal law. It is true that the Prize Court of each country may have its own forms of proceedings; but these forms must not be such as in any way to diminish the full measure of justice to which the neutral is entitled. The belligerent Prize Court, therefore, has no right practically to deny justice by any unnecessary delay in administering it; still less has it any right to adopt, in cases where the jurisdiction is founded exclusively upon international law (the vessel having been seized on the high seas) a mode of procedure, however usual in their municipal courts, which tries the case in the first instance secretly, in the absence and behind the back, as it were, of the accused parties, without their having any opportunity of obtaining proper professional advice and counsel; and though it is said that at a later stage of the proceedings it will be competent to the owners of the owners of the captured vessel to impugn the sentence of this secret tribunal, should it be adverse to them, they ought not to be placed in a condition of having even a *primâ facie* sentence pronounced against them in the dark, and without any power or opportunity of stating their case. No such course has ever been pursued by the great maritime States of England and America, or, as far as we are aware (whatever may be their practice in criminal cases), by the maritime States of the North or of France, in the cases of prize.

There can be no valid reason why the case should not be heard at once, and in open court; and it must be remembered that in the event either of the vessel being restored, or being condemned by a manifestly unjust sentence, it will be the right and duty of Her Majesty's Government to insist upon the indemnification being proportionate not only to the original wrong done by the seizor, but to the consequential injuries arising out of the delay, expense, and miscarriage of justice incident to so improper a mode of proceeding.

We have, &c.
(Signed) H. M. CAIRNS.
W. BOVILL.
ROBERT PHILLIMORE.

No. 199.

The Law Officers of the Crown to Lord Stanley.—(*Received November* 10.)

My Lord,

Lincoln's Inn, November 9, 1866.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 3rd November instant, stating that he was directed to transmit to us the accompanying despatch, received from Her Majesty's Consul at Cadiz, from which we should perceive that Mr. Isaac, of the firm of Isaac, Campbell, and Co., had requested Mr. Dunlop to place the "Tornado" in the list of British vessels arrived at Cadiz, to which request Mr. Dunlop had deferred acceding, until he should receive instructions from Her Majesty's Minister at Madrid; and Mr. Hammond was pleased to request that we would take this despatch into consideration, and report to your Lordship, at our earliest convenience, our opinion as to the answer which should be returned to Mr. Dunlop.

In obedience to your Lordship's commands we have the honour to report—

That having regard to the peculiar circumstances of the case, and the "Tornado" having been brought into Cadiz by the Spanish cruizer as a prize of war, we think that it is expedient that the Consul should refrain from placing this vessel on the Consular list of arrivals of British vessels.

It is true that this act could in no way affect the decision of the Prize Court, but it is also true that it could in no legitimate way benefit Mr. Isaac, while it would probably give great offence to the Spanish authorities.

We have, &c.
(Signed) JOHN ROLT.
W. BOVILL.
ROBERT PHILLIMORE.

No. 200.

The Queen's Advocate to Lord Stanley.—(*Received November* 24.)

My Lord,

Doctors' Commons, November 24, 1866.

I AM honoured with your Lordship's commands signified in Mr. Egerton's letter of the 23rd instant, stating that he was directed by your Lordship to transmit to me a letter from Messrs. Richardson and Co, dated the 21st instant, complaining of the proceedings of the Spanish authorities at Barcelona, in the matter of a cargo of saltpetre shipped by Messrs. Richardson on account of a house at Barcelona which appears subsequently to have failed; and Mr. Egerton was to request that I would take this letter, and its inclosures, into consideration, and report to your Lordship my opinion whether the case is one in which Her Majesty's Government can take any, or what, steps.

In obedience to your Lordship's commands I have considered the letter, and its inclosures, and have the honour to report—

That it appears to me that, according to the circumstances stated, Messrs. Richardson had not lost the right which, by the general commercial law and usage, belonged to them, of stopping the delivery of these goods after the bankruptcy of Messrs. Pinto and Co.; they seem to have been unfairly treated, and I think that Her Majesty's Government might properly instruct the Consul at Barcelona to assist, as far as he is able, the application of Messrs. Richardson and Co. for the restoration of these goods, or the payment of the amount of the invoice; but at the same time Messrs. Richardson and Co. must be apprized that they must not rely upon any further interference by Her Majesty's Government on their behalf, the question being, strictly speaking, one of commercial law which it is competent to the Spanish tribunals to decide.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 201.

The Law Officers of the Crown to Lord Stanley.—(*Received November* 27.)

My Lord,

Lincoln's Inn, November 26, 1866.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 14th instant, stating that with reference to our previous Reports in regard to the case of the "Tornado," he was directed by your Lordship to transmit to us the accompanying despatches, as marked in the margin,[*] relative to the refusal of the Spanish authorities to allow Mr. Dunlop to see Mr. McPherson, one of the crew of that vessel, on the ground of his being a Chilean subject; and to request that we would take these papers into our consideration, and favour your Lordship, at our earliest convenience, with our opinion as to the instructions which should be addressed to Sir John Crampton on this subject.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we think instructions should be addressed to Sir John Crampton to the following effect: That the proposition of international law maintained by the Spanish authorities with respect to John McPherson, namely, that a person captured on board a belligerent ship of war engaged in the service of that ship may be lawfully treated as an enemy by the captor, is correct; but that it does not necessarily affect the case of McPherson.

The "Tornado," which was *primâ facie* a British vessel belonging to British subjects, was captured on the high seas while peaceful relations subsisted between Great Britain and Spain, on the ground that she was a Chilean privateer. But the fact of her being so is directly denied by the British owners, and has been for a long period put in issue before the Prize Court; and if it should turn out that the vessel is British, McPherson, whether in the Chilean service or not, could not be lawfully taken out of a British vessel on the high seas, and must be restored to the ship. It is also to be observed that the British owners of the vessel have a perfect right to hold such personal communication with McPherson as is necessary for the defence of their cause, more especially as it appears that McPherson has been already examined on the part of the captors.

We cannot close this Report without again adverting to the opinion expressed in our former Reports that the Spanish authorities have no right to detain and treat the crew of the "Tornado" as prisoners of war unless the "Tornado" was actually in the military service of Chile; and we think that no opportunity should be lost of impressing upon the Spanish Government both that the delay in deciding the case has been already such as to give just cause for grave complaint, and also that Her Majesty's Government will be bound to require, in the event of the vessel being proved innocent, ample compensation for the seizure and detention of the vessel and also for the treatment of her crew.

We have, &c.
(Signed) JOHN ROLT.
W. BOVILL.
ROBERT PHILLIMORE.

No. 202.

The Law Officers of the Crown to Lord Stanley.—(*Received December* 6.)

My Lord,

Lincoln's Inn, December 6, 1866.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 26th November ultimo, stating that with reference to our Report of the 30th of October last, respecting the case of the "Tornado," he was directed by your Lordship to transmit to us a despatch with its inclosures from Her Majesty's Minister at Madrid upon that subject (No. 272); and to request that we would take these papers into consideration, and favour your Lordship with our opinion thereupon.

We are also honoured with your Lordship's commands signified in Mr. Hammond's letters dated respectively the 30th day of November last (with a further letter from Messrs. S. Isaac, Campbell, and Co. and its inclosures) and the 1st and 3rd days of December instant, with inclosures on the same subject.[*]

In obedience to your Lordship's commands we have taken the papers submitted to us into our consideration, and have the honour to report—

That we think Her Majesty's Minister at the Court of Madrid should be instructed, in reply to the note of General Calonge of the 21st day of November, to say that Her Majesty's Government abstain at present from further discussing the question raised by General Calonge as to the right of captors in cases of prize to institute preliminary secret examinations of the persons on board and others as witnesses, inasmuch as that preliminary examination is now concluded, and ought, if it were right to resort to it at all, to have been concluded long since; but that Her Majesty's Government confining themselves to what is now right to be done in the matter, require either that the legality of the capture of the ship shall immediately be put in course of open trial, with the fullest means of defence to all concerned, in the usual manner, or that the ship and crew be immediately released with adequate compensation, and that Her Majesty's Minister should be requested to ascertain, as precisely as may be possible, and to forward forthwith to Her Majesty's Government, the present state of proceedings in the Prize Court, and whether any, and what, steps have actually been taken for the public and open trial of the questions at issue.

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[*] Consul Dunlop, Nos. 58 and 59; Sir J. Crampton, No. 258.

[†] Consul Dunlop, No. 60; Sir J. Crampton, Nos. 269, 274, and 275.

We think also that Her Majesty's Minister should be instructed to repeat that while admitting the right of the Spanish Prize Courts to deal with the prize in the manner and subject to the limitations mentioned in former despatches, Her Majesty's Government deny the right of the Spanish Government to detain British subjects as prisoners of war merely because they were on board the vessel at the time of capture, even if the trial proceeds; and that as it appears clear that the crew generally (possibly with one or two exceptions) were neither Chilean subjects, nor engaged in the Chilean service, the utmost right of the Spanish Government as against them must be to detain them without imprisonment so as to insure that their evidence shall be forthcoming when necessary: and Her Majesty's Minister should, we think, urge that those of the crew who are in this position should be at once released from everything like imprisonment, and (though kept under such surveillance as may be necessary for securing their evidence at the proper time) should, according to their respective stations in life, receive such allowances and accommodation as are due to the subjects of a friendly Power.

It should further, we think, be an instruction to Her Majesty's Minister at Madrid, that Her Majesty's Government again protest against the doctrine that if the "Tornado" shall prove to be a British vessel the Spanish Government have any right for one moment to detain any person found on board her, even though such person be a Chilean subject or an officer in the Chilean service. In the event supposed, the vessel with her crew and passengers, whatever their nationality or character, must be restored, and full compensation made for the wrong done by the detention.

It may also be right to urge that the only question is what was the nationality and character of the ship at the time of capture.* The intentions and conduct of her owners at any former time can only be of importance as bearing on the question of the true character and nationality of the ship at the time of the capture.

We think that Messrs. Isaac and Co. should be informed that, as your Lordship is advised that the Prize Court has jurisdiction in the matter of the "Tornado," all that Her Majesty's Government can properly do, is to urge the speedy trial of the case, to insist upon full means of defence being afforded the owners of the "Tornado," upon her crew not being treated as prisoners of war, and to intimate that if it should turn out that she has been unjustly seized, due compensation must be awarded to her owners; and that all this has been already done by Her Majesty's Government.

They should also be informed that they are under a mistake when they conceive that the belligerent has no right to inquire into the previous history of the vessel which he has seized, or that the simple fact of the transfer of her ownership to these gentlemen prevents the Spanish Prize Court from ascertaining the real character of her destination, and whether the enemy has, or has not, any remaining interest in her. The arguments alleged by these gentlemen in their letters are proper to be urged by their agents before the Prize Court in Spain.

We have, &c.
(Signed) JOHN ROLT.
JOHN B. KARSLAKE.
ROBERT PHILLIMORE.

Addendum.

By the above expression, "bearing upon her nationality at the time of the capture," we may add that the evidence of the vessel having, since the breaking out of war, been the property of the Chilean Government as a ship of war, or having since that time been employed as, or built for the purpose of being employed as, a privateer in the service of the Chilean Government, might justify the Prize Court in disregarding any change of ownership, and of holding her nationality at the time of capture not to be changed thereby.

(Signed) JOHN ROLT.
JOHN B. KARSLAKE.
ROBERT PHILLIMORE.

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* See Addendum.—R. P

No. 203.

The Law Officers of the Crown to Lord Stanley.—(*Received December* 27.)

My Lord, *Lincoln's Inn, December* 27, 1866.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 18th December instant, in which he stated that, with reference to his letter of the 3rd instant, he was directed by your Lordship to transmit, for any observations we might have to offer thereupon, the accompanying further despatches which had been received from Her Majesty's Minister at Madrid relating to the "Tornado" case (Nos. 288 and 289).

In obedience to your Lordship's commands we have the honour to report—

That it does not occur to us to make any observations on the further despatches now laid before us, in addition to those which we have already had the honour to offer in a former Report on this case.

The principles of international law which ought to govern this case are not controverted in the letter or despatch of General Rubalcava to General Calonge, and the Spanish authorities seem alive to the necessity of a prompt application of the principles for which we have contended.

We have, &c.
(Signed) JOHN ROLT.
JOHN B. KARSLAKE.
ROBERT PHILLIMORE.

Switzerland.

No. 204.

The Queen's Advocate to the Earl of Clarendon.—(*Received April* 14.)

My Lord, *Doctors' Commons, April* 14, 1866.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 9th instant, stating that he was directed by your Lordship to transmit to me the accompanying letter from Mr. J. G. Roch, dated the 16th ultimo, containing a protest against his being called upon for military service in Switzerland, as a Genevese. A Report which has been received from Her Majesty's Minister in Switzerland, transmitting a copy of his correspondence with the Federal Government upon this subject, was also inclosed; and Mr. Hammond was pleased to request that I would take these papers into consideration, and furnish your Lordship with my opinion as to Mr. Roch's liability under the circumstances in question.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I understand the grandfather of Mr. Roch to have been by birth a Genevese subject, having been born in a territory ceded by Sardinia to Geneva in 1816 by a Treaty, one of the conditions of which was, that those so born should, being Christians, be considered as Genevese. That by the law of this Canton the national character is inalienable, and extends to the grandchild, who, in this case, lives and is domiciled at Geneva. The matter seems to have been judiciously and successfully treated by Admiral Harris. I do not think that the claim to exemption from military service can be put—the English law on the same subject being duly borne in mind—upon the high ground of strict right. The claim has been, and should be, preferred upon the lower ground of usage and convenience.

I have, &c.
(Signed) ROBERT PHILLIMORE.

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No. 205.

The Queen's Advocate to the Earl of Clarendon.—(Received May 8.)

My Lord,

Doctors' Commons, May 8, 1866.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 4th instant, stating that, with reference to my Report of the 14th ultimo, he was directed by your Lordship to transmit to me a letter from Sir R. Peel, urging a reconsideration of the case of Mr. J. G. Roch, who protests against being called upon for military service in Switzerland as a Genevese. The former papers were transmitted for my consideration; and Mr. Hammond was pleased to request that I would furnish your Lordship with my opinion as to what reply should be returned to Sir R. Peel's application.

In obedience to your Lordship's commands I have taken this case again into consideration, and have the honour to report—

That the case of Mr. Roch is singular in its circumstances; but as it is admitted that the grandfather of Mr. Roch was, by operation of the Treaty, a Genevese citizen to all intents and purposes, the real question is this: Has the Geneva Government a right to enforce a law, which it has enacted long ago, that the grandchildren of Genevese citizens shall be treated, *in Geneva*, as also being Genevese citizens? It is difficult to say that England can deny this right to Geneva, inasmuch as England treats the grandchild, who himself, and whose father, is born out of the country as a natural-born subject if the grandfather was a natural-born subject. It is very true that in this case the father was of age, though the grandson, Mr. Roch, was a minor when the grandfather was a Genevese citizen, and that Mr. Roch has been at various times treated by the Genevese Government as an Englishman; and, therefore, it is a very strong case for remonstrance, as I have had the honour to report, on the ground of convenience, usage, and comity: but it is not a case which can be judiciously placed upon the footing of strict right. The Genevese Government cannot on this ground be denied the power to enforce this law in its own territory. On referring to Admiral Harris' despatch (No. 31, April 2) I see that he fully expects that his remonstrance will prevail.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 206.

The Queen's Advocate to the Earl of Clarendon.—(Received May 23.)

My Lord,

Doctors' Commons, May 21, 1866.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 21st instant, stating that, with reference to my Report of the 8th instant on the subject of the claim of Mr. Roch to exemption from military service in Geneva, the substance of which has been communicated to Sir Robert Peel, he was directed by your Lordship to transmit to me a further letter from Sir Robert Peel, adverting to what he considers to have been a point misinterpreted in this case, and bearing upon the question whether Mr. Roch's grandfather or father can be held to have been Swiss citizens under the operation of the Treaty of 1816; and Mr. Hammond was pleased to request that I would take Sir Robert Peel's letter into consideration, and furnish your Lordship with any observations I may have to make thereupon.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That it must be remembered that the question in this case is, whether the British Government has a right to insist that a *Genevese law*, as to the national character of a grandchild of a Genevese citizen, shall not be enforced *in Geneva*.

With respect to the effect of the Treaty: The recognition of the grandfather as a Genevese citizen may have been formally made in 1833; but it was by reason and in virtue of the Treaty of Cession of 1816, the natural effect of which was to render the subjects of the ceded territory citizens of the State to which the cession was made.

With respect to the previous treatment of Mr. Roch as a British subject by the Genevese authority, I can only repeat that it constitutes a good ground for remonstrance, which there seems little reason to doubt will be successful, against his being now compelled to discharge the military duties of a Genevese subject.

I have, &c.
(Signed) ROBERT PHILLIMORE.

Tunis.

No. 207.

The Queen's Advocate to the Earl of Clarendon.—(Received February 23.)

My Lord,

Doctors' Commons, February 22, 1866.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 14th instant, stating that, with reference to my Report of the 29th of December last, he was directed by your Lordship to transmit to me, for such observations as I may have to offer thereupon, the accompanying despatch which has been received from Her Majesty's Agent and Consul-General at Tunis (No. 7), containing the further particulars respecting the course he had adopted in regard to the Maltese family who had been conpelled by distress to embrace the Mahometan religion.

The former papers relating to this case were inclosed for reference.

In obedience to your Lordship's commands I have further considered this case, and have the honour to report—

That I think there is no reason to disapprove of the conduct of Mr. Wood in this matter.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 208.

The Queen's Advocate to Lord Stanley.—(Received December 12.)

My Lord,

Doctors' Commons, December 12, 1866.

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 12th instant, stating that he was directed to transmit to me the accompanying despatch, and its inclosures, from Her Majesty's Agent and Consul-General at Tunis setting forth the circumstances under which a sequester has been placed upon a Tunisian ship of war in the port of Malta by some creditors of the Bey; and Mr. Hammond was pleased to request that I would take these papers into consideration, and report to your Lordship, at my earliest convenience, my opinion on the points raised by Mr. Wood, and as to the instructions which it would be right and proper to give him for his future guidance.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I am of opinion that Her Majesty's Consul-General should be apprized that the exercise of civil jurisdiction at the instance of a private individual over a vessel of war belonging to a friendly State in any port or harbour of Her Majesty's dominions ought not to be allowed. It is true that this point has never been formally decided, though it has been raised in an English Court.—(Case of the "Prinz Frederick," 1 Phill. Com. International Law, p. 370.)

In my opinion the principles of international and public law, applicable to this question, are most correctly laid down by Mr. Justice Story, delivering the judgment of the Supreme Tribunal of the United States in the case of the "Santissima Trinidad:"—

"It stands upon principles of public comity and convenience, and arises from the presumed consent or licence of nations, that foreign public ships coming into their ports and demeaning themselves according to law, and in a friendly manner, shall be exempt from the local jurisdiction. But as such consent and licence is implied only from the general usage of nations, it may be withdrawn upon notice at any time without just offence; and if, afterwards, such public ships come into our ports, they are amenable to our laws in the same manner as other vessels."—(1 Phill. Com. International Law, p. 368.)

It becomes,t herefore, unnecessary to answer relatively to this case, the second question propounded by the Consul-General; and as the case is urgent, I send my Report in to-night.

I have, &c.
(Signed) ROBERT PHILLIMORE.

Turkey.

No. 209.

The Queen's Advocate to the Earl of Clarendon.—(Received January 12.)

My Lord,
Doctors' Commons, January 12, 1866.

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 10th instant, stating that he was directed by your Lordship to transmit to me two despatches from Her Majesty's Ambassador at Constantinople (Nos. 6 and 7) respecting the abuses which have been discovered to be practised upon the British Post Office at Constantinople, in sending articles through it which would be properly liable to Custom duties in Turkey. That I should perceive from Lord Lyons' despatch No. 7, that in the case of Mr. Blogg, the fraud was discovered by the Turkish authorities, and that he has been fined double the amount of the duty payable on his goods, for his evasion of the Customs regulations. That Mr. Blogg has applied to Her Majesty's Government for their intervention on his behalf; and Mr. Layard was pleased to request that I would furnish your Lordship with my opinion whether or not the circumstances of the case justify Her Majesty's Government in affording any, and what, support to Mr. Blogg.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I am clearly of opinion that Her Majesty's Government ought not to interfere on behalf of Mr. Blogg. He appears to me to have been very lightly punished for attempting to perpetrate a plain fraud upon the Turkish Custom-house, as to the circumstances of which he has made a very disingenuous statement.

With respect to the general question of similar frauds effected through the medium of sending jewels in registered letters through the British Post Office in the Ottoman dominions, it appears to me clearly the duty of Her Majesty's Government to take some measures for the repression of this abuse. The concession of a separate Post Office to Great Britain is a very large and liberal concession of comity, and ought to be enjoyed with a scrupulous regard to the legitimate object for which it was made.

The proposal made by the Turkish authorities does not seem likely to be effective, and it is open, perhaps, to other objections. Some arrangement might be made, I should think, through the Department of the Postmaster-General, which might put a check upon these frauds.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 210.

The Law Officers of the Crown to the Earl of Clarendon.—(Received January 19.)

My Lord,
Lincoln's Inn, January 19, 1866.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 4th January instant, stating that with reference to our Reports of the 11th May, 1864, and the 26th January, 1865, he was directed by your Lordship to transmit to us the accompanying despatch, with its inclosures, from Her Majesty's Ambassador at Constantinople (No. 61) reporting the views entertained by some of his colleagues in regard to the question of Consular jurisdiction in Tripoli, and the difficulty of arriving at any other common resolution among the Representatives of the Christian Powers than that of maintaining the jurisdiction claimed by Her Majesty's Consul-General in Tripoli; and to request that we would take these papers into our consideration, together with the former ones connected with this question,* and report to your Lordship our opinion as to the further steps which should now be taken in this matter.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That if this question is to be considered as purely one of the legal construction of the Capitulations it must, as we have before reported, be decided against the pretensions of the British Consul, and in favour of the claim made by the Ottoman authorities.

Two material facts, in support of the opposite view, are alleged in these papers:

1. That the usage (of which, however, no satisfactory proof that we can see has yet been offered) has always been in accordance with the British pretension.

2. That a similar pretension has always been, and still is, maintained by other European States.

It still appears to us that there ought, if possible, to be a joint action of the Christian Powers who have Treaties with the Porte on this subject; and that Her Majesty is, at all events, entitled to claim for the British Consul at Tripoli as large a jurisdiction, with respect to offences alleged to have been committed there by British subjects, as may be conceded by the Porte to the Consuls of other Powers with respect to their subjects,

But we are unable to make any practical suggestions as to this matter, in addition to those which we have already had the honour to offer to your Lordship in our former Reports.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 211.

The Law Officers of the Crown to the Earl of Clarendon.—(Received February 14.)

My Lord,
Lincoln's Inn, February , 1866.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 29th ultimo, stating that he was directed by your Lordship to transmit to us the accompanying despatch, and its inclosures, from Her Majesty's Ambassador at Constantinople (No. 9), reporting the circumstances under which Mr. W. F. Johnston a British subject, has been sentenced to six months' imprisonment for an assault on a Turkish soldier, and the grounds on which Her Majesty's Consul-General at Bagdad has declined to give Mr. Johnston up to the Turkish authorities in order that he might undergo the sentence pronounced against him; and Mr. Hammond was to request that we would take this case into consideration, and report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That upon the general subject of the Capitulations between Great Britain and the Ottoman Empire we have had the honour to make several Reports, the general tenor of which may be said to be that these Capitulations, in their plain and natural sense, are binding upon Great Britain; but that if other Christian States have been, and are now, permitted to substitute a usage derogating in some degree from the obligation of these Capitulations, Great Britain ought not to be placed by the Ottoman authorities in a worse condition than these States.

In the present case we agree with Mr. Logie that the 42nd Article of the Capitulations has not been complied with, and, therefore, that the Turkish authorities cannot claim, as a matter of right, the delivering up of Mr. Johnston.

It is very difficult to arrive, upon the evidence before us, at the truth of the story; but we think that Mr. Johnston was much to blame, and that he did, though under considerable provocation, assault the soldier in a manner which cannot be justified.

The punishment, regard especially being had to the character of the prison, appears to us excessive.

The proposition of Colonel Kemball (Her Majesty's Consul) that Johnston should undergo imprisonment for one month in the Consular premises would be an arrangement of this affair, which, if practicable, it might be expedient to effect: but if the Turkish Government are not satisfied with this, we think it is clear that he ought not to be given up as demanded; the trial, in the absence of the British Consul, and the decision without his concurrence, being, under the Capitulations, a mere nullity.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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* Mr. Erskine, Nos. 5 and 45; Memorandum, March 15; to Sir H. Bulwer, No. 134; Sir H. Bulwer, No. 24; Mr. Stuart, No. 157, 1864; to Mr. Stuart, No. 81; Mr. Stuart, No. 228, 1865.

No. 212.

The Law Officers of the Crown to the Earl of Clarendon.—(Received March 27.)

My Lord, *Lincoln's Inn, March* 24, 1866.

WE are honoured with your Lordship's commands signified in Mr. Murray's letter of the 27th February, 1866, stating that he was directed by your Lordship to transmit to us therewith a Memorial from Messrs. Kemp and Aitken (dated the 21st ultimo), requesting that permission may be obtained for them from the Austrian Government, through that of Her Majesty, to take proceedings against Mr. Picciotti, the Austrian Consul at Aleppo, to recover certain sums due by him as one of the partners in the firm of Laniado, Abadi and Co., bankrupts; and likewise to transmit to us a despatch from Her Majesty's Consul at Aleppo (January 1, 1866) on this subject; and to request that we would take these papers into our consideration, and favour your Lordship with our opinion as to the steps which should be taken by Her Majesty's Government in this matter.

We are also honoured with your Lordship's commands signified in Mr. Murray's letter of the 28th February, 1866, stating that with reference to his letter of the previous day, he was directed by your Lordship to transmit to us a further despatch from Her Majesty's Consul at Aleppo (No. 9), inclosing a Petition from Mr. A. T. Coleman (dated the 13th ultimo), representing the assignees of the bankrupt firm, Laniado, Abadi and Co.; and to request that we would take this paper into our consideration, in conjunction with the papers transmitted to us in his letter above-mentioned.

In obedience to your Lordship's commands we have taken these papers into our consideration. and have the honour to report—

That it appears that, whether the suit be prosecuted in the Court at Aleppo or at Trieste, the Austrian Consul cannot be proceeded against, without the consent of the Austrian Government.

That, as there is *primâ facie* evidence that the Austrian Consul was acting as partner in this firm during the period when a large portion of the debts were contracted, it seems to us proper that the petition of Mr. Coleman, with the annexed documents, should be communicated by your Lordship to the Austrian Government, with a request that the proper steps may be allowed to be taken for rendering the Austrian Consul amenable to both or one of the tribunals at Aleppo and Trieste.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 213.

The Law Officers of the Crown to the Earl of Clarendon.—(Received May 15.)

My Lord, *Lincoln's Inn, May* 12, 1866.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 4th instant, stating that he was directed by your Lordship to transmit to us the accompanying letters from Mr. Fernandes (dated the 3rd January and 7th February ultimo), containing a statement of his claim against the Porte, in consequence of the authorities at Durazzo preventing him from carrying out a contract he had entered into for cutting and exporting timber from a forest in that neighbourhood; and also the accompanying despatch and its inclosures from Lord Lyons (No. 117), containing the result of his Excellency's investigation in regard to Mr. Fernandes' claim; and to request that we would take these papers into our consideration, and report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we agree with the view of this case taken by Mr. Consul Logie; and we do not think it would be proper that Her Majesty's Government should now call upon the Porte to order a rehearing of the suit, which was so long ago decided against M. Fernandes.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 214.

The Law Officers of the Crown to the Earl of Clarendon.—(Received May 15.)

My Lord, *Lincoln's Inn, May* 12, 1866.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 12th April ultimo, stating that he was directed by your Lordship to transmit to us the accompanying despatch and its inclosure, from Her Majesty's Ambassador at Constantinople (No. 99), setting forth the circumstances under which Mr. Cesare Raffaelli, who claims British protection in Turkey, has applied for the support of Her Majesty's Embassy, in regard to questions which have arisen between him and the Porte with reference to a steam saw-mill at Ada Bazar; and to request that we would take this matter into our consideration, and favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That we are clearly of opinion that Her Majesty's Government are not bound to interfere at all in this matter between Mr. Raffaelli and the Turkish Government, and we humbly advise that they should abstain from doing so.

With respect to the claim of this person for British protection, we think (apart from the consideration of his nationality) that inasmuch as British protection has been accorded to him and his ancestors for a long series of years, and as it is recognized by his Highness Aali Pasha (letter of 17th December, 1864, Inclosure 9 in No. 99), and by the Firman granted to Mr. Raffaelli, it should be continued to him.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 215.

The Law Officers of the Crown to the Earl of Clarendon.—(Received May 15.)

My Lord, *Lincoln's Inn, May* 14, 1866.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 21st ultimo, stating that he was directed to transmit to us a despatch from Lord Lyons (No. 112), applying for instructions with regard to the claim of M. Scarlato M. Mavrogadato to British protection, and also with regard to a claim preferred by this person against the Egyptian Government, under the circumstances set forth in the correspondence, of which copies were inclosed in Lord Lyons' despatch; and Mr. Hammond was pleased to request we would take the same into consideration, and furnish your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That with respect to M. Mavrogadato's claim to British protection, we do not think that, in strictness, any foreigner who is merely naturalized in Great Britain has a title to British protection abroad, though we think the good offices of Her Majesty's Representatives may, as a general rule, be properly extended to such persons elsewhere than in the dominions of the State to which they owe natural allegiance. Substituting, therefore, the term "good offices" for the term "protection," we agree with the opinion expressed in the letter of Mr. Logie to Count Pisani (Inclosure No. 9 in Lord Lyons' No. 112), that such claim as this gentleman may have to British good offices in the Ottoman dominions must be "subject to the determination of any question which may be raised by the Turkish Government arising out of his place of birth; and that if that question is raised, M. Mavrogadato must be prepared to establish, to his Excellency's satisfaction, that he forms one of a class of persons over whom the Porte has renounced its right of regarding them as its subjects, notwithstanding their birth in its territory."

With respect to the claim preferred by M. Mavrogadato against the Egyptian Government, while we think it is a matter by no means free from doubt whether in the circumstances of this military revolt the Egyptian Government are responsible at all for damages which foreigners, in common with native subjects, may have sustained, we are clearly of opinion that Colonel Stanton (see letter of Lord Lyons, Inclosure No. 8 in No. 112) is correct in his view, that the Egyptian Government can, at the most, only be

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held liable for the actual value on the spot of the articles destroyed; and that no support should be given by Her Majesty's Representative to any other claim whatever upon the Egyptian Government in this case. As to the claim itself for the actual loss, we think it may not improperly be recommended to the favourable consideration of that Government. We do not, however, advise that, if resisted, it should be pressed as a matter of right.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 216.

The Law Officers of the Crown to the Earl of Clarendon.—(Received May 18.)

My Lord, *Lincoln's Inn, May* 16, 1866.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 7th instant, stating that he was directed by your Lordship to transmit to us the accompanying correspondence* respecting an application which has been made by Captain Dingwall for the interference of Her Majesty's Government with regard to claims against certain inhabitants of Tarsus, brought forward by his agent or partner, Mr. Abdo Debbas.

Mr. Hammond was also pleased to state that he had inclosed a despatch from Sir H. Bulwer, relative to a somewhat similar case, which formed the subject of the Law Officers' Report of the 26th August, 1859, together with the draft of the instruction which was addressed to Sir H. Bulwer in reply.

We are also honoured with your Lordship's commands signified in Mr. Hammond's letter of the 8th instant, stating that, with reference to his letter of the previous day, he was directed by your Lordship to transmit to us the accompanying further letter from Captain Dingwall, respecting the case of Abdo Debbas; and to request that we would favour your Lordship with our opinion on this case at our earliest convenience.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we agree with the principle of the Report of our predecessors in office, dated August 26, 1859, upon the subject of claims of partnerships formed in Turkey between British and Turkish subjects to receive British protection. The principle of that Report is applicable to Captain Dingwall's case so far as relates to the partnership transactions of himself and Abdo Debbas.

We also agree in all respects with the advice tendered by Her Majesty's Judge and Consul-General Logie to Lord Lyons (Inclosure 10 in Lord Lyons' No. 3; No. 39, Judicial, April 14, 1866).

We think that Her Majesty's Government ought not to grant any exceptional protection to the firm of Mr. Dingwall and Mr. Abdo Debbas, of Tarsus, the latter being a subject of the Porte in Tarsus; and that the obtaining the Vizirial letter for Mr. Debbas, and following it up in the manner indicated by the instructions given to Mr. Skene, was all that could properly be done in this case by Her Majesty's Ambassador at Constantinople.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 217.

The Law Officers of the Crown to the Earl of Clarendon.—(Received May 30.)

My Lord, *Lincoln's Inn, May* 30, 1866.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 15th of May instant, stating that he was directed by your Lordship to transmit to us the accompanying despatch and its inclosure from Colonel Stanton (No. 47), relative to certain Police Regulations applicable to foreigners in Egypt, which have been adopted by the Egyptian Government, with the concurrence of the Agents of foreign Powers; and to request that we would take this matter into consideration, and favour your Lordship with our opinion thereupon.

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* Captain Dingwall, October 20; to Captain Dingwall, October 23; to Lord Lyons, No. 24, October 24; Captain Dingwall, November 21; to Captain Dingwall, November 23; Lord Lyons, No. 29, November 18; to Captain Dingwall, December 4, 1865; Captain Dingwall, April 3; to Captain Dingwall, April 4; to Lord Lyons, No. 122, April 4; Lord Lyons, No. 137, April 23, 1866.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we think Colonel Stanton acted properly in giving his consent, in common with the other Consuls, to these Police Regulations, which appear to have become necessary for the maintenance of public order in Egypt, and not to violate the provisions of the Capitulations or Treaties now existing between Great Britain and the Porte.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 218.

The Law Officers of the Crown to the Earl of Clarendon.—(Received June 7.)

My Lord, *Lincoln's Inn, June* 6, 1866.

WE were honoured with your Lordship's commands signified in Mr. Hammond's letter of the 22nd May last, stating that he was directed by your Lordship to transmit to us the accompanying letter, dated the 19th ultimo, which has been received from Mr. Fernandes, in reply to a letter (of which the draft was annexed), which was addressed to him on the 18th ultimo, founded upon our Report of the 12th ultimo, on the subject of his claim against the Porte, in consequence of the authorities at Durazzo preventing him from carrying out a contract he had entered into for cutting and exporting timber from a forest in that neighbourhood; and to request we would take Mr. Fernandes' letter into our consideration, and report to your Lordship our opinion as to the answer which should be returned to it.

Mr. Hammond was also pleased to state that the former papers relating to this case were annexed for reference.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we are of opinion that an answer to the following effect should be sent to Mr. Fernandes:—That Her Majesty's Government have again considered his request that they would exert official influence to procure a rehearing of his case before the Turkish authorities; and that they find no sufficient grounds for altering the determination which they have already expressed.

We have, &c.
Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 219.

The Law Officers of the Crown to the Earl of Clarendon.—(Received June 8.)

My Lord, *Lincoln's Inn, June* 7, 1866.

WE were honoured with your Lordship's commands signified in Mr. Murray's letter of the 25th ultimo, stating that, with reference to our Reports of November 24, 1864, and February 7, 1865, relative to the expediency of Her Majesty's Consular Officers in the Levant adhering strictly to the letter of the Capitulations, he was directed by your Lordship to transmit to us a despatch from Her Majesty's Agent and Consul-General in Egypt (Consular, No. 11, February 12, 1866), requesting instructions as to the manner in which certain questions should be decided by Her Majesty's Consular Officers in Egypt with reference to Treaty obligations, and to request that we would favour your Lordship with our opinion as to the course which should be taken in this matter.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That we think the instructions which Colonel Stanton has issued to Her Majesty's

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Legal Vice-Consul are proper with respect to both the classes of cases referred to him by that officer. With respect to the first, British subjects are entitled to insist upon the established usage being put in force by the local authorities. With respect to the second, British subjects are bound by the terms of the Treaty of the 21st February, 1856, which we think is rightly interpreted by Colonel Stantou.

If, indeed, after it was known that British subjects complied with the terms of this Treaty, and submitted to the imposts in question, the subjects of other States, to whom the provisions of the Treaty equally apply, were permitted systematically to enjoy an exemption from these imposts, the question would assume a different shape, and would then require reconsideration.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 220.

The Queen's Advocate to the Earl of Clarendon.—(*Received June* 13.)

My Lord,
Doctors' Commons, June 12, 1866.

I AM honoured with your Lordship's commands signified in Mr. Murray's letter of the 7th instant, stating that he was directed to transmit to me a letter, dated the 24th ultimo, from Mr. C. H. Davis, suggesting, with reference to the Act 5 Vict., cap. 6, under which Bishops may be appointed to places out of Her Majesty's dominions, certain alterations which he alleges to be necessary in the Colonial Bishops Bill, now before the House of Commons; and Mr. Murray was pleased to request that I would furnish your Lordship with my opinion thereupon.

Copies of the Bill and Act of Parliament were also inclosed, as well as a Memorandum drawn up in the Foreign Office, January 28, 1859, upon the subject of the establishment of a Bishopric at Jerusalem.

In obedience to your Lordship's commands I have the honour to report—

That the Colonial Bishops Bill was prepared under the sanction and advice of the Law Officers of the Crown, and that I do not think the observations of Mr. Davis with respect to what he conceives may be the possible bearing of this measure upon the Jerusalem Bishops Bill (5 Vict., cap. 6) are of sufficient weight to induce your Lordship to require any alteration in this measure; though, otherwise, the suggestion of adding the Statute 5 & 6 Vict., cap. 6, to the Schedule of Statutes proposed to be abrogated by this Bill would be worthy of consideration.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 221.

The Law Officers of the Crown to the Earl of Clarendon.—(*Receive July* 10.)

My Lord,
Lincoln's Inn, July 7, 1866.

WE are honoured with your Lordship's commands signified in Mr. Murray's letter of the 5th instant, stating that he was directed by your Lordship to transmit to us therewith a despatch from Her Majesty's Consul-General and Judge at Constantinople (No. 13, Judicial, June 20, 1866), recommending that the sentence passed by the British Consular Court at Alexandria upon an Englishman named Glover, for robbery with violence, be commuted, on the ground that he furnished information which led to the conviction of his accomplices; and Mr. Murray was to request that we would take this paper into consideration, and furnish your Lordship with our opinion as regards Mr. Logie's suggestions on this matter.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we think Mr. Logie's suggestion may properly be complied with in this case.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 222.

The Queen's Advocate to Lord Stanley.—(*Received August* 29.)

My Lord,
Doctors' Commons, August 29, 1866.

I AM honoured with your Lordship's commands signified in Mr. Murray's letter of the 25th instant, stating that he was directed to transmit to me a representation, dated the 21st instant, from Messrs. Coventry, Sheppard, and Co., and other merchants interested in the corn trade, complaining of the effects of an order issued by the Moldo-Wallachian Government, prohibiting the exportation of maize, barley, and millet.

A despatch from Her Majesty's Agent and Consul-General at Bucharest, setting forth the grounds on which this order has been given, was also inclosed; and Mr. Murray was pleased to request that I would furnish your Lordship with my opinion whether Her Majesty's Government would have a right to demand that contracts for grain by British merchants with traders in the Principalities, previously to the issue of the order, shall be exempted from its operation, and that grain thus already contracted for, shall be allowed to be exported. And if not, what course Her Majesty's Government would, in my opinion be justified in taking in this matter.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That a Treaty of Commerce, such as that between Her Majesty and the Sultan (signed at Kanlidja, 29th April, 1861), does not prevent one of the Contracting States from prohibiting, in time of famine, the exportation of native produce necessary for the sustenance of the people, is a proposition of international law which may be said to be well established by the reason of the thing, and by the usage of States (Vattel, L. 2, c 12, s. 179). Such a dearth appears, according to the letter of Mr. Consul Green (Bucharest, 13th August, No. 24), actually to exist in these Principalities, so far as the cereals, maize, barley, and millet, are concerned; upon the first of which crops the food of the people is said mainly to depend.

Assuming this to be the true state of the case, I am of opinion that it was competent to the Government of these Principalities to prohibit, during the continuance of this dearth, the exportation of these cereals. I am further of opinion that Her Majesty's Government cannot be advised to claim, as a matter of right, that contracts for these cereals made by British merchants with traders in the Principalities, previously to the issue of the order, shall be exempted from its operation, and that grain, thus already contracted for, shall be allowed to be exported. But if the Memorandum from the Foreign Office, which accompanies these papers, correctly states that there exists, in the Ottoman Dominions, a "Réglement Organique" requiring a certain notice to be given several months beforehand of such prohibitions, I think Her Majesty's Government would be justified in representing to the proper authorities in these Principalities that, with respect to grain already purchased and as to which the contract has been completed by British merchants, previously to the issue of this prohibition, if such grain be not exempted from the operation of the order, a claim for proper compensation for the injury thereby inflicted on the British trader will be founded; of which it will be the duty of Her Majesty's Government to require satisfaction from the Government of the Principalities. The existence of the "Réglement Organique" referred to, places the demand for compensation upon a vantage ground, but even if none such existed it would not be competent to a State to make a law injuriously affecting, by retrospective operation, the foreign trader (who had a right to rely upon the provisions of the existing commercial Treaty) without incurring an obligation to compensation for the damage thus inflicted.

Upon the whole I humbly advise that Mr. Green be instructed to represent to the proper authorities the opinion of Her Majesty's Government in the sense and spirit of the observations which I have now the honour to offer; and it would perhaps be expedient that reference should be made to the precedent of the effectual remonstrance of Sir J. Canning in 1846; for foreign States have, I conceive, still the right to treat these Principalities as, *de jure*, subject to whatever international obligations are binding on the Ottoman Government.

I have, &c.
(Signed) ROBERT PHILLIMORE.

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No. 223.

The Law Officers of the Crown to Lord Stanley.—(Received August 30.)

Lincoln's Inn, August 29, 1866.

My Lord,

WE were honoured with your Lordship's commands signified in Mr. Hammond's letter of the 9th August instant, in which he stated that he was directed by your Lordship to transmit to us the accompanying letter from Messrs. Ede and Co., requesting the interference of Her Majesty's Government in regard to a claim they have upon the Egyptian Government, under the circumstances therein stated, and to request that we would inform your Lordship whether, in our opinion, this claim can be properly supported.

In compliance with your Lordship's commands we have the honour to report—

That we think that this claim ought not to be supported by Her Majesty's Government without further and better information respecting it, and we humbly recommend that Lord Lyons, to whom it is said the claim has been submitted, be requested to give his opiniom; and also that Her Majesty's Consul-General at Alexandria be desired to report to your Lordship thereupon.

In the meantime, Messrs. Ede and Co. should be informed that your Lordship cannot, until you have received the above-mentioned opinion and report, give any answer to the request of those gentlemen for the support of Her Majesty's Government.

We have, &c.

(Signed) H. M. CAIRNS.
W. M. BOVILL.
ROBERT PHILLIMORE.

No. 224.

The Queen's Advocate to Lord Stanley.—(Received October 6.)

Doctors' Commons, October 3, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Egerton's letter of the 26th ultimo, stating that with reference to my report of the 21st of June, 1865, respecting the claim of Mr. de Mattos to receive from the Turkish Government interest on the amount due to him by that Government for coals supplied to the Ottoman Artillery Department, but which were not paid for at the time specified in the contract entered into between him and the Porte; he was directed by your Lordship to transmit to me, together with the previous papers, the accompanying further correspondence which has passed on the subject, and to request that I would take the same into consideration and report to your Lordship my opinion as to the course which should now be taken with regard to this matter.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That, as I understand the present position of this case, it is as follows:—Her Majesty's Ambassador at Constantinople has been instructed to press upon the Turkish Government the payment of the principnl sum of money due to Mr. de Mattos, with an interest of 7 per cent.; that this demand has not been rejected by the Turkish Government, but Mr. de Mattos conceives himself to be entitled to interest at the rate of 12 per cent., and demurs to the proposed settlement of his claim.

The agent of Mr. de Mattos refers to various legal authorities for the purpose of establishing two positions:—(1). That interest is due in the circumstances, though no mention is made of it in the contract. (2). That the interest should be at the rate of 12 per cent., such being the current interest at Constantinople. With respect to the former position, I have already advised Her Majesty's Government in accordance with it.

With respect to the second, I am by no means certain that it is legally correct, even if an action for breach of contract were brought in a Court of Justice; but, even assuming the correctness of it, I am clearly of opinion that it does not necessarily furnish the measure of a demand, preferred through the medium of Diplomatic Agency, to the Turkish Government.

It is quite competent to Her Majesty's Government to take into consideration many circumstances by which a Court of strict law could not be guided. It has, in fact, a discretion to exercise with reference to the condition of the Turkish Government as well as other matters; and I think that this discretion has been wisely exercised by Her Majesty's Representative at Constantinople in the more moderate demand for interest than he (Mr. de Mattos) has though proper to make.

I have, &c.

(Signed) ROBERT PHILLIMORE.

No. 225.

The Law Officers of the Crown to Lord Stanley.—(Received December 7.)

Lincoln's Inn; December 7, 1866.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 6th instant, stating that we might have noticed in the newspapers an account of a person named Surratt, alleged to have been concerned in the assassination of President Lincoln, having been traced by American agents in several parts of Italy, and from thence to Malta, and finally to Egypt; and Mr. Hammond inclosed the newspapers to which he referred, and was directed also to transmit to us a despatch from Her Majesty's Vice-Consul in Egypt, asking instructions with reference to the possible contingency of Surratt claiming to be protected in Egypt as a British subject against a demand made on the Egyptian authorities by the Consul of the United States for his delivery up for trial in the United States; and as the matter is very urgent, Mr. Hammond was to request that we would consider, and report to your Lordship with as little delay as possible, what instructions should be sent to Mr. Francis, and which, to save time, would be sent by telegraph.

In obedience to your Lordship's commands we have considered this case, and have the honour to report—

That instructions to the following effect should be sent to Her Majesty's Consul.

1. That, *primâ facie,* this person must be treated as a foreigner, not entitled to British protection.

2. That his own assertion, or oath, must not be considered as sufficient proof that he is a British subject, otherwise the exclusive Consular jurisdiction of the Ottoman dominions would become an asylum for fugitive criminals of all nations.

3. That if he produces proper proof, by documents or otherwise, of his British nationality, the Consul must refer the matter to Her Majesty's Government for further instructions (as in this event a question of Consular jurisdiction will arise, and the Treaty of Extradition with the United States would not be applicable to the case).

We have, &c.

(Signed) JONH ROLT.
JOHN B. KARSLAKE.
ROBERT PHILLIMORE.

No. 226.

The Queen's Advocate to Lord Stanley.—(Received December 22.)

Doctors' Commons, December 22, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 21st instant, stating that he was directed by your Lordship to transmit to me the accompanying note which has been received from the Turkish Ambassador at this Court, requesting that orders may be given for the prevention of the embarkation from British ports of contraband of war for Turkish territory. A letter from the Treasury, to which Department Musurus Bey's note was immediately referred, as well as a copy of the Treaty of 1861 between Her Majesty and the Sultan, to which allusion is made, was also inclosed; and Mr. Hammond was pleased to request that I would take these papers into consideration, and report to your Lordship my opinion as to the course which Her Majesty's Government should pursue in this matter.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That M. Musurus should be apprised that Her Majesty's Government cannot undertake to prevent the exportation of contraband articles, and that the seizure at Liverpool has not been made upon the ground that the articles were contraband, but on the ground that the exporter attempted to defraud the Custom-house.

That the Treaty of Kanlidja (April 29, 1861), provides by the XVIIIth Article for the seizure of contraband goods by the Ottoman Treasury, and the XVth Article provides "That the Sublime Porte may issue a general prohibition against the importation into the Ottoman dominions of gunpowder, cannon, arms of war, or military stores, but such prohibition will not come into operation until it shall have been officially notified, and will only apply to the articles mentioned in the Decree enacting the prohibition." The same

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Article of the Treaty contains special conditions under which gunpowder is allowed to be imported.

It will of course, therefore, be competent to the Ottoman authorities to take such measures as may seem to them expedient in order to prevent the importation of contraband into the Ottoman dominions. I assume that it is not the intention of Her Majesty's Government to issue a Proclamation putting in force the 150th section of the 16 and 17 Vic., cap. 107, and thereby prohibiting the exportation of arms, ammunition, gunpowder, &c.

I have, &c.
(Signed) ROBERT PHILLIMORE.

United States.

No. 227.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received January* 6.)

My Lord,
Lincoln's Inn, January 6, 1866.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 12th ultimo, stating that he was directed by your Lordship to transmit to us, together with the previous papers,* a despatch from Sir Frederick Bruce, and its inclosures,† respecting a claim preferred against the United States' Government by Mr. Heyworth, on account of cotton seized at Augusta; and to request that we would take the same into our consideration, and favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we are of opinion that neither of the grounds alleged for the confiscation of this property is legally valid. This cotton appears to have been purchased as an investment by neutral merchants with the intention of transporting it to England as soon as the war should be at an end. No attempt to break the blockade by exporting the cotton before this event had happened is proved or even alleged. The law applicable to the mutual rights of belligerents and neutrals, in case of blockade, rests upon well established principles, recognized both by England and by the United States. By that law vessels attempting to break a blockade by ingress or egress from the port, are, with or without their cargo (according to the circumstances) liable to seizure and confiscation. This is the utmost extent to which international law permits the belligerent to exercise dominion over the property of a neutral.

The cotton in this case represents certain sums of money which neutral merchants sent or in some manner paid for its purchase, but which has not been captured (assuming for the sake of argument that it might have been captured) on board any vessel either going in or out of a blockade port. It could not, therefore, have been lawfully seized, even *flagrante bello*, on the ground of any breach of the blockade. Then, as to the other ground, namely, the assistance which it is said the belligerent derived from the money which purchased the cotton, the answer is, that the neutral had a right to trade with both belligerents, and that the advantage which either might have derived from that trade cannot enure to the injury of the neutral: and this cotton is seized (it is always to be remembered) not as the property of the enemy, a ground of seizure which would have given rise to very different considerations, but as the property of the neutral.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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* Mr. Hepworth, October 25; to Mr. Hepworth, November 2; to Sir F. Bruce, No. 4, 1865.

† Sir F. Bruce, No. 4, 1865.

No. 228.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received January* 9.)

My Lord,
Lincoln's Inn, January 9, 1866.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 30th of December, 1865, stating that, with reference to his letter of the 22nd of that month, he was directed by your Lordship to transmit to us a further note and its inclosures, from Mr. Adams, dated the 28th ultimo, respecting the case of the "Shenandoah;" and to request that we would take the same into our consideration, and favour your Lordship with our observations thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That the inclosures in Mr. Adams' letter contain the first evidence which has been submitted to Her Majesty's Government bearing on the alleged piracy of Captain Waddell, and on the alleged breach of the Foreign Enlistment Act on the part of persons forming part of the crew of the "Shenandoah" when she arrived at Liverpool.

With respect to the charge of piracy: Temple certainly states that, on some day of June last, Captain Waddell was told by the captain and crew of a vessel which he had captured that General Lee had surrendered, and that the war was over. It does not appear that this statement of the captain and crew (if actually heard by Temple) was at the time confirmed by anything written or printed, such as newspapers, letters, &c.; and the truth of Temple's statement may be greatly doubted, from the entire silence of the protest of the master of the "William C. Nye," stated by Temple to have been afterwards captured (a copy of which protest was sent by Mr. Adams to Lord Russell on the 21st October last) upon the same point. Captain Waddell continued to make prize after this; but after the receipt of the next information (the date of which is not given further than that it was before the 6th of July) Temple does not assert that any further prizes were made. The next date which he gives is the 2nd of August, when Captain Waddell made further inquiries of the "Barracouta," an English vessel; and upon receiving from her confirmation of the intelligence, determined to sail to England.

We do not think that, upon this evidence, there would be such a reasonable probability of obtaining a conviction on the charge of piracy as to warrant a prosecution. Temple's statement as to the first communication of the cessation of the war to Captain Waddell would probably be contradicted by witnesses on Captain Waddell's behalf: but, even if it were uncontradicted, the jury might well doubt whether Captain Waddell really believed the information of what he must have regarded as highly improbable until it was subsequently confirmed; and if he did not believe it, the *mens rea* necessary to his conviction would not be established.

With respect to the nationality of some of the crew of the "Shenandoah," we think that the statements of Temple (although he does not show what means he has of knowing that any of the persons described as British subjects in his list are natural-born subjects of Her Majesty) are such as to make further inquiries necessary; endeavours should be made to ascertain the present residence or whereabouts of those whom he describes to be British subjects, and to ascertain what further proof can be obtained on this subject. Mrs. Marshall cannot give evidence against her husband; but other evidence against him may possibly be obtained. On the whole, we advise that prosecutions for offences against the 2nd section of the Foreign Enlistment Act should be instituted against any British subjects against whom Temple's evidence can be confirmed by reliable testimony; and if no such testimony can be obtained against other persons, it will deserve consideration whether, upon his own admissions, a prosecution should or should not be instituted against Temple himself.

With respect to that part of Mr. Adams' letter which refers to two 18-pounder guns being mounted on the deck of the "Shenandoah" when she left England, we have to observe that, if this were true, it would be immaterial, inasmuch as Mr. Adams does not assert that either he or Her Majesty's Government had information of it; and, further, that the total silence of all the witnesses in the case of Regina *v.* Corbett (who had been examined by the American Consul), on the subject of these guns, throws some doubt (to say the least) on this part of Temple's story. Independently of which it is clear that the general armament and equipment of the "Shenandoah" with the necessary munitions of war was provided by the "Laurel;" and there is nothing to render it probable that, without such equipment, and in the state in which she left this country, the "Shenandoah" (even if she carried the two guns alleged) was in the condition of an armed vessel capable of committing hostilities against the United States.

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Among other statements in the depositions of Temple which appear to us to require notice are some relating to the conduct of the Governor and officers of the Government at Melbourne, in Victoria, who are said to have paid to Captain Waddell and his officers attentions of a very marked and public kind, which (from persons in such situations) would appear to us to have been highly unsuitable and inconsistent with a due respect for Her Majesty's neutrality. We doubt extremely the truth of these statements, especially as they go much beyond anything which we find alleged by the United States' Consul at Melbourne in the papers sent by Mr. Adams to Lord Russell on the 21st October last. But, nevertheless, we think that it might be proper to bring these allegations to the attention of Sir C. Darling and his Government, and to ask for some explanations with reference thereto.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 229.

The Law Officers of the Crown to the Earl of Clarendon.—(Received January 9.)

Lincoln's Inn, January 9, 1866.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 22nd ultimo, stating that he was directed by your Lordship to transmit to us a copy of a despatch from Mr. Seward dated the 30th November ultimo (which had been communicated to your Lordship by Mr. Adams), in which the United States' Secretary of State protests against the course pursued by Her Majesty's Government in reference to the "Shenandoah," her officers and crew, on the arrival of that vessel at Liverpool; and Mr. Hammond was to request that we would take this despatch into consideration, and furnish your Lordship with such observations as we may have to offer thereupon, and more particularly with reference to the proofs stated to have been furnished to Her Majesty's Government of the guilty practices of the "Shenandoah," and the statements as to the nationality of her crew.

The previous papers were sent for reference if required.

We are also honoured with Mr. Hammond's letter of the 29th ultimo, inclosing to us a printed copy of the bound MSS. correspondence which was forwarded to us on the 22nd ultimo.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That it is impossible for us to avoid expressing our surprise and regret at the tone and style which throughout characterize Mr. Seward's despatch of the 30th of November last. It imputes, in plain terms to Her Majesty's Government, a determination to disregard "applications for justice" made by the United States' Government, and an intention to shelter from the punishment due to their offence, persons known to be guilty of piracy.

It is for Her Majesty's Government to determine in what manner the sense which we presume your Lordship must entertain of such imputations should be made known to the Government of the United States.

With respect to the proofs stated to have been furnished to Her Majesty's Government of the alleged guilty practices of the "Shenandoah," and the statements as to the nationality of her crew, we beg to offer the following observations:—

Mr. Seward in his despatch, while dwelling only upon the crime of piracy which he assumes to have been committed by the commander and crew of the "Shenandoah," says, that the alleged offenders, when under the power of Her Majesty's Government, obtained their "discharge and unconditional enlargement" upon two grounds: 1st. That Her Majesty's Government had in their possession no evidence "to impeach a prevaricating plea of the Commander;" and, 2ndly. That none of those persons were subjects of Great Britain; "whereas," he says, "upon evidence, which seems to this Government entirely conclusive, all the offenders were either native subjects of the Queen, *or had become by some sufficient form of refuge or domiciliation, amenable, equally with native subjects, to the penal laws of the realm.*"

Mr. Seward cannot be ignorant that Her Majesty's Government have never alleged the fact that none of these persons were shown to be subjects of Great Britain, as a reason for not prosecuting them for *piracy.* Foreigners guilty of piracy are as much amenable to the tribunals of this country as natural-born subjects. It was only with reference to a very different question (namely, whether any charge could be made under the "Foreign Enlistment Act"), that the nationality of these persons was, or was ever alleged to be, material. That question, of course, depended upon the words of the particular statute under which the enlistment abroad, or on the high seas, of persons who had become by any "form of refuge or domiciliation," or otherwise, amenable to British laws while in this country, would not be an offence unless they were "natural-born subjects of Her Majesty."

Mr. Seward does not commit himself to the assertion that Her Majesty's Government were in possession of evidence to show that any of those persons who formed the crew of the "Shenandoah" when she arrived at Liverpool were natural-born British subjects; and, as a matter of fact, it is certain that Her Majesty's Government were not in possession of any such evidence, nor could such a fact be presumed, in the absence of evidence, against individuals coming to Liverpool on board a Confederate ship-of-war, and not shown to have enlisted within Her Majesty's dominions.

We return to the first ground (the only material one as to the charge of piracy) upon which Her Majesty's Government is (and so far truly) said to have acted. Whether Captain Waddell's statement was, or was not, open to the charge of prevarication brought against it by Mr. Seward, it was not in the power of Her Majesty's Government to detain any of those men without laying an information against them before a Magistrate in the ordinary course of law, and supporting it by at least some *primâ facie* evidence. The simple fact is that there was no such evidence. But Mr. Seward says: (1) That "every part of the unlawful transaction complained of had occurred either in British ports or on the decks of the 'Shenandoah,' *herself a British vessel;*" (2) "that all these transactions had been fully made known to Her Majesty's Government;" and (3), "that any parties who could give the necessary testimony for the conviction of the pirates were not only within British jurisdiction, but actually within custody of agents of Her Majesty's Government."

Each of these propositions must be separately examined. The first seems to us to imply that Mr. Seward's charge of piracy against the "Shenandoah" is not founded upon the alleged continuance of hostilities by Captain Waddell after he had received notice of the termination of the war, but that he designates as piracy all the captures made by that vessel during the whole course of the war, and endeavours to support that pretension by the allegation that she was throughout "a British vessel." To this it is enough to say that such a contention is opposed, either to universally acknowledged principles of law, or to notorious and indisputable facts. To universally acknowledged principles of law, if Mr. Seward means to contend that the Commander and crew of a vessel, commissioned as a public ship of war by a Revolutionary Government, which has been recognized as a belligerent Power by neutral nations, can be charged with piracy in a neutral country merely for capturing and destroying the ships of the other belligerent. To notorious and indisputable facts, if he means to deny that the "Sea King" was transferred and delivered by her former British owners and commander to agents of the Confederate States (by whom she was purchased in order that she might be employed and commissioned by and in the service of those States), or that she was actually so employed and commissioned as a public ship of war, under the name of the "Shenandoah," from a period antecedent to her first capture, down to the close of the war. It cannot be too distinctly understood that no charge of piracy could possibly be preferred or entertained against this vessel under these circumstances by Her Majesty's Government, or in the Courts of this country, unless it had been satisfactorily shown that this ship wilfully continued to seize and destroy United States' vessels after she was apprized of the termination of the war. But there is a further answer to this pretence, that the "Shenandoah" is to be regarded as having been, while making war upon the United States, "a British vessel." When she arrived at Liverpool, Mr. Adams (7th November, 1865) requested Her Majesty's Government to take possession of her "with a view to deliver her into the hands of his [the United States'] Government," taking notice at the same of the "belligerent character," which "in the eyes of Her Majesty's Government" she had possessed, though suggesting that there might be grounds for taking criminal proceedings against the persons on board, either because "her ravages appeared to have been continued," after her claim to a belligerent character had, at all events, ceased, or because several of those persons were "British subjects."

Her Majesty's Government having received from Captain Waddell the possession of this ship (surrendered by him expressly for the reasons alleged in his letter of the 6th November, 1865, namely, that "as all the property of Government had reverted by the fortune of war to the Government of the United States of North America, therefore

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this vessel, inasmuch as it was the property of the Confederate States, should accompany the other property already reverted), complied with Mr. Adams' request, and delivered up the ship to the agents of the United States' Government, at the same time sending Mr. Adams a copy of Captain Waddell's letter. Mr. Adams in a letter dated 14th November, 1865, stated that the Consul of the United States at Liverpool had taken charge of the vessel under his instructions, and added (what has unfortunately not been verified by the event) that he "entertained no doubt that the promptness of this proceeding would give great satisfaction to his Government."

It is hardly necessary for us to point out to your Lordship that Mr. Adams' request for the delivery of this ship to the United States' Government could neither have been made nor complied with, except upon the ground that she was, in the circumstances which had happened, the lawful property of that Government. If she had been British-owned (as Mr. Seward now affects to represent), the Government of the United States could have had no possible claim or title to her, even though she might have been guilty of piracy, nor could the Crown of Great Britain have acquired any title to or disposing power over her, by means of any surrender of Captain Waddell in the port of Liverpool, or by any other means short of a regular forfeiture and condemnation by process of law.

To Mr. Adams, when he made the request, all this was, of course, perfectly well known; and he also knew (if not otherwise, at all events from the proceedings before Vice-Chancellor Wood in the case of the "United States *v.* Prideaux," taken by his own direction), that the Government and Courts of this country must necessarily recognize his Government as entitled to the property in this vessel, on the ground stated by Captain Waddell, namely, that she had been acquired, and was possessed, as public property, by the persons who, during the war, had exercised the powers of government in the Confederate States: a ground which (we may add) was also distinctly recognized by the Judge of the United States' Prize Court in the recent case of the "Wren."

We think Her Majesty's Government were at the time entitled to assume (and we know they did assume) that this request was made upon this ground, upon which alone it could be supported; and, after having so obtained the delivery of the vessel, it certainly does not seem to us to be consistent for the Government of the United States to deny that she was a public ship of war, belonging to and commissioned by the Revolutionary Government of the Confederate States.

We have dwelt so much upon this point because it seems to be that upon which Mr. Seward really relies.

We now proceed to examine his second statement, namely, "that all the transactions" (supposed to make out a case of piracy against the "Shenandoah") "had been" (before the crew were released at Liverpool) "fully made known to Her Majesty's Government."

This confirms us in our impression, that Mr. Seward does not mean to rely upon the allegation that the "Shenandoah" continued her ravages after she was apprized of the termination of the war. For the fact is, that the only particulars with respect to any capture or captures made by the "Shenandoah," at any date or dates subsequent to the termination of the war, which had even before that time been communicated to Her Majesty's Government, either by Mr. Adams, or in any other manner, were those relating to the capture of the "William C. Nye" on the 26th of June, 1865, the documents with respect to which were forwarded with Mr. Adams' letter to Earl Russell of the 21st of October last.

Those documents, however, which included the protest of the master of the "William C. Nye" (made at San Francisco on the 7th August last), are absolutely silent as to any notice or knowledge of the termination of the war, either by the captors, or by the master or crew of the "William C. Nye," or by any of the persons met by them on board the "Shenandoah," who had belonged to the crews of vessels previously captured.

This seems to us to be very strong negative evidence that the restoration of peace was not in fact known at the time when, and in the seas where, this capture took place. But whether that be so or not, these documents certainly did not put Her Majesty's Government in possession of any evidence showing, or tending to show, that the crime of piracy had been committed.

There remains only Mr. Seward's third statement, that "any parties who could give the necessary testimony for the conviction of the pirates were not only within British jurisdiction, but virtually within the custody of agents of Her Majesty's Government."

As Mr. Seward has not explained to what persons he here refers, we can only say that the existence of persons able to give such testimony was not then known or indicated to Her Majesty's Government; and if it was then known to the Minister, or any other agent of the United States in this country, it was not communicated by them to Her Majesty's Government. If Mr. Seward means that some of the persons forming the crew of the "Shenandoah" could themselves have given available evidence for this purpose, it is hardly necessary to observe that no such evidence was offered or known to be available; and that it is not consistent with our usual method of administering justice to endeavour to extract from persons suspected, even on probable grounds, of crime, admissions capable of being used against themselves.

We have no further comments to offer upon this remarkable despatch, except to repeat (what we have formerly stated) that if the agents of the United States in this country, or any other persons, were in possession of evidence on which a charge of piracy against the officers and crew of the "Shenandoah" could have been supported before a Magistrate, it was competent for them to have themselves preferred such a charge, and to have obtained a conviction thereon in due course of law.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 230.

The Law Officers of the Crown to the Earl of Clarendon.—(Received January 10.)

My Lord, *Lincoln's Inn, January* 10, 1866.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 6th instant, stating that he was directed by your Lordship to transmit to us the accompanying letter, dated the 2nd instant, from Messrs. Gregory and Rowcliffe preferring a claim against the Government of the United States on account of the destruction of cotton, belonging to the late Mr. Kay, at Camden in South Carolina: and Mr. Hammond was pleased to request that we would take the same into consideration and furnish your Lordship with our opinion thereupon. The Memorandum which has been prepared respecting this claim, together with the papers in the case of Messrs. Aitkin and Rogers therein referred to, was also inclosed.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That we think this case falls within the principle of the opinion which we expressed in our Report on the case of Messrs. Aitken and Rogers. Indeed, if the present claim be at all distinguished from this case, it is distinguished unfavourably for the claimant, inasmuch as the cotton was, in this case, purchased and stored by a resident American agent for the British owner.

We do not, therefore, advise your Lordship to forward, as requested by Messrs. Gregory and Rowcliffe, this case for the consideration of the American Government. The owners may, of course, make any representation on their own behalf which it might be competent for a natural born subject of the United States to make under similar circumstances.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 231.

The Law Officers of the Crown to the Earl of Clarendan.—(Received January 15.)

My Lord, *Lincoln's Inn, January* 15, 1866.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 11th instant, stating that he was directed by your Lordship to transmit to us, together with the previous papers,[*] a letter from the Colonial Office, and its inclosures,[†] respecting the case of the "Georgiana," a vessel which has been claimed by the United States' Government from the Government of Canada as having belonged to the Government of the so-called Confederate States: and to request that we would take

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[*] Colonial Office, November 30, 1864; January 27, February 6, March 23, and April 8, 1865.

[†] Colonial Office, January 10, 1866.

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the same into our consideration and favour your Lordship, at our early convenience, with our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That the "Georgiana" cannot, at present, be given up by the Government of Canada. Litigation, involving the question of title to her ownership, is now pending before the Civil Tribunals of Canada. The Government of the United States has itself obtained an injunction from the Canadian Court of Chancery against the alleged owner. The issue of this suit certainly, and, probably, also the hearing of the rule in the Canadian Court of Queen's Bench, must be waited for before any decision of the Executive can be taken in this matter.

In the meantime, it is to be observed that the claim of the United States' Government to this vessel, on the ground that she belonged to the late Confederate Government, carries with it the admission of a previous state of public war, and confirms some of the observations which we had the honour to offer to your Lordship in our last Report on the case of the "Shenandoah."

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 232.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received January* 19.)

Lincoln's Inn, January 18, 1866.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 9th January instant, stating, that with reference to our Report of the 25th July, 1863, on the case of Mr. J. McAlister Vernon, he was directed by your Lordship to transmit to us a further letter from that gentleman, dated the 20th December, 1865, urging his claims against the Government of the United States on account of his imprisonment and loss of property; and to request that we would take the same into our consideration and favour your Lordship with our opinion thereupon.

Mr. Hammond was also pleased to state that the previous papers were also inclosed for reference, if required.[*]

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we adhere to the opinion expressed in our Report of the 25th of July, 1863.

We think that the advice given by his Excellency Sir F. Bruce to Mr. Vernon was judicious and right; and we are clearly of opinion, for the reasons set forth in our former Report, that Her Majesty's Government ought not to interfere in this case.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 233.

The Law Officers of the Crown to the Earl Clarendon.—(*Received June* 19.)

Lincoln's Inn, January 19, 1866.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 10th instant, stating that, with reference to our Report of the 5th September last, he was directed by your Lordship to transmit to us, together with the former papers,[†] the accompanying letters from the Colonial Office, and their inclosures,[‡] respecting the case of the Confederate schooner "St. Mary's"; and he was to request that we would take the same into our consideration and favour your Lordship with any observations we might have to offer thereupon.

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[*] Lord Lyons, No. 583; to Lord Lyons, No. 450, 1863; Lord Lyons, No. 607; to Mr. Burnley, No. 457, 1864; Sir F. Bruce, No. 456; to Sir F. Bruce, No. 14, November 16, 1865.

[†] Colonial Office, May 30; to Sir F. Bruce, No. 232; to Colonial Office, June 5; Colonial Office, July 17, and August 5; to Sir F. Bruce, No. 232, August 8; to Colonial Office, September 8, 1865.

[‡] Colonial Office, September 27, 1865; January 9, 1866.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That it now appears that the "St. Mary's" did not, as a matter of fact, remain, at the period referred to by Mr. Adams, abandoned by her captors in Annotto Bay; and that, if the vessel had been so abandoned, she would have been taken possession of by the British authorities "in order" (to cite the words of the Jamaica Government Secretary's letter July 5, 1865,) "to prevent unseemly conflict of finders, unless the American Consul first takes possession." The position, therefore, of Mr. Adams turns out to be wholly unfounded, and we repeat our opinion that Governor Eyre is not to blame in any way with respect to this vessel.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 234.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received February* 3.)

Lincoln's Inn, February 3, 1866.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 17th ultimo, stating that, with reference to our Reports of the 18th of November and 12th of June last, he was directed by your Lordship to transmit to us, together with the previous papers, a further letter, dated the 8th ultimo, from Messrs. Dean and Co., respecting the case of the "Dashing Wave," together with a draft of the answer which your Lordship proposes to return to those gentlemen; and to request that we would take the same into our consideration, and favour your Lordship with our opinion whether this draft is right and proper to be sent.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we are of opinion that the draft letter is right and proper to be sent.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 235.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received February* 5.)

Lincoln's Inn, February 3, 1866.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 27th ultimo, stating that he was directed by your Lordship to transmit to us the accompanying letter from the Admiralty, dated the 23rd ultimo, inclosing copies of correspondence respecting the case of a sailor named John Scullen, who left the United States' merchant ship, on board of which he was serving at Nassau, and delivered himself up to the Commander of Her Majesty's ship "Cygnet," as a deserter from Her Majesty's ship "Ariadne;" and to request that we would take the same into our consideration, and favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we are of opinion that the Commander of Her Majesty's ship "Cygnet" acted rightly in refusing to give up this deserter from Her Majesty's ship "Ariadne," who had surrendered himself.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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No. 236.

The Law Officers of the Crown to the Earl of Clarendon.—(Received February 5.)

Lincoln's Inn, February 3, 1866.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 24th ultimo, stating that with reference to our Report of the 6th ultimo, he was directed by your Lordship to transmit to us the accompanying despatch from Her Majesty's Consul at Charleston (No. 11, January 5), and its inclosures, respecting cotton purchased for British subjects by agents in the so-styled Confederate States during the late civil war.

And Mr. Hammond was to request we would take the same into consideration, and furnish your Lordship with our opinion thereupon.

The previous papers relating to the case of Mr. Heyworth were also inclosed.*

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we do not find any new facts stated in these papers which at all effect the Report which we have already had the honour to make upon the general subject of the seizure of cotton belonging to British subjects, purchased from Confederate owners.

In our opinion the seizure of this cotton now is an act scarcely justifiable; the confiscation of it would be an act wholly unwarrantable by any principles of jurisprudence, private or public, with which we are acquainted.

To treat the dealings of foreigners with persons in the Confederate States as bound by the Acts of Congress of the United States during the time while the *de facto* Government of the Confederate States continued, would be a most questionable course of proceeding; but to hold *bonâ fide* transactions of this kind, which take place in 1862 and 1863, defeated *ex post facto* by an Act of Congress passed in 1864, would be nothing less than monstrous.

The circumstances as stated appear to place the case of Messrs. Gibbs on a most favourable footing; but we do not advise that Her Majesty's Government should at present intervene exceptionally on behalf of any individual British purchaser of this cotton. We think that the strongest official remonstrance as to the whole of this class of cases should be pressed upon the United States' Government.

Messrs. Gibbs' case, and its circumstances, may (of course) be referred to, as illustrating the nature of the injustice complained of.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 237.

The Queen's Advocate to the Earl of Clarendon.—(Received February 12.)

Doctors' Cammons, February 12, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 10th instant, stating that he was directed by your Lordship to transmit to me the accompanying letter from the Colonial Office, inclosing a despatch from the Governor of the Bahamas, dated the 7th instant, requesting instructions as to the course which he is to pursue in case of his being called upon by the Captain of a United States' vessel of war to assist in the recovery of deserters, together with copies of a correspondence which has passed between the Colonial Office and Board of Trade upon the subject; and to request that I would take these papers into consideration, and furnish your Lordship with my opinion thereupon.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I am of opinion that the Governor of the Bahamas has no legal authority to assist the Captain of a United States' ship of war in the recovery of deserters from his ship. Such an authority could only be derived from the provisions of a Statute. It is clear that the Imperial Statute 15 and 16 Vic., cap. 26, is confined to merchant vessels, and I understand that the Local Bahamas Act, passed in 1833 (which I have not before me), does not confer upon him any such power.

I have, &c.
(Signed) ROBERT PHILLIMORE.

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* Mr Heyworth, October 25; to Mr. Heyworth, November 2; to Sir F. Bruce, No. 4, November 4; Sir F. Bruce, No. 486, November 28, 1865.

No. 238.

The Law Officers of the Crown to the Earl of Clarendon.—(Received February 14.)

Lincoln's Inn, February 14, 1866.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 13th instant, stating that, with reference to our Report of the 3rd instant respecting the cotton purchased by Messrs. Gibbes and Co., of Charleston, on behalf of English houses, which has been embargoed by the United States' Government, he was directed by your Lordship to transmit to us the draft of a further instruction on this subject which has been prepared for transmission to Sir F. Bruce, together with letters from Messrs. Wright and Co., Messrs. Kelly and Co., and others, at Glasgow, urging Her Majesty's Government to interfere on behalf of cotton purchased by Messrs. Gibbes and Co. on their account, under circumstances similar to the cotton owned by Mr. Heyworth.

Mr. Hammond was to request that we would take these representations into our consideration, as well as the draft instruction to Sir F. Bruce, and report to your Lordship whether, in our opinion, it is right and proper to be sent, and stated that your Lordship would be glad to receive our Report in time to admit of the instruction being sent off by the mail of Saturday next.

In obedience to your Lordship's commands we have considered these papers, and have the honour to report—

That we think this draft letter is fit and proper to be sent.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 239.

The Law Officers of the Crown to the Earl of Clarendon.—(Received February 14.)

Lincoln's Inn, February 14, 1866.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 12th instant, stating that, with reference to our Report of the 9th ultimo, he was directed by your Lordship to transmit to us letters from the Home Office and Admiralty, dated the 7th instant, reporting the result of the inquiries instituted by them respectively into the truth of the statements made by one of the crew of the "Shenandoah," as communicated to the Foreign Office by Mr. Adams; and to request that we would take these papers into consideration, and report to your Lordship our opinion thereupon, and as to what course can now be taken in the matter. A printed copy of Mr. Adams' letter of December 28, 1865, was also inclosed.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we think it would be impossible for Her Majesty's Government to institute any prosecution upon the uncorroborated evidence of Temple, whose statement appeared to us, from the first, to bear manifest signs of exaggeration, if not falsehood.

The information now obtained proves him to be a thoroughly untrustworthy witness; and as no other testimony is at present forthcoming in support of his statement, we cannot advise your Lordship to take any proceedings in this matter.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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No. 240.

The Queen's Advocate to the Earl of Clarendon.—(*Received February* 23.)

Doctors' Commons, February 23, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 8th instant, stating that he was directed by your Lordship to transmit to me a letter from the Colonial Office inclosing a copy of an Act lately passed by the Legislature of Canada, entitled "An Act to amend Chapter 62 of the 'Consolidated Statutes of Canada,' and to provide for the better regulation of Fishing and protection of Fishing," together with a copy of a letter from Mr. D. A. P. Watt, Treasurer to the Board of Trade at Montreal, complaining of some of the provisions of this Bill; and Mr. Hammond was pleased to request that I would take these papers into consideration, and furnish your Lordship with my opinion whether there is any objection to the Act in question with regard to its bearing on the Reciprocity Treaty, which was inclosed for convenience of reference.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That I have considered the Canadian Statute referred to, and the Reciprocity Treaty with the United States.

By the Treaty, "all fisheries in rivers, and in the mouths of rivers, are hereby reserved exclusively for British fishermen." I am not certain to what distance from the shore the unceded fishings and fisheries in Canada extend. The Treaty gives the liberty to the inhabitants of the United States to take, in certain waters, the particular kind of fish specified, in common with the subjects of Her Majesty.

If the licences and leases to private persons contemplated by the Canadian Statute include waters in which by the Treaty the inhabitants of the United States have a right to fish, it is clear that either the licence or lease must be construed so as not to exclude the United States' subjects, though it excludes British subjects; or that the Statute has impaired the international obligations of the Treaty. I think that this position should be clearly put before the Canadian authorities, and that your Lordship's opinion should be reserved till an explanation is received on both points, namely, as to whether the licence or lease is granted with the understanding that it does not exclude United States' inhabitants, and whether they do or do not include the waters mentioned in the Treaty.

I have, &c,
(Signed) ROBERT PHILLIMORE.

No. 241.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received February* 28.)

Lincoln's Inn, February 28, 1866.

My Lord,

WE were honoured with your Lordship's commands signified in Mr. Hammond's letter of the 21st February instant, stating that, with reference to our Report of the 10th ultimo, he was directed by your Lordship to transmit to us a letter from Messrs. Cairns and Co., dated the 19th instant (which had been forwarded to the Foreign Office by Sir E. Colebrooke) relative to their cotton at Camden in South Carolina, which was destroyed by the United States' authorities, and to request that we would take this case into our consideration and report to your Lordship our opinion thereupon.

We were also honoured with a further letter from Mr. Hammond dated the 22nd February instant, stating that he was directed by your Lordship to transmit to us the accompanying letter from Messrs. Brown and Sharp, dated 21st instant, and its inclosures, respecting the destruction of cotton at Camden, South Carolina; and to request that we would take the same into our consideration, in connection with the other papers relating to the same subject which were forwarded to us on the 21st instant, and favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have perused the papers referred to us, and have the honour to report—

That we are of opinion that these two cases are not distinguishable in principle from other cases in which we have advised your Lordship, that the property having been destroyed in the course of belligerent operations there is no ground for the interference of Her Majesty's Government.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 242.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received March* 7.)

Lincoln's Inn, March 6, 1866.

My Lord,

THAT the answer of the Lord Lieutenant to the United States' Consul, contained in Major-General Larcom's letter of the 28th ultimo, appears to us to be proper and correct.

It is impossible that Her Majesty's Government should recognize any title in any foreign Power to interfere on behalf of natural born subjects of Her Majesty whom it may be thought necessary to detain in custody in Ireland on the ground that such natural born subjects have become by naturalisation or otherwise entitled to rights of citizenship in a foreign country.

If any controversy is raised in these or in any other cases upon the question whether the persons in custody are, in fact, natural born subjects of Her Majesty, it will be right to receive and to pay due attention to any representations which may be made on that subject by the Minister or Consul of the nation whose citizens they are represented to be, and to inquire into the truth of such representations and of any evidence which may be offered in support of them.

If it should appear that any persons who are so in custody are not, in fact, natural born subjects of the Queen, it will be right to pay prompt attention to all representations tending to exonerate them from suspicion and to justify their release, which may be offered to Her Majesty's Government, and to give upon each such case, in which it may not be deemed proper to release them, such explanations to the Minister or Consul interceding on their behalf as may show that their liberty has not been interfered with, except upon such necessary or reasonable grounds as are deemed by Her Majesty's Government to be sufficient under the present circumstances of Ireland to justify their detention.

The course which we recommend to be followed upon these points is the same which was uniformly followed by the Government of the United States under similar circumstances during the recent war in that country.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
JAMES A. LAWSON.
JAMES SULLIVAN.

No. 243.

The Attorney-General to the Earl of Clarendon.—(*Received March* 6.)

Lincoln's Inn, March 6, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 27th ultimo, stating that he was directed by your Lordship to transmit to me a note from Mr. Adams, containing observations with regard to what I said in the House of Commons on the 23rd February, in reply to Mr. Labouchere's statement as to what passed between Her Majesty's Government and that of the United States on the subject of proposed amendments in the Foreign Enlistment Acts of the two countries, and to request that I would favour your Lordship with such observations as I might have to offer in reply to Mr. Adams' note.

In obedience to your Lordship's commands I have taken this matter into consideration, and have the honour to report—

That after a careful reconsideration of the expressions used by me on the occasion to which Mr. Adams refers, and of the documents cited in his letter to your Lordship, I am unable to perceive that there was in the substance of my observations anything which, when rightly understood, can be open to the charge either of misstating material facts or of placing a wrong construction upon the conduct of the Government of the United States. It must be borne in mind that my object was not at all to criticise or reflect upon the conduct of that Government, for which I have always entertained a most high and sincere respect, but solely to explain under what circumstances Her Majesty's Government had determined, during the late war, to put to proof the efficiency or inefficiency of our own foreign Enlistment Act, without attempting to propose any alteration of it to Parliament.

1. With respect to the exact date at which the overture to which I referred was made by Her Majesty's Government, my memory (for I spoke from memory) was certainly not quite accurate; and, on that point, I willingly accept Mr. Adams' correction. But I must be permitted to add that the circumstance of that overture having been made after, and not before, the commencement of the discussions with respect to the "Alabama," would (if it had been present to my mind) have enabled me to give additional point to some of my observations as to the manner in which that overture was met by the Government of the United States.

2. Mr. Adams appears to think that the facts did not warrant me in representing this overture as having been made by Her Majesty's Government "spontaneously, of its own volition;" the letter of Earl Russell, dated the 19th December, 1862, in which it was contained, having been written in answer to one from Mr. Adams himself, in which, (after seeking redress for the captures made by the "Alabama") he solicited from Her Majesty's Government "a more effective prevention of any repetition of such lawless and injurious proceedings in Her Majesty's ports." No doubt, it was with a view to this latter object, mutually desired by both Governments, that Earl Russell, in reply, suggested the consideration of the question whether amendments might not advantageously be made in the Foreign Enlistment Acts of both countries. That suggestion, however, though made upon such an occasion, did not the less originate with Her Majesty's Government, and was not the less entirely spontaneous on their part. Mr. Adams had, on one or two former occasions, intimated that new legislation by Great Britain against blockade-running, and against the exportation of munitions of war from this country to the Confederate States, might have been acceptable to the Government of the United States; but I am not aware that he had ever, down to that time, suggested any alteration of our Foreign Enlistment Act, as necessary for the more efficient prevention of naval equipments for warlike purposes; and the sequel of the correspondence itself clearly proves that the Government of the United States did not look upon their own Act of Congress of 1818 as requiring any such alteration.

I see no reason, therefore, to recede at all from the substance of that part of my statement in which Mr. Adams understands me to have affirmed "that the British Government spontaneously, of its own volition, initiated a proposition to the Government of the United States to revise the Foreign Enlistment Acts of both countries, and make such additions as might be thought necessary to them."

3. But with respect to the remaining and more important point, I cannot altogether admit the correctness of Mr Adams' interpretation of my language. He understands it to have been substantially affirmed by me, "That the answer of the United States to this offer was like throwing cold water on it altogether. They said they had no objection to enter into the consideration of such a question, but they were satisfied with their own law as it stood," So far, Mr Adams quite fairly represents the effect of my statement; and the documents cited by himself (as well as Earl Russell's despatch to Lord Lyons on the same subject, to which he does not refer) prove the *fact* to have been as I stated it, whether I rightly described such an answer as cold and discouraging or not. Mr. Adams, indeed, quotes a letter from Mr. Seward to himself, dated the 19th January, 1863, and says, that he "abstains from entering into any discussion of whether the language of that letter is or is not fairly to be considered as throwing cold water altogether" on Earl Russell's proposition. But he does not state that the terms of that letter of Mr. Seward were ever communicated to Her Majesty's Government; nor can I find the least trace of such a communication having been made in any of the sources of information open to me. I do not, therefore, perceive how the language of Mr. Seward in a letter to Mr. Adams can legitimately be called in aid to alter or modify the impression which Mr. Adams' own conversation with Earl Russell may have been in itself calculated to produce.

Mr. Adams proceeds to say that it was "clearly implied in the sequel" (of my observations), "though not affirmed in words, that, as a consequence of this answer, the British Government were reluctantly compelled to desist from appealing to Parliament at all." And then, after citing passages from the documents which passed between himself and the Government of Washington, ending with his own despatch, which contains a record of the conversation between himself and Earl Russell, he assumes it to have been shown, "that his Lordship's answer, declining to proceed any further, was made forthwith, and was the result of Cabinet deliberations previously held, and of the opinion of the Lord Chancellor theretofore given. It was," he adds, "in no way the effect of the communication made by myself at the moment, but had been prepared in advance to meet it whenever it came, or whatever it might be. It fell in with an opinion expressed by Mr. Seward, but was in no manner dependent upon it. If this be the correct chronology, it follows that no such hypothetical difficulty in an appeal to Parliament, after such an answer, as is described by Her Majesty's Attorney-General, could ever have been possible. Her Majesty's Government had decided before the answer ever appeared, not to make any such appeal, but rather to abide by the Lord Chancellor's confidence in the existing Statute."

I cannot think it is a just inference from anything which I said that Her Majesty's Government were "reluctantly compelled" to desist from making any application to Parliament "as a consequence" of Mr. Adams' answer to Earl Russell's suggestion. I neither said nor implied that Her Majesty's Government were *desirous* of making any such application to Parliament; much less that the answer returned by the United States' Government to Earl Russell's overture, was their only or their principal reason for not making it. On the contrary, the manifest difficulty of carrying such a measure through Parliament at such a time, and the great inconvenience of any unsuccessful attempt to do so (to which I did not omit to refer) would necessarily make the conclusion that such an attempt was unnecessary (if it could be arrived at on good grounds) acceptable to Her Majesty's Government; and the opinion formed in the Cabinet, under the advice of the Lord Chancellor (which I also mentioned in the debate), that our existing law would probably be found upon trial sufficient for its purpose, must (of course) have contributed in a very important degree to that conclusion. But as I read the reports of this conversation (both that made by Mr. Adams and that of Earl Russell to Lord Lyons), I find nothing in either of them to justify Mr. Adams' inference, that Her Majesty's Government had determined beforehand to let the matter drop at all events, and not to propose any measure to Parliament whatever the answer of the Government of the United States might be.

Lord Russell did, indeed, at once come to the conclusion, which he then announced to Mr. Adams, that the matter could not at that time usefully be carried further. But why? Not because the Cabinet had already so decided, but because the opinion of the Government of the United States, as expressed by Mr. Adams, as to their own law, was found to coincide with the opinion of the Lord Chancellor, expressed in the Cabinet, as to our law. Under these circumstances there appeared to be an agreement of opinion between the Governments of both countries, that reliance might safely be placed upon their existing laws; and, if any measure had been afterwards proposed to Parliament, the opinions thus formed and expressed must, when made known, have had an unfavourable influence upon its chance of success. To prosecute the negotiation further under such circumstances, might not improbably have proved a source of serious embarrassment to Her Majesty's Government, unless some amendments of the laws of both countries had actually resulted from it; and the prospect of such a result was too uncertain to justify the risk.

The Government of the United States had thought it necessary, while expressing their willingness to consider any propositions which might emanate from Her Majesty's Government, to guard themselves against being supposed to admit that their own law (in the language of Mr. Adams) was not "of very sufficient vigour," or (in the language of Earl Russell) that it "could be improved." They were willing to receive suggestions, but though invited to do so, they themselves made none. What might have been the effect of this if Her Majesty's Government had been satisfied that an amendment of our Foreign Enlistment Act was indispensable for the accomplishment of its objects, I cannot pretend to say; but under the actual circumstances of the case, its natural (not to say necessary) effect was the reply immediately given by Earl Russell to Mr. Adams; in which reply the Government of the United States, without any appearance of surprise or dissatisfaction, acquiesced.

Mr. Adams thinks himself warranted in concluding that, if the answer of the Government of the United States had been different, the reply of Earl Russell would still have been the same. My conclusion, from the facts and the documents was and is the reverse. Having voluntarily proposed to enter into communication, with a view to the mutual revision of the Statutes of both countries on a very important and very practical subject, it was fully open to his Lordship to withdraw from that proposal when the Government of the United States had expressed their willingness to entertain it in a merely passive sense, without accepting any part of the responsibility of pressing it forward, or even encouraging it so far as to say that they concurred in the views with which it had been originally proposed, or that they anticipated any prospect of advantage from its further prosecution. Under these circumstances the Lord Chancellor's opinion that there was no practical necessity for a change in our law, became decisive. But my belief is that the Cabinet had, in fact, come to no conclusion which would have superseded the further consideration of the question at that time, if the United States' Government had stated it to be the result of their experience that their own law required amendments to make it perfectly efficient; much less if they had expressed an anxiety to agree in such amendments as might make the laws of both countries more effective for their common purpose, and had offered, or stated themselves to be prepared to offer any practical suggestions with that view. Nor does it apper to me at all probable that, if such had been the tenor of the answer given by Mr. Adams to Earl Russell's proposal, his Lordship would have, nevertheless, broken off a negotiation initiated by himself, merely because the Lord Chancellor had in the meantime induced the Cabinet to take a more favourable view than that which had been entertained by Her Majesty's Law Officers of our existing law.

I think, therefore, that I did not err in my appreciation of the substance of what took place between the two Governments; and although I do not attribute, and never have attributed, the decision of Her Majesty's Government solely to the opinion expressed by the Government of the United States as to the sufficiency of their own law, I still continue to believe (what alone I meant to state or imply in my place in Parliament), that the opinion so expressed by the Government of the United States did exercise a material influence upon the course then and subsequently taken by Her Majesty's Government, and that it would have been also likely to prove a serious impediment to the success of any measure for the amendment of the Foreign Enlistment Act, if such a measure (even after some continued negotiation with the Government of the United States) had been introduced into Parliament.

I have, &c.
(Signed) ROUNDELL PALMER.

P.S.—I annex, as necessary to give a complete view of what passed, the two following extracts; No. 1 being the passage in Earl Russell's letter to Mr. Adams of December 19, 1862, immediately following that quoted by Mr. Adams; and the other, No. 2, being Earl Russell's report to Lord Lyons, dated February 14, 1863, of his conversation with Mr. Adams.

No. 1.

"I shall accordingly be ready to confer at any time with you, *and to listen to any suggestions which you may have to make, by which the British Foreign Enlistment Act, and the corresponding Statute of the United States, may be made more efficient for their purpose.*"

No. 2.

Mr. Adams said, "That his Government were ready to listen to any propositions Her Majesty's Government had to make; but they did not see how their own law on this subject could be improved." I said, "that the Cabinet had come to a similar conclusion, so that no further proceedings need be taken at present on this subject."

R. P.

No. 244.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received March* 9.)

My Lord, *Lincoln's Inn, March* 9, 1866.

WE are honoured with your Lordship's commands signified in Mr. Murray's letter of the 7th of March instant, stating that he was directed by your Lordship to transmit to us three letters from the Home Office,* inclosing copies of correspondence between the United States' Consul at Dublin and the Irish Government, relative to the arrest, on suspicion of being implicated in the Fenian movement, of persons claiming to be citizens; and at the same time to state to us that, in an interview with your Lordship on the previous day, Mr. Adams claimed a right to interfere on behalf of all persons arrested who can prove American citizenship. Mr. Adams did not go so far as to demand their release on that account, but that the United States' Consul at Dublin should be informed of the cause of their imprisonment, and be allowed to see the depositions against them.

Mr. Murray was also pleased to state that he was directed by your Lordship to request that we would take this subject into our consideration, and that we would report to your Lordship our opinion as to how far this claim should be complied with:—1st, with respect to American born citizens; and 2ndly, as to British born subjects who have been naturalized in the United States. And also to inclose, as likely to be useful to us, a Memorandum showing what passed between Her Majesty's Government and that of the United States with regard to the arrest of British subjects in the United States at the time of the suspension of the writ of *habeas corpus* in that country, and the correspondence between Mr. Bancroft and Viscount Palmerston respecting arrests in Ireland in 1848; and to refer us, with regard to this correspondence, to the Law Officers' Report of the 7th of August, 1849.

We are also honoured with your Lordship's commands signified in Mr. Layard's letter of the same date, stating that he was directed by your Lordship to transmit to us, with reference to Mr. Murray's letter of the same date, a volume of United States' executive documents containing the correspondence laid before Congress in regard to American citizens imprisoned in Ireland in 1848.

We are also further honoured with your Lordship's commands signified in Mr. Layard's letter of the 8th of March instant, stating that he was directed by your Lordship to transmit to us a letter from the Home Office dated the 7th instant, inclosing copies of further correspondence between the United States' Consul at Dublin and the Irish Government, relative to the arrest of persons claiming to be American citizens, and to request that we would take the same into our consideration, together with the papers now before us, and report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That the answers of the Lord-Lieutenant to the United States' Consul, contained in Major-General Larcom's letters of the 28th ultimo and the 3rd instant, appear to us to be proper and correct.

It is impossible that Her Majesty's Government should recognize any title in any foreign Power to interfere on behalf of natural born subjects of Her Majesty whom it may be thought necessary to detain in custody in Ireland, on the ground that such natural-born subjects have become, by naturalization or otherwise, entitled to rights of citizenship in a foreign country. On this point it is sufficient to say, that we entirely adhere to the views expressed in the Report of the Law Officers of the 7th of August, 1849.

If any controversy is raised in any particular case upon the question, whether the persons in custody are in fact natural born subjects of Her Majesty, it will be right to receive and to pay due attention to any representations which may be made on that subject by the Minister or Consul of the nation whose citizens they are represented to be, and to inquire into the truth of such representations, and of any evidence which may be offered in support of them.

If it should appear that any persons who are so in custody are not, in fact, natural-born subjects of the Queen, it will be right to state (in answer to any proper inquiry) the cause of their detention, and to pay prompt attention to all representations tending to exonerate them from suspicion, and to justify their release, which may be offered to Her Majesty's Government; and also to give, as to each such case in which it may not be deemed proper to release them, such further explanations to the Minister or Consul interceding on their behalf, as may show that their liberty has not been interfered with except upon necessary or reasonable grounds, deemed by Her Majesty's Government, under the present circumstances of Ireland, to be sufficient to justify their detention. It will be for the Lord-Lieutenant in each particular case, to judge how far it may be consistent with the public interest to allow the foreign Consul to see the depositions (if any) which may have been taken against such persons.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.
JAMES A. LAWSON.
JAMES SULLIVAN.

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* Home Office, February 23, February 26, and March 5.

No. 245.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received March* 10.)

My Lord, *Lincoln's Inn, March* 10, 1866.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 23rd January, 1866, stating that with reference to our Report of the 25th of May last, he was directed by your Lordship to transmit to us, together with the previous papers,* a further letter from Mr. O'Connor† respecting his claims on account of the destruction of tobacco belonging to him at Richmond. And to request that we would take the same into our consideration, and favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands, we have taken these papers into our consideration, and have the honour to report—

That we see no reason to alter the opinion upon this gentleman's claims, which we have expressed in our former Report. Indeed, the present statement tends to confirm this opinion.

It would be impossible to hold the Government of the United States responsible for the loss of this tobacco, caused for the most part by the accident, or the fact, of fire, in part also by the action of the Confederate Government.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 246.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received March* 13.)

My Lord, *Lincoln's Inn, March* 12, 1866.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 20th January last, stating that with reference to our Report of the 29th December last, he was directed by your Lordship to transmit to us, together with the previous papers,‡ a letter from the Colonial Office,§ inclosing copies of a correspondence between Sir F. Bruce and Governor Rawson, respecting the registration in British ports of vessels formerly owned by residents in the so-styled Confederate States, and to request that we would take the same into our consideration, and favour your Lordship with our opinion thereupon.

Mr. Hammond was also pleased to state, that the papers relating to the case of the "Wren," referred to to in this correspondence, were also inclosed.‖

In obedience to your Lordship's commands, we have taken these papers into our consideration, and have the honour to report—

That we have already very fully reported on the important subject to which these papers relate.

It does not occur to us, that we can add any observations to those which we have already had the honour to make, or that any new fact is now presented for our consideration.

Governor Rawson's letter to Sir F. Bruce of the 1[illegible]th December, 1865, seems to us to have been in every respect proper.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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* Mr. O'Connor, March 8; to Mr. O'Connor, March 28; Mr. O'Connor, June 7; to Mr. O'Connor, June 17, 1864; Mr. O'Connor, April 22; to Mr. O'Connor, May 2; Mr. O'Connor, May 6; to Mr. O'Connor, May 13; Mr. O'Connor, May 15; to Mr. O'Connor, June 1, 1865.

† Mr. O'Connor, December 27, 1865; Volume.

‡ Sir F. Bruce, No. 487; to Colonial Office, November 28; Mr. Adams, December 28, 1865; to Sir F. Bruce, No. 4, January 17, 1866.

§ Colonial Office, November 18, 1865.

‖ Mr. Archibald, No. 49; to Mr. Laird, August 7; Mr. Laird, August 10; to Sir F. Bruce, No. 347; Consul Archibald, No. 64; to Sir F. Bruce, No. 392; Consul Archibald, No. 93; to Sir F. Bruce, No. 29.

No. 247.

The Queen's Advocate to the Earl of Clarendon.—(*Received March* 17.)

My Lord, *Doctors' Commons, March* 16, 1866.

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 12th instant, stating that with reference to my Report of the 12th ultimo, he was directed by your Lordship to transmit to me, together with the former papers, a further letter from the Colonial Office (dated 8th instant), inclosing two Acts of the Bahamas Legislature, bearing upon the subject of the liability of the Governor of the Bahamas to be called upon to assist in arresting deserters from United States' ships of war; and Mr. Layard was to request that I would again take the subject into consideration, and furnish your Lordship with my opinion thereupon.

In obedience to your Lordship's commands, I have again considered this matter, and have the honour to further report—

That I have now perused the Bahamas Acts of 1833 and 1865. The former is less carefully worded than the latter, which purports to be a continuing Act, and contains the word "merchant." I think both related to merchant-vessels only; and I adhere to the opinion which I have had the honour to express.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 248.

The Attorney-General to the Earl of Clarendon.—(*Received March* 21.)

My Lord, *Lincoln's Inn, March* 21, 1866.

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 13th March instant, stating that your Lordship had transmitted to Mr. Adams a copy of the statement which I made to your Lordship in answer to the representation from Mr. Adams touching what I said in the House of Commons with reference to proposals for amending the Foreign Enlistment Acts of this country and the United States; and that he was directed by your Lordship to inclose a letter which has been received from Mr. Adams, dated 12th instant, in reply, for any observations which I might desire to make thereupon.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That Mr. Adams' letter of the 12th instant call for little further observation on my part.

If Mr. Adams understood me "substantially to affirm" the two propositions embodied in this letter, all I can say is that he misunderstood me. I stated (as is the truth), that Her Majesty's Government "voluntarily initiated a proposition" to the United States' Government, *not* "to amend the provisions of the British Foreign Enlistment Law for the benefit of the United States," but, that the Foreign Enlistment Acts of both countries should be revised, with a view to their simultaneous amendment, if, *after* mutual communication, such amendments should appear to the two Governments to be practicable and desirable.

I further stated the answer which was, in fact, given by the United States' Government to that overture, describing it (and I think truly) as one which did not encourage Her Majesty's Government to proceed further in the matter, and as one which, if the matter had been carried further, might have been used in Parliament as an argument against the existence of any necessity for the alteration of our law. But I did not, either directly or "substantially" affirm that "Her Majesty's Government had been deterred from prosecuting this friendly proposal entirely by the cold and repulsive manner in which that proposition had been met by the United States."

I disclaim wholly the inference which Mr. Adams considers to follow from the propositions which he attributes to me, viz., that "the whole responsibility for any failure of Her Majesty's Government in securing from Parliament greater safeguards against the abuse of neutrality in this kingdom devolves on the United States." Nothing could possibly be further from my mind than the idea that the United States ought to be held responsible for the decision of Her Majesty's Government to abide by and enforce the existing law of this country. It is one thing to attribute (as I think I was fully justified in attributing) considerable practical importance to the opinion

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expressed by the Government of the United States at that juncture that their own law was "very sufficient" for its intended purpose; and another thing to say or imply, that because such was the opinion of the United States, Her Majesty's Government were not solely and exclusively responsible for forming and acting upon a similar opinion as to the law of this country.

The only other statements in Mr. Adams' letter which seem to me to require any remark, are those in which he insists that the only thing done by Her Majesty's Government was "*a suggestion of an intention to make a proposal*," and that "*that intention was definitively abandoned* before any reply from the United States came to the knowledge of Her Majesty's Government." I am surprised that Mr. Adams, who speaks so much in this letter of facts (as opposed to reasoning), should again have overlooked the fact (proved by the passage of Earl Russell's letter of the 19th December, 1862, which was extracted in the appendix to my former remarks), that Her Majesty's Government did not merely "suggest an intention to make a proposal," but expressly invited suggestions from the Government of the United States, which they failed to obtain. Upon the other question, whether the intention conveyed by Earl Russell's letter had been "definitively abandoned" before the answer of the United States' Government was received, Mr. Adams (unless he has some private information not discoverable from the contemporaneous documents, and which has never been communicated to me), seems simply to confound two things materially different: viz. (1), an opinion derived at by the Cabinet, under the advice of the Lord Chancellor, that reliance might be placed on the sufficiency of our Foreign Enlistment Act for its intended purpose; and (2), a definitive resolution not to follow up the overture contained in Earl Russell's letter of the 19th December, 1862. I do not find, in the documents to which I have access that any such resolution had been taken, in or out of the Cabinet, before Earl Russell learnt from Mr. Adams that the United States' Government did not consider their own Foreign Enlistment Act to require, or indeed to be susceptible of, any improvement.

I have, &c.
(Signed) ROUNDELL PALMER.

No. 249.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received March* 29.)

Lincoln's Inn, March 28, 1866.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 19th March instant, stating that, with reference to our Report of the 14th ultimo, respecting the case of the "Shenandoah," he was directed by your Lordship to transmit to us, together with the previous papers,* a further correspondence between the Foreign Office and the Home Office,† respecting the possibility of obtaining evidence against the officers and crew of that vessel, and also with regard to the trustworthiness of Temple's testimony; and to request that we would take these papers into our consideration, and favour your Lordship with such observations as we might have to offer thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration and have the honour to report—

That in our former Reports we sufficiently intimated our opinion of the untrustworthy character of Temple's evidence; and as so long a period has passed by without any confirmation being obtained of those parts of his statement which tended to show that offences triable by the laws of this country might have been committed by persons on board the "Shenandoah," and as the correspondence with the Home Office leads to the conclusion that none such is likely to be obtained, we are of opinion that so far as any further inquiries at Liverpool are concerned, the matter may now properly be allowed to drop.

The proposal of Temple to give wilfully false evidence in the case of Captain Corbett would alone be sufficient to render his statement entirely unworthy of credit: and many other circumstances (some of which are apparent on the face of his deposition itself) tend to show its untruth. Into these, however, we do not think it necessary now to enter; but it is satisfactory to find that Captain Waddell's statement, that no captures were made by the "Shenandoah" after the news of the termination of the war reached those

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* Mr. Adams, December 28, 1865; Admiralty, February 7; Home Office, February 7, 1866.

† Home Office, February 16; to Home Office, February 17; Home Office, March 16, 1866.

on board her, is confirmed by the evidence of the boy Rosel, which seems to us to be well entitled to credit.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 250.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received April* 11.)

Lincoln's Inn, April 9, 1866.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Murray's letter of the 26th ultimo, stating that he was directed to transmit to us therewith a letter from Her Majesty's Consul at Galveston (No. 3), now on leave of absence in this country, requesting to be informed what course should be pursued with reference to payment of a debt due to the heirs of the late Mr. David Cameron, British subject, which payment is proposed to be made in the depreciated currency of the United States; and to request that we would furnish your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That the general question as to the effect upon debts due to foreigners of a subsequent alteration of the currency, in which a legal tender may be made, by the Legislature of the country where such debts are payable, involves considerations as to which jurists of eminence have holden different opinions. But we do not think it necessary in this case to express our own opinion on that general question; because we are of opinion that, in a question arising out of a contract for the sale of land in a foreign country, Her Majesty's Government cannot properly interfere; and that the vendors, though British subjects, must have recourse to the law of the country in which the land is situated, and must be considered, with respect to it, as entitled only to the same administration of justice as native subjects.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 251.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received April* 11.)

Lincoln's Inn, April 10, 1866.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 29th of March ultimo, stating that he was directed by your Lordship to transmit to us a letter, dated the 27th ultimo, from Messrs. Duck, Brothers, and Co., of Liverpool, stating that they are sufferers by the pillage of Bagdad, Mexico, by United States' subjects, and that the goods were taken to the American side of the Rio Grande, and their agent's endeavours to recover the same were unsuccessful; and Mr. Hammond was pleased to add that Messrs. Duck, Brothers, and Co., are consequently desirous of knowing if they are to look to the United States' Government for redress and indemnification, and, if so, whether their claim can be forwarded to that Government through Her Majesty's Minister at Washington: and Mr. Hammond was to request that we would take Messrs. Duck Brothers' letter into our consideration, and report to your Lordship our opinion as to the answer which should be returned to it.

The further papers, as marked in the margin,* touching the general question of the pillage of Bagdad were annexed for our information.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we advise that an answer be sent to Messrs. Duck and Co. to the effect: that they must address any claim which they may have to make in consequence of their losses

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* Vice-Consul Bagnall, January 25; Mr. Scarlett, No. 6, January 28; No. 13 A, February 9; Admiralty, March 17; Acting Consul Jolly, No. 2, March 20, 1866.

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at Bagdad to the Government of the United States; that Her Majesty's Government will direct Her Majesty's Representative at Washington to exercise his discretion as to supporting that claim; but Messrs. Duck must not rely upon any exertions of Her Majesty's Government on their behalf, it being the duty of the Mexican Government, under whose protection Messrs. Duck's goods were placed, to take whatever steps may be proper in this case for the purpose of obtaining indemnification for damages caused by an invasion from the United States' territory upon a Mexican town.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 252.

The Queen's Advocate to the Earl of Clarendon.—(*Received May* 1.)

Doctors' Commons, April 30, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 27th instant, stating that, with reference to my Report of the 23rd of February last, relative to the Act lately passed by the Canadian Legislature for the better regulation of fisheries, he was directed by your Lordship to transmit to me a letter, dated the 25th instant, from the Colonial Office, inclosing a copy of a despatch from the Governor of Canada, together with a copy of a Report from the Commissioner of Crown Lands on the subject of the above-mentioned Act; and Mr. Layard was to request that I would take these papers into consideration, and furnish your Lordship with my opinion whether after the explanations now received as to the bearing of the proposed Act on the stipulations of the Reciprocity Treaty, there is any further objection to its confirmation by Her Majesty's Government.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I am of opinion that the explanations now received as to the bearing of the proposed Act on the stipulations of the Reciprocity Treaty remove the objection to its confirmation by Her Majesty's Government.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 253.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received May* 11.)

Lincoln's Inn, May 11, 1866.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 28th March last, stating that with reference to our Report of the 25th of September last respecting Mrs. Molyneux's claim against the United States' Government, he was directed by your Lordship to transmit to us the accompanying papers, as marked in the margin,* comprising the correspondence which has since passed on this case; and he was more particularly to call our attention to the estimate of Mrs. Molyneux's losses set forth in her letter of the 21st March; and was to request that we would take the same into our consideration, and report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That upon the general subject of this claim we have no remarks to add to those which we have already had the honour of addressing to your Lordship, except that we must not be understood as having ever advised Her Majesty's Government that this ought to be treated as a case of international wrong on the part of the Government of the United States. Our view has always been, and still is, that this case is distinguished from others by such circumstances as to make it right that Her Majesty's Government should use their good offices to obtain (if possible) redress for Mrs. Molyneux.

With respect to the particular items specified in the letter of Mrs. Molyneux, we think that Mr. Fullerton's estimate of the damage done to the house at Savannah should be accepted, without the additions proposed by Mrs. Molyneux.

With respect to the alleged losses at the farm and house in North Carolina, we think that the affidavit of the farm manager and that of the deceased housekeeper as to the list of articles destroyed may, *primâ facie*, be relied on. The estimate of Mrs. Molyneux as to their value (though this is not authenticated by proof) should, we think, be forwarded (omitting the claim for her late housekeeper's losses) to Sir F. Bruce.

Mrs. Molyneux must be apprised that Her Majesty's Government cannot do more than recommend her claim to the favourable consideration of the United States' Government; and that it may, not improbably, be met, either wholly or in part, by the statement that American subjects have suffered similar losses during the war, and have not obtained compensation.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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* To Mrs. Molyneux, November 15; Mrs. Molyneux, December 2; to Mrs. Molyneux, December 11, 1865; Mrs. Molyneux, March 21, 1866; Memorandum, December 1865; Sir F. Bruce, No. 455, October 24, 1866; to Sir F. Bruce, No. 373, October 6; No. 61, December 21, 1865.

No. 254.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received May* 15.)

Lincoln's Inn, May 14, 1866.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 23rd April ultimo, stating that he was directed by your Lordship to transmit to us a copy of a despatch from Her Majesty's Minister at Washington (No. 119), inclosing a pamphlet by Mr. O'Connor, an eminent lawyer of New York, upon the Treasury Agent system of cotton seizure in the South; with the concurrent opinion of Messrs. Evarts, Pierrepont, and Brady, of the New York bar; and to request that we would take this pamphlet into our consideration, and report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration and have the honour to report—

That we are of opinion that the conclusions of public law, at which these learned gentlemen have arrived, are, in the main, sound and correctly drawn.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 255.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received June* 7.)

Lincoln's Inn, June 7, 1866.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 31st ultimo, stating that he was directed by your Lordship to transmit to us the accompanying despatch from Sir Frederick Bruce (No. 158, May 14), reporting that he had been informed by Mr. Seward that, in the opinion of the United States' Judge Advocate-General, no claim on account of losses sustained during the civil war could be entertained by the United States' Government, unless such claim originated in a *loyal* State; and to request that we would take the same into our consideration, and favour your Lordship with any observations we might have to offer thereupon.

In obedience to your Lordship's commands we have taken this matter into consideration, and have the honour to report—

That we are of opinion that the subjects of Her Majesty, resident and possessing landed property in the territory of the United States cannot, generally speaking, claim to be placed on a better footing, with respect to compensation, than native citizens. There may be particular cases, the circumstances of which may justify the official intervention of the Government of the foreign subject; but such cases would be exceptions to the general rule. In the absence of information that the case referred to by Sir F. Bruce is such an exceptional one, we are not able to say that there is any ground for the remonstrance of Her Majesty's Government against the decision of the Judge-Advocate which is adverse to the British claimant in this case.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 256.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received June* 21.)

My Lord, *Lincoln's Inn, June* 20, 1866.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 8th instant, stating that, with reference to our Report of the 28th of February, he was directed by your Lordship to transmit to us the accompanying letter and its inclosures, from Mr. W. H. Stewart, asserting, as executor of the late Mr. Stewart, the senior member of the firm of Messrs. Hopley and Co., of Charleston, a claim upon the United States' Government on account of cotton belonging to the late Mr. C. E. Stewart, which was destroyed at Camden; and that Mr. Stewart also prefers a claim in respect of cotton seized by the United States' authorities at Charleston; and he further represents that a loss of 52,071 dollars was sustained by the late Mr. C. E. Stewart, in consequence of the repeal, after the suppression of the rebellion, of the currency laws in force in the so-styled Confederate States during the civil war.

Mr. Hammond was also pleased to state that he was directed by your Lordship to request that we would take these several claims into our consideration, and favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That this claimant was, and is, entitled, on account of the destruction of his property, to all such remedies (if any such there be), as may be open to an American citizen who, continuing to reside in one of the Confederate States during the war, nevertheless remained loyal to the Government of the United States, but that he cannot, with respect to compensation for damages inflicted upon his testator's property by the army of the United States, or with respect to the effect upon the interest of his testator of the legislation either of the Confederate Government, or of the United States, concerning the paper currency of that country, be placed upon a different footing. If, indeed, he were placed in a worse condition merely because his testator was a British subject, there would be ground for remonstrance by Her Majesty's Government on his behalf; but at present this is not alleged to be the case.

We desire to apply this opinion to each and all of these classes of claims preferred by Mr. Stewart.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 257.

The Law Officers of the Crown to the Earl of Clarendon,—(*Received June* 27.)

My Lord, *Lincoln's Inn, June* 27, 1866.

WE were honoured with your Lordship's commands signified in Mr. Hammond's letter of the 16th instant, stating that, with reference to our Report of the 5th of July last, he was directed by your Lordship to transmit to us, together with the previous papers,* a letter from Mr. Barclay and its inclosures,† urging his claim for compensation on account of injury done to his property in Georgia by the United States' military forces; and to request that we would take the same into our consideration, and favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we are unable to alter the opinions which we expressed as to the particular case of Mr. Barclay, in our Report of July 5, 1865, and, as to the general category of cases under which that of Mr. Barclay falls, on the 7th of June last.

We are, therefore, still of opinion, for the reasons stated in these Reports (hard as Mr. Barclay's case undoubtedly is), that Her Majesty's Government must decline to press the claim of Mr. Barclay upon the United States' Government.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 258.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received June* 28.)

My Lord, *Lincoln's Inn, June* 28, 1866.

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 16th instant, stating that he was directed by your Lordship to transmit to us the accompanying letter, dated the 12th instant, from the Colonial Office, inclosing, together with an explanatory correspondence, a petition addressed to Mr. Adams by Daniel Mc Sweeny, a citizen of the United States, complaining of his being illegally imprisoned in Ceylon; and to request that we would take the same into our consideration, and favour your Lordship with our opinion with regard to this case, in order that, in forwarding this Memorial to Mr. Adams, your Lordship may be able to make such observations upon it as we might consider advisable.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we are of opinion that the imprisonment and punishment of this man was legal, and that his complaint is founded upon a misapprehension of the law and the facts. It would seem to us that it would be expedient to forward to Mr. Adams a copy of the Report of Chief Justice Creasy and Mr. Justice Temple, with the Memorial of Mc Sweeny.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 259.

The Queen's Advocate to the Earl of Clarendon.—(*Received June* 29.)

Doctor's Commons, June 28, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 6th instant, stating that he was directed by your Lordship to transmit to me the papers, as marked in the accompanying list, relative to the claims on Her Majesty's Government of a Mr. J. A. Machado and Mr. F. J. Medeiros, arising out of the detention by the British authorities on the African coast of the American vessels "Mary Varney" and "Thomas Watson," in the years 1854 and 1857. That the "Mary Varney" was detained by the Colonial authorities at Balhurst, in the River Gambia, in the month of July 1854, on suspicion of having Slave Trade equipments on board; and on being taken for adjudication into the Vice Admiralty Court of that Colony, was released after a detention of twelve days, with costs and damages against the detainers.

That in April 1858, nearly four years after the detention of the "Mary Varney," a claim for compensation to the amount of 50,000 dollars was, for the first time, made on Her Majesty's Government through Mr. Dallas, at that time United States' Minister at this Court. That this claim was referred for the consideration of the Queen's Advocate, who reported that it was well-founded in point of principle, but suspicious as to the delay in bringing it forward, and also in point of amount. That Mr. Dallas was accordingly

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* Mr. Barclay, June 9; to Mr. Barclay, July 15; to Sir F. Bruce, No. 302, 1865; Sir F. Bruce, No. 122 to Mr. Barclay, April 24, 1866.

† Mr. Barclay, June 14; Memorandum, June 15, 1866

answered to the effect that whilst Her Majesty's Government were not prepared to justify the seizure of the "Mary Varney," and as no claim for specific damages had been advanced at the time, or at any period antecedent to the date of Mr. Dallas' note of the 6th of April, 1858, Her Majesty's Government could not but feel some surprise at the nature and amount of the claim brought forward, unaccompanied, as it was, by any accounts, vouchers, or items. That the United States' Minister was requested to furnish information on these points; and Her Majesty's Government begged to be distinctly informed whether they were to understand that the Government of the United States had satisfied itself, and if so, upon what grounds, of the entire reasonableness of the amount claimed, or whether that Government merely forwarded the statement of Mr. Machado as to the amount he thought proper to claim (50,000 dollars), without expressing any opinion thereupon. That on the 9th of October, 1858, Mr. Dallas, in acknowledging the receipt of Lord Malmesbury's note, stated that it would be his duty "to abstain from troubling his Lordship with comments on the case of the 'Mary Varney' until it should be in his power to give the distinct reply requested to the inquiry made by his Lordship as to how far and upon what grounds, preliminary to the presentation, the United States' Government were satisfied of its good faith and reasonableness. He confined himself, therefore, to transmitting some additional documents which had reached him a few days since." (These documents consisted of copies of the ship's papers having no reference to the merits of the claim.) That from the date of Mr. Dallas' note of October 9, 1858, up to the receipt of Mr. Adams' letter of the 3rd of March last, no further communication of any kind was received from the United States' Government on the subject of this claim, which now amounts to 108,312 dollars.

That, as regards the case of the "Thomas Watson," this vessel was detained by the Commander of Her Majesty's ship "Bloodhound," on the 15th of September, 1857, and sent to Sierra Leone for adjudication, on a charged preferred by a coloured British subject against the master of the "Thomas Watson," to the effect that he had detained him on board his ship with the intention of selling him into slavery. That on the arrival of the "Thomas Watson" at Sierra Leone, the proctor engaged by the captors advised them not to take the case into Court, and the vessel was accordingly given up to her master and crew on the 10th of October, having been detained for twenty-five days. That the Queen's Advocate, to whom the case was referred, reported that the seizure was not justifiable, and Her Majesty's Government thereupon, before any complaint had been made of the seizure, expressed to the United States' Government their regret at the occurrence, and at the same time recalled the Commander of the "Bloodhound.".

That in March 1858, a note was received from the United States' Minister at this Court claiming damages to the amount of 60,000 dollars for the owners of the "Thomas Watson," and 20,000 dollars for their agent, Mr. Medeiros. That these claims were referred for the consideration of the Queen's Advocate, and Her Majesty's Government, in conformity with that Officers' Report, demurred to the amount claimed, but stated that, having admitted that the Commander of the "Bloodhound" was to blame in detaining the "Thomas Watson," it necessarily followed that compensation was due, the only question being the amount.

That in order to ascertain what would be a fair amount of compensation, and being desirous that the matter should be promptly and amicably adjusted, Her Majesty's Government instructed the British Consul at New York to place himself in communication with Messrs. Machado and Medeiros, with a view to investigate any statement they might place before them, and to endeavour to settle matters with them.

That the parties interested, however, declined to treat with Mr. Archibald, but stated that they would submit their claim to arbitration; and at the same time informed him that their views respecting such arbitration would be immediately made known to Her Majesty's Government through the United States' Minister in London. That this communication was made by Mr. Machado to Mr. Archibald on the 26th of June, 1858, and from that time up to the receipt of the United States' Minister's note of the 3rd of March last, a period of nearly eight years, these claims have remained in abeyance, no further communication respecting them having been received from the United States' Government or from any other source.

That on the receipt, however, of Mr. Adams' note of the 3rd of March last, your Lordship referred to Her Majesty's Consul at New York, with instructions to that Officer to make inquiries respecting Mr. Machado, and to endeavour to ascertain the causes that led to the delay on the part of Mr. Machado in prosecuting his claim. That the accompanying despatch from Mr. Archibald contains a report on this subject; and that it will be seen from this despatch that the real cause of Mr. Machado's delay in prosecuting his claims was his complicity in slave traffic.

Mr. Layard was also pleased to add that as regards Mr. Medeiros, that individual, at the time he was connected with Mr. Machado, was one of the most notorious slave agents on the African Coast, and that by the latest advices received by Her Majesty's Government was still on the West Coast of Africa, engaging, when opportunities offered, in the Slave Trade; and Mr. Layard was pleased to request that I would take these papers into consideration and furnish your Lordship with my opinion as to the course which Her Majesty's Government should pursue in dealing with these claims.

In obedience to your Lordship's commands, I have taken these papers into consideration, and have the honour to report—

That I think it is impossible now to controvert the right of Machado to compensation, if the United States' Government, with full knowledge that he was at the very period when his vessels were seized, a notorious slave dealer, continue to press his claim upon Her Majesty's Government; both because there was no legal evidence which warranted the seizure of these vessels, and because the claim for compensation has been unequivocally recognized by Her Majesty's Government. But I think that all the circumstances of the cases, as they are contained in the Memorandum, should be laid before Mr. Adams, and that he should be apprised that while Her Majesty's Government feel themselves bound to grant compensation, if Mr. Adams, with the light which the subsequent transactions in 1861 (mentioned in Consul Archibald's letter) have thrown upon the character of this man, still think fit to demand it. Nevertheless they must decline to pay down any specific sum until a proper investigation has established the amount which was due to Machado at the time when Her Majesty's Government expressed to the then United States' Minister at this Court (Mr. Dallas), their readiness to entertain and settle the question. It was at the request of that gentleman that the investigation was then delayed; the subject was never adverted to again by him; and although it now appears that Machado suggested in 1858 to Mr. Dallas the name of Mr Joshua Bates as a referee, this suggestion was never imparted to Her Majesty's Government, until the subject was again, after this long interval of silence, brought to their notice in the present year by Mr. Adams.

That Her Majesty's Government cannot therefore be required to pay any sum beyond that which shall be found to have been due at the above-mentioned period, as it is admitted that they are in no way responsible for the delay which has occurred.

If Mr. Adams should still support these claims on the part of his Government, the most expedient arrangement would be, to refer the consideration of the amount of compensation to the decision of two competent persons, with power to call in an umpire, on whom they should agree beforehand.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 260.

The Law Officers of the Crown to the Earl of Clarendon.—(Received July 3.)

Lincoln's Inn, July 2, 1866.

My Lord,

WE are honoured with your Lordship's commands, signified in Mr. Hammond's letter of the 28th June ultimo, stating that he was directed by your Lordship to transmit to us a Memorial from Messrs. Cheetham and Son, together with other papers respecting their claim to be compensated by the United States' Government on account of the destruction of a quantity of cotton, their property, on the occasion of General Sherman's march through the Southern States; and to request that we would take this claim into our consideration, and report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands, we have taken these papers into consideration, and have the honour to report—

That we think that the circumstances of this case do not distinguish it from the other cases, in which a like claim for compensation has been made. We, therefore, apply to it the principle, which we have reported ought to govern such cases; and have the honour to express our opinion that Messrs Cheetham must seek the same redress (if any), for the injury of which they complain, as an American subject would have recourse to in the like circumstances.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 261.

The Queen's Advocate to Lord Stanley.—(*Received August* 3.)

Doctors' Commons, August 2, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Egerton's letter of the 31st ultimo, stating that he was directed by your Lordship to transmit to me the accompanying despatch from Mr. Cosens, the Acting British Consul at Savannah, reporting the circumstances under which a coloured British subject, named Edwards, has been detained in slavery for three years by United States' citizens, and requesting to be informed whether Edwards is not, in equity, entitled to some compensation from the United States' Government on account of his detention, and Mr. Egerton was to request that I would take this case into consideration, and furnish your Lordship with my opinion thereupon.

In obedience to your Lordship's commands I have considered this case, and have the honour to report—

That Edwards appears to have been kidnapped in British territory and taken to Georgia by two American citizens, both of whom are now dead. His late master appears to have purchased him with the *bonâ fide* intention, declared at the time, "of facilitating his return to his native place." He is now free by operation of law. I see no reason why the United States' Government should be made responsible for an illegal act committed without their sanction in a foreign country.

I do not advise that any demand for compensation be made in this case to the United States' Government.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 262.

The Law Officers of the Crown to Lord Stanley.—(*Received August* 8.)

Lincoln's Inn, August 7, 1866.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 14th of July ultimo, stating that, with reference to the Law Officers' Report of the 20th of June, he was directed by your Lordship to transmit to us, together with the former papers,* a letter from Mr. W. H. Stewart† renewing his application for the interference of Her Majesty's Government to obtain from the Government of the United States compensation for the losses sustained by the late Mr. Stewart of Charleston in consequence of the civil war in the United States; and to request that we would take Mr. Stewart's letter into our consideration and favour your Lordship with our opinion as to the answer which should be returned thereto.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That we adhere to the opinion expressed in the former Report of the Law Officers upon this claim.

That we advise that an answer be sent to Mr. Stewart to the following effect, viz:—

That Her Majesty's Government have apprized Mr. Stewart, by their reply to his former application, that his claim must be considered as being upon the same footing as that of an American citizen continuing to reside in one of the Confederate States during the war, and, nevertheless, remaining loyal to the Government of the United States.

That Her Majesty's Government are unable to discover, from the statements in his present letter, that his claim for compensation has been treated in a less favourable or different manner by the Government of the United States.

We have, &c.
(Signed) H. M. CAIRNS.
W. BOVILL.
ROBERT PHILLIMORE.

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* Mr. Stewart, June 7; to Mr. Stewart, June 25, 1866.

† Mr. Stewart, July 13, 1866.

No. 263.

The Law Officers of the Crown to Lord Stanley.—(*Received August* 23.)

Lincoln's Inn, August 22, 1866.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 7th August instant, stating that he was directed by your Lordship to transmit to us a letter from the Colonial Office, dated the 31st July ultimo, forwarding a transcript of an Act passed by the Legislature of Newfoundland providing for the constitution of a Marine Court of Inquiry in that Colony; and to request that we would take this Act into our consideration, and inform your Lordship whether, in our opinion, it may properly be submitted for the Queen's confirmation.

In obedience to your Lordship's commands we have taken this Act into our consideration, and have the honour to report—

That, as at present advised, we think the 10th Section of this Act should not be approved of by Her Majesty.

It appears to us that much practical inconvenience and difficulty, leading, perhaps, to serious international questions, would be likely to arise from the attempt of a British Court to exercise a kind of jurisdiction (for such it would be) over "foreign ships, property, and persons," even although such jurisdiction should be exercised at the instance of a foreign Consular Officer.

We have, &c.
(Signed) H. M. CAIRNS.
W. BOVILL.
ROBERT PHILLIMORE.

No. 264.

The Law Officers of the Crown to Lord Stanley.—(*Received September* 3.)

Lincoln's Inn, August 31, 1866.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 10th instant, stating that he was directed to transmit to us two letters from the Colonial Office,* with their inclosures, relative to certain measures adopted or proposed to be passed by the Canadian Legislature, in order to protect the inhabitants of Canada from lawless aggressions from subjects of foreign countries at peace with Her Majesty.

That we should observe from the inclosed papers in what respects these measures are deemed by the Secretary of State for the Colonies to require amendment, but that before addressing the Governor-General of Canada the Secretary of State for the Colonies is anxious that our opinion should be taken on the subject, and Mr. Hammond was accordingly to request that we would take this matter into consideration, and furnish your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have the honour to report—

That we agree with the observations of Lord Carnarvon both upon the Acts which have received Her Majesty's sanction, and upon the Bills which have been unofficially sent to him; and that we think the letter which his Lordship proposes to send to his Excellency the Governor of Canada, is fit and proper to be sent.

We have, &c.
(Signed) H. M. CAIRNS.
W. BOVILL.
ROBERT PHILLIMORE.

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* Colonial Office, July 3 and August 3.

No. 265.

The Law Officers of the Crown to Lord Stanley.—(*Received September* 8.)

Lincoln's Inn, September 7, 1866.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 7th ultimo, stating that he was directed to transmit to us a letter from the Colonial Office, dated the 31st ultimo, forwarding the transcript of an Act passed by the Legislature of Newfoundland, relative to the deportation of criminals from that Colony, together with a despatch addressed by the Governor to the late Secretary of State for the Colonies, and Mr. Hammond was pleased to request that we would take these papers into consideration, and inform your Lordship whether, in our opinion, this Act may properly be submitted for the Queen's confirmation. The previous correspondence was also inclosed for convenience of reference.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That we feel some difficulty as to the words in Section 1, "*without delay*," coupled with the enactment that if the person does not depart, he may be arrested and detained by any person, and imprisoned *without warrant*.

There is no provision in the proposed Statute as to who is to say what is "*delay*" in each case, and as to who is to guard against abuse in "*any person*" arresting and detaining on the score that there has been delay.

We think the Court should name the time within which the convict is to leave, and then he may be arrested if found in the Colony after that time, and before the expiration of his sentence. And we humbly advise that the proposed Statute should undergo these amendments before it receives the confirmation of Her Majesty.

We have, &c.
(Signed) H. M. CAIRNS.
W. BOVILL.
ROBERT PHILLIMORE.

No. 266.

The Law Officers of the Crown to Lord Stanley.—(*Received September* 12.)

Lincoln's Inn, September 12, 1866.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Egerton's letter of the 20th ultimo, stating that he was directed by your Lordship to transmit to us a further letter from Mr. Stewart, dated the 14th ultimo, whose previous letter respecting his claim upon the United States' Government was answered in conformity with our Report of the 7th ultimo, and Mr. Egerton was to request that we would take Mr. Stewart's present statements into our consideration, and report to your Lordship whether they induce us in any respect to alter or modify the opinion we have already given respecting this case.

In obedience to your Lordship's commands we have taken Mr. Stewart's further letter into our consideration, and have the honour to report—

That we see no reason to alter or modify the opinion which we have had the honour to express in our former Report on this subject.

Mr. Stewart has not in his communication to your Lordship of the 14th of August, done more than assert in general terms that his property was seized, while that of American subjects was exempt from seizure, while he, at the same time, explains that this assertion is made not upon any knowledge or information which he possesses or has received, but merely because he "does not know of, and cannot conceive such a case."

We have, &c.
(Signed) H. M. CAIRNS.
W. BOVILL.
ROBERT PHILLIMORE.

No. 267.

The Law Officers of the Crown to Mr. Hammond.—(*Received September* 22.)

Lincoln's Inn, September 19, 1866.

Sir,

WE were favoured with your note of the 20th August ultimo, in which you stated that you were directed by Lord Stanley to transmit to us a letter from the Colonial Office, inclosing a copy of a despatch from Lord Monck, dated the 16th ultimo, respecting the Act recently passed by the Canadian Legislature extending to Lower Canada the law already existing in Upper Canada, authorizing the trial by Militia court-martial of persons in arms against the Queen's forces, and which Act was submitted to us in your letter of the 10th August ultimo.

In compliance with the request contained in your note, we have the honour to report—

That the further despatch from Lord Monck does not affect the opinion which we have had the honour to express in our former Report.

We have, &c.
(Signed) H. M. CAIRNS.
W. BOVILL.
ROBERT PHILLIMORE.

No. 268.

The Law Officers of the Crown to Lord Stanley.—(*Received October* 6.)

Lincoln's Inn, October 6, 1866.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Egerton's letter of the 5th ultimo, stating that, with reference to our letter of the 31st of August last, furnishing your Lordship with our opinion as to certain Acts passed by the Canadian Legislature with regard to aggression by foreign subjects in time of peace, he was directed by your Lordship to transmit to us a letter from the Colonial Office dated the 3rd ultimo, forwarding two further Acts relating to the same subject, which have been passed by the Parliament of Canada; and Mr. Egerton was to request that we would take these documents into our consideration, and inform your Lordship whether we see in them anything which modifies the opinion expressed in our letter above referred to.

In obedience to your Lordships commands we have the honour to report—

That we have considered the documents now forwarded to us, and see nothing in them to induce us to modify the opinion we had the honour to express in our letter of the 31st of August last, although we observe that the Acts have been passed with the retrospective operation which Lord Carnarvon proposed to state could not be sanctioned. (See Sir F. Rogers' letter to Mr. Hammond of the 8th of August, 1866, page 5.)

We have, &c.
(Signed) H. M. CAIRNS.
W. BOVILL.
ROBERT PHILLIMORE.

No. 269.

The Law Officers of the Crown to Lord Stanley.—(*Received November* 2.)

Lincoln's Inn, October 30, 1866.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 17th instant, stating that he was directed by your Lordship to transmit to us a letter from Mr. Stewart dated the 10th instant, in reply to a letter which was addressed to him in the sense of our Report of the 12th ultimo, respecting his claim to be compensated by the United States' Government on account of property belonging to the late Mr. Stewart, of Charleston, which was destroyed in that city and at the town of Camden by the United States' forces; and to request that we would take Mr. Stewart's letter into consideration, and furnish your Lordship with our opinion as to the answer which should be returned thereto. The previous papers were also inclosed for convenience of reference.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we think that an answer should be sent to Mr. Stewart to the following effect: That he seems to misunderstand the grounds on which Her Majesty's Government think it their duty to decline to press his claims upon the Government of the United States. It is not upon the ground that the property of Mr. Stewart may not have suffered injuries for which he is justly entitled to compensation, but upon the ground on which Her Majesty's Government have been invariably advised to act in similar cases, namely, that the position of Mr. Stewart *with respect to this American property* is, according to the principles of international law, that of an American citizen; and that, therefore, he must seek such redress for his injuries as is incident to an American citizen, and is not entitled to the official interference of Her Majesty's Government on his behalf.

It is also to be observed that although the cities in which the cotton was deposited had capitulated, the war was not at an end; and the destruction of the cotton having taken place in the enemy's country, as a matter of expediency, in the course and conduct of the war, it is scarcely probable that the United States' Government would feel itself called upon to make any redress to Mr. Stewart, and certainly, in these circumstances, none could properly be demanded as a right by Her Majesty's Government.

We have, &c.
(Signed) H. M. CAIRNS.
W. BOVILL.
ROBERT PHILLIMORE.

No. 270.

The Law Officers of the Crown to Lord Stanley.—(Received November 23.)

Lincoln's Inn, November 22, 1866.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 12th instant, stating that he was directed by your Lordship to transmit to us a letter from the Colonial Office forwarding copies of correspondence received from the Canadian Government on the subject of the boundaries of the North American Lakes.

And Mr. Hammond was pleased to request that we would take these papers into consideration, and furnish your Lordship with our opinion on the questions raised therein.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we agree with the opinion expressed by the Attorney-General for Canada upon both the questions submitted to us.

We have, &c.
(Signed) JOHN ROLT.
W. BOVILL.
ROBERT PHILLIMORE.

No. 271.

The Law Officers of the Crown to Lord Stanley.—(Received November 29.)

Lincoln's Inn, November 28, 1866.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 16th instant, stating that he was directed by your Lordship to transmit to us a despatch from Sir Frederick Bruce (No. 328), inclosing a copy of a note from Mr. Seward on the receipt at Washington of the intelligence that Messrs. Lynch and the Rev. J. Mc Mahon had been sentenced to death for their participation in the Fenian raid into Canada last spring.

And Mr. Hammond was to request that we would take Mr. Seward's note into consideration, and furnish your Lordship with my opinion as to the answer which it will be proper to return thereto.

In obedience to your Lordship's commands we have considered Mr. Seward's letter, and have the honour to report—

That assuming, as we do, that Lynch and Mc Mahon are citizens of the United States, we see no objection to copies of the record of their trial and conviction being furnished to the Consul of the United States, though it should not be admitted that the United States' Government are entitled, as of right, to demand such copies of the British Government, and we think that Sir F. Bruce should be instructed accordingly; and in reference to Mr. Seward's statement that it might happen that delays might unavoidably result from past incidents, or from future events which cannot now be foreseen, to add that Her Majesty's Government cannot admit that the cause of justice in Canada could be affected by such considerations.

Whether copies should be furnished in every case will depend in some degree upon circumstances as they may arise, but, as a general rule, we think they should be given.

With respect to the examination of the judicial proceedings, with a careful regard to the rights of the United States, and the maintenance of good relations between the two countries, as requested by Mr. Seward, we think the best answer will be that the Canadian Government will endeavour to secure that the laws shall be observed and properly and impartially administered and executed, and with due regard to the rights of the United States and of all who may be interested therein.

That the latter part of Mr. Seward's note involves questions of policy, both with regard to Canada and to the United States, upon which the information now submitted to us would not enable us to form or to express any satisfactory opinion, if any opinion were necessary.

We have, &c.
(Signed) JOHN ROLT.
W. BOVILL.
ROBERT PHILLIMORE.

No. 272.

The Law Officers of the Crown to Lord Stanley.—(Received November 28.)

Lincoln's Inn, November 28, 1866.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 23rd November instant, stating that he was directed by your Lordship to transmit to us therewith a copy of a despatch from Mr. Seward dated the 17th September ultimo, communicated to him by Mr. Adams, pressing the claims of the citizens of the United States for damages occasioned to them by the "Alabama," "Shenandoah," and other vessels during the late war, and the draft of a despatch to Sir Frederick Bruce on the subject which your Lordship proposes to submit to the consideration of the Cabinet, but before doing so your Lordship wishes to have our opinion on it. Your Lordship, therefore, requested that we would take this draft into our immediate consideration, and furnish you, at our earliest convenience, with any observations which it may occur to us to offer upon it.

Mr. Hammond also stated that he sent us the correspondence respecting these vessels, which had at different times been laid before Parliament, in case we should wish to refer to it.

In obedience to your Lordship's commands we have the honour to report—

That we have taken into our consideration the copy of a despatch from Mr. Seward, and your Lordship's draft despatch to Sir Frederick Bruce referred to in Mr. Hammond's letters, in order to furnish your Lordship with any observations which it might occur to us to offer upon the draft despatch as requested by Mr. Hammond.

We have found it difficult to define the precise limits within which our observations thus generally requested should be kept, and have, therefore, thought it right to state freely all that has occurred to us on the subject.

The proposal that Her Majesty should enter into negotiations for the conclusion of a Convention to provide for the referring to arbitration *the first of the two questions* mentioned in the draft despatch, and the passages of the draft bearing upon that question appear to us to be open to the following observations:—

The passage relating to the "Alabama," in page 2 of the draft despatch, may possibly be construed as admitting that there was a *primâ facie* case for her detention was not disclosed and known to Her Majesty's Government before she escaped (though unarmed and unequipped) from England.

We apprehend that the contention on the part of Her Majesty's Government is that the *primâ facie* case was not disclosed so as to be known to them till it was too late under then existing circumstances to detain her.

In page 8 of the despatch it is stated in reference to the same vessel "the law would have justified her detention." This statement, taken in connection with other parts of the despatch, and with the first proposed question, leads us to conclude that it is intended to admit that, since the law would have justified the detention of the "Alabama," Her Majesty's Government would, if the facts had been known to them in time, have owed a duty to the Government of the United States to detain her; and if this be so, the proper question (if arbitration be decided on) would appear to us to be the following, viz., whether the circumstances of the delay and of the accident by which the "Alabama" was allowed to escape rendered Her Majesty's Government liable for the injuries subsequently inflicted on the commerce of the United States, and this we assume is the point intended to be raised by the first question, though perhaps it might be rendered clearer by a slight alteration in the mode of putting it.

But if it is not intended to admit that a knowledge of the facts before the escape of the vessel would have made it the duty of the British Government to detain her, then the whole subject of liability would be open, and we think the question should rather be to this effect, viz., "were the British Government at any time before the escape from Great Britain of the 'Alabama' under any obligation to the United States to seize and detain her; and were they guilty of any neglect in not having seized and detained her, and for which the Government is responsible."

As to the *policy* of a reference to arbitration of the *first question* on either view of the case our opinion is somewhat divided, and as this is not strictly within our province we abstain from expressing any opinion upon it.

In reference to the *second proposed question* the following observations occur to us:—

The opinion of the late Law Officers was, as we understand, that the transfer of the "Alabama," Shenandoah," and "Georgia" to the command of commissioned officers of the Confederate States, did confer on those vessels the character of ships of war, and entitled Great Britain to treat them accordingly in British ports. In this opinion we concur.

If it were intended to refer the expediency of this state of international law for the future to arbitration, it would appear to us to be rather a subject for discussion and decision amongst all the leading maritime Powers than for an arbitration between Great Britain and the United States. But we presume from the whole tenor of Mr. Seward's despatch, and of the draft reply thereto, that the decision upon the reference of this question is to have some bearing upon the question, whether any and what amount is to be ultimately awarded to the American Government, or to the subjects of that Government, in respect of the claims now brought forward by Mr. Seward.

This involves, therefore, an inquiry by the referees as to what are the principles of international law applicable to this subject.

So far as it may be in our province to express an opinon on this question we feel bound to say that such a reference to arbitration is, in our opinion, inexpedient.

There are also some minor points on which we venture to offer one or two remarks.

Mr. Seward, in the third paragraph of his despatch, speaks of the political excitements in Great Britain during the progress and at the conclusion of the war, as having rendered that period unfavourable to an examination of the questions now brought forward. This statement may probably have been thought unimportant, but we think it right to call attention to the fact that it does not appear to us to be directly challenged by anything contained in the draft despatch.

Nor is the reference contained in the fifteenth paragraph of Mr. Seward's despatch to "a disregard of the obligations of Treaties," noticed, so far as we are aware, in the draft despatch. This again may have been advisedly omitted, and we refer to it only that it may receive consideration if it has not already done so.

It may be also worth consideration whether the form of expression in page 12 of the draft despatch, as to its being impossible "for Her Majesty's present advisers to abandon the ground which has been taken by former Governments," may not admit of a construction by Mr. Seward that the views of the present Government are not in entire accordance on the subject there referred to with their predecessors.

We have, &c.
(Signed) JOHN ROLT.
W. BOVILL.
ROBERT PHILLIMORE.

No. 273.

The Law Officers of the Crown to Lord Stanley.—(*Received November 28.*)

Lincoln's Inn, November 28, 1866.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 27th of November instant, stating that with reference to his letter of the 23rd instant, he was directed by your Lordship to transmit to us an amended draft of the despatch which it is proposed to address to Sir F. Bruce in answer to the note from Mr. Seward to Mr. Adams, relative to the "Alabama" and other claims; and Mr. Hammond requested that we would take the same into our consideration, and report to your Lordship our opinion thereupon.

In obedience to your Lordship's commands, we have the honour to report—

That we have considered the proposed alteration of the first draft despatch, and with reference to the following statement, namely, "The same objection, however, does not necessarily apply to other questions which may be at issue between the two Governments in reference to the late war; and with regard to these I have to instruct you to ascertain from Mr. Seward whether the United States' Government will be prepared to accept the principle of arbitration as proposed above," it occurs to us that this passage would probably be considered by the United States' Government to pledge Her Majesty's Government to an arbitration upon all the other claims raised by Mr. Seward. This would, we think, be objectionable.

If, however, it be thought desirable not to state the questions in the despatch, we would suggest the substitution of a passage to the following effect: "That upon the other matters at issue between the two Governments, if the questions could be defined, and should, when so defined, appear to be such as might properly be made the subject of arbitration between the two countries, Her Majesty's Government would not be unwilling to adopt such a mode of disposing of the other existing differences."

We may, however, be permitted to add that, if arbitration be decided upon, it appears to us to be more desirable for Her Majesty's Government to consider and define in the first instance what questions they will be willing to refer to arbitration.

We have, &c.
(Signed) JOHN ROLT.
W. BOVILL.
ROBERT PHILLIMORE.

No. 274.

The Law Officers of the Crown to Lord Stanley.—(*Received December 7.*)

Lincoln's Inn, December 7, 1866.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 8th ultimo, stating that he was directed by your Lordship to transmit to us for perusal, and for any other observations we may have to offer thereupon, the accompanying despatches from Her Majesty's Minister at Washington, and Her Majesty's Chargé d'Affaires in Chile,* relative to the case of the "Meteor," a vessel condemned by Judge Betts on the ground that she was destined for a Chilean privateer, and of other vessels purchased in American ports which are said to be on their way to Chile.

In obedience to your Lordship's commands we have perused and considered these despatches, and have the honour to report—

That the circumstances connected with the seizure and condemnation of the "Meteor," and her subsequent release on bail while the case was under appeal to the Supreme Court will very probably be of importance in any future discussions on the subject of the "Alabama;" but that the information on the subject contained in the despatches and accompanying papers now before us is too informal, incomplete, and uncertain to justify Her Majesty's Government in treating it as a foundation for any argument in their diplomatic intercourse with the United States' Government. That it will, therefore, be advisable to obtain, if possible, a full report of the case, and an authentic copy of Judge Betts' judgment, with evidence of the facts and circumstances connected with the vessel having been after appeal released or given up to the owners on bail.

That the pamphlet entitled "Pro bono Publico" appears to show some amount of public opinion in America opposed to the contentions of Mr. Seward in the case of the "Alabama," but that it does not occur to us that this circumstance can be of much (if any) importance in reference to any of the subjects now under discussion with the United States' Government.

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* Sir F. Bruce, No. 303, September 1; No. 330, October 20; October 22; Mr. Thomson, No. 124, August 8, 1865.

We have, &c.
(Signed) JOHN ROLT.
JOHN B. KARSLAKE.
ROBERT PHILLIMORE.

No. 275.

The Law Officers of the Crown to Lord Stanley.—(*Received December* 13.)

Lincoln's Inn, December 13, 1866.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 4th of December instant, stating that he was directed by your Lordship to transmit to us the accompanying letter, dated the 1st instant, with its inclosures, from Mr. Alfred Cox relative to his claim against the Government of the United States for the destruction of his property, at Meridian, by the forces under General Sherman during the American War in 1864; and to request that we would take these papers into our consideration, and favour your Lordship with our opinion as to what answer should be returned to Mr. Cox's application.

In obedience to your Lordship's commands we have taken the papers submitted to us into our consideration and have the honour to report—

That we are of opinion that the case of Mr. Alfred Cox does not differ in principle from many others of the same kind, as to which we have had the honour to report to the Foreign Office. We therefore think an answer to Mr Alfred Cox should be sent to the following effect:—

That it appears that Mr. Alfred Cox "settled" in Mississippi in 1856; that the alleged injury was inflicted on his landed and other property by the military forces of the United States during the late civil wars in that country; that Her Majesty's Government must adhere to the rule on which they have hitherto acted in many similar cases and decline to interfere officially on behalf of Mr. Alfred Cox; and that with respect to the property in question Mr. Cox must have recourse to whatever remedy or redress the law of the United States affords to one of its own citizens in such circumstances.

We have, &c.
(Signed) JOHN ROLT.
JOHN B. KARSLAKE.
ROBERT PHILLIMORE.

No. 276.

The Law Officers of the Crown to Lord Stanley.—(*Received December* 27.)

Lincoln's Inn, December 27, 1866.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 15th instant, stating that he was directed by your Lordship to transmit to us a letter dated the 28th ultimo, from Mr. Edward King, requesting the interference of Her Majesty's Government to obtain a settlement of his claim against the United States' Government for losses inflicted by the United States' troops on his property in Richmond after the surrender of that city; and Mr. Hammond was to request that we would take this letter into consideration, and furnish your Lordship with our opinion as to the course that should be pursued with regard to Mr. King's application.

In obedience to your Lordship's commands we have perused and considered Mr. King's letter, and have the honour to report—

That Mr. King should be apprized by your Lordship, that his case belongs to a class which, the Law Officers have advised Her Majesty's Government, are not proper subjects for the official intervention of Her Majesty's Government. The acts of Mr. King place him, so far as the property with respect to the injury of which he complains is concerned, in the same position, with the same legal rights and liabilities, as an American citizen.

We have, &c.
(Signed) JOHN ROLT.
JOHN B. KARSLAKE.
ROBERT PHILLIMORE.

No. 277.

The Law Officers of the Crown to Lord Stanley.—(*Received December* 31.)

Lincoln's Inn, December 31, 1866.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 21st day of December 1866, stating that, with reference to our Report of the 13th instant, he was directed by your Lordship to transmit to us a further letter, dated the 19th instant, from Mr. Alfred Cox, requesting a reconsideration of his case, and urging the intervention of Her Majesty's Government in support of his claim for the destruction of his property in the United States; and he was accordingly to request that we would again take this case into our consideration and favour your Lordship with our opinion thereupon.

The previous papers were also sent therewith.*

In obedience to your Lordship's commands we have taken this case into our consideration and have the honour to report—

That we see no reason to alter the opinion which we have had the honour to express in our former Report on this case.

We have, &c.
(Signed) JOHN ROLT.
JOHN B. KARSLAKE.
ROBERT PHILLIMORE.

Venezuela.

No. 278.

The Queen's Advocate to the Earl of Clarendon.—(*Received January* 13.)

Doctors' Commons, January 12, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 8th instant, stating that he was directed by your Lordship to transmit to me a despatch from Mr. Edwardes, lately Her Majesty's Chargé d'Affaires at Caracas (No. 89, October 25, 1865), and one from Mr. Harrison (No. 5, December 9, 1865), who is acting temporarily in that capacity, inclosing their correspondence with the Venezuelan Government on the subject of the nationality of persons born in Venezuela; and Mr. Hammond was pleased to request that I would take these papers into consideration, and furnish your Lordship with any observations I may have to make on the subject generally, and especially on the point respecting British claims.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I am of opinion that Mr. Edwardes has stated the matter very properly to the Venezuelan Government. It seems to me clear that this new law ought not to affect the position of British claimants whose claims had accrued previously to the passing of this law, and the argument that the law is not retroactive but explanatory, is inadmissible.

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* Mr. Cox, December 1; to Mr. Cox, December 15, 1866.

Previously to the passing of it, as I understand the facts, practice and usage had interpreted the law as treating the children of foreign subjects, though born in the Venezuelan territory, as foreigners. To pass a law now explaining that the law had never meant to consider such persons as foreigners, is substantially to pass a retroactive law to the injury of foreigners.

I adhere to the opinion expressed in my former Report on this subject.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 279.

The Queen's Advocate to the Earl of Clarendon.—(Received January 16.)

Doctors' Commons, January 16, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 8th instant, stating that with reference to my Report of the 23rd ultimo, relative to the claims of British subjects against the Venezuelan Government, and to my Report of the 20th March, 1865, relative to the claim of Messrs. Schloss and Co. and Michelson, he was directed by your Lordship to transmit to me a despatch from Mr. Harrison, now in charge of Her Majesty's Legation at Caracas, on the subject of this claim (No. 4, December 9, 1865); and Mr. Hammond was pleased to request that I would take this despatch into consideration, together with the previous papers, and furnish your Lordship with my opinion on the case as it now stands.

In obedience to your Lordship's commands I have the honour to report—

That I have again perused the papers in this case.

I do not find that any point is now raised by the Venezuelan Government which is not discussed in my Report of March 20, 1865. I therein stated, among other matters, my opinion that the claim could not be barred by not having been presented within a period arbitrarily named by the debtor; the condition being, in the circumstances, illegal and impossible. To this Report I beg leave now to refer. I will only now repeat that this debt has been distinctly recognised by Lord Aberdeen (see despatch of Lord Canning April 9, 1857), and, I think, also by your Lordship; and that directions have been given to Her Majesty's Representative at Caracas to procure the payment of it. It was a debt due by the Colombian Republic when undivided. Venezuela is now, as I understand the case, the only one of the three Republics (though I am not sure about Ecuador) into which Colombia has been divided which has not paid its share of that debt.

The obligation to pay this share has also been formally recognized by a Venezuelan Government which preceded the present one. I observe that Mr. Edwardes does not comment upon this claim in his recent elaborate Report, I presume because it was considered to be one no longer open to discussion. Mr. Harrison incloses, without comment, the reply of the Venezuelan Government.

I will only add that if, notwithstanding the former recognition of the validity of this claim, your Lordship should be of opinion that the merits of the case should again be inquired into, it would be proper, I humbly think, that Her Majesty's Representative should be directed to institute such an inquiry; if, on the other hand, your Lordship be of opinion that the case has been for some time closed, and that no new or sufficient argument has been adduced for its being reopened, instructions to this effect should be sent to Her Majesty's Representative at Caracas.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 280.

The Queen's Advocate to the Earl of Clarendon.—(Received May 18.)

Doctors' Commons, May 17, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 12th instant, stating that he was directed by your Lordship to transmit to me a letter from Mr. H. R. Hartman, complaining of the proposed reduction of the amount of his claim against the Venezuelan Government from 362,198 dollars, at which he had originally fixed it, to 8,000 dollars, which Mr. Edwardes, after a legal investigation of this claim, considered to be a fair compensation for his losses, and requesting that the

case, with all the documents and proofs which he was ready to bring forward in support of it, might be reconsidered. A further letter from Mr. Hartman forwarding those documents, together with the previous papers connected with this case, and Mr. Edwardes' Report on Venezuelan claims, including that of Mr. Hartman, and which has been already submitted to me, was also transmitted; and Mr. Hammond was pleased to request that I would take these papers into consideration, and furnish your Lordship with my opinion as to the reply which should be returned to Mr. Hartman's application.

In obedience to your Lordship's commands I have taken this case again into consideration, and have the honour to report—

That there is no reason whatever for believing that this claim of Mr. Hartman was not duly considered by Mr. Edwardes in the Report he made upon the Venezuelan claims. Your Lordship will recollect the strong and emphatic condemnation which Mr. Edwardes passes upon the scandalous manner in which these claims of British subjects upon the Venezuelan Government have been exaggerated and inflated, when they have not been wholly fictitious, and upon the unfortunate facility with which they were at one time received and recognized by Her Majesty's Legation. In that Report he speaks as follows of Mr. Hartman's claim: "I need say but little about Mr. R. Hartman's claim. He wants 362,198 dollars, or between 55,000*l.* and 56,000*l.* sterling, because, he says, he was prevented for about two years from working upon an estate the whole value of which does not amount to 40,000 dollars. However, he has told me that he was instructed to make his claim as large as possible. Originally he certainly was steward upon the estate, and I do not feel by any means certain that he ever was anything else."

And in the extract from the Report, which is the last document in the volume sent with the papers, Mr. Edwardes gives satisfactory reasons for showing that 8,000 dollars is a full compensation for any just claims which Mr. Hartman has against the Venezuelan Government.

It is to be observed also that, according to the Report of Mr. Orme (June 7, 1861, Caracas, No. 47) this estate, of which Mr. Hartman first took the management, and afterwards became the lessee, belonged to "a notorious Federal and opponent of the Government, and that at a time when the civil war was, as he (Mr. Hartman) perfectly well knew, at its highest, has been an object of constant suspicion on the part of the Government, and the circumstance of the Federals having frequently visited his estate and his house tended to increase the suspicion." And it further appears from the concluding part of the inventory attached to the lease now forwarded by Mr. Hartman (Inclosure No. 5) that Soledad Lander, the lessor of the property in question to Mr. Hartman, at the very time when the lease was made, reserved "the right of reclamation against all such persons" who had caused the losses and damages to property which at that time the owner had suffered.

I entirely agree with the opinion formerly expressed by the Law Officers, February 5, 1861, upon this very case of Mr. Hartman, as to the principle of international law applicable to all cases of this description. "We do not think," they say, "that the Venezuelan Government can be held responsible generally for injuries inflicted on the property or persons of British subjects, or other foreigners, resident in the country by insurgents engaged in open and armed hostility to the Government; and which injuries the Government had not the power to prevent. A foreigner cannot claim to be placed in a better situation than the natural-born subjects of the country. If the country be invaded by the enemy, and the foreigner's property is injured by the invading army, he has no title to claim compensation. Injury caused by insurgents or rebels is subject to the same rule. If, indeed, the Government having the power to do so, neglects, or wilfully abstains, from putting down the insurgents, it may be regarded as an accomplice in the act complained of, and there would be a right in the foreigner to demand compensation."

They go on to say, "In the case before us we find no sufficient ground for alleging that the injuries complained of would not have occurred but for gross neglect on the part of the Venezuelan Government; and we do not think, therefore, that the facts, as far as we can ascertain them, would justify a demand for compensation."

In the former Report which I had the honour to make to your Lordship I advised that the Report of Mr. Edwardes should be adhered to. I retain that opinion. And I think that an answer should be sent to Mr. Hartman to the following effect:—That after a careful reconsideration of all the documents connected with the case, your Lordship sees no reason to doubt that the conclusion at which Mr. Edwardes arrived is, on the whole, well-founded, and that the sum at which he places the compensation due to Mr. Hartman from the Venezuelan Government is proper. That it is questionable whether any compensation whatever ought to be demanded on behalf of Mr. Hartman, inasmuch as it is, generally speaking, a sound principle of international law that the foreigner who purchases or leases land in a State is not entitled to any other remedy than that which the law affords to a native in similar circumstances; and it is also a sound principle of international law that a Government, during a civil war, is not, generally speaking, responsible for injuries the consequences of that war, done to the property of foreign residents, in any greater degree than it is responsible for injuries inflicted upon the landed property of native subjects. That it is clear that when Mr. Hartman undertook the management of this property, he was aware that a civil war was then raging, and that the property belonged to an opponent of the Government. That, therefore, it is only in consequence of the negotiations and other special circumstances which have preceded this claim of Mr. Hartman that it can be properly entertained at all by Her Majesty's Government; and that they must adhere to the Report of the Diplomatic authority to whom they entrusted the investigation of all these claims by British subjects upon the Venezuelan Government.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 281.

The Queen's Advocate to the Earl of Clarendon.—(*Received July* 10.)

Doctors' Commons, July 9, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 29th ultimo, stating that he was directed to transmit to me a despatch from Her Majesty's Chargé d'Affaires at Caracas, reporting on the conduct of the Government of Venezuela in evading the payment of their obligations to foreign holders of their bonds; and to call my attention to the suggestion thrown out by Mr. Fagan, that the administration of the Custom-houses should in some manner be brought under the control of the bondholders, with a view of obtaining a settlement of their claims. And Mr. Hammond was pleased to request that I would take this portion of Mr. Fagan's despatch into consideration, and report to your Lordship my opinion whether in case such a plan were adopted, it would be considered as an act of hostility against Venezuela, or only a justifiable act of seizure on behalf of creditors, every other method of recovering their debts having been exhausted.

In obedience to your Lordship's commands I have taken this matter into consideration, and have the honour to report—

That it would be impossible to distinguish the forcible seizure of the principal Venezuelan Custom-houses, and the placing them under British administration, for however good a purpose, from an act of reprisals, which would border very closely upon an act of positive war. That such an act done for the purpose specified, and at the request of the Venezuelan Government, would be open to no objection arising out of principles of international law, but would be a question of expediency for the consideration of Her Majesty's Government.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 282.

The Queen's Advocate to Lord Stanley.—(*Received July* 20.)

Doctors' Commons, July 19, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 17th instant, stating that, with reference to my Report of the 4th June, 1864, in regard to Captain Matthews' claim against the Venezuelan Government, he was directed by your Lordship to transmit to me a despatch with its inclosures, which has been received from Her Majesty's Chargé d'Affaires at Caracas (No. 29), respecting this claim; and was also to request that I would take these papers into consideration and furnish your Lordship with my opinion thereupon; and for convenience the former papers connected with this claim were transmitted to me.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I do not advise your Lordship that this case ought to be further pressed upon the Venezuelan Government.

Captain Matthews might be apprized that Her Majesty's Government regret that the good offices of Her Majesty's Representative have not induced the Venezuelan Government to take a more favourable view of his claim, but they cannot, with propriety, interfere further on his behalf.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 283.

The Law Officers of the Crown to Lord Stanley.—(*Received December* 13.)

Lincoln's Inn, December 13, 1866.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 5th instant, stating that he was directed to transmit to us a despatch and its inclosures from Her Majesty's Chargé d'Affaires at Caracas reporting the circumstances under which the English crew of the steamer "Bolivar," which they had navigated from England to be employed in the service of the Government of Venezuela, had seized the vessel and sailed away as was supposed for Trinidad; and Mr. Hammond was to request that we would take these papers into consideration and report to your Lordship our opinion whether Her Majesty's Government can take any steps in regard to these proceedings.

Mr. Hammond was also pleased to add that as Her Majesty's subjects have many outstanding claims against the Government of Venezuela, which that Government, notwithstanding its repeated promises, continues to delay payment, your Lordship would be glad to be informed whether the vessel might not be attached by Her Majesty's Government in a British port with a view to its value being made available for the satisfaction, as far as it might go, of British claims.

A previous despatch, reporting the arrival of the "Bolivar" at La Guaiva, was also inclosed.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That three questions appear to be raised by the papers laid before us, upon which our opinion is desired.

The first, relates to the ship.

The second to the crew; and

The third to the right of the British Government to detain the ship as part payment of a debt owing from the Venezuelan Government to certain subjects of Her Majesty.

With respect to the first question, it appears from the papers before us that the Venezuelan Government have purchased and paid for the "Bolivar," and that she is now the property of that Government, but that she has been sailing as an armed vessel without the consent of that Government, and without lawful commission or lawful flag, and was supposed to have entered the port or harbour of Trinidad. Assuming these facts to be accurately stated we should, if the vessel had been and remained at Trinidad, have been of opinion that instructions should be given to the proper authorities there to detain her, and by force if necessary; and that the Venezuelan Government should have been immediately apprised that she was so detained and that no objection would be offered by Her Majesty's Government to the Venezuelan Government taking possession of her by any legal means; and we were about to report to this effect, but we have seen in the newspapers of yesterday a statement which leads to the belief that this vessel had arrived in the Medway and is in the custody of the authorities there. If so, we think that the vessel should remain in that custody, and that a communication to the purport and effect of that above suggested should now be made to the Venezuelan Government.

2ndly. With respect to the crew. We understand from the papers before us that they were enlisted in the service of a foreign State and have since, without the authority of that State, possessed themselves of the ship and taken her, first, to Trinidad, and afterwards brought her to this country of their own authority. Under these circumstances we are of opinion that Her Majesty's Government ought not to interfere in any way on their behalf with the Venezuelan Government.

With regard to the third question. We are of opinion that having regard to the circumstances in which this vessel came within Her Majesty's dominions, it would not

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be right or expedient that Her Majesty's Government should seize the vessel as an instalment of a debt due from the Venezuelan Government to Her Majesty's subjects. Such an act would be one of reprisals, removed only one step from the declaration of actual war; and such a proceeding ought not, we think, in any case, to be taken without due preliminary notice to the State which is to be affected by it.

We have, &c.
(Signed) JOHN ROLT.
JOHN B. KARSLAKE.
ROBERT PHILLIMORE.

APPENDIX.

Brazil.

No. 7 A.

The Queen's Advocate to the Earl of Clarendon.—(*Received February* 1.)

Doctors' Commons, January 31, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 29th instant, stating that he was directed by your Lordship to transmit to me a letter from Miss Young,* requesting to be allowed access to certain documents supposed to be deposited in the archives of Her Majesty's Legation at Rio de Janeiro. The former correspondence, as marked in the margin,† together with a Memorandum on the subject of Miss Young's claim, was also inclosed;‡ and Mr. Hammond was pleased to request that I would take these papers into consideration, and furnish your Lordship with my opinion as to the steps which may properly be taken in the case.

In obedience to your Lordship's commands I have taken this matter into consideration, and have the honour to report—

That I think the request of Miss Young is reasonable, and should be granted by your Lordship. The agent of Miss Young might be allowed to see the papers in the office of the Consulate, under the superintendence of some person appointed by the Consul; and the Consul might furnish attested copies of any papers material for the establishment of Miss Young's claim. But I think that any expense caused by such copying should be defrayed by Miss Young.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 8 A.

The Queen's Advocate to the Earl of Clarendon.—(*Received May* 18.)

Doctors' Commons, May 17, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 7th instant, stating that he was directed by your Lordship to transmit to me a despatch from Her Majesty's Minister at Rio de Janeiro (No. 32), forwarding translations of various documents connected with the claim of Mr. Reeve against the Government of Brazil.

Mr. Hammond was also pleased to inclose the previous correspondence, as marked in the margin, connected with this claim; and was to request that I would take these papers into consideration, and furnish your Lordship with my opinion thereupon.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I have read the voluminous documents in this case, which contain all the evidence produced, the arguments of Counsel, and the decisions of the Courts, relative to these questions of the maternity of Deolinda Roza de Vasconcellos, and the will of Robert James Kenny.

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* Miss Young, January 18, 1866.

† Mr. Young, March 7, 1864; Consul Morgan, Nos. 38 and 39; Mr. Young, April 5; to Mr. Young, April 10; to Mr. Thornton, No. 5, September 7, 1865.

‡ Memorandum, January 24, 1866.

It is clear that, if this woman was the mother of Robert James Kenny, she was entitled, by the law of Brazil, which properly governed the case, to the two-thirds of the estate of Robert James Kenny, notwithstanding his will.

The Brazilian Tribunals have decided that she was the mother, though, with an inconsistency pointed out by Mr. Thornton—favourable, however, to Mr. Reeve, the British claimant—(who purchased the interest of the legatees in the will), they decided that the deceased, not being proved to be ignorant of his mother, had, by law, a right to dispose of the remaining third part of his property, which, it appears, has been received by Mr. Reeves.

The only question for your Lordship is, whether these decisions were so plainly contrary to justice as to render it necessary and proper that Her Majesty's Government should interfere, by application to the Government of Brazil, to protect the interests of the British subject who was injured by these judgments. I am clearly of opinion that no such grounds exist for the interference of Her Majesty's Government. I am not satisfied that the Judgment was wrong according to the Brazilian laws and rules of evidence; and I certainly see no reason to ascribe any corrupt or bad motive to the Judges, or to doubt that they arrived in good faith at the conclusions embodied in their sentence.

I agree entirely with the view which Mr. Thornton takes of this case, in his letter of April 2, 1866, No. 32; and I must advise your Lordship that this case now presents, however suspicious its former aspect may have been, no circumstances which call for any official intervention of Her Majesty's Government.

I have, &c.
(Signed) ROBERT PHILLIMORE.

Central America.

No. 20 A.

The Queen's Advocate to Lord Stanley.—(Received July 19.)

Doctors' Commons, July 19, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 13th instant, stating that, with reference to my Report of the 5th February last, relative to a grant for cutting mahogany made to Messrs. Vaughan by the Government of the Mosquito territory, respecting which a discussion has arisen with the Government of Nicaragua, he was directed by your Lordship to forward to me a despatch on that subject from Mr. Mathew, late Her Majesty's Minister in Costa Rica (No. 17, May 9). A Report on Mr. Mathew's despatch from Mr. Green, formerly Her Majesty's Consul at Greytown, together with the former papers, was also inclosed; and Mr. Hammond was pleased to request that I would take the same into consideration, and report to your Lordship my opinion as to the right of the Nicaraguan Government with regard to the Mosquito Reserve.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That the construction of the Treaty of Managua (1860) which is contended for by Mr. Mathew and Mr. Green, and which appears to have also the sanction of my predecessor in office, is, in my opinion, correct. And that the Mosquito Government have all the rights of ownership within the reserved district, in which must be included the right of cutting timber; and that the Government of Nicaragua have no title or authority to interfere with the exercise of this right on the part of the Mosquito Government. I have no information as to the "satisfactory answer" which Don Silva declares Mr. Vaughan received from the Foreign Office on this subject. The papers before me would lead to the conclusion that the statement must be erroneous, inasmuch as Lord Clarendon, in his despatch of February 16, apprises Messrs. Vaughan and Co. that "the grant made to you by the Nicaraguan Government must be considered invalid unless you can obtain the sanction of the Mosquito Indians confirming it."

I have, &c.
(Signed) ROBERT PHILLIMORE.

Colombia.

No. 57 A.

The Queen's Advocate to Lord Stanley.—(Received January 25.)

Doctors' Commons, January 24, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 19th instant, stating that he was directed by your Lordship to transmit to me two despatches from Her Majesty's Consul at Panama,* relative to the case of a British subject named George Holmes who was shot at Colon by a sentry from the United States' ship "James Adger"; and Mr. Hammond was also pleased to inclose a correspondence with the Columbian Minister at this Court, and a despatch which your Lordship has addressed to Her Majesty's Minister at Washington on this subject,† and was to request that I would take these papers into consideration and furnish your Lordship with my opinion thereon.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I do not find in these papers any precise statement of the claims preferred by the United States to jurisdiction over the place in which this murder was committed.

Reference is made by the President of Panama, in his letter of 20th November, 1865, to the United States' Consul, of a despatch upon the subject addressed by the President to the United States' Government, but I do not find any copy of this despatch.

I have looked at the Treaty between the United States and New Granada, 1846, but I am not aware, at present, of any foundation for the claim of exclusive jurisdiction so asserted by the United States' Consul.

The course which has been adopted, both by the President of Panama, by the Government of Colombia, and by your Lordship, appears to me right and proper.

It is obvious that in any case the criminal ought not to escape justice altogether, and that it is the duty of the United States' Government, if they can establish satisfactorily their claim to exclusive jurisdiction, to cause this person *primâ fâcie* guilty of an unprovoked murder, to be properly tried by their own authority.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 57 B.

The Queen's Advocate to the Earl of Clarendon.—(Received February 23.)

Doctors' Commons, February 22, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Layard's letter of the 15th instant, stating that he was directed by your Lordship to transmit to me the accompanying correspondence regarding the claim of this country, under the IVth Article of the Treaty with Colombia, of 1825, to be admitted to certain privileges given on condition of reciprocity to Venezuela and Ecuador, by the Commercial Treaty lately concluded by Colombia with these Republics; and Mr. Layard was to request that I would take these papers into consideration, together with the Treaty of 1825 (see Hertslet's Treaties, vol. iii, p. 56), and furnish your Lordship with my opinion whether and how far Her Majesty's Government will be justified in insisting upon the interpretation already put by them on the IVth Article of that Treaty.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That, according to the plain construction of Article IV of the Treaty of 18th April, 1825, between Great Britain and Colombia, it is not legally competent to Colombia to refuse to admit into her ports the native produce of Great Britain at the lower rate of duty which she now concedes to the native produce of Venezuela and Ecuador.

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* Mr. Henderson, No. 8, November 21; No. 9, December 22, 1865.

† To General Mosquera, January 3; General Mosquera, January 10, 1866; to Sir F. Bruce, No. 54, December 16, 1865.

It is, of course, a matter for the consideration of Her Majesty's Government whether, as it appears that Venezuela and Ecuador have procured this advantage by a remission of their own duties of importation, a course which Great Britain does not intend to adopt, this strict fulfilment of the obligations of the Treaty shall be pressed upon Colombia.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 57 c.

The Queen's Advocate to Lord Stanley.—(Received April 5.)

Doctors' Commons, April 5, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 3rd instant, stating that he was directed to transmit to me a despatch, with its inclosures (No. 6), from Her Majesty's Acting Chargé d'Affaires at Bogota, relative to a claim which Mr. R. A. Joy, the Agent of the Magdalena Steam Navigation Company, has instituted against the Colombian Government for the seizure by the military authorities of the State of Magdalena of the "Antioquia," a vessel belonging to the above Company. A previous despatch (No. 36) of Mr. O'Leary's containing a copy of a law passed by the Columbian Congress in 1864 relative to the navigation of the rivers of the Republic, and to which reference is made by Mr. O'Leary in his present despatch, was also inclosed; and Mr. Hammond was pleased to request that I would take these papers into consideration, and furnish your Lordship with my opinion thereupon.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report,—

That I am of opinion—

1st. That this Company still retains its character of one formed at New York under the law of the United States; and that as Mr. Joy claims as the agent of that Company, it is incumbent on the Government of the United States, and not on Her Majesty's Government, to interfere in this matter.

2ndly. That if Her Majesty's Government should think that Mr. Joy on the ground of his being a British subject has a claim to their assistance, that then I agree with Mr. O'Leary that the liability of the Colombian Government is limited to the period which intervenes between the day of her capture, and that on which the President of the State of the Magdalena offered to place the vessel at the disposal of Mr. Joy; and that as the Columbian Government is willing to accept this liability so limited, and to abide by the decision of the Tribunals as to the amount of indemnity to be awarded to the Company, there is no ground for the interference of Her Majesty's Government.

I also agree with Mr. O'Leary on the construction which he puts on the law of the 24th of May, 1856, and the applicability of that law in the circumstances to the owners of the "Antioquia."

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 58 A.

The Queen's Advocate to Lord Stanley.—(Received December 24.)

Doctors' Commons, December 21, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 13th instant, stating that he was directed by your Lordship to state to me that two questions have lately arisen between Her Majesty's Government and the Government of the United States of Colombia (formerly styled the Republic of New Granada) on which your Lordship is desirous to learn my opinion. That the first question is, whether the Government of the United States of Colombia has a right to levy a transit-rate on British mails conveyed across the Isthmus of Panamá by the Panamá Railway Company. The circumstances under which this question has arisen are detailed in the accompanying Memorandum which has been prepared at the Foreign Office.

The second question is, as to the right of the Colombian Government to levy

tonnage-dues in the ports of the Republic on British steam-vessels conveying mails, and especially in the ports at either terminus of the Panamá Railway. That this point is also touched upon in the Memorandum above mentioned.

That the Government of the United States have uniformly resisted the imposition by the Colombian Government either of a transit-tax upon the United States' mails crossing the Isthmus of Panamá or of tonnage-dues upon their vessels in the ports at the Atlantic and Pacific termini of the railway. That it is believed that the ground on which the Government of the United States insists on an exemption from any such charges is, that under the charter granted by the New Granadian Government to the Railway Company no authority but the Company has any right to levy charges upon the railway or in the ports at either terminus; and that it appears, from a despatch lately received from Her Majesty's Acting Consul at Panamá (private, November 2, 1866), that the United States will resist by force, if necessary, any attempt to impose such charges.

For my perusal some correspondence which has taken place on this subject was also inclosed; and Mr. Hammond was pleased to state that, if I should wish for any further information than that which those papers afford, your Lordship would supply it.

That the questions are of considerable importance for this country, especially as mails for New Zealand and Australia are now sent by way of the Isthmus; and Mr. Hammond was pleased to state that your Lordship would be glad to receive my Report at my earliest convenience, in order that your Lordship may send suitable instructions to Her Majesty's Chargé d'Affaires at Bogotá and to Her Majesty's Consul at Panamá.

Mr. Hammond was also pleased to add that, in the negotiation of a Treaty of Friendship, Commerce, and Navigation which was signed between Great Britain and the United States of Colombia on the 16th February last, Her Majesty's Government proposed an Article securing to Great Britain the transit of the Isthmus for passengers, goods, and correspondence on the same terms as might be granted to or allowed to be enjoyed by any other foreign nation. That that Article was refused by the Colombian negotiator, and was ultimately omitted from the Treaty. A copy of the Treaty was also inclosed.

I am also honoured with Mr. Hammond's letters of the 17th and 19th instant, transmitting further papers in this case.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That the importance of the questions submitted to me, and the multiplicity of documents which it has been necessary to peruse, have prevented me from making an earlier Report to your Lordship.

That the Articles in the Decree of the Colombian Government which have given rise to the present controversy are as follows:—"Article I. The vessels of those nations with which there exist no Postal Conventions shall be subjected to the payment of tonnage duties, and be required to deliver the mails in the respective post-offices; failing to comply with which duty, the mails will not be allowed to proceed to their destination." "Article II. The vessels of the French line of St. Nazaire, as well as those belonging to nations with which there exist Postal Conventions, or special Treaties upon the guarantee of the Isthmus, shall enjoy the privileges which said Convention or Treaties concede."

That the abstract right of every independent State to regulate the conditions under which it will admit the goods or the mails of foreign States within its dominions is unquestionable; but, like other abstract rights, it may be so totally or partially abandoned, or modified in favour of foreign States, as to give them rights which cannot be arbitrarily, and without notice, if at all, taken away from them without their consent. Independently, however, of these general observations, the case as to the territorial rights of the local Government over the Isthmus of Panamá is at the present date one *sui generis*. The *jus transitûs* over the Isthmus, which is the connecting link between the Atlantic and Pacific Oceans, has been now for some years the subject of special Treaties between the great commercial States, and especially between England and the United States of America, as well as between foreign States and the Government of the territory in which the Isthmus is placed; and it may be doubted whether it would now be competent to the Government of Colombia arbitrarily to close against foreign States in time of peace this great highway of the civilized world. The President of Panamá appears to be aware of the peculiar character impressed by usage and circumstances upon the Isthmus. "It is evident," he says, "that the resistance the tonnage-tax meets with is only based on custom, if such may be said. The whole world is already accustomed to the free use of the interoceanic route without meeting with any sort of drawback; and such is the force of habit—particularly when it produces advantageous results—that any change becomes vexing, and is looked upon as an abuse," &c. ("Panamá and Star Herald," November 13, 1866.)

But however this may be, it was no doubt competent to the Colombian Government to prescribe the conditions under which, as to the payment of tolls, navigation dues, and the like, the transit should be used.

And here, with reference to the recent Decree, which, it is to be remarked, is clearly framed in a spirit of direct hostility to British interests, two questions seem to arise:—1. Whether it be competent to the Colombian State to concede with respect to this peculiar *jus transitûs* in time of peace, immunities to one foreign State, from which others are excluded. 2. Whether in fact the Colombian State has not given over its rights and authority in this matter, by the terms of the Charter, to an independent Railway Company.

As to the first point, the Colombian State has directly exempted the United States of North America and France by the terms of the Decree, from the payment of those dues which it now demands from Great Britain; and first, it is to be noticed that the reasons which it alleges for both these exceptions are obvious pretexts, for the exemption is not accorded to the United States, as the Colombian Government allege, on account of the guarantee contained in the Treaty of 12th December, 1846,[*] which has no stipulation to that effect, though it does contain one to the effect that the United States shall be entitled to equality of treatment with New Granada (as the Colombian State was then called). Nor is any such exemption conceded to France on account of the Postal Treaty, which has been for twenty years a dead letter, which was granted long before the construction of the Panamá Railway, and which grants no privilege to French mails conveyed across the Isthmus, except in the cases of privileges being accorded to another foreign State;[†] and this new Colombian Decree purports to grant (Article II) to France, only the privilege contained in this Treaty. For the construction put upon this Article by Mr. Bunch seems to me correct.

I think, therefore, that the position taken up by Earl Russell, in his letter of 28th September, 1865, to General Mosquera, is warranted by the principles of international law, applicable to the very special circumstances of the postal transit over the Isthmus:—"Her Majesty's Government cannot consent to pay any charge whatever upon the passage of British mails which is not made upon, and the payment of which is not actually enforced upon, the mails of every other foreign Power." It was after due notice being given to the Colombian Government of the determination of Her Majesty's Government that the Colombian Government refused the peace-making clause proposed by Lord Clarendon to be inserted in the Treaty of 17th October, 1866. And that Government has no right to be surprised if Her Majesty's Government now execute the intention of which Earl Russell distinctly apprized them in 1865.

With respect to the remaining question, whether the Colombian State has not given over its rights and authority in this matter by the Charter granted to an independent Railway Company:—

It appears to me that the United States' Government are justified in answering, as they have done, this question in the affirmative. The case stands thus:—The Colombian Government transfers to a foreign Railway Company, by a solemn charter, all right of transit over the Isthmus in return for a railway executed by foreign skill, industry, and capital, reserving to themselves a stipulated portion of the profit. This Charter, for such a purpose as uniting the Atlantic and Pacific Oceans, cannot be considered as affecting merely the subscribing parties to it. It gave public notice—so to speak—to every civilized State in the world, that the State within whose territorial limits the channel of communication between the two hemispheres was to be made, had conceded for a certain period to a particular corporate body, all authority and emoluments—with a certain specified reservation—incident to its construction and management.

On the faith of this contract foreign States had a right to rely; to enter into stipulations with the foreign Company or Corporation whom the Colombian State had to so large an extent invested with its own original rights and authority in this matter. They had a right to put the obvious and national construction on the terms of the Charter or instrument,—to enter, as Great Britain had done, with that Company, into engagements of a costly and complicated character, affecting the postal relations of the mother country with its numerous Colonies in all parts of the world; and any subsequent act of the grantor of the Charter, whereby it exercised to the injury of foreign States the rights which, by the plain language of the instrument, it had parted with to the Company, is a wrong to those States to which they are not obliged to submit.

The President of Panamá admits, as to the Decree in question, which he has "seriously considered," that "it interferes in the most direct manner with the free transit over the Isthmus," and "besides may give rise to questions with those countries principally sustaining this traffic."[*]

With respect to the demand by the Colombian Government that the letters of foreign States shall be deposited in the Post Office, it must be admitted that it is competent to the Colombian Government to enforce the clause in the contract with the Railway Company which imposes this necessity; but it is not competent to that Government, by pretending to enforce this clause after having allowed it to be a dead letter ever since it was inserted, practically to stop the postal communications of the civilized world by the interoceanic route.

Before they now enforce the clause, they are bound, at least, to show that they have provided the proper and necessary means of forwarding the letters which they require to be deposited in the office. The President of Panamá puts their present incapacity to discharge their duty beyond all doubt. His language is so just and pertinent that I desire to cite it:—"As far as the mails are concerned, the execution of the Decree of the 17th August on the Isthmus would certainly cause grievous inconveniences, giving as an infallible result their detention here or at Colon for many hours, and consequently the discredit of this interoceanic route. If the Consuls would agree to have their mails sent to the Post Offices where there are no means of despatching them, they would remain there a long time. According to the 29th Article of the Panamá Railroad Contract, the Company is only to receive such packages of mails as are delivered by the Post Offices; and it would be difficult to enforce on the Company the fulfilment of this clause, which the National Government has looked upon with so much indifference, and which, to say the truth, has been violated by themselves. In fact, the correspondence for the interior of the Republic was usually sent through the British Consul, with whom the Company treated directly. I am sure that when the President of the Union will be fully acquainted with all these circumstances, he will see clearly the bad results it would have on the transit to insist on even the transit mails being delivered to the national Post Offices."[*]

The amount of injury and inconvenience inflicted upon Great Britain may be estimated from the letter of the Postmaster-General to Mr. Hammond (31st October, 1866):—

"On the faith of arrangements made long since with the Panamá Railway Company, acting under the powers conferred upon it, by its agreement with the Government of the Republic, British mails intended to be conveyed from Panamá to ports in Ecuador, Bolivia, Peru, and Chile by mail-packets subsidized by this country, and sent by each British mail-packet to Colon, and forwarded by means of the railway across the Isthmus, return mails for England being in like manner carried by the British mail packets to Panamá transmitted by the railway to Colon, and there put on board the British West India packets. Since June last, also, mails between this country and New Zealand have been sent monthly to Colon and Panamá by British mail-packets, and transmitted across the Isthmus by the railway. Any interruption or delay of these mails in the course of their transmission would be fraught with most serious consequences to persons interested in the correspondence, and it is desirable, therefore, that steps should be taken to prevent any interference on the part of the Colombian Government."

It would of course be desirable to adjust both the questions in controversy, namely, 1st, as to the detention of the mails in the Post Office; and 2ndly, the tonnage dues, by any reasonable arrangement. But, in the meanwhile, Her Majesty's Government will be [illegible]ly warranted, in my opinion, in taking their stand, with respect to both these questions, upon the position that the Colombian Government, maintaining amicable relations with Great Britain, ought not to impose upon her obligations, with respect to the commercial and pacific use of the Isthmus, from which she exempts the two other great commercial States of the world, the United States of North America and France.

I have, &c.

(Signed) ROBERT PHILLIMORE.

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[*] State Papers, vol. xxxvi, p. 994.

[†] Post Office to Foreign Office, November 6, 1866. See Article XIX in inclosed Treaty of France with New Granada, signed at Bogota, January 31, 1844.

[*] "Panama Star and Herald."

Hanover.

No. 98 A.

The Law Officers of the Crown to Lord Stanley.—(*Received December* 31.)

Lincoln's Inn, December 31, 1866.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 18th of December, 1866, stating that he was directed by your Lordship to ask our opinion on the following matter:—

The Kingdom of Hanover has, as we are aware, been annexed by conquest to the Kingdom of Prussia.

That a question is now pending between the King of Prussia and the ex-King of Hanover, in regard to the amount of compensation to be made by the former to the latter for the private property of the House of Hanover.

That Her Majesty's Government have no knowledge as to the nature and place of deposit of that private property which is to be subject of compensation; whether it merely consists in property in money, houses, furniture, jewels, pictures, and such like articles, which have fallen into the possession of Prussia on the annexation of the Kingdom of Hanover, or whether under the definition of private property to be surrendered in return for compensation is included property belonging to the House of Hanover, whether invested for a length of time in the English funds, or jewels and other moveable property belonging to the Crown of Hanover, and forwarded to this country for security on the breaking out of the late war, and subject equally with the funded property to family entails.

Mr. Hammond was also pleased to state that we should see by the inclosed statement of the family laws of the House of Hanover that the Queen has a contingent interest in the family entails of that House.

That the point therefore on which your Lordship would be glad to have our early opinion is, whether any steps can be taken, under the circumstances which he had set forth, and which are all that are within your Lordship's knowledge, to secure the reversionary interests of the Queen in the property now subject to the family entails, or to the compensation awarded by the King of Prussia to the King of Hanover in lieu thereof; and if so, what those steps should be.

In obedience to your Lordship's commands, we have taken this matter into consideration, and have the honour to report—

That it does not appear from the papers sent to us that Her Majesty has any interest in the question now pending between the King of Prussia and the ex-King of Hanover, except such interest as may be incident to the contingent right of Her Majesty to the Throne and Kingdom of Hanover. The two sets of extracts from the Hanoverian Law of Succession relate entirely to the Throne and Kingdom, except clause 6 of the Laws of 19th November, 1836, which does not affect the present question. We apprehend that by the *jus victoris* the King of Prussia has a right to at least all property, moveable and immoveable, which appertained to the Crown and Kingdom, and which the Sovereign could not sever from the Crown. We think that, if, following usage which has sometimes prevailed, the conqueror concedes property to the conquered Sovereign, or make him compensation for property taken, the property so restored, or such compensation as may be made, must be deemed to be the free gift of the conqueror, and subject only to limitations which he may think right to impose upon it in the hands of the recipient.

If it should happen that property conceded or compensation granted to the conquered Sovereign should, by the terms of the concession or grant, be subjected in his hands to the limitations or entails to which the property given up, or in lieu of which compensation is made, was subject before the conquest, it does not appear, from the papers before us, that Her Majesty had any interest in such property. It does not follow that the limitations or entails relating to such property would be the same as those relating to the Kingdom.

We think that, according to precedent, a formal protest against any injury which the annexation of Hanover by Prussia may inflict upon the reversionary interests of Her Majesty, or her descendants, should be formally made and tendered by Her Majesty's representative at Berlin to the King of Prussia, and we also think that a claim may be made on the ex-King of Hanover that property ceded, or compensation awarded to him, should be held subject to the limitation and entail to which Crown property was subject before the conquest.

We have, &c.
(Signed) JOHN ROLT.
JOHN B. KARSLAKE.
ROBERT PHILLIMORE.

Hayti.

No. 100 A.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received February* 6.)

Lincoln's Inn, February 5, 1866.

My Lord,

WE are honoured with your Lordship's commands, signified in Mr. Hammond's letter of the 29th January ultimo, stating that he was directed by your Lordship to transmit to us therewith a letter from the Colonial Office inclosing a despatch from the Governor of the Bahamas[*] on the subject of the treatment of Haytian refugees, and to request that we would take these papers into our consideration, together with our report of the 18th December, 1865, and other correspondence relating to the same subject, and favour your Lordship with our opinion as to the instructions which Mr. Cardwell proposes to give to Governor Rawson in this matter.

In obedience to your Lordship's commands, we have taken these papers into our consideration, and have the honour to report—

That we are of opinion, that the instructions which Mr. Cardwell proposes to send to the Governor of the Bahamas are right and proper to be sent.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 100 B.

The Queen's Advocate to Lord Stanley.—(*Received March* 13.)

Doctors' Commons, March 12, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Murray's letter of the 5th instant, stating that, with reference to my Report of the 22nd of December last respecting the rights of Consulates in Hayti to afford an asylum to political refugees, he was directed by your Lordship to transmit to me a despatch, with its inclosures, which has been received from Her Majesty's Chargé d'Affaires in Hayti upon this subject; and Mr. Murray was pleased to request that I would take these papers into consideration, and furnish your Lordship with any observations I may have to offer thereupon.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That it appears from the answers of the foreign Consuls to Her Majesty's Chargé d'Affaires in Hayti, that the Government of that country has been in the habit of granting to the Consular-house the privilege of protecting refugees. This, as the American Consul justly observes, is an exceptional privilege not in accordance with the general law of nations.

The present Government of Hayti appear to desire the continuance of this privilege, because it spares the Government the necessity of inflicting capital punishment on political offenders, which they are obliged to decree, but do not wish to execute. Her

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[*] January 23, 1866; Colonial Office, December 15, 1865; Colonial Office, January 20; Law Officers, January 18, 1866; to Law Officers, December 19, 1865.

Majesty's Chargé d'Affaires says that the exercise of the privilege has saved a great many lives, but "that it involves our Vice-Consuls not only in great expenses, but exposes them to serious disputes with the local authorities." He is of opinion, however, that, if it is to be abandoned, due notice should be given at a time when the Republic is tranquil of the intention to abandon it.

I think the existence of the privilege at this moment is made out; but I should also think that it ought, as soon as a proper time arrives, to be abandoned.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 100 c.

The Queen's Advocate to the Earl of Clarendon.—(Received May 23.)

Doctors' Commons, May 23, 1866.

My Lord,

I AM honoured with your Lordship's commands, signified in Mr. Hammond's letter of the 18th instant, stating that he was directed by your Lordship to transmit to me a despatch, with its inclosures, from Her Majesty's Chargé d'Affaires at Hayti, relative to the circumstances connected with the capture by the Haytian forces of the British vessel "Don José," in October last; and to request that I would take these papers into consideration, and furnish your Lordship with my opinion as to what instructions should be sent to Mr. St. John in regard to this matter.

In obedience to your Lordship's commands, I have taken these papers into consideration, and have the honour to report—

That it appears that, at the time when this schooner, the "Don José," was captured, the blockade of Cape Haitien was effectual "and completely closed the port."

The "Don José" has been tried properly, I presume; and though I do not find among the papers the copy of "the law under which the condemnation was effected," which Mr. St. John says he incloses, I see no reason to doubt that the vessel was properly condemned.

Her ignorance of the existence of the blockade appears very improbable; and it was a question for the Court to determine.

I see no reason for the official interference of Her Majesty's Chargé d'Affaires, either in this case or that of the "E. Beckwith."

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 100 D.

The Law Officers of the Crown to Lord Stanley.—(Received October 6.)

Lincoln's Inn, October 5, 1866.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Murray's letter of the 17th ultimo, stating that, with reference to our letter of the 5th of February last upon the subject of the treatment of Haytian refugees, he was directed by your Lordship to transmit to us a letter from the Colonial Office, dated August 27, relative to certain complaints made by Haytian refugees whom it was found desirable to remove from Jamaica; and Mr. Murray was pleased to request that we would take these papers into consideration, and furnish your Lordship with our opinion as to the reply which Lord Carnarvon proposes to return to the complainants.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That we are of opinion that the reply which the Earl of Carnarvon proposes to return to the claimants in this case is fit and proper to be sent. We think at the same time that it would be desirable if General Lamoth and his friends can produce (as they ought to be able to do) satisfactory evidence of the amount and value of any property lost by them by reason of the withdrawal of the naval guard from the "Oracle," that steps should be taken to award a reasonable compensation for such loss.

We have, &c.
(Signed) H. M. CAIRNS.
W. BOVILL.
ROBERT PHILLIMORE.

Mexico.

No. 119 A.

The Queen's Advocate to the Earl of Clarendon.—(Received January 9.)

Doctors' Commons, January 9, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 2nd instant, stating that with reference to my Report of the 22nd of May last on the subject of the liability of British subjects to serve in a force which was being organized in Mexico for the protection of property from the depredations of guerrilla bands, he was directed by your Lordship to transmit to me a despatch from Her Majesty's Minister in Mexico, inclosing a correspondence which he had held with the Mexican Government and with British residents on this subject, and requesting to be instructed as to the course he should pursue in the event of the Mexican Government insisting on the enrolment of foreigners in such bodies, notwithstanding the representation which has been made to them: and Mr. Hammond was pleased to request that I would take Mr. Scarlett's despatch into consideration, and report to your Lordship my opinion as to the instructions which should be sent to him thereon.

In obedience to your Lordship's commands I have taken this case again into consideration, and have the honour to report—

That I adhere to the opinion which I had the honour to express in my former Report on this subject. The real question is, whether this body in which the foreigner is required to enrol himself, be *bonâ fide* intended exclusively for the strictly civil and municipal purposes of protecting property from depredation, or, whether it be for the further object also, of acting indirectly as part of an army against a military force, though that force may be organized by rebels. In the former case it is not unreasonable or contrary to international comity, regard being had to the present disturbed state of Mexico, that they should be required, as temporary citizens, to belong to that civil force. In the latter case it would be a violation of that comity to compel them to serve in this body or force. Moreover, in this instance, Mr. Scarlett observes, that Her Majesty's subjects are protected by an express Article of the Treaty between England and Mexico from compulsory military service.

I think that the payment of the tax proposed for a short or definite period would, as I have before said, be a fair adjustment of the difficulty. I agree with Mr. Scarlett that the acceptance of "honorary distinctions" cannot be forced upon Her Majesty's subjects, but I am not sure that I fully understand what is meant to be conveyed by these expressions.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 119 B.

The Attorney-General to the Earl of Clarendon.—(Received February 3.)

Lincoln's Inn, February 2, 1866.

My Lord,

I AM honoured with your Lordship's command signified in Mr. Hammond's letter of the 18th ultimo, stating that he was directed by your Lordship to forward to me a despatch from Her Majesty's Minister in Mexico (No. 196, December 9, 1865), reporting that application had been made to him to procure for the Emperor of Mexico a copy of the British Constitution; and to request that I would favour your Lordship with a list of Books of Reference which might be furnished for His Majesty's use.

In obedience to your Lordship's commands I have the honour to report—

That copies of the Petition of Right (3 Car. I, cap. 1), the Act against the Star Chamber, &c. (16 Car. I, cap. 10), the Habeas Corpus Acts (31 Car. II, cap. 2, and 56 Geo. III, cap. 100), the Act declaring Rights and Liberties after the Revolution of 1688 (1 Will. and Mar., Session 2, cap. 2), the Acts for securing the independence of the Judges (12 and 13 Will. III, cap. 2, and 1 Geo. III, cap. 23), and the Acts for establishing the Royal Supremacy (26 Hen. VIII, cap. 1, and 1 Eliz., cap. 1), and for Abolishing

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the High Commission Court (16 Car. I, cap. 11), may, in my opinion, usefully be sent to Her Majesty's Minister in Mexico, as containing some of the most important guarantees for the general constitutional system of this country which have ever been introduced, or placed on record by direct legislation.

The only Books of Reference which it occurs to me to mention are the once popular but rather superficial and rhetorical Treatise of Delolme, and Hallam's "Constitutional History of England," which latter is, in my judgment, by far the best work on this subject.

I have, &c.
(Signed) ROUNDELL PALMER.

No. 119 C.

The Queen's Advocate to the Earl of Clarendon.—(*Received February* 8.)

Doctors' Commons, February 7, 1866.

My Lord,

I AM honoured with your Lordship's commands, signified in Mr. Hammond's letter of the 5th instant, stating that he was directed by your Lordship to transmit to me a despatch from Her Majesty's Minister in Mexico (No. 202, December 22, 1865), inclosing copies of certain decrees, having reference to the civil rights of foreigners residing in that country; and Mr. Hammond was to request that I would take these papers into consideration, and furnish your Lordship with my opinion thereon.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That upon perusal of the various legal ordinances contained in this "Estatuto Orgánico," I do not find any provision which appears to me to call for any observation from your Lordship on behalf of the subjects of Her Majesty.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 119 D.

The Queen's Advocate to the Earl of Clarendon.—(*Received March* 5.)

Doctors' Commons, March 3, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 27th ultimo, stating that he was directed by your Lordship to transmit to me the accompanying correspondence, as marked in the margin, relative to a claim of the heirs of the late Dr. Gibson on the property of the firm of Lamadrid, of Acapulco; and to request that I would take these papers into consideration, and furnish your Lordship with my opinion as to the steps which should be taken in the matter.

In obedience to your Lordship's commands I have the honour to report—

That in the circumstances of this case I think that further communication should be had by Her Majesty's Minister at Mexico before the realisation of this mortgage be pressed upon the firm of Lamadrid through the intervention of Her Majesty's Government.

It is clear from the letter of Mr. Wylie that this pressure would result in the loss of the property. I therefore advise that Messrs. Gibson be answered to the effect that Her Majesty's Government decline, while the persons entitled in distribution are not unanimous, to give directions to Her Majesty's Minister at Mexico to press for the foreclosure of this mortgage, being assured by him that the result will be, in the present state of Mexican affairs, to cause the loss of the property; but that Her Majesty's Minister at Mexico will be requested to specify a reasonable period, after the expiration of which he thinks the foreclosure of the mortgage may be attempted.

In the meanwhile it is, of course, competent to Messrs. Gibson to take what steps they think expedient on their own behalf in this matter.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 119 D*.

The Queen's Advocate to the Earl of Clarendon.—(*Received April* 25.)

Doctors' Commons, April 25, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 21st instant, stating that, with reference to my Reports of the 22nd May and the 20th June, 1865, and the 9th January of the present year, respecting the obligation sought to be imposed upon British subjects in Mexico to serve in the Rural Guard, he was directed by your Lordship to acquaint me that your Lordship has recently instructed Her Majesty's Minister at Mexico to propose to the Mexican Government the draft of a new Treaty of Commerce and Navigation to be substituted for the existing Treaty of the 26th December, 1826. That in that draft is inserted an Article exempting British subjects from compulsory military service, and from any contributions imposed in lieu of such service; and that Mr. Scarlett, in a despatch also transmitted, expresses his apprehension lest the provisions of that Article should be at variance with the instructions which were addressed to him by Earl Russell and your Lordship, founded upon my Reports, to which reference is made.

Mr. Hammond was also pleased to transmit, by direction of your Lordship, a Memorandum upon the subject which has been prepared in the Foreign Office, together with the draft of an instruction which your Lordship proposes to address to Mr. Scarlett; and he was pleased to request that I would take such draft into consideration, and report to your Lordship my opinion thereupon. That your Lordship would be glad to receive my Report in time to write to Mr. Scarlett by the mail of the 1st May.

In obedience to your Lordship's commands I have taken these papers into consideration, and have the honour to report—

That I think that the instructions contained in your Lordship's letter to Mr. Scarlett are very proper. The addition proposed to Article XVI of the Treaty would remove all difficulty in the future construction of this Article, and perhaps it might be expedient that it should be made in the first instance, and before it is required by the Mexican Government; but I submit this suggestion to your Lordship's better judgment.

I have, &c.
(Signed) ROBERT PHILLIMORE.

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No. 119 E.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received May* 1.)

My Lord, *Lincoln's Inn, April* 28, 1866.

WE are honoured with your Lordship's commands, signified in Mr. Hammond's letter of the 12th instant, stating that, with reference to our report of the 30th of October last, he was directed by your Lordship to transmit to us a further despatch from Her Majesty's Minister in Mexico (No. 29), forwarding copies of a correspondence which has passed between himself and Mr. Crowther, in regard to the claim of the latter for protection, on the ground of his being a British subject, and Mr. Hammond was to request that we would take these papers into our consideration, and furnish your Lordship with our opinion thereupon. Mr. Hammond was pleased also to inclose, for our convenience, the former papers connected with this case.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That, according to the statement in the letter of Mr. Crowther to Mr. Scarlett (26th February, 1866), Mr. Crowther is the son of a British soldier, who served in the British Army in 1809-12. If this fact be capable of proof, we think his statement that he is himself a natural born British subject may, in the absence of evidence to the contrary, be taken for true; and if he now seeks to be recognized as a British subject generally, and without reference to any circumstances connected with or arising out of the late civil war in America, we think that he might be fairly recognized as a British subject by Mr. Scarlett.

If the records of the War Office support his statement that his father did serve in the British Army, any other proof of that statement will probably be unnecessary; if not it cannot be accepted as true, without proof. In the meantime, as the circumstances of the case appear to render it probable that he was originally a British subject, we think that Mr. Scarlett should continue to extend to him a protection, limited to six months, or some such period, before the expiration of which Mr. Crowther must produce some reasonable evidence of his British origin, unless, on reference to the War Office records, such evidence should prove to be unnecessary.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 119 F.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received May* 7.)

My Lord, *Lincoln's Inn, May* 7, 1866.

WE are honoured with your Lordship's commands, signified in Mr. Hammond's letter of the 7th April ultimo, stating that, with reference to his letter of the 29th March last, he was directed by your Lordship to transmit to us a further despatch from Her Majesty's Minister in Mexico respecting the sack of Bagdad by the United States' soldiers.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we are of opinion that Mr. Scarlett and Mr. Consul Bagnall have exercised a sound discretion in the advice which they have given to the British residents at Matamoras.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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No. 120 A.

The Queen's Advocate to Lord Stanley.—(Received August 14.)

Doctors' Commons, August 12, 1866.

My Lord,

I AM honoured with your Lordship's commands, signified in Mr. Hammond's letter of the 3rd instant, stating that he was directed to transmit to me a despatch from Her Majesty's Minister in Mexico (No. 83) relative to the proceedings of the Government of that country in taking possession of a line of railway in which British interests are concerned, and to request that I would take the same into consideration and report to your Lordship my opinion as to the reply which should be returned to Mr. Scarlett.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That this act of the Mexican Government appears to be extremely arbitrary and unjustifiable, and I humbly advise that Mr. Scarlett be instructed to use his good offices on behalf of Mr. Davidson, as a foreign shareholder in the railway of which the Government has thus summarily possessed itself; at the same time Mr. Scarlett should apprize Mr. Davidson that he must rely principally upon his own exertions, both by putting in force whatever remedies the law may furnish and by addressing memorials to the Emperor and his Government.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 120 B.

The Queen's Advocate to Lord Stanley.—(Received September 5.)

Doctors' Commons, September 4, 1866.

My Lord,

I AM honoured with your Lordship's commands, signified in Mr. Egerton's letter of the 1st instant, stating that he was directed to transmit to me two despatches from Her Majesty's Minister at Mexico (Nos. 8 and 9), inclosing copies of Decrees which have been issued by the Mexican Government closing certain ports of that country against both internal and foreign commerce; and Mr. Egerton was pleased to request that I would take these papers into consideration and furnish your Lordship with my opinion as to the legality of the above-mentioned proceeding.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That the Decree in question prohibits all commerce between places subject to the Imperial Government and the Department of Chihuahua, which is under the control of the enemy of the Emperor, and it also contains a Regulation with respect to passports as to persons travelling in that Department; that it is to be remembered that Her Majesty, though neutral in the civil war now existing in Mexico, has recognized the Emperor as the lawful Sovereign of that State. No question, it will be observed, as to the validity of any blockade is raised by this Decree. I see no reason to doubt the competence of the Emperor of Mexico to make the Decree in question, which is to have effect only within his own dominions.

I have, &c.
(Signed) ROBERT PHILLIMORE

River Plate.

No. 157 A.

The Law Officers of the Crown to the Earl of Clarendon.—(Received June 30.)

Lincoln's Inn, June 28, 1866.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 25th instant, stating that he was directed by your Lordship to transmit to us therewith a despatch from Her Majesty's Chargé d'Affaires at Buenos Ayres, giving a summary of the occurrences connected with the imprisonment of Mr. George D. Stewart of that city, whose case has for some time been before Her Majesty's Government, and has already been reported on by Her Majesty's Advocate-General.

Mr. Hammond was at the same time to transmit to us the former correspondence on the subject, and to request that we would take the papers into our consideration, and report to your Lordship our opinion as to the merits of Mr. Stewart's case as set forth therein, and as to the nature of any further instructions to be addressed to Mr. Ford on the subject, and of any communication to be made to the party in this country who has applied in behalf of Mr. Stewart.

In obedience to your Lordship's commands we have taken this matter into our consideration, and have the honour to report—

That it appears to us that Her Majesty's Chargé d'Affaires at Buenos Ayres has taken every step which was proper and judicious in this matter, and that it is not necessary to address to him any further instructions upon the subject of Mr. Stewart's claim. Upon the merits of that claim we have not as yet sufficient evidence before us to pronounce an opinion with certainty; but there seems to be at present no proof that the tribunal before which it is now pending will not do justice with respect to it. The proper answer to the gentleman applying in this country on behalf of Mr. Stewart would be, that Her Majesty's Government have instructed Her Majesty's Chargé d'Affaires to give such aid to Mr. Stewart as he may be properly able to give; but that as the case of this gentleman is now depending before the ordinary tribunals of the country, there is no ground for any other kind of official interference on the part of Her Majesty's Government.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

Russia.

No. 157 B.

The Law Officers of the Crown to the Earl of Clarendon.—(Received April 5.)

Lincoln's Inn, April 4, 1866.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 19th of March ultimo, stating that he was directed by your Lordship to transmit to us the accompanying letter, dated the 13th ultimo, from Messrs. Geach and Franklyn, putting forward the claim of Mr. Finkenstein, as a naturalized British subject, to receive from the Russian Government compensation on account of injuries inflicted on him by Russian soldiers in 1863, under the circumstance set forth in the previous papers in this case, also sent therewith;[*] and to request that we would take this matter into our

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[*] Lord Bloomfield, Nos. 136, 144, 150, 154, 156, 171, and 178; to Lord Bloomfield, Nos. 67, 73, and 77; Mr. Finkenstein, April 25; to Mr. Finkenstein, April 30.

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consideration, and favour your Lordship with our opinion as to the answer which should be returned to Messrs. Geach and Franklyn.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That we agree with the opinion expressed by Earl Russell in his letter to Mr. Finkenstein of April 30, 1863. Mr. Finkenstein being a Russian subject by birth and allegiance, received his injuries in the country of which he was a subject, from soldiers who were his fellow-subjects.

The British naturalization (even if it had been general, and not, as we infer, merely colonial) could not, without the consent of Russia, give Mr. Finkenstein the character of a British subject in the Empire of Russia.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

St. Domingo.

No. 160 A.

The Queen's Advocate to Lord Stanley.—(*Received August* 2.)

Doctors' Commons, August 2, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 28th ultimo, stating that he was directed by your Lordship to transmit to me the accompanying correspondence, which has been received through the Colonial Office,* relative to the seizure of the British vessel "President" for an alleged breach of the revenue laws of the Republic of St. Domingo; and Mr. Hammond was to request that I would take these papers into consideration, and report to your Lordship my opinion as to any steps to be taken in the matter by Her Majesty's Government.

In obedience to your Lordship's commands I have considered these papers, and have the honour to report—

That it appears that all the vessels seized for alleged breach of the revenue laws of Puerto Plata have been restored to their owners. It is very difficult to understand what *de facto* authority governs at this part of the Island of San Domingo; but looking to the circumstances, I do not think any interference on the part of Her Majesty's Government necessary on behalf of the owners of these vessels.

It would seem to be very desirable that there should be a resident Vice-Consul at Puerto Plata.

I have, &c.
(Signed) ROBERT PHILLIMORE.

No. 160 B.

The Queen's Advocate to Lord Stanley.—(*Received December* 18.)

Doctors' Commons, December 15, 1866.

My Lord,

I AM honoured with your Lordship's commands signified in Mr. Hammond's letter of the 12th instant, stating that he was directed to transmit to me a letter from the Board of Trade on the subject of certain expenses incurred by the British Vice-Consul at San Domingo in 1864 for the provisioning of the crew of the British vessel "Eliza," which had been seized by the Spanish authorities for an alleged attempt to break the blockade then in force at San Domingo; and to request that I would take these papers into consideration, and inform your Lordship of the steps which it will now be proper to take thereon. The previous correspondence was also inclosed.

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* Colonial Office, July 16 and July 25, 1866.

In obedience to your Lordship's commands I have taken this case into consideration, and have the honour to report—

That it appears from the papers that it was at first doubtful whether the "Eliza" was seized by the Spanish authorities on the ground of her having violated some municipal law, or her having broken the blockade of San Domingo; but her detention was finally justified by the Spanish authorities on the latter ground. It appears also that she was, after long detention (eighty-one days), ultimately released without trial; and if the statement in the Judgment of the Court of the Turks and the Caicos Islands be correct, the vessel was repaired by the Spanish authorities and restored to her owners.

That the "Eliza" was taken in a blockaded port appears to be admitted, her defence being that she was driven there by stress of weather. As this is a very common pretext of blockade-runners, her detention and examination were not improper, much less illegal; and if she had been fairly tried, and the Court had determined that, though she was innocent, there had been in the circumstances probable cause of seizure, and that therefore her owners were not entitled to costs or damages, a regard for our own prize precedents would have perhaps warranted Her Majesty's Government in abstaining from making any official complaint of the decision.

It appears, however, that her seizure having been almost immediately protested against by the proper British authorities, and due information given that compensation would be insisted upon, eighty-one days elapsed before her release was granted, and then without any trial, so that her owner had no opportunity of preferring to the Prize Court his demand for costs and damages. In this state of things Her Majesty's Government were advised that the presumption must be that the "Eliza" was in no way to blame, and therefore, as a matter of right, entitled to that compensation which is usually expressed in the Prize Court under the terms "costs and damages," the latter including all fair expenses of a demurrage character. Accordingly, Her Majesty's Government made a demand to this effect, including the sum of 68*l.* 5*s.* 6*d.*, to which the letter of the Board of Trade (1st December, 1866) refers; but I cannot discover that this demand, conveyed in two letters of Mr. West, 11th and 13th July, 1865 (copies of which were inclosed to the Foreign Office, 15th July, 1865), has received any answer. This is at least the last despatch on the subject previously to the letter of the Board of Trade above referred to, which I can find in the papers now submitted to me.

The application which that letter requests your Lordship to make to the Spanish Government has been made a year and a half ago; and unless some intervening arrangement has been made, or different resolution on the part of Her Majesty's Government (of which I am not aware) has been taken, it seems to me that the only course which your Lordship can now pursue is to instruct Her Majesty's Representative at Madrid to press for an immediate satisfaction of this long-delayed claim, and that when the money be obtained the sum of 68*l.* 5*s.* 6*d.* should be sent to the Board of Trade for the repayment of Her Majesty's Vice-Consul's expenses at San Domingo incurred by supporting the crew of the "Eliza."

I have, &c.
(Signed) ROBERT PHILLIMORE.

P.S.—If the vessel has been repaired by the Spanish Government, the costs of the repairs (unless, indeed, caused by the act of the Spanish Government) will probably be deducted from the amount of compensation which has been claimed.

R. P.

Saxony.

No. 160 C.

The Law Officers of the Crown to Lord Stanley.—(*Received November* 26.)

Lincoln's Inn, November 22, 1866.

My Lord,

WE are honoured with your Lordship's commands, signified in Mr. Hammond's letter of the 7th instant, stating that he was directed by your Lordship to transmit to us a

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despatch from Her Majesty's Chargé d'Affaires at Dresden, in which he requests to be informed as to the legal *status* in this country and abroad of persons who are born in a foreign country, of a mother being a natural-born British subject; and to request that we would take this despatch into consideration, and furnish your Lordship with our opinion as to the reply to be given to Mr. Eden's inquiries.

In obedience to your Lordship's commands, we have taken this question into consideration, and have the honour to report—

That the child born abroad of a foreign father, and of a mother being a natural-born British subject, is not entitled to the privileges of a natural-born British subject, but remains an alien, notwithstanding the statute 7 & 8 Vict., cap. 66, by which such a child is enabled to inherit land; nor is the child having this *status* entitled to the protection, as a natural-born British subject, of Her Majesty's Agents abroad, or to a British passport, or to the privilege of being married at one of Her Majesty's Legations.

But we think that the protection of Her Majesty's Representatives abroad, might fairly be extended to the child in any country other than that of her father, in any case of distress or particular emergency.

We have, &c.
(Signed) JOHN ROLT.
W. BOVILL.
ROBERT PHILLIMORE.

Spain.

No. 165 A.

The Law Officers of the Crown to the Earl of Clarendon.—(Received January 24.)

Lincoln's Inn, January 24, 1866.

My Lord,

WE are honoured with your Lordship's commands, signified in Mr. Hammond's letter of the 17th January instant, stating that, with reference to our previous reports on the subject of vessels supposed to be fitting out in this country to act as privateers in the war between Spain and Chile, he was directed by your Lordship to transmit to us further letters from the Treasury and the Home Department* relative to vessels which are being fitted out at Liverpool and elsewhere, and to request that we would take these papers into our consideration, and favour your Lordship with our opinion, at our earliest convenience, as to whether any steps can be taken by Her Majesty's Government in this matter.

In obedience to your Lordship's commands, we have taken these papers into our consideration, and have the honour to report—

That we do not find any facts stated in these papers, upon which we can advise Her Majesty's Government that they ought to take any steps with respect to the vessels which are mentioned in them.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 179 A.

The Law Officers of the Crown to the Earl of Clarendon.—(Received March 1.)

Lincoln's Inn, February 28, 1866.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 31st ultimo, stating that he was directed to transmit to us, with reference to our Report of the 1st of August last, two letters from the Colonial Office,† inclosing further despatches from the Governor of the Bahamas relative to Mr. Wiggins, the lessee of Cay Sal. The previous correspondence which has taken place on this subject was also inclosed; and Mr. Hammond was pleased to request that we would furnish your Lordship with our opinion whether the course suggested by Mr. Cardwell can properly be taken in this matter.

We are also honoured with Mr. Hammond's letter of the 20th instant, transmitting a letter and its inclosures which has been received from the Colonial Office, containing further information respecting this case.

In obedience to your Lordship's commands we have taken these papers into consideration, and have the honour to report—

That at present there does not appear to us to be sufficient evidence to show whether Mr. Wiggins, or the person passing by that name, is, or is not, a slaver or wrecker, or both. If he is, it certainly seems strange that he should have asked to have revenue officers stationed on the island.* Should these suspicions turn out to be well founded, it would, of course, be the duty of Her Majesty's Government to take all lawful measures for preventing instead of forwarding his claim to be lessee of the island; but these measures should, in our opinion, be taken directly by Her Majesty's Government, and not indirectly with Spain, having regard to the acts of Governor Bayley, and the formal transfer of the lease from Mr. Wilson to this person.

Upon the whole we advise that for the present the proceedings of this person be carefully watched, and further evidence must be collected before Her Majesty's Government take any definite steps in this matter.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

No. 184 A.

The Law Officers of the Crown to the Earl of Clarendon.—(Received April 28.)

Lincoln's Inn, April 27, 1866.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 7th April instant, stating that, with reference to our Report of the 13th of September last, he was directed by your Lordship to transmit to us a despatch from Her Majesty's Minister at Madrid (No. 70, March 17), inclosing a copy and translation of a note which he has received from the Spanish Government, in which they decline to give any compensation to the owners of the "Mermaid," or to accede to the proposal of Her Majesty's Government that this case, as well as those of other vessels which were sunk by shots from the fort of Ceuta, should be submitted to a Mixed Commission, to arbitration, or to the good offices of a friendly Government.

Mr. Hammond was also pleased to state that he was directed by your Lordship to inclose the previous documents connected with the case of the "Mermaid," together with the papers connected with the cases alluded to by the Spanish Government; and to request that we would take all these papers into our consideration, and favour your Lordship with our opinion thereupon.

In obedience to your Lordship's commands we have taken these papers into our consideration, and have the honour to report—

That the reasons assigned by the Spanish Minister for non-compliance with either of the alternatives proposed by Sir J. Crampton do not appear to us satisfactory. So far as the question of the interest of the witnesses is concerned, the Spanish officers appear to us to be open to, at least, as much objection as the captain and crew of the "Mermaid."

With respect to the case cited, in which the British Government is alleged to have refused compensation to the Spanish Government, we have only to observe that, as far as we can judge, it appears to be distinguishable from that of the "Mermaid," and also that no offer of arbitration appears to have been pressed by the Spanish Government in that case upon the Government of Her Majesty.

Upon the whole, we adhere to the opinion expressed in the Report which we have had the honour to make upon this subject.

We have, &c.
(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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* Treasury, December 28 and 30, 1865, January 15, 16, and 16; Home Office, January 1 and 16, 1866.

† Colonial Office, November 24; to Colonial Office, December 13, 1865; Colonial Office, January 25, 1866.

* See despatch of Governor Rawson, No. 87, April 8, 1866.

No. 195A.

The Law Officers of the Crown to the Earl of Clarendon.—(*Received July 6.*)

Lincoln's Inn, July 4, 1866.

My Lord,

WE are honoured with your Lordship's commands signified in Mr. Hammond's letter of the 2nd instant, stating that he was directed by your Lordship to transmit to us therewith, for our joint consideration, the accompanying papers,* which, with the exception of Sir J. Crampton's despatch No. 133, which has just been received, have at various times been submitted to the Queen's Advocate, respecting the case of the British vessel "Mermaid," sunk by a shot fired at her from a Spanish battery at Tarifa; and Mr. Hammond was to request that we would take this case into consideration, and report our opinion as to the course which Her Majesty's Government should now pursue.

In obedience to your Lordship's commands we have taken this case into consideration, and have the honour to report—

That we see no reason to alter the opinion which we have had the honour, after a careful examination of the evidence submitted to us, to express to your Lordship in our joint Reports of the 13th September, 1865, and of the 27th of April of the present year, upon this case. The refusal of Señor de Castro to grant compensation in this case is founded upon two reasons:—

One, that the Spanish Government gives, and has a right to give, more credence to the declarations of the Spanish officers (whom he declares, strangely enough, to be wholly disinterested, though they are justifying their own acts, which, if admitted to be unjustifiable, might entail on them a heavy responsibility) than to the declarations of the captain and crew of the "Mermaid;" but the obvious answer is, that the credence due to the deponents on either side must depend upon a proper investigation of all the circumstances and probabilities of the case as compared with the statements on each side: for it is not mere swearing or declaring, but swearing or declaring credibly, which ought to procure credence for the oath or declaration.

The proposition of Her Majesty's Government to submit this matter to proper arbitration would, if accepted by the Spanish Government, have led, and would still lead, to an investigation and decision, which would, of course, be acquiesced in as decisive by both Governments.

The other reason of Señor de Castro is, that Her Majesty's Government, in each of the cases of the "Rayo," in 1844, and of the "Prometheo" and "Iris," in 1854, believed the testimony of their own officers, and disbelieved that of the Spanish witnesses.

It is obvious, however, that the value of the testimony given in each particular case must depend upon the whole circumstances of that case; and Her Majesty's Government did not, in either of the instances referred to, profess to give credit to the testimony of British witnesses, because they were British, in preference to that of foreigners; but they rested their conclusions mainly upon the internal evidence of the whole transactions, and upon the application of tests beyond the region of serious controversy. The "Rayo" was a Spanish Government vessel, sunk by shots fired from Gibraltar (about which fact there was no difference), on account of her disregarding signals intended to bring her to, after a boat despatched from her had, within British waters, pursued and fired shots at a smack suspected of contraband trade. Not only was the fact of the chase and firing within British waters established by a great mass of British testimony, but there was really no opposing testimony, not even so much as a distinct denial on the part of the Spanish Commander; nor could the question itself very well have arisen if the "Rayo" and her boat had not followed the chase within gun-shot of Gibraltar. The signals given from the Rock, after the chase had been discontinued, may have been (and probably were) misunderstood by the Spanish officer; and the true character and the movements of the "Rayo" and her boat may have been, in some degree, mistaken by the British officers; her destruction, also, was unintentional, and was justly the subject of regret: but as the whole affair arose out of an unjustifiable violation of British territory (about which there was no room for serious controversy, and of which this was not the first instance), it was impossible for Her Majesty's Government to accept responsibility for the consequences.

In the more recent case of the "Prometheo" and "Iris," which was one of accidental collision at sea, the facts on which the British Government relied were proved by the log-book of the "Prometheo," and by the repairs which that vessel had actually required and undergone in consequence of the collision. The conclusion drawn as to the absence of fault, and consequent responsibility on the part of the British officer, was derived rather from the application of nautical judgment and science to the facts so established, with others not in controversy, than from any preference of British to Spanish testimony. Besides which there was a known legal remedy open in that case, in the British Court of Admiralty, to the Spanish owners of the "Iris," if they had been able to show that the collision really arose through the fault of the commander of the "Prometheo;" and where such a legal remedy existed, and was not resorted to, Her Majesty's Government could not be required to treat a case in which they did not themselves recognize the existence of a valid ground of complaint as one to be settled by international arbitration.

We must conclude by observing that we see no reason why Her Majesty's Government should abandon the position which they have taken up in this matter, inasmuch as the evidence appears to show that reparation is due from the Spanish Government for a great injury inflicted by the act of Spanish authorities upon a British vessel, which appears to us to be proved, by clear and credible testimony, to have complied with the requisites of the Spanish law, and not to have disregarded them, and to have been, after and notwithstanding such compliance (though doubtless through inadvertence), fired at with ball, and consequently sunk.

We have, &c.

(Signed) ROUNDELL PALMER.
R. P. COLLIER.
ROBERT PHILLIMORE.

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* Three Volumes.

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